

## DECENTWORKCHECK.ORG

Check

Decent Work Check Malawi is a product of WageIndicator.org  
and [www.mywage.org/malawi](http://www.mywage.org/malawi)



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

## 02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

## 03/13 Annual Leave &amp; Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

## 04/13 Employment Security





10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>





## 06/13 Maternity &amp; Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

- |     |                                                                                                                                                                     |                                                                                     |                          |                          |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary                                                                                                 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy<br><i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave                                                                                         |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child                                                                                           |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 07/13 Health & Safety

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- |     |                                                                                                                                                                    |                                                                                     |                          |                          |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy                                                                                                            |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost                                                                             |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace                                            |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 08/13 Sick Leave & Employment Injury Benefits

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- |     |                                                                                                             |                                                                                       |                          |                          |
|-----|-------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |    | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury                                       |   | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness                                             |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease     |  | <input type="checkbox"/> | <input type="checkbox"/> |









## 09/13 Social Security

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- |     |                                                                                                                       |                                                                                       |                          |                          |
|-----|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60                                                                             |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit                                                   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job                                                                      |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 10/13 Fair Treatment

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- |     |                                                                                                                                          |                                                                                       |                          |                          |
|-----|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination                                     |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace                                                                    |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Sex/Gender                                                                                                                               |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Race                                                                                                                                     |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Colour                                                                                                                                   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Religion                                                                                                                                 |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Political Opinion                                                                                                                        |  | <input type="checkbox"/> | <input type="checkbox"/> |

\* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>

## 11/13 Minors & Youth

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41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

## 12/13 Forced Labour

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43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

## 13/13 Trade Union Rights

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46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

## Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Malawi scored 35 times "YES" on 49 questions related to International Labour Standards

### If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

### If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

### If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.

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## 01/13 Work & Wages

### Regulations on work and wages:

Employment Act (No. 6 of 2000), last amended in 2010

### Minimum Wage

The Minister for Labour may fix the minimum wages of any group of wages earners after consultation with representative organizations of workers and employers. After such consultations, a wages order is issued by the Minister for Labour.

In prescribing minimum wages, the minister must, as far as possible, consider –

- (a) the needs of workers and their families, the general level of wages, the cost of living, social security benefits and the relative living standards of order social groups and;
- (b) economic factors, including the requirements of economic development, levels of productivity and any effect the wage might have on employment levels in the country.

The Minister for Labour must, in consultation with representative organizations of workers and employers, reconsider the levels of minimum wages at least once every three years.

Employment Act 2002 states that the Labour Officer must ensure the compliance with this Act, subject to the directions of Labour Commissioner. In case of non-compliance an employee may file a complaint with the District Labour Officer. Trade unions can also represent a person having dispute or alleging violation of a provision of this Act. An employee can also present complaint to the Court.

Any employer who pays a wage below the stipulated minimum wage rate is guilty of an offence and liable to a fine of MK 50,000 and to imprisonment for ten years.

Source: §8 (5), 54-55 & 64 of the Employment Act (No. 6 of 2000), last amended in 2010

### Regular Pay

The Employment Act defines the terms remuneration and wages separately as follows:

“Remuneration” means the wage or salary and any additional benefits, allowances or emoluments whatsoever payable, directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employees employment; while “Wage” means all earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law, which are payable by virtue of a written contract of employment by an employer to an employee for work done or to be done or for service rendered or to be rendered.

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The wages payable to an employee are paid in accordance with the terms of the employment contract. Wages must be paid at least once a week, or fortnight in the case of an employee whose wages are fixed by the hour, day or week or calculated solely on a piece-work or task-work basis. Wage payment period cannot exceed one month in the case of employees whose wages are fixed on a monthly or yearly basis.

Where the contract of employment is for a specific task, wages may be paid upon the completion of the task. Wages may be paid on weekly, fortnightly or monthly basis if the employer and the employee so agree, in which case the contract is not being considered to be one for a specific task.

The wages must be paid:

- (a) to the employee or to a person specified by him in writing;
- (b) in legal tender (Malawian Kwacha); and
- (c) can, with the consent of the employee, be paid by cheque in the sum of the wages payable.

Employers are required to provide an accurate itemized statement/pay slip with following information:

- (a) the employee's gross wages due at the end of the pay period;
- (b) the amount of every deduction and the purpose for each deduction; and
- (c) employee's net wages payable at the end of the pay period.

