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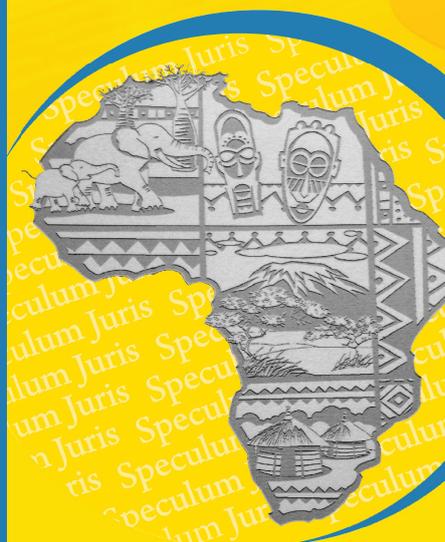
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Ghana's Domestic Workers Regulations of 2020: A Critical Appraisal

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Abstract

This article aims to review Ghana's Labour (Domestic Workers) Regulations (LI 2408) of 2020. It highlights the scope and purpose of the Regulations, the requirements for establishing an employment relationship between a domestic worker and an employer and the fundamental rights and basic conditions of employment for domestic workers when on duty. Additionally, the article refers to international labour standards regarding the protection of the rights of domestic workers, such as the Domestic Workers Convention (No. 189) of 2011. Furthermore, this article assesses whether the Domestic Workers Regulations meet those international standards. It concludes by welcoming the Domestic Workers Regulations as a positive step towards protecting domestic workers who have historically been denied legal protection under Ghana's labour laws.

Keywords: Domestic Workers; Domestic Workers Regulations; Domestic Workers Convention; Conditions of Employment; Employment Relationship; International Labour Standards

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1 INTRODUCTION

Domestic workers are a vital part of the workforce in Ghana's labour market. Although domestic workers represent an integral part of Ghana's rural and urban labour force, there is scant legislative and academic research on their protection. Domestic workers in Ghana typically come from rural, impoverished backgrounds and are predominantly women and migrant workers.¹ They perform various household duties such as cooking, laundry, shopping, babysitting, and caring for the elderly. Historically, the relationship between domestic workers and their employers in Ghana has been difficult to regulate. Studies from about a decade ago regarding the employment conditions of domestic workers reveal that most earn below the national daily minimum wage.² The research also indicated that domestic workers were compensated either in cash or in kind.³ Also, it was observed that the working relationship between domestic workers and their employers was often based on oral agreements.⁴ Domestic workers often face difficulties in pursuing contractual remedies against their employers, as their employment relationships are often not regulated by written agreements⁵ and therefore find themselves in vulnerable positions.⁶ In recent times, however, there have been calls by

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- 1 Tsikata "Employment Agencies and the Regulation of Domestic Workers in Ghana: Institutionalizing Informality?" 2011 *Canadian Journal of Women and the Law* 213 215–217. See generally, Tsikata "Employment Agencies and Domestic Work in Ghana" in Fudge, McCrystal and Sankaran (eds) *Challenging the Legal Boundaries of Regulation* (2012) 252–264; Apt, *A Study of Child Domestic Work and Fosterage in Northern and Upper East Region of Ghana* (2005); Leadership and Advocacy for Women in Africa – Ghana (LAWA-Ghana), *Domestic Workers in Ghana: First to Rise and Last to Sleep* (2003); Awumbila, Deshingkar, Kandilige, Teye & Setrana "Please, Thank You and Sorry – Brokering Migration and Constructing Identities for Domestic Work in Ghana" 2019 *Journal of Ethics and Migration Studies* 265 265–270; Hodzi, Annor & Darkwah "An Exploration of Work-Related Experiences of Domestic Workers in Accra, Ghana" 2021 *Journal of Workplace Behavioural Health* 309 309-310; Tsikata "Domestic Work and Domestic Workers in Ghana: An Overview of the Legal Regime and Practice in Ghana, Conditions of Work and Employment Series No. 23" (2009) ILO https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_145332.pdf (accessed 25-09-2021); Ghana Trade Union Congress (TUC)/WIEGO "Report on Domestic Workers in Ghana" (2012) WIEGO <https://www.wiego.org/sites/default/files/publications/files/G03.pdf> (accessed 25-09-2021).
 - 2 Tsikata 2011 *Canadian Journal of Women and the Law* 215.
 - 3 *Ibid* 215.
 - 4 Apt *A Study of Child Domestic Work and Fosterage* 27.
 - 5 Tsikata 2011 *Canadian Journal of Women and the Law* 215.
 - 6 LAWA-Ghana *Domestic Workers in Ghana* 7-8; Tsikata 2011 *Canadian Journal of Women and Law* 216.

academics and other stakeholders to protect the rights of domestic workers.⁷

The enactment of the Labour (Domestic Workers) Regulations (L.I 2408) of 2020 (hereafter “Domestic Workers Regulations”)⁸ is one of the main steps taken by Ghana to formalise the informal relationship that has hitherto existed between domestic workers and employers. Additionally, the promulgation of the Domestic Workers Regulations is crucial because it affords domestic workers several remedies for breaches of their rights by their employers. The enactment of the Domestic Workers Regulations almost two decades after the promulgation of the Labour Act 651 of 2003 (hereafter the Labour Act) has been received with optimism and praise.⁹ The Labour Act is the parent legislation that regulates employment and industrial relations and applies to all workers and employers in Ghana.¹⁰ Unfortunately, however, the Labour Act excludes domestic workers from enjoying certain core conditions of employment and thus does not explicitly afford domestic workers the necessary legal protection in their relationship with employers.¹¹ It is not clear why the legislators, when drafting the Labour Act, excluded domestic workers from the scope of the Act.¹² Therefore, the Domestic Workers Regulations is a positive development, as it creates a formal relationship between domestic workers and employers. The Regulations also establish a monitoring and compliance system that ensures that employers adhere to the conditions of employment, as stipulated in an employment

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- 7 McBride “Cleaning Up the Industry: Improving Protection for Precarious and Child Domestic Workers” 2018 *Fordham International Law Journal* 1334 1338; Rodgers “The Regulation of Vulnerable Workers and Precarious Work: A Liberal Framework” in Fashoyin and Tiraboschi (eds) *Vulnerable Workers and Precarious Working* (2013) 1-32; Orzturk “The Precarious Situation of Domestic Work in Light of the Turkish Labour Law and the ILO Convention No. 189” 2016 *The Journal of Labour and Social Affairs in Eastern Europe* 171; Parrenas “The Indenture of Migrant Domestic Workers” 2017 *Women’s Studies Quarterly* 113 115; Clarke “Domestic Work, Joy or Pain?” 2002 *Social and Economic Studies* 153 154; Mann “Employment Rights Protection and Conditions of Domestic Workers: A Critical Appraisal” 2015 *Journal of the Indian Law Institute* 216-218; Grant “Domestic Workers: Employees or Servants” 1997 *Agenda: Empowering Women for Gender Equity* 61 61–62; Chin “Precarious Work and Its Complicit Network: Migrant Labour in Singapore” 2019 *Journal of Contemporary Asia* 528 528; McCann “Equality Through Precarious Work Regulation: Lessons From Domestic Work Debates in Defence of Standard Employment Relationship” 2014 *International of Law in Context* 507 507. For further discussion on the vulnerability of domestic workers in Ghana, see generally Tsikata “Like Your Own Child? Employers’ Perspective and Domestic Work Relations in Ghana” in Rodriguez, Tsikata and Ampofo (eds) *Transatlantic Feminism: Women and Gender Studies in Africa and the Diaspora* (2015) 189; Anyidoho and Ampofo “Informalizing the Formal: The Conditions of Female Agency Workers in Ghana’s Banking Sector” 2017 *Contemporary Journal of African Studies* 67 67; Awumbila, Teye and Yaro “Of Silent Maids, Skilled Gardeners and Crucial Madams: Gendered Dynamics and Strategies of Migrant Domestic Workers in Accra, Ghana” 2017 *Geo Journal* 957–960; Tsikata “Promoting Change in Domestic Work Conditions From Outside in a Context of Regulatory Inertia: The Case of Ghana: Working Paper No. 9 – Working Paper Series” https://www.mcgill.ca/ldrl/files/ldrl/dzodzi_tsikata_the_ghana_case_study_working_paper_9_0.pdf (accessed 25-05-2024); Murphy “The Enduring Vulnerability of Migrant Domestic Workers in Europe” 2013 *The International and Comparative Law Quarterly* 599.
- 8 Labour (Domestic Workers) Regulations, 2020 (L.I. 2408) available at https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=111530 (accessed 28 May 2025).
- 9 Mpedi and Coleman *Labour Law in Ghana* (2022).
- 10 Section 1 of the Labour Act. The following categories of workers are excluded from the scope of application of the Act: Ghana Armed Forces, the Police Service, the Prisons Services and the Security and Intelligence Agencies.
- 11 Section 44 of the Labour Act.
- 12 See, Memorandum to the Labour Bill (2002) (on file with author). The Memorandum to the Labour Bill, the explanatory document accompanying the Act is silent on the reasons for excluding domestic workers from enjoying certain rights under the Labour Act. Similarly, parliamentary debates culminating to the acceptance of the content of the Labour Bill does not provide reasons as to why domestic workers were excluded from enjoying certain individual labour rights from the Labour Act. For further appraisal, see the Parliament of Ghana, *Parliamentary Debates – Official Report on Second Reading of the Labour Bill – Col. 2109*, 8 July 2003 (on file with author).

contract and the Labour Act.

The purpose of this article is to review the provisions, as well as the scope and aim of the Domestic Workers Regulations,¹³ which is the statutory requirement for establishing an employment relationship between a domestic worker and an employer, the rights of domestic workers while on duty and the basic conditions of employment for domestic workers. The article also refers to international labour standards on the protection of the rights of domestic workers, such as the Domestic Workers Convention (No. 189) of 2011 and assesses whether the Domestic Workers Regulations meet those standards.¹⁴

This article is organised into eight sections. The first section deals with the scope and purpose of the Domestic Workers Regulations. The second section discusses the formalisation of the employment relationship between a domestic worker and an employer by way of a written employment contract. The third section addresses the wages, remuneration, and benefits a domestic worker is entitled to. The fourth section addresses the basic conditions of employment for domestic workers. It also highlights the aspects of the Domestic Workers Regulations on maternity leave, annual leave, sick leave, and medical care for domestic workers. The fifth section discusses the rights of domestic workers while on duty, including freedom of association, prohibition of forced labour and protection against sexual harassment, among others. The sixth section addresses fair and unfair termination of employment and related issues. The seventh section deals with the mechanics of enforcing the terms of an employment contract and resolving contractual disputes between an employer and a domestic worker. The final section concludes by welcoming the Domestic Workers Regulations as a step in the right direction to formalise and regulate the working relationship between an employer and a domestic worker.

2 SCOPE, PURPOSE AND APPLICATION OF THE REGULATIONS

The Domestic Workers Regulations was promulgated following section 174 of the Labour Act, which confers power on the minister responsible for labour to make regulations that give effect to provisions in the Labour Act.¹⁵ The Domestic Workers Regulations seek to protect the rights of domestic workers in Ghana.¹⁶ It also seeks to formalise and define the working relationship between an employer and a domestic worker. The Domestic Workers Regulations apply to a domestic worker, an employer, and the occupants of the household in which a domestic worker is employed.¹⁷ A domestic worker is defined under section 175 of the Labour Act as a “person who is not a member of the family of a person who employs him or her as a house help.”¹⁸ Also, section 175 of the Labour Act defines an employer as a person who employs a worker under a contract of employment.¹⁹ Several academics have criticised the definition of a domestic worker under section 175 of the Labour Act for being narrow, as it does not capture the complex nature of domestic work in Ghana. For instance, Tsikata opines that the definition of a domestic worker in the Labour Act excludes “fostered children and persons with kinship relations.”²⁰ Tsikata

13 Mpedi and Coleman *Labour Law in Ghana* 48–49.

14 Ghana has not ratified the Domestic Workers Convention of 2011. However, the provision of the Domestic Workers Convention can serve as legislative and judicial inspiration for Ghana. See The International Labour Organisation (ILO), ‘Ratifications of C189 – Domestic Workers Convention, 2011 (No. 189) www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460 (accessed 25-09-2021).

15 The preamble of the Domestic Workers Regulations.

16 *Ibid* reg 1(a) .

17 *Ibid* reg 2(a) and (b) .

18 *Ibid*.

19 Section 175 of the Labour Act.

20 Tsikata 2011 *Canadian Journal of Women and Law* 220.

reasons that fostered children and persons with kinship relations often perform domestic work in return for their school fees, thus constituting an important category of domestic work.²¹

Internationally, the ILO Domestic Workers Convention (No. 189) of 2011 (hereafter Domestic Workers Convention) defines a domestic worker as “any person engaged in domestic work within an employment relationship.”²² The Convention also defines domestic work as “work performed in or for a household or households”²³ However, the Domestic Workers Convention stipulates that a person who performs domestic work occasionally or sporadically and not on an occupational or regular basis, is not considered a domestic worker.²⁴ The definition of a domestic worker under the Domestic Workers Convention is thus broad compared to that of the Labour Act, which has drawn some criticisms from scholars.

The Ghana Statistical Service defines domestic workers as “persons engaged to render household services with or without pay.”²⁵ A statistical snapshot by Baah-Boateng and Vanek in collaboration with the Women in Informal Employment: Globalizing and Organizing (WIEGO), reveals that there are approximately 60,000 and over 1 million domestic workers and home-based workers in Ghana respectively.²⁶ Furthermore, the Law and Advocacy for Women in Africa, Ghana (LAWA-Ghana) defines a domestic worker as a person who works in their employer’s house(s) and receives payment either in kind or in cash.²⁷ According to Tsikata, the definition by LAWA-Ghana is appropriate because it can encapsulate some of the complexities associated with domestic work in Ghana.²⁸ Under the Domestic Workers Regulations, domestic work encompasses domestic chores performed in any home or domestic setting,²⁹ as well as assistance in petty commercial activities,³⁰ security services³¹ and gardening.³² In terms of application, the Regulations apply to domestic workers above the legal age of majority, i.e., eighteen years and above. The Children’s Act 560 of 1998 deals with employment issues

21 *Ibid.* For further discussion on the rationale for including fostered children in the definition of domestic workers, see Tsikata 2011 *Canadian Journal of Women and Law* 220.

22 Article 1(b) of the Domestic Workers Convention.

23 *Ibid* art 1(a).

24 *Ibid* art 1(c). It is noteworthy that Ghana has not yet ratified the Domestic Workers Convention (No. 189) of 2011. Even though the Domestic Workers Regulations do not explicitly indicate that it seeks to ratify the Domestic Workers Convention, the content of the Regulations is modelled in line with the provisions of the Convention. For example, the range of rights provided by the Domestic Workers Regulations, such as the protection against harassment, abuse and violence, leave entitlements, hours of work, and the formalisation of the employment relationship, along with the clear requirements that termination of employment must follow required procedure mirror the provisions of the Convention. See, International Labour Organisation (ILO), ‘Ratifications of C189 – Domestic Workers Convention, 2011 (No. 189)’ https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460 (accessed 28-05-2025).

25 Ghana Statistical Service, *Population and Housing Census Enumerator’s Manual* (1999) 56.

26 Baah-Boateng and Vanek define domestic work to include domestic housekeepers, home-based personal care workers, domestic cleaners, and helpers. Home-based workers, on the other hand, include those workers identified by their place of work as the “home”. The definition, however, is indicative of the possibility that there is a significant number of domestic workers in Ghana, more than the 60,000 projected by the authors. See, Baa-Boateng and Vanek, ‘Informal workers in Ghana: A Statistical Snapshot’ (January 2020) https://www.wiego.org/wp-content/uploads/2020/03/WIEGO_Statistical_Brief_N21_0.pdf (accessed 28-05-2025).

27 LAWA-Ghana *Domestic Workers in Ghana* 2.

28 Tsikata (2011) *Canadian Journal of Women and the Law* 220.

29 Regulation 22(a) of the Domestic Workers Regulations.

30 *Ibid* reg 1(c).

31 *Ibid* reg 1(d).

32 *Ibid* reg 1(e).

involving children and related matters.³³

3 THE FORMALISATION OF THE EMPLOYMENT RELATIONSHIP

The Domestic Workers Regulations provide that an employer and a domestic worker must secure their working/employment relationship by way of an employment contract, which must be in writing. According to the Domestic Workers Regulations, the conclusion of a contract of employment between an employer and a domestic worker must be per section 13 of the Labour Act,³⁴ which requires an employer to furnish a worker with a written statement of the main terms of the employment contract within two months after the commencement of employment.³⁵ However, this is subject to the terms and conditions of the employment contract.³⁶ The Labour Act defines a contract of employment as “any contract of service, whether in writing or oral or expressed or implied.”³⁷

It is observed that the requirements for concluding an employment contract under the Labour Act and the Domestic Workers Regulations differ substantially. Under the Labour Act, an employment contract may be written or oral, express or implied. However, under the Domestic Workers Regulations, an employment contract must be in writing.³⁸ The Domestic Workers Regulations does not provide guidance regarding the implications of domestic workers and their employers not complying with the requirement that their employment relationship must be in writing. It is thus unclear whether the non-existence of a written employment contract renders the employment relationship void. This article suggests that employers comply with the statutory duty to have written employment contracts. This can be achieved by simply following the model contract provided in the First Schedule of the Domestic Workers Regulations. However, the failure of an employer and domestic worker to secure the employment relationship in writing should not render the relationship void. By not rendering an employment relationship void, due to the non-existence of a written contract could prevent employers from escaping their legal responsibilities towards their domestic workers.

From another perspective, the very requirement in the Domestic Workers Regulations that a contract of employment must be in writing, could be disadvantageous in some instances. The non-existence of a written contract does not necessarily negate the existence of an employment relationship between an employer and a domestic worker. For example, where it is ascertained that (1) the relationship between a domestic worker and an employer is not occasional or sporadic, (2) the domestic worker receives remuneration for work done, and (3) the domestic worker enjoys certain rights, such as maternity and sick leave, among others, an employment relationship can be implicitly established between that domestic worker and the employer, even though there is no written contract. Indeed, the foregoing assessment aligns with recent decisions of the Supreme Court of Ghana, which held that employment relationships or contracts can be impliedly established by assessing the conduct of the employer, the worker and the corresponding

33 Sections 12–13 of the Children's Act.

34 Regulation 3(1) of the Domestic Workers Regulations.

35 Section 3 of the Labour Act.

36 *Ibid* s 13.

37 *Ibid* s 175.

38 Regulation 3(1) of the Domestic Workers Regulations.

responsibilities or duties discharged towards each other.³⁹ When concluding a contract if either the domestic worker or the employer is illiterate, the Domestic Workers Regulations prescribes that the execution of the employment contract must be done in accordance with section 3 of the Illiterates Protection Act (CAP 262) of 1912.⁴⁰

Under Ghanaian law, the conclusion of a contract must flow from the free will and consent of the parties. Accordingly, a domestic worker cannot be forced to conclude a contract with an employer against their will or consent. A contract of employment is an essential source of law in determining the working relationship and the rights and obligations of both the employer and the worker. An employment contract establishes an employment relationship between a worker and an employer.⁴¹ An employment contract imposes legally enforceable obligations on the contracting parties. The employer and a domestic worker must legally fulfil their obligations under their employment contract. Ghanaian courts have expressed their commitment to upholding the parties to a contract to fulfil their contractual bargain.⁴²

3 1 Content of an Employment Contract

A contract of employment must clearly outline the rights and obligations of the parties. According to the Domestic Workers Regulations, an employment contract must make provision

- 39 *Frederick Abban & 9 Others v Takoradi Flour Mills Company Limited* Civil Appeal No. J4/75/2021 (Unreported) where Justice Amadu Tanko stated: “an employee may be said to be one, engaged as a member of an employment to perform task of that employment. There should thus, be an engagement, by way of a contract, whether oral, implied or written. That is, although the general position is that the employment contract must be in writing, the court in appropriate situations, can glean the employer-employee relationship from the conduct of the parties, such as if the employer consistently effects salary payments... .”
- 40 Regulation 3(5) of the Domestic Workers Regulations. Section 3 of Illiterates Protection Act of 1912 provides, “a person writing a letter or any other document for or at the request of an illiterate person, whether gratuitously or for a reward shall (a) clearly and correctly read over and explain the letter or document or cause it to be read over and explained to the illiterate person, (b) cause the illiterate person to sign or make a mark at the foot of the letter or other document or to touch a pen with which a mark is made at the foot of the letter or other document, (c) clearly write the full name and address of the writer on the letter or the other document as a writer of it, and (d) state on the letter or the other document the nature and amount of the reward charged or taken by the writer for writing the letter or the other document, and shall give a receipt for the reward and keep a counterfoil of the receipt to be produced at the request of any of the officer’s names in section 5 [District Chief Executive or a Police Officer.” For further discussion on how Ghanaian courts have dealt with legal issues under the Illiterates Protection Act (Cap 262) of 1912 see, *Abed Nortey v African Institute of Journalism & Communications, Stephen Nartey & Daniel Nartey* Civil Appeal No. J4/47/2013; *Khoury v Mitchual & Another* [1989-90] 2 GLR 256; *Zambrama v Segbedzi* [1991] 2 GLR 221; *Kofi v Anisah* [1993-1994] 1 GLR 309.
- 41 Casale “The Employment Relationship: A General Introduction” in Casale (ed) *The Employment Relationship: A Comparative Overview* (2011) 1–3; Van Staden and van Eck “The Parties to the Employment Relationship: A Comparative Analysis” 2018 *TSAR* 539 540; Wass “The Legal Definition of Employment Relationship” 2010 *European Law Journal* 45 45; Bishop “The Modern Employment Contract” 1990 *Advocates Quarterly* 245 246; Cavalier and Upex “The Concept of Employment Contract in European Private Law” 2006 *International and Comparative Law Quarterly* 587 588; Morscadelli “The Essentials of an Employment Contract” 2004 *LawNow* 24 24–25; Cohen “Implying Fairness into the Employment Contract” 2009 *Industrial Law Journal* 2271–2273; Bentein and Guerrero “The Employment Relationship: Current Research Avenues” 2008 *Industrial Relations* 409 409.
- 42 *Akim Akroso & Others v Akim Manso Stool & Others* [1989-1990] 1GLR 100; *Boateng v Valco Aluminium Co. Ltd* [1984] 1 GLR 733; *Magna Terris Ltd v Berthold Paa Joe Gadagbui* Suit No. H1/155/2016; *Nana Amua Gyebu XV v Ghana Telecommunications Co. Ltd (Vodafone)* Suit No. E1/83/14; *Donkor v Maye Kom Na Mehwe Nyame Association* [2007-2008] SCGLR 179; *Motor Parts Trading Co. v Nunoo* [1962] 2 GLR 195; *Agricultural Development Bank Limited v Webb Builders Limited & Another* Suit No. CM/BFS/0874/2016; *West Africa Quarry Limited v Godfred Summabe & 3 Others* Suit No. H1/6/2018; *Mireku v Tetteh* [2008-2009] 2 GLR 268; *City and Country Waste Ltd v Accra Metropolitan Assembly* [2007] 1 SCGLR 409; *Benjamin Duffuor v Bank of Ghana* Civil Appeal No. H1/254/2018; *Kobeah v Tema Oil Refinery* [2003–2004] 2 SCGLR 1033; *James Baiden & Others v Graphic Corporation* Civil Appeal No. CA J4/36/2004 (unreported); *Fofie v Zanyo* [1992] 2 GLR 475; *Tony Anning-Boateng v Regimanuel Gray Ltd* Suit No. H1/206/14; *Volta Aluminium Company Ltd v Akuffo & Others* [2003–2004] SCGLR 1158.

for the payment of a domestic worker,⁴³ the frequency of the payment of wages,⁴⁴ the mode of payment of the wages,⁴⁵ and whether an employer will provide lodging and meals to the domestic worker.⁴⁶ Also, an employment contract must clearly outline the hours of work and rest periods,⁴⁷ overtime work,⁴⁸ holiday periods,⁴⁹ leave periods,⁵⁰ the responsibilities of the domestic worker,⁵¹ and the minimum qualifications or skills a domestic worker must possess.⁵² In addition, an employment contract must specify whether the worker will be provided with training, skills development⁵³ and healthcare (including medical insurance).⁵⁴ Most importantly, the Domestic Workers Regulations requires that a contract of employment must include pre-employment and post-employment medical examinations,⁵⁵ background checks,⁵⁶ referees and guarantors whom the employer may contact.⁵⁷ Notwithstanding the above, an employer may include any additional benefits a domestic worker may be entitled to in the employment contract.⁵⁸

An essential rule in the Domestic Workers Regulations is that a contract of employment should not provide any benefits or conditions that are less favourable than those outlined in the Regulations.⁵⁹ By this rule, the provisions in the Domestic Workers Regulations take precedence over a contract of employment. Therefore, where the terms/conditions of an employment contract are inconsistent with the Domestic Workers Regulations, that condition/term is void because it denies a domestic worker the minimum benefits provided under the Regulations.⁶⁰ The Domestic Workers Regulations does not provide guidelines on instances where a contract of employment offers better conditions of employment to a domestic worker than the Regulations. Mpedi and Coleman have argued that when an employment contract provides higher protection in terms of conditions of employment than the Labour Act and associated Regulations, the content of the employment contract should prevail over the statutory framework.⁶¹ The views of Mpedi and Coleman can be extended in this context in the sense that if a contract of employment provides better conditions for the domestic worker than the Domestic Workers Regulations, the content of the employment contract should prevail over the Domestic Workers Regulations. This is because upholding the employment contract will meet the ultimate purpose of the Domestic Workers Regulations, which is to afford domestic workers minimum and better conditions of

43 Regulation 3(2)(a) of the Domestic Workers Regulations.

44 *Ibid* reg 3(2)(b).

45 *Ibid* reg 3(2)(c).

46 *Ibid* reg 3(2)(d).

47 *Ibid* reg 3(2)(e) and (f).

48 *Ibid* reg 3(2)(g).

49 *Ibid* reg 3(2)(h).

50 *Ibid* reg 3(2)(i).

51 *Ibid* reg 3(2)(j).

52 *Ibid* reg 3(2)(k).

53 *Ibid* reg 3(2)(l).

54 *Ibid* reg 3(2)(m).

55 *Ibid* reg 3(2)(n).

56 *Ibid* reg 3(2)(o).

57 *Ibid* reg 3(2)(p).

58 *Ibid* reg 3(4).

59 *Ibid* reg 21(1).

60 *Ibid* reg 21(2).

61 Mpedi and Coleman *Labour Law in Ghana* 152–153.

employment.

3 2 Duties of a Domestic Worker

The Second Schedule of the Domestic Workers Regulations outlines a catalogue of duties that an employer may incorporate into an employment contract. The Regulations require that the duties of a domestic worker be clearly stated in the employment contract.⁶² These duties include childminding or babysitting, caring for an employer's aged relative, and performing general household chores such as cooking, laundry, shopping, tidying, removing refuse for collection, ironing, and other household tasks.⁶³ Other duties include driving, which encapsulates general driving duties, errands and washing of cars; gardening duties; security, including daytime and night-time security services; assistance in petty commercial activities such as preparing and selling cooked food; food processing, baking, and storekeeping, among others.⁶⁴

3 3 Deposit and Register of a Contract of Employment

Under the Domestic Workers Regulations, an employer is required to deposit the employment contract concluded with a domestic worker with the District Labour Officer within one month after the contract has been concluded.⁶⁵ Also, where the employer and the domestic worker agree to amend the content of their employment contract, the Domestic Workers Regulations provides that the amended employment contract must be deposited with the appropriate District Labour Officer within two weeks after the said amendment.⁶⁶ The District Labour Officer is required by the Domestic Workers Regulations to keep and maintain a register of employment contracts deposited at the District Labour Office.⁶⁷ The District Labour Officer must also ensure that the register is available for inspection during regular working hours.⁶⁸

4 WAGES AND BENEFITS OF A DOMESTIC WORKER

The Domestic Workers Regulations require an employer to pay a domestic worker the wages agreed upon in their employment contract. However, this obligation is subject to section 67 of the Labour Act,⁶⁹ in terms of which an employment contract must stipulate the worker's full salary, wages, and allowances. The wages, salary and emolument must be payable in a legal tender in addition to non-cash remuneration.⁷⁰ Any contract of employment that provides the contrary is void.⁷¹ Employers are required to pay domestic workers not less than the National Daily Minimum Wage (NDMW).⁷² The Domestic Workers Regulations permits an employer to provide a domestic worker with a non-cash benefit of monetary value (benefit-in-kind).⁷³ However, the employer must specify the quantum of benefit-in-kind in the employment contract.⁷⁴ Also, an employer must pay the domestic worker the remuneration for overtime work

62 Regulation 3(2) of the Domestic Workers Regulations.

63 *Ibid* sch 2.

64 *Ibid* sch 2.

65 *Ibid* reg 4(1).

66 *Ibid* reg 4(2).

67 *Ibid* reg 5(1).

68 *Ibid* reg 5(2).

69 *Ibid* reg 6(2) of the Domestic Workers Regulations.

70 Section 67 of the Labour Act.

71 *Ibid* s 67 of the Labour Act.

72 *Ibid* reg 6(1).

73 *Ibid* reg 6(3).

74 *Ibid* reg 6(3).

unless the employment contract specifies a fixed rate.⁷⁵ A domestic worker is not obliged to work overtime.⁷⁶ The provision on wages and remuneration in the Domestic Workers Regulations aligns with Article 11 of the Domestic Workers Convention, which imposes a duty on member states to institute or implement measures to ensure domestic workers enjoy minimum wage coverage.⁷⁷

4.1 Statutory Deductions From the Wages of a Domestic Worker

An employer is precluded from making any deduction from the wages of a domestic worker that is inconsistent with sections 69 and 70 of the Labour Act and the National Pensions Act 766 of 2008 (hereafter the National Pensions Act).⁷⁸ Sections 69 and 70 of the Labour Act deal with the prohibited and permitted deductions an employer may make from a worker's wages, respectively. According to section 69 of the Labour Act, an employer is precluded from making any deduction by way of discount, interest or any similar charge on account of an advance remuneration made to a worker in anticipation of the regular payment period of remuneration.⁷⁹ Also, an employer is prohibited from imposing a pecuniary penalty on a worker for any reason or deduct any amount from the worker's remuneration unless that deduction is permissible under the Labour Act or any other law.⁸⁰ Certain deductions are permissible under the Labour Act. However, such a deduction must be made with the worker's consent.⁸¹ An employer may make the following deductions:

Any deduction due from a worker in respect of contributions to any provident, pension, or other fund or scheme agreed by the employer to the worker; (b) any financial facility advanced by the employer to be a worker at the written request of the employer or any facility guaranteed by the employer to the worker; (c) any amount paid to the worker in error as remuneration, in excess of what the worker is legitimately entitled to, from the employer; (d) on the written authority of the worker, any amount due from the worker as membership or contribution to an organisation of which the worker is a member; (e) for meeting any loss suffered by the employer as a result of the damage of, or damage to, any property or thing used in connection with, or produced by, the employer's business and which is under the control of the worker; (f) any deduction in compliance with an order made by the Commission [National Labour Commission].⁸²

Section 70(2) of the Labour Act precludes an employer from making a deduction in respect of any loss suffered due to damage to property by a worker unless (a) the employer is satisfied that the worker has caused the loss or damage and the worker is clearly shown to be responsible;⁸³ (b) the amount to be deducted is fair and does not exceed the actual value of the loss or damage suffered by the employer or that the amount represents a fair estimate of the loss or damage suffered;⁸⁴ (c) that the worker has been given a reasonable opportunity to show cause why the deduction should not be made,⁸⁵ and (d) the rate of the deduction is such to avoid hardship to the worker or his dependents.⁸⁶ The Labour Act provides instances where a worker can lodge

⁷⁵ *Ibid* reg 6(4) and (5).

⁷⁶ *Ibid* reg 6(4) and (5).

⁷⁷ Article 11 of the Domestic Workers Convention, art 11.

⁷⁸ Regulation 7(1).

⁷⁹ Section 69(1) of the Labour Act.

⁸⁰ *Ibid* s 69(2).

⁸¹ *Ibid* s 70(1).

⁸² *Ibid* ss 70(1)(a)–(f).

⁸³ *Ibid* s 70(2)(a).

⁸⁴ *Ibid* s 70(2)(b).

⁸⁵ *Ibid* s 70(2)(c).

⁸⁶ *Ibid* s 70(2)(d).

a complaint with the National Labour Commission (NLC) about any deduction made by an employer. Section 70(4) of the Labour Act provides that when a worker is aggrieved by any deduction made by an employer and cannot resolve the matter with the employer, the worker may present a written complaint to the NLC.⁸⁷ The NLC has a duty under the Labour Act to investigate the complaint and decide on the matter.⁸⁸ The decision of the National Labour Commission shall, subject to any other law, be final.⁸⁹

As mentioned, certain deductions are permissible under the Domestic Workers Regulations. For instance, under the Domestic Workers Regulation, an employer can register a domestic worker as an informal employee and ensure that provision is made for that domestic worker to pay periodic contributions according to the National Pensions Act.⁹⁰ An employer must deduct a portion of the social security contribution from the domestic worker's wages and pay the appropriate institution or scheme.⁹¹ Regarding contributions to trade unions, the Regulations prohibits an employer from making any deduction from the wages of a domestic worker to pay union dues or for any other purpose unless the domestic worker requests in writing that such a deduction be made.⁹²

5 CONDITIONS OF EMPLOYMENT OF DOMESTIC WORKERS

5 1 Living Standards and Rest Periods

The Domestic Workers Regulations provide minimum conditions of employment for domestic workers. These include living conditions/living standards, rest periods, sick leave and medical care and annual and maternity leave. An employer must provide those conditions to a domestic worker and must not obstruct or deny the domestic worker access to these conditions. Under the Domestic Workers Regulations, domestic workers, particularly live-in domestic workers, are entitled to the necessary facilities to ensure adequate and decent living conditions that guarantee privacy and safety,⁹³ such as access to toilet and bath facilities,⁹⁴ and adequate food (if provided).⁹⁵ A domestic worker is also entitled to rest periods. The Domestic Worker Regulations give a guideline on the quantum of rest a domestic worker is entitled to *vis-à-vis* the work hours. First, a domestic worker is entitled to daily rest for eight consecutive hours.⁹⁶ Secondly, regarding domestic work where the normal hours are continual, the worker is entitled to at least thirty minutes of rest during work, but those thirty minutes are regarded as part of the normal working hours.⁹⁷ Thirdly, where normal working hours are divided into two parts, the worker is entitled to at least thirty minutes of rest, which is considered part of the normal work hours.⁹⁸ Also, in any undertaking regarding domestic work, the worker is entitled to a rest

87 *Ibid* s 70(3).

88 *Ibid* s 70(4).

89 *Ibid* s 70(4).

90 *Ibid* reg 7(2) of the Domestic Workers Regulations.

91 *Ibid* reg 7(3).

92 *Ibid* reg 7(4).

93 *Ibid* reg 8(a).

94 *Ibid* reg 8(b).

95 *Ibid* reg 8c3).

96 *Ibid* reg 9(1).

97 *Ibid* reg 9(2)(a).

98 *Ibid* reg 9(2)(b)

period of at least twenty-four hours in one week.⁹⁹

5 2 Annual, Sick and Maternity Leave, Medical Care, and Public Holidays

A domestic worker is entitled to annual leave, which is determined following section 20 of the Labour Act.¹⁰⁰ Section 20 of the Labour Act provides that every worker in any undertaking is entitled to at least fifteen working days leave with full pay in any calendar year of continual service.¹⁰¹ Full pay is defined in section 20 of the Labour Act to mean the worker's remuneration, without overtime pay, including the cash equivalent of any remuneration in kind.¹⁰² A domestic worker is thus entitled to fifteen working days of annual leave with full pay. In addition, a female worker is entitled to paid maternity leave.¹⁰³ Section 57 of the Labour Act provides that a woman, on the production of a medical certificate issued by a medical practitioner or a midwife, indicating the expected date of her confinement, is entitled to maternity leave of at least twelve weeks in addition to any period of annual leave she is entitled to after her period of confinement.¹⁰⁴ An employer must pay the full remuneration of the worker while on maternity leave and any other benefits due to her.¹⁰⁵ In cases where an illness, medically certified by a medical practitioner, is attributed to her confinement, the worker is entitled to leave after confinement, as certified by the medical practitioner.¹⁰⁶

In situations where the confinement is abnormal or where two or more babies are born during the same confinement, the Labour Act permits the period of maternity leave to be extended for two weeks.¹⁰⁷ Furthermore, where an illness medically certified by a medical practitioner is attributed to pregnancy, the a woman is entitled to additional leave as approved by the medical practitioner.¹⁰⁸ Regarding nursing mothers, the Labour Act provides that a nursing mother is entitled to interrupt her work for an hour during working hours to nurse her baby.¹⁰⁹ The interruption by the nursing mother is treated as part of the normal working hours.¹¹⁰ Most importantly, the Labour Act precludes an employer from dismissing a woman while on maternity leave.¹¹¹

A domestic worker is also entitled to sick leave, which is determined under section 24 of the Labour Act and is defined as a period of absence from work, owing to illness certified by a medical practitioner.¹¹² Sick leave is not considered part of annual leave. Sick leave after or during annual leave is not computed as part of annual leave.¹¹³ In terms of the health of domestic workers, an employer has a duty, especially where that employer makes provision for medical care, to ensure that the domestic worker is registered under a health insurance scheme.¹¹⁴ Unfortunately, the Domestic Workers Regulations does not reference a domestic

99 *Ibid* reg 9(2)(c).

100 *Ibid* reg 10.

101 Section 20(1) of the Labour Act.

102 *Ibid* s 20(2).

103 Regulation 12 of the Domestic Workers Regulations.

104 Section 57(1) of the Labour Act.

105 *Ibid* s 57(2).

106 *Ibid* s 57(4).

107 *Ibid* s 57(3).

108 *Ibid* s 57(4).

109 *Ibid* s 57(6).

110 *Ibid* s 57(7).

111 *Ibid* s 57(8).

112 *Ibid* s 24.

113 *Ibid* s 24.

114 Regulation 11 of the Domestic Workers Regulations.

worker's right to occupational health and safety and other issues regarding compensation for injuries, accidents, and diseases contracted during the course and scope of employment.

The issue of occupational health and safety of domestic workers, as well as compensation for injuries, accidents and diseases contracted during the course and scope of employment is crucial, particularly in light of the recent South African Constitutional Court decision in *Mahlangu & another v Minister of Labour and others*.¹¹⁵ The *Mahlangu* case brings to light the downsides of the statutory exclusion of domestic workers from receiving compensation for injuries, death, accidents and diseases contracted during the course and scope of employment.¹¹⁶ The novelty of the decision marks a significant shift under South African law to a legal regime where domestic workers can receive compensation under the South African Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA). Ghanaian courts and legislators could, accordingly, draw judicial and legislative guidance from the *Mahlangu* case on the normative and practical aspects of extending statutory protection and compensation to domestic workers or their dependents in the event of any workplace-related accidents, injuries, diseases or deaths.

Notwithstanding the fact that the Domestic Workers Regulations is silent on the issue of compensation for workplace-related injuries, death, diseases and accidents, an employer is obliged, under general common law and statutory duty (under the Labour Act), to ensure that workers work in a healthy and safe environment.¹¹⁷ Regarding compensation for an accident, injury or disease contracted during the scope of employment, domestic workers may find coverage under the Workmen's Compensation Act (PNDCL 187) of 1987. The Workmen's Compensation Act of 1987 deals with compensation for injury, diseases and accidents sustained by a worker during the course and scope of employment. The Workmen's Compensation Act mandatorily enjoins employers to set aside some funds to compensate workers who may sustain an injury, disease, or accident at work.¹¹⁸

Regarding public holidays, an employer must grant a domestic worker leave on statutory public holidays.¹¹⁹ The employer must pay the domestic worker the full daily wage upon granting that leave.¹²⁰ However, where the terms and conditions of the employment contract require a domestic worker to work on public holidays, the employer must pay the domestic worker double the normal wage.¹²¹

6 RIGHTS OF DOMESTIC WORKERS AT WORK

6.1 Freedom of Association

A domestic worker is free to join or form a trade union and is entitled to collective bargaining.¹²² The right to form or join trade unions is guaranteed under the Constitution of the Republic of Ghana of 1992 (hereafter 1992 Constitution). Article 21(1)(e) of the 1992 Constitution provides, among other things, that every person has the right to freedom of association, including the freedom to form/join trade unions or other associations, national or international, to protect

115 *Sylvia Mahlangu & another v Minister of Labour & others* 2021 (2) SA 54 (CC).

116 For further discussion, see Nkosi and Singh, "The Case of Sylvia Mahlangu – The Fight for Legislative Inclusion for Domestic Workers in South Africa" (2025) *Diversity & Inclusion Research* 1.

117 Sections 118–121 of the Labour Act.

118 Sections ss 1–10 of the Workmen's Compensation Act of 1987.

119 Regulation 13 of the Domestic Workers Regulations.

120 *Ibid* reg 13.

121 *Ibid* reg 13.

122 *Ibid* reg 14.

their interest. Section 79(1) of the Labour Act, which effectuates Article 24(3) of the 1992 Constitution, also provides that workers are free to form or join any trade union to promote and protect their economic and social interests.¹²³ Trade union rights are further reinforced in the Directive Principles of State Policy (Chapter Six of the 1992 Constitution), specifically under Article 36(11), which is to the effect that “the state shall encourage the participation of workers in the decision-making process at the workplace.”¹²⁴ The 1992 Constitution obligates the state to enact laws that ensure that workers have the right to freely join or form associations to pursue their economic and social interests.¹²⁵ This right must be free from government interference,¹²⁶ but may be limited in certain circumstances. The 1992 Constitution provides that freedom of association shall not be restricted unless the restriction is prescribed by law and reasonably necessary in the interest of national security or public order or for the protection of the rights and freedoms of others.¹²⁷

Freedom of association under Ghanaian labour and industrial relations law can be characterised in two ways. First, it refers to the liberty a worker has to join or form a trade union. Secondly, freedom of association underscores the liberty to refrain from joining or not be compelled to join a trade union. The former is referred to as positive freedom of association.¹²⁸ The latter is known as negative freedom of association.¹²⁹ Admittedly, however, the 1992 Constitution, the Labour Act and the Domestic Workers Regulations employ a positive orientation towards freedom of association. That notwithstanding, some decisions of the Supreme Court of Ghana are instructive on the contours of negative freedom of association.¹³⁰ A domestic worker can thus choose not to join a trade union or be compelled to join one. The provision in the Regulations protecting the right to freedom of association aligns with Article 3 of the Domestic Workers Convention. Article 3 of the Domestic Workers Convention requires member states to

123 Article 24(3) of the Constitution of the Republic of Ghana of 1992. See also *Ernest Adofo & Others v Ghana Cocoa Board* Civil Appeal No. J6/01/2012; *Christopher Agbozo, Elias Kwadjo Adjabeng, John Kennedy Nanor & Asare Danquah Bismark & 294 Others v Akosombo Textiles Limited* Civil Appeal No H1/62/2010.

124 Article 36(11) of the 1992 Constitution.

125 *Ibid* art 37(2)(a).

126 *Ibid* art 37(2)(a).

127 *Ibid* art 24(4). See also *Customs and Excise & Preventive Services v The National Labour Commission & The Public Service Workers' Union of the Ghana Trade Union Congress (GTUC)* Writ No. J1/5/2007.

128 Von Prondzynski “Freedom of Association and the Closed Shop: The European Perspective” 1982 *Cambridge Law Journal* 256 267; Lomasky “The Paradox of Association” 2008 *Social Philosophy and Policy* 182 182; Baird “Government-Sector Unionism and Human Rights” 2012 *Human Rights Review* 391 393.

129 Novitz “Negative Freedom of Association: Gustafsson v Sweden” 1997 *Industrial Law Journal* 79 79; Alexander “What is Freedom of Association and What is Its Denial?” (2008) 25 *Social Philosophy and Policy* 1 1; Casey “Some Implications of Freedom of Association in Labour Law: A Comparative Survey With Specific Reference to Ireland” 1972 *International Comparative Law Quarterly* 699–700; Budeli “Understanding the Right to Freedom of Association: Components and Scope” 2010 *Obiter* 16 20; Botha and Mischke “A New Labour Dispensation for South Africa” 1997 *Journal of African Law* 134 136; Forde “The European Convention on Human Rights and Labor Law” 1983 *American Journal of Comparative Law* 301 321. *See generally*, Jensen “Negative Freedom of Association and Financial Contributions of Interest Groups to Political Parties” 2005 *European Public Law* 179; Davis “Sigurjonsson v Iceland: The European Courts on Human Rights Expands the Negative Right of Association” 1995 *Case Western Reserve Journal of International Law* 301 301-303; Rogers “Three Concepts of Workplace Freedom of Association” 2016 *Berkeley Journal of Employment and Labor Law* 177 211.

130 *Mensima & Others v Attorney-General & Others* [1996–1997] SCGLR 676. It is noteworthy that the preponderance of case law in Ghana deals with positive freedom of association. See *Civil and Local Government Staff Association of Ghana (CLOSSAG) v The Attorney-General, The Office of the Head of Civil Service & The Head of Local Government Service* Civil Appeal No. J1/16/2016; *Ernest Adofo & Others v Ghana Cocoa Board* Civil Appeal No. J6/01/2012; *Customs, Excise & Preventive Service v National Labour Commission & Public Service Workers' Union of GTUC* Writ No. J1/5/2007; *New Patriotic Party v Attorney-General* [1993–1994] 2 GLR 35; *Mohammed K Boateng v The National Chairman, NPP & 5 Others* Suit No. H1/51/2010; *The Republic v Ghana Education Service, Ex Parte Ampofo Oppong, Agyeman Duah Ernest, Arhin Wallace Jones & Adams Bright Nesta* Suit No. C10/12/13.

institute measures that ensure domestic workers have the right to freedom of association. While theoretically, domestic workers can refrain from joining or not be compelled to join a union, practically, their refrain from joining a union could exclude them from the protective umbrella of unions and collective actions of unions, such as the Union of Informal Workers Associations (UNIWA) of the Trades Union Congress of Ghana.¹³¹

6 2 The Right to Collective Bargaining

According to the Domestic Workers Regulations, trade unions comprising domestic workers have the right to collective bargaining,¹³² which must be per the provisions of the Labour Act. Under the Labour Act, a collective agreement relating to the conditions of employment of workers may be concluded between one or more trade unions, on the one hand, and representatives of one or more employers or employers' organisations, on the other.¹³³ A collective agreement is a written contract concluded between an employer(s) and a trade union for and on behalf of their members concerning the conditions of employment.¹³⁴ The content of a collective bargaining agreement may include the class or category of workers to which the agreement applies,¹³⁵ the conditions of work, including hours of work, rest periods, annual leave, and occupational health and safety,¹³⁶ remunerations and method of calculating remuneration,¹³⁷ the period of probation and conditions of probation,¹³⁸ and the period of notice of termination of employment,¹³⁹ among others.

Procedurally, specific requirements must be met before a collective bargaining agreement will be valid under Ghanaian law. These procedures/requirements include the duty of parties to negotiate in good faith,¹⁴⁰ the conditions for obtaining a collective bargaining certificate,¹⁴¹ or a variation thereof,¹⁴² the procedure for dealing with the negotiating committee and joint negotiating committee,¹⁴³ negotiations conducted by a union officer or a member,¹⁴⁴ the duration

131 For further discussion on the role of UNIWA, including capacity building, skills training, financial literacy programmes for informal workers, and advocating policies that protect the interests of informal workers, see, <https://uniwaghana.org/> (accessed 28-05-2025).

132 Regulation 14 of the Domestic Workers Regulations.

133 Section 96 of the Labour Act.

134 Benson *The Law of Industrial Conflict* (1988) 143; Kristiansen 'Labour Market and Collective Agreement' in Letto-Vanamo, Tamm and Mortensen (eds) *Nordic European Law in Context: Ius Gentium: Comparative Perspectives on Law and Justice* (2019) 153–155; Harcourt and Lam "Freedom of Association, Freedom of Contract, and the Right-to-Work Debate" 2006 *Employee Responsibilities Rights Journal* 249 250; Charlton and Sciarra "Collective Bargaining as Agreement and as Law: Neo-Contractualist and Neo-Corporative Tendencies of Our Age" in Pizzorusso (ed) *Law in the Making: A Comparative Study* (1988) 186–187; Kirchner and Kremp "Unions and Collective Bargaining" in Kirchner, Kremp and Magotsch (eds) *Key Aspects of German Employment and Labour Law* (2018) 243–256; Pineiro *International Maritime Labour Law* (2015) 239; Visser "What Happened to Collective Bargaining During Great Recession?" 2016 *Journal of Labour Policy* 1 1.

135 *Ibid* s 98(1)(a).

136 *Ibid* s 98(1)(b).

137 *Ibid* s 98(1)(c).

138 *Ibid* s 98(1)(d).

139 *Ibid* s 98(1)(e).

140 *Ibid* s 97.

141 *Ibid* s 99.

142 *Ibid* s 100.

143 *Ibid* s 100-102.

144 *Ibid* s 103.

of the collective bargaining agreement,¹⁴⁵ the power to extend collective bargaining agreement,¹⁴⁶ dispute resolution and the effect of extending collective bargaining agreement.¹⁴⁷

Collective bargaining agreements have legal implications. Under the Labour Act, a collective bargaining agreement concluded by a trade union shall, so far as the terms of the agreement permit, apply to all workers of the class specified on the collective bargaining certificate.¹⁴⁸ This means that, provisions regarding the termination of employment and the rights granted to a worker or employer are considered part of the terms of the contract of employment between the worker and the employer.¹⁴⁹ Even after the expiration of the collective agreement, the provisions that affect the terms of a contract of employment shall continue to have effect, as long as those provisions have not been varied by agreement of the parties.¹⁵⁰ Under the Labour Act, the rights conferred on a worker by a collective bargaining agreement shall not be waived by that worker.¹⁵¹

In the event of a conflict between the terms of a collective bargaining agreement and the terms of any contract not contained in the collective agreement, the collective bargaining agreement shall prevail unless the contract terms are more favourable to the worker.¹⁵² It is immaterial whether the contract was concluded before the collective agreement.¹⁵³ The Labour Act enjoins parties to a collective bargaining agreement to bring to the notice of workers about the conclusion of the agreement.¹⁵⁴ The Domestic Workers Regulations ensure that trade unions comprising domestic workers have the right to collective bargaining, which accords with Article 3 of the Domestic Workers Convention. Article 3 of the Domestic Workers Convention imposes an obligation on member states to ensure that they implement measures that provide domestic workers with the right to collective bargaining.¹⁵⁵

6 3 Prohibition Against Forced Labour

An employer must ensure that domestic workers are not subjected to forced labour.¹⁵⁶ Forced labour is defined by section 117 of the Labour Act to mean service or work that is exacted from a person under threat of a penalty and for which the person has not offered himself/herself voluntarily.¹⁵⁷ It does not include labour required as a result of a sentence or an order of a court,¹⁵⁸ labour required of a member of a disciplined force or service as their duties,¹⁵⁹ labour required in the event of war,¹⁶⁰ or in the event of an emergency or calamity that threatens life and well-being of the community,¹⁶¹ and labour reasonably required as part of normal communal or

145 *Ibid* s 107.

146 *Ibid* s 109.

147 *Ibid* s 108.

148 *Ibid* s 105(1).

149 *Ibid* s 105(2).

150 *Ibid* s 105(3).

151 *Ibid* s 105(4).

152 *Ibid* S 105(4).

153 *Ibid* s 105(4).

154 *Ibid* s 106.

155 Article 3(1) of the Domestic Workers Convention.

156 Regulation 15 of the Domestic Workers Regulations.

157 Section 117 of the Labour Act.

158 *Ibid* s 117(a).

159 *Ibid* s 117(b).

160 *Ibid* s 117(c).

161 *Ibid* s 117(c).

other civic obligations.¹⁶² The protection against forced labour in both the Domestic Workers Regulations and the Labour Act has its roots in the 1992 Constitution of Ghana. Article 16(1) of the 1992 Constitution prohibits a person from being held in slavery or servitude.¹⁶³

Also, article 16(2) of the 1992 Constitution prohibits a person from being subjected to or required to perform forced labour.¹⁶⁴ A breach of the constitutional and statutory obligations against forced labour attracts penal sanctions.¹⁶⁵ According to the Labour Act, any employer convicted of forced labour must pay a fine not exceeding 250 penalty units.¹⁶⁶ The provision in the Domestic Workers Regulations that prohibits forced labour accords with Article 3(2)(b) of the Domestic Workers Convention. Article 3(2)(b) of the Domestic Workers Convention provides that member states implement measures that promote and realise the fundamental principles and rights at work, including eliminating all forms of forced or compulsory labour.¹⁶⁷

6 4 Prohibition Against Sexual Harassment and Domestic Violence

The Labour Act and the Domestic Workers Regulations prohibit sexual harassment and violence by an employer.¹⁶⁸ Sexual harassment is defined in section 175 of the Labour Act to mean “any unwelcome, offensive or importunate sexual advances or request made by an employer or superior officer or a co-worker, whether the worker is a man or a woman.”¹⁶⁹ The right against sexual harassment applies to both the domestic worker and the domestic worker’s employer. Under the Domestic Workers Regulations, an employer must ensure that a domestic worker is not subjected to any form of sexual harassment and violence in the workplace of the domestic worker.¹⁷⁰ A corollary obligation is imposed on the domestic worker to prevent sexual harassment or domestic violence against the employer or an occupant of the employer’s household.¹⁷¹

In the event of the occurrence of sexual harassment or domestic violence, the Domestic Workers Regulations encourage the domestic worker to report the issue to the nearest District Labour Officer and other authorities, including the Ghana Police Service and the Commission on Human Rights and Administrative Justice (CHRAJ).¹⁷² The provision in the Domestic Workers Regulations prohibiting domestic violence and sexual harassment against domestic workers, in part, accords with Article 5 of the Domestic Workers Convention. Article 5 of the Domestic Workers Convention imposes an obligation on member states to implement measures that ensure that domestic workers enjoy adequate protection against all forms of abuse, harassment, and violence.¹⁷³

6 5 Training of a Domestic Worker by an Employer

According to the Regulations, an employer may train and retrain a domestic worker.¹⁷⁴ However,

162 *Ibid* s 117(d).

163 Article 16(1) of the 1992 Constitution.

164 *Ibid* art 16(2).

165 Section 117(2) of the Labour Act.

166 *Ibid* s 117(3).

167 Article 3(2)(b) of the Domestic Workers Convention.

168 Regulation 17 of the Domestic Workers Regulations.

169 Section 175 of the Labour Act.

170 Regulation 17(1) of the Domestic Workers Regulations.

171 *Ibid* reg 17(3) .

172 *Ibid* reg 17(2) of the Domestic Workers Regulations.

173 Article 5 of the Domestic Workers Convention.

174 Regulation 16(1) of the Domestic Workers Regulations.

the cost of training/retraining is at the employer's expense.¹⁷⁵ The training may include both formal and informal training, as agreed upon between the employer and the domestic worker.¹⁷⁶ The Regulations require that the training be of such a nature that it is useful to the domestic worker.¹⁷⁷ The training may include training on childminding, food preparation and household first aid.¹⁷⁸ The provision in the Regulations requiring employers to train domestic workers aligns with the ILO's call for employers to equip domestic workers with the relevant skills and knowledge. Domestic workers are entitled to training and education, which according to the ILO, serve as benchmarks for the achievement of satisfactory work.¹⁷⁹ The ILO requires that training should be geared towards improving not only the vocational but also the organisational and communication skills of the domestic worker.¹⁸⁰ The call for effective training and education of domestic workers to acquire better skills can boost the recognition of domestic work.¹⁸¹ Realising this right requires the concerted efforts of all relevant social partners, including the government of Ghana, trade unions in the informal sector, employers and employer associations, among others.

7 MONITORING AND COMPLIANCE

Upon complaint by a domestic worker, the Domestic Workers Regulations imposes an obligation on the District Labour Officer to inspect the household to ascertain whether the employer complies with the provisions of the Regulations.¹⁸² The requirement for monitoring and compliance is vital as it ensures that employers fully comply with the regulations and the terms and conditions outlined in the employment contract of domestic workers.¹⁸³ Achieving this objective of effective monitoring and compliance would also require the concerted efforts of all social partners, including the Labour Department, Labour Inspectorates, trade unions, employers and/or employer associations, and non-governmental organisations. In addition, a domestic worker-friendly grievance procedure, can be instituted. The procedure for instituting complaints should consider the unique nature and characteristics of domestic work and workers who lack the requisite education.

8 TERMINATION OF EMPLOYMENT CONTRACT

Terminating a domestic worker's employment contract must comply with sections 15 and 17 of the Labour Act.¹⁸⁴ Section 15 of the Labour Act provides several grounds for an employer or a worker to terminate an employment contract.¹⁸⁵ Under the Labour Act, an employment contract may be terminated either at the instance of the worker or the employer.¹⁸⁶ The right to terminate an employment contract is regarded as an implied term in a contract of employment.¹⁸⁷ In *Kobi v*

175 *Ibid* reg 16(1).

176 *Ibid* reg 16(1).

177 *Ibid* reg 16(2).

178 *Ibid* reg 22.

179 International Labour Organisation 'Recognizing Domestic Workers as Workers through Skills Development and Employment Contract' (26 May 2017) <https://www.ilo.org/resource/news/recognizing-domestic-workers-workers-through-skills-development-and> (accessed 28-05-2025).

180 *Ibid*.

181 *Ibid*.

182 Regulation 19 of the Domestic Workers Regulations.

183 *Ibid* reg 19.

184 *Ibid* reg 18.

185 Section 15 of the Labour Act.

186 *Ibid* s 15(a).

187 *Kobi v Ghana Manganese Co Ltd* [2007-2008] SCGLR 771.

*Ghana Manganese Co Ltd*¹⁸⁸ Ansah JSC, commenting on the protection afforded to workers by the Labour Act, stated: “The passing of the new Labour Act 651 of 2003 (Act 651) has brought relief to the employee. The right to terminate employment does not depend on the whims of the employer.”¹⁸⁹ A party terminating the employment relationship must do so following the terms of the employment contract. The Supreme Court of Ghana explained the foregoing position in *Dr Festus Nii Boye v Ghana Ports & Harbour Authority*,¹⁹⁰ that an “employment contract must be terminated in accordance with its terms.”¹⁹¹ Also, in *Kobi*, Ansah JSC averred that “the right to terminate is dependent on the contract and must be exercised in accordance therewith.”¹⁹² Furthermore, in *Kobeah & Others v Tema Oil Refinery*,¹⁹³ the Supreme Court stated that “either party has the right to bring a contract to an end in accordance with its terms.”¹⁹⁴

Under section 15 of the Labour Act, a contract of employment may be terminated by mutual agreement between a worker and an employer,¹⁹⁵ or by the worker on the grounds of ill-treatment and sexual harassment,¹⁹⁶ by the employer on the death of the worker and before the expiration of the duration of employment.¹⁹⁷ Furthermore, the employer may terminate an employment contract if it is revealed that the worker is unfit for employment upon medical examination.¹⁹⁸ Also, section 15 of the Labour Act permits an employer to terminate the employment contract if the worker is unable to carry out their work due to sickness or accident¹⁹⁹ or incompetence,²⁰⁰ or proven misconduct.²⁰¹ The grounds outlined in the Labour Act to fairly terminate an employment contract can serve as valid grounds for which a domestic worker or an employer of a domestic worker may terminate their employment contract. However, upon the termination of the employment contract, section 17 of the Labour Act provides that notice of termination must be given to the other party.²⁰² Where the domestic worker cannot read or write, the Regulations require that the parties notify the appropriate District Labour Officer of the termination.²⁰³

8 1 Unfair Termination of a Contract of Employment of Domestic Workers

The Domestic Workers Regulations protect the employment of domestic workers from unfair termination. Under the Regulations, a contract of employment of domestic workers is deemed to have been unfairly terminated if a domestic worker terminates the contract of employment because of ill-treatment by the employer²⁰⁴ or failure of the employer to take action on repeated complaints of sexual harassment of the domestic worker by the employer or a dependant or

188 [2007-2008] SCGLR 771.

189 *Kobi v Ghana Manganese Co Ltd* [2007-2008] SCGLR 771 at 773. See also, *Aryee v State Construction Corporation* [1984-86] I GLR 424.

190 Suit No. INDL/53/13.

191 *Dr Festus Nii Boye v Ghana Ports & Harbour Authority* Suit No. INDL/53/13. See also Adagewine “Judicial Construction and Termination of Employment Contract and Conditions of Service in Ghana: A Critique” (2014) *Journal of Business Research* 18 18-32.

192 *Kobi v Ghana Manganese Co. Ltd* [2007-2008] SCGLR 771 at 773.

193 [2003-2004] SCGLR 1033.

194 *Kobeah & Others v Tema Oil Refinery* [2003-2004] SCGLR 1033.

195 Section 15(a) of the Labour Act.

196 *Ibid* s 15(b).

197 *Ibid* s 15(c).

198 *Ibid* s 15(d).

199 *Ibid* s 15(e)(i).

200 *Ibid* s 15(e)(ii).

201 *Ibid* s 15(e)(iii).

202 *Ibid* s 17.

203 Regulation 18(2) of the Domestic Workers Regulations.

204 *Ibid* reg 18(3)(a).

an occupant of the household of that employer.²⁰⁵ Where a domestic worker terminates the employment contract due to sexual harassment or domestic violence, the domestic worker may complain to the District Labour Officer.²⁰⁶ Upon termination of the employment contract, the employer is required to pay any outstanding remuneration that is due to the domestic worker,²⁰⁷ a minimum of two months' salary,²⁰⁸ lodging expenses for one month if the domestic worker lives on the premises of the employer,²⁰⁹ and any other benefit determined by the District Labour Officer or a representative of the District Labour Officer.²¹⁰

Also, a domestic worker may seek any other form of relief in court in cases of unfair termination.²¹¹ Where a court establishes that an employer of a domestic worker, a dependant of that employer or an occupant in the employer's house has committed sexual harassment or domestic violence against the domestic worker, the contract of employment shall be deemed to have been terminated.²¹² It is noteworthy that the provisions in the Regulations governing unfair termination of employment do not limit the content of section 63 of the Labour Act, which deals with unfair termination of employment.²¹³ Section 63 of the Labour Act provides that a worker's employment shall not be unfairly terminated if the only reason for the termination is one of the following:

- (a) that the worker has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union;
- (b) that the worker seeks office as, or is acting or has acted in the capacity of, a workers' representative;
- (c) that the worker has filed a complaint or participated in proceedings against the employer involving violation of this Act or any other enactment;
- (d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;
- (e) in the case of a woman worker, due to the pregnancy of the worker or in the absence of the worker from work due to maternity leave;
- (f) in case of a worker with disability, due to the worker's disability;
- (g) that the worker is temporarily ill or injured and this is certified by the recognised medical practitioner;
- (h) that the worker does not possess the current level of qualification in relation to the work for which the

205 *Ibid* reg 18(3)(b).

206 *Ibid* reg 18(4).

207 *Ibid* reg 18(5)(a).

208 *Ibid* reg 18(5)(b).

209 *Ibid* reg 18(5)(c).

210 *Ibid* reg 18(5)(d).

211 *Ibid* reg 18(6).

212 *Ibid* reg 18(7).

213 Domestic Workers Regulations, regulation 18(3). For further discussion on the various aspects of unfair termination of employment, see *Bani v Maersk Ghana Ltd* [2011] 2 SCGLR 796 where the Supreme Court stated that "unfair termination is not a common law principle and even though it was provided by the Labour Act 2003 (Act 651) it was not meant to be applied by courts at the suit of a party to an employment contract." See also *Republic v High Court, Accra (Industrial & Labour Division Court) Ex Parte Peter Sangber-Dery and ADB Bank Ltd Civil Motion No J5/53/2017*; *Republic v High Court, Accra Civil Appeal No. J5/53/2017*; *Charles Kwodwo Gyasi v Mining Building Contractors Ltd Civil Appeal No H1/79/2018*; *Peter Oduro v Ashanti Goldfields Ltd Civil Appeal No H1/136/12*; *Lawrencia Adams v Coffey International Development Ltd Civil Appeal No Ha/171/16*; *John Micoock v Red Sea Housing Services (Ghana) Ltd Civil Appeal No H1/120/2014*; *Major Norbert Abea Tibori (Rtd) v Anglogold Ashanti (Ghana) Limited Civil Appeal No H1/36/2014*; *Merchant Bank Ltd v National Labour Commission Civil Appeal No H1/1/2004*; *Monica Woanya v Data Link University College Suit No H1/33/2014*; *Sam Wood Ltd v Luke Beyuo Dery Civil Appeal No H1/150/2012*; *Faustina Asantewaa & 7 Others v The Registered Trustees of the Catholic Church, Koforidua Diocese Suit No H1/03/2014*; *Anthony Emmanuel Crankson v The National Disaster Management Organization (NADMO) & the Attorney General Suit No H1/13/2013*; *William Appiah & Others v Cocoa Marketing Board Suit No H1/43/12 (Unreported)*; *Leonard Justice Adom v Angel Educational Complex Suit No H1/30/2021*; *Kofi Agyen-Mensah v Kuapa Kokoo Limited Civil Appeal No H1/64/2016*; *Albert Amos Clotley v Electricity Company of Ghana Suit No IL/00029/2015*; *Osei Nyantakyi v Ghana Grid Company Ltd Suit No. INDL/21/11*; *Galton Nene Kanor Nartey v Class Fm (GH) Ltd & Another Suit No. INDL/53/11*; *Peter Boachie v Precious Minerals Marketing Co Suit No. INDL/35/2012*; *Julian Eric Appiah v Cocoa Processing Company Ltd Suit No. BC 127/2007*.

worker was employed which is different from the level of qualification required at the commencement of his or her employment or (i) the worker refused or indicated an intention to refuse to do any work done by a worker who at the time was taking part in lawful strike, unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment.²¹⁴

In addition, under the Labour Act, an employment relationship is deemed to have been unfairly terminated if the employer fails to prove or substantiate that the reason for the termination of the employment relationship was fair²¹⁵ and that the termination was in accordance with the Labour Act or a fair procedure.²¹⁶ The Domestic Workers Regulations do not provide mechanisms to resolve unfair termination disputes. However, under the Labour Act, a domestic worker whose employment has been unfairly terminated, may complain to the NLC for determination or initiate an action at the High Court.²¹⁷ The NLC or the courts can order three main remedies: compensation, reinstatement, and re-employment.²¹⁸ Hence, a domestic worker whose employment has been unfairly terminated may either be compensated, reinstated or re-employed based on the order of the NLC or the courts.

9 ENFORCEMENT OF CONTRACT OF EMPLOYMENT

The Domestic Workers Regulations provides that any disputes arising from the employment contract between a domestic worker and an employer may be resolved following the Alternative Dispute Resolution Act 798 of 2010 (hereafter ADR Act).²¹⁹ However, the choice by a domestic worker or an employer to resolve their dispute under the ADR Act does not derogate their right to enforce their employment contract by due process of law.²²⁰ The point worth stressing here is that the dispute resolution provision in the Domestic Workers Regulations applies only to contractual disputes. This then excludes disputes relating to unfair termination of employment. Under Ghanaian law, contractual disputes are distinguished from unfair termination disputes. Stated differently, under Ghanaian law, disputes regarding the enforcement of or a breach of an employment contract differ from unfair termination of employment, which essentially refers to the termination of employment in breach of statute or a fair procedure. Even though the Domestic Workers Regulation is silent on the dispute resolution mechanisms regarding unfair termination of employment, a domestic worker has the right under the Labour Act to make a complaint to the NLC or the court for determination.

Generally, parties can resolve their contractual disputes under the ADR Act. However, from a policy point of view, resolving disputes by domestic workers *via* the ADR Act seems impractical, as dispute resolution under the ADR Act is not that straightforward. Under the ADR Act, disputes can be resolved through arbitration, negotiation, conciliation and mediation, or customary arbitration.²²¹ These mechanisms for resolving disputes are in and of themselves technical and cumbersome for disputing parties. For instance, when parties choose to resolve their dispute *via* arbitration, they face the complexities of choosing arbitrator(s) or referring their dispute to the Alternative Dispute Resolution Centre created by the ADR Act.²²² In addition, the parties would have to choose the governing law of arbitration and further determine the rules for arbitration,

214 Section 63(1) of the Labour Act.

215 *Ibid* s 63(4)(a).

216 *Ibid* s 63(4)(b).

217 *Republic v High Court; ex parte Peter Sangber Dery & Agricultural Development Bank (ADB) Limited* Civil Motion No. J5/53/2017 (unreported).

218 Sections 64(2)(a)–(c) of the Labour Act.

219 Regulation 20(1) of the Domestic Workers Regulations.

220 *Ibid* reg 20(2).

221 See, the Alternative Dispute Resolution Act.

222 *Ibid* ss 114–124.

among others.²²³ Considering that most domestic workers are illiterate and do not have the requisite knowledge of these technicalities, coupled with the fact that most domestic workers lack financial strength, resolving disputes under the ADR Act becomes impractical.

The best interest of domestic workers will be met if the NLC resolves disputes arising out of their employment contract and other labour-related matters. The resolution of disputes by the NLC will not be out of place since several provisions in the Domestic Workers Regulations refer to the Labour Act, which confers authority on the NLC to resolve and facilitate labour and industrial-related disputes.²²⁴ More so, with the mandate of the NLC to resolve unfair termination of employment disputes, the interests of domestic workers will be best served when they utilise this dispute resolution channel as it is procedurally less cumbersome. Indeed, from the perspective of law reform, the NLC can establish a domestic workers desk, which will consider the very nature of domestic work and domestic workers, *ie* the fact that most domestic workers are illiterate, and create a special dispensation or mechanism to deal with disputes arising out of their employment contracts.

In sum, the Domestic Workers Regulations is an essential piece of legislation that seeks to formalise the working relationship between domestic workers and their employers. The Domestic Workers Regulations clearly outline the conditions of employment, the rights of domestic workers at work and mechanisms to ensure monitoring and compliance by employers. The Domestic Workers Regulations also affords domestic workers statutory protection of their rights. Most importantly, the Domestic Workers Regulations align with international labour standards, especially some of the provisions in the Domestic Workers Convention. Despite some shortfalls, the Domestic Workers Regulations is an essential piece of legislation worth celebrating as it provides legislative protection for domestic workers in Ghana.

10 CONCLUSION

The enactment of the Domestic Workers Regulations has been received with enthusiasm and praise. Domestic workers, whose employment relationship with their employers largely remained informal now have legislative protection under the Domestic Workers Regulations. This article reviewed the provisions of the Domestic Workers Regulations. The article highlighted the scope and purpose of the Regulations, the statutory requirement for establishing an employment relationship between a domestic worker and an employer, the rights of domestic workers, and the basic conditions of employment for domestic workers. The article also referred to international labour standards for protecting domestic workers, specifically the Domestic Workers Convention, and assessed whether the Domestic Workers Regulations meet these standards. Several provisions in the Domestic Workers Regulations accord with international labour standards on protecting domestic workers, particularly the Domestic Workers Convention.

The article highlighted some critical issues not covered in the Domestic Workers Regulations. These issues include occupational health and safety for domestic workers and compensation for injuries, accidents and diseases contracted by domestic workers during the course and scope of their employment. Even though the Domestic Workers Regulations is silent on the issue of occupational health and safety, the article indicated that an employer is under both common law and statutory duty (under the Labour Act) to ensure that their workers work in a safe and healthy environment. In terms of compensation for diseases, accidents or injuries sustained

223 Section 5 of the Alternative Dispute Resolution Act.

224 Sections 138(10)(a) and (b) of the Labour Act. Section 138 of the Labour Act outlines the functions of the NLC, including the duty to facilitate and settle industrial disputes, and investigate labour-related complaints, in particular relating to unfair labour practices and take steps it considers necessary to prevent labour disputes.

by a domestic worker during the course and scope of employment, this article indicated that domestic workers might be afforded protection under the Workmen's Compensation Act of 1987. The article also reflected on the dispute resolution mechanisms outlined in the Domestic Workers Regulations.

Under the Domestic Workers Regulations, contractual disputes must be resolved under the Alternative Dispute Resolution Act. The article suggested that resolving disputes under the ADR Act may be impractical, especially considering that most domestic workers are not well-educated and lack financial resources. Also, the impracticality flows from the fact that dispute resolution under the ADR Act is not straightforward. Accordingly, it is suggested that the National Labour Commission should be the appropriate forum to settle disputes. Generally, however, the Domestic Workers Regulations is welcomed as a step in the right direction to formalise and protect the fundamental rights of domestic workers in Ghana.