



WEEKLY LABOUR BULLETIN

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RESIGNATION OR DESERTION OF WORKERS WITHOUT NOTICE

INTRODUCTION

Section 12 (4a) of the Labour Act stipulates how a contract of employment can be terminated by either party to the contract. However, it is not always the case that this section is followed by either party; hence, disputes arise due to the nature of the termination of the contract of employment. In this bulletin, we examine one way the contract is not terminated under section 12(4a): an employee leaving the workplace without giving notice.

The length of the notice period is determined by the length of the employment contract, and this can be found in section 12 (4) of the Labour Act. There are numerous reasons why an employee may just up and leave without giving notice, which include a job offer on another farm, joining artisanal miners for those close to mining areas, etc.

This article focuses on some of the legal questions surrounding situations where farm workers are leaving employment without giving any notice and sometimes without paying monies owed to the deserted farmer. For purposes of this article, “deserted farmer” shall refer to the farmer whose employees leave for or are recruited by another farmer, while “recruiting farmer” shall refer to the farmer who employs farm workers from the deserted farmer.

The pertinent questions are:

1. What, if any, is the recourse available to a deserted farmer against an employee who leaves employment without notice?
2. What, if any, is the recourse available to a deserted farmer against the recruiting farmer for any loss suffered because of the recruitment?
3. How does one address the likelihood of the employee coming back to reclaim their job or to demand their terminal benefits?

RECOURSE FOR A DESERTED FARMER AGAINST THE DESERTING EMPLOYEE

While the Labour Act (the Act) obliges an employee to give the appropriate notice on resignation, there is no specified remedy in the Act for failure to do so. Some employers are of the view that if an employee leaves without giving notice, the employee’s terminal benefits can easily be offset against the notice. This approach is contrary to the provisions of section 12A (6) of the Act, which forbids any kind of offset except in the circumstances listed therein.

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In the realm of our labour laws, the employer therefore has no remedy against the employee. He can only resort to other remedies provided under the common law for breach of contract. This entails that the employer may claim damages from the employee for breach of contract and for any resultant losses. Given the costs associated with embarking on such a route vis-à-vis the likelihood of recovering from an ordinary farm worker, any damages awarded by a court, one is left wondering if this option is worth pursuing.

On the other hand, court action may be necessary where the employee also has outstanding loans. These amounts, smaller as they may appear, may add up to significant amounts where several employees are involved. The deserted employer may want to pursue court action to teach the employees concerned a lesson, given that failure to settle an amount awarded by a court may, in certain circumstances, justify civil imprisonment.

WHAT CAN THE DESERTEED FARMER DO AGAINST THE RECRUITING FARMER?

There is no law prohibiting one employer from recruiting persons employed by another employer. In fact, the trend is that employers prefer employees currently attached to another employer, as these are considered familiar with current production methods.

In any event, there is no law placing an onus on a recruiting employer to first verify if the employee concerned is not violating his contract with the deserted employer. At law, contractual obligations are only binding to the parties who made an agreement under that contract. If a deserting farmer alleges breach, that can only be against the deserting employee.

WHAT IF THE DESERTER LATER COMES BACK TO RECLAIM THEIR JOB OR TO DEMAND THEIR TERMINAL BENEFITS?

The employee may later discover that it is not greener on the other side of the fence and retrace their footsteps back to the deserted employer or to demand their “dues”.

As already pointed out, the employee has breached his employment contract by not giving the required notice and absenting himself from work without authority. In employment terms, this amounts to an act of misconduct under an employment code ([s.i 41 of 2022](#)). It is advised that the employer takes disciplinary action against the employee by conducting a disciplinary hearing and passing the relevant punishment. If it is more than five (5) days, the employee can be dismissed. The disciplinary hearing can proceed in the

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employee's absence as long as notification of the proceedings has been delivered to the employee's last known address (even in the farm compound). If the employee is dismissed, there is no basis for them to claim their job back.

Regarding the scenario in which one comes back to demand their terminal benefits, the employer can only "withhold" them, with the prior approval of the Minister of Labour ([see section 13 of the Act](#)), pending a court order that the employee forfeits the terminal benefits. This is one instance where taking court action may prove worth the effort.

CONCLUSION

The Labour Act does not provide a remedy to employers against deserters other than disciplinary action. However, this does not mean that a deserted farmer has to simply watch helplessly while employees leave, in some cases with outstanding loans. There is an option for civil litigation for breach of contract or for damages against any incurred losses. However, in some cases, the cost and effort of mounting lawsuits against farm workers may not be an attractive adventure. On the other hand, there are instances where this option is worth considering, even just to set a precedent against such conduct.

Disclaimer: This article is issued to serve as a general guide to farmers and does not substitute legal advice that may be required to address a particular situation with peculiar circumstances.

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