No employer is allowed to pay wages in the form of promissory notes, vouchers or coupons. Employer cannot require or permit a worker to pay or repay any remuneration payable to him or deduction from worker's wages for the purpose of obtaining or retaining employment. Employer cannot require a worker to make use of any store which is established in connection with the undertaking of the employer or for the sale of commodities to his employees. Wages must not be paid at the places of entertainment and where alcohol or noxious drugs are sold except for the workers who are employed therein.

The employer cannot deduct from an employee's wages any amount except for the following:

- (a) the employee's contribution to a compulsory social security scheme;
- (b) an amount to be deducted in accordance with law or a court order, provided that such deduction must not exceed 50% of the wages payable in the wage period;
- (c) an amount authorized by the employee in writing which is not greater in aggregate to an amount equal to one-half of the wages of the employee and which –
  - (i) is due to the employee in respect of housing furnished by the employer to the employee, goods sold by the employer to the employee or any loan or advance on his wages granted by the employer to the employee;
  - (ii) the employer has paid or has undertaken to pay in connection with any loan granted to such employee in order to acquire a dwelling or in connection with the hiring of a dwelling or other accommodation; or
  - (iii) the employee owes to a vacation, sick, medical, insurance, savings, provident or pension fund.

Source: §3, 50-52 of the Employment Act (No. 6 of 2000), last amended in 2010

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## 02/13 Compensation

### Regulations on Compensation:

Employment Act (No. 6 of 2000), last amended in 2010

### Overtime Compensation

An employee's normal working hours are set out in the employment contract. An employer may not require or permit any employee, other than a guard or others specified, to work for more than 48 hours during a week, excluding overtime. The Minister for Labour may not require or permit a shift worker to work more than 8 hours a day. For other employees, the daily hour limit is 12 hours for 5-day work week and eight hours for a six-day work week.

The temporary exemption from normal working hour limits can be granted in the following cases:

- (a) in case of actual or imminent accident, force majeure or the need for urgent work to premises or equipment, which is necessary to avoid serious interference with the ordinary working of the undertaking;
- (b) in the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures; and
- (c) in order to prevent loss of perishable goods.

A worker must be compensated for each hour of overtime with compensatory rest (of at least equivalent hours) and premium pay for overtime hours. The ordinary overtime is the time worked on a working day in excess of the hours normally worked by the employee in the undertaking. For overtime hours, a worker is paid at 150% of the normal hourly wage rate.

Source: §36-39 of the Employment Act (No. 6 of 2000), last amended in 2010

### Night Work Compensation

No provisions relating to night work or the compensation offered for it could be identified within the law.

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## Compensatory Holidays / Rest Days

Employment Act provides for a compensator rest day when a worker has to work overtime on a working day or weekly rest day or a public holiday.

Source: §36 of the Employment Act (No. 6 of 2000), last amended in 2010

## Weekend/Public Holiday Work Compensation

Employment Act provides for premium pay for those working on weekly rest days and public holidays. Workers are paid at twice the rate (200% of the normal hourly wage rate) for working on a weekly rest day and a public holiday.

Source: §39 of the Employment Act (No. 6 of 2000), last amended in 2010



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**03/13 Annual Leave and Holidays****Regulation on Annual Leave and Holidays:**

Employment Act (No. 6 of 2000), last amended in 2010

**Paid Vacation**

Annual leave is regulated under the Employment Act. Length of annual leave depends on the working days in a week. Annual leave is

- (a) eighteen (18) working days if the worker works six days a week; and
- (b) fifteen (15) working days if the worker works five days a week.

Where an employee's length of service in any one year, including the period prior to the completion of the first year of continuous service, is less than the length of service required for the full entitlement set out above, worker is entitled to a period of annual leave with pay proportionate to his/her length of service during that year (pro-rate leave).

Workers are entitled to their wages during annual leave at the rate the employee was receiving immediately prior to the commencement of leave (or termination of employment contract). Annual leave must be taken within six months of its entitlement provided that such leave may be deferred and accumulated by mutual agreement.

The annual leave is granted by the employer, in consultation with the employee, as from a date determined by the employer, but not later than six months after the end of the year in respect of which the leave entitlement arose. Annual leave is not concurrent with any period of sick leave, maternity leave or notice of termination of contract of employment. Furthermore, annual leave is exclusive of the public holidays.

Source: §44 & 45 of the Employment Act (No. 6 of 2000), last amended in 2010

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## Pay on Public Holidays

There are eleven public holidays in Malawi which are as follows New Year's Day (January 01), John Chilembwe Day (January 15), Martyrs' Day (March 03), Good Friday, Saturday following Good Friday, Easter Monday, Labour Day (May 01) Kamuzu Day (May 14), Independence Day (July 06), Mothers' Day (October 15) Eid-al-Fitr/Feast of the Breaking of the Fast, Christmas Day (December 25) and Boxing Day (December 26).

If a public holiday falls on Saturday or Sunday, it is observed on the following Monday. Dates of Muslim holidays depend on the sighting of moon are thus liable to change.

Workers are entitled to fully paid public holidays. However, if a worker is absent from work without reasonable cause on a working day(s) preceding the public holiday(s), he/she would not be entitled for payment on the public holiday. Similarly, a worker loses the entitlement for paid public holiday if he/she fails to do so without a reasonable cause.

The normal working hours on a public holiday are paid at twice the rate. The overtime hours on a public holiday are paid at 400% of the normal rate.

Source: Public Holidays Act 1967; §40 of the Employment Act (No. 6 of 2000), last amended in 2010

## Weekly Rest Days

Weekly rest is regulated under the Employment Act. Under the law, a weekly period of rest comprises of at least twenty-four consecutive hours, which is usually taken on a customary day of rest or a day agreed upon between the parties.

No clear provision could be located in law related to daily rest period and breaks.

Source: §36 of the Employment Act (No. 6 of 2000), last amended in 2010

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## 04/13 Employment Security

### Regulations on Employment Conditions:

Employment Act (No. 6 of 2000), last amended in 2010

### Written Employment Particulars

Employment contracts are regulated under the Employment Act which specifies fixed term, indefinite term and task based employment contracts. Employers are required to provide written statement to the worker which should include following details:

- the names of the employee and of the employer;
- the date of commencement of the contract;
- the rate of remuneration and the method of calculating remuneration;
- the intervals at which remuneration is paid (wage period);
- the nature of the work to be performed;
- normal hours of work;
- any provision for the termination of the contract;
- any disciplinary rule applicable to the employee.

The written statement must be handed to the employee within one month of his/her reporting to work.

Source: §25 & 27 of the Employment Act (No. 6 of 2000), last amended in 2010

### Fixed Term Contracts

Although the Employment Act stipulates that a contract may be for a specified period of time, no provisions can be identified under the law which mention the objective reasons for which such contracts may be concluded. Employment Act also does not specify the maximum length of a single fixed term contract and the maximum number of renewals that are allowed for a single fixed term contract.

However, in accordance with the Employment Act, fixed-term or task based contracts used to fill in on a lasting basis positions connected with the normal and permanent activity of an undertaking are deemed concluded for an unspecified period of time (indefinite term).

Source: §28(3) of the Employment Act (No. 6 of 2000), last amended in 2010

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## Probation Period

Probation or trial period is regulated under the Employment Act. In respect of a skilled worker, parties may agree to add a provision on probation in the employment contract provided that its duration does not exceed 12 months.

During probationary period, a contract of employment can be terminated at any time by either party without notice.

Source: §26 of the Employment Act (No. 6 of 2000), last amended in 2010

## Notice Requirement

Contract termination is regulated under the Employment Act. A fixed term contract and task based contract automatically terminate on expiry of the term and on completion of the specific task respectively. An indefinite term contract may be terminated by either party after serving a written notice.

Contract termination notice depends on the wage period. The required notice period is one month for workers paid wages on a monthly rate. For workers paid fortnightly, the required termination notice is 15 days for workers with less than five years of service and 30-day notice for workers with at least five years of service. For workers paid weekly, the contract termination notice ranges between one week (less than 2 years of service) to two weeks (2-5 years) and finally one month (at least 5 years). For those workers paid hourly or daily, the contract termination notice is one day for less than six months of service; one week for six months to two years of service; 15 days' notice for 2-5 years of service; and one month for at least 5 years of service. Where wage period is different from those specified above (except an annual rate), either party may terminate the contract at the end of a working day without notice. The minimum notice period in respect of a fixed term contracts is fourteen (14) calendar days.

Either party can waive its right to notice and is also free to accept payment in lieu of notice. In lieu of providing notice of termination, employer has to pay the employee a sum equal to the remuneration that would have been received during the notice period and confer on the employee all other benefits due to the employee up to the expiration of the required period of notice.

Where the employee terminates the contract without notice in circumstance in which notice was required, and the employer has not waived the right to notice, the employee is required to pay the employer in lieu of notice a sum equal to the remuneration that would otherwise have been given to the employee up to the expiration of the required period of notice.

Employer is required to provide a contract termination certificate which should include, among others, the reasons for employment termination. Employer may not terminate the employment contract without a valid reason connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking. Employee must be provided an opportunity to defend himself against the allegations.

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An employer may summarily dismiss a worker (without notice or less than required notice) if he/she is guilty of gross misconduct, habitual or substantial neglect of duties, lack of skills claimed by the worker, willful disobedience, or absence from work without permission and reasonable excuse. A worker may also terminate the employment contract (without notice or less than required notice) where the employer's conduct has made it reasonable to terminate the employment relationship (constructive dismissal).

The invalid reasons for dismissal include marital status; pregnancy; maternity leave; family responsibilities; race; colour; sex; religion; political opinion; social origin; nationality/national origin; property; birth; ethnic origin; trade union membership and activities; disabilities; language; filing a complaint against the employer; temporary work injury or illness; participation in a lawful strike; and refusal of a worker to do the work normally done by a striking worker.

Source: §28-30 & 57-60 of the Employment Act (No. 6 of 2000), last amended in 2010

### Severance Pay

Employment Act regulates severance payments. Severance pay is only given to those employees who are dismissed for economic reasons (termination of a contract as result of redundancy or retrenchment, or due to economic difficulties, or technical, structural or operational requirements of the employer) or unfairly (unfair dismissal). A worker must have completed one year of service for entitlement to severance pay. Severance pay is not payable for workers during probationary period; dismissal on objective grounds; dissolution of employer (partnership) and unreasonable refusal to accept offer on similar terms; and death of the personal employer and unreasonable refusal to accept offer on similar terms.

On the termination of contract as a result of redundancy or retrenchment or due to economic difficulties or technical, structural or operational requirements of the employer or unfair dismissal of the employee, workers are entitled to severance payment in the following manner:

- a) no severance pay for less than one year of service;
- b) two weeks' wages for each completed year of service: first to fifth year;
- c) three weeks' wages for each completed year of service: sixth to tenth year;
- d) four weeks' wages for each completed year of service: eleventh year and onward

If an employee has been exempted from providing pension benefits to the employees, employer is required to provide gratuity (on meeting three-month qualification service) on retirement, termination of employment or death of the worker. In such a case, the payable gratuity is equal to 5% of the monthly salary of a worker for each completed month of service (60% of the final monthly salary for each completed year of service).

A worker is entitled to wages and remuneration due on the termination or completion of his employment contract within 7 days of such termination or completion.

Source: §35 & 53 of the Employment Act (No. 6 of 2000), last amended in 2010

Regulations on employment conditions for Parents:

**Paternity Leave**

No provisions on Paternity Leave could be identified within the law.

**Parental Leave**

No provisions on parental leave could be identified within the law.

**Flexible Work Option for Parents / Work-Life Balance**

No provisions on flexible work option for parents could be identified within the law.

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**06/13      Maternity at Work****Regulations on maternity and work:**

Employment Act (No. 6 of 2000), last amended in 2010

**Free Medical Care**

No provisions on free medical care for pregnant workers could be identified within the law.

**No Harmful Work**

No provisions on protecting health and safety of pregnant workers were identified within the law.

**Maternity Leave**

A female employee is entitled, within every three years, to at least eight weeks' maternity leave on full pay. In the event of illness, certified by a registered medical practitioner, arising out of pregnancy or confinement, affecting the employee or her child, the employer must grant the employee additional paid leave as the employer may deem fit.

Source: §47 of the Employment Act (No. 6 of 2000), last amended in 2010

**Income**

Every pregnant worker is entitled to a fully paid 8-week maternity leave. Maternity leave is paid by the employer.

During maternity leave, worker's normal benefits and entitlements, including her contractual rights and accumulation of seniority, continue uninterrupted and her period of employment is not considered to have been interrupted, reduced or broken.

Source: §47 of the Employment Act (No. 6 of 2000), last amended in 2010

**Protection from Dismissals**

Employment of a worker is secure during pregnancy and maternity leave. An employer who terminates the employment of an employee because the employee is pregnant or for any reason connected with her pregnancy is guilty of an offence. The burden of proof that the employment was not terminated because of pregnancy is on the employer.

Where an employer is convicted of such an offence, he/she is liable to a fine of MK 20,000 and imprisonment for five years.

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In addition, the Court may order –

- (a) the employer to reinstate the employee, who is treated in all respects as if her employment had not been terminated; and
- (b) an award of compensation (ranging between one week to one month pay for each completed year of service).

An employer who is ordered to reinstate a worker and refuses to do so is liable to a fine of MK500 for each day of offence.

Source: §49 & 63 of the Employment Act (No. 6 of 2000), last amended in 2010

### **Right to Return to Same Position**

Upon the expiration of her maternity leave, an employee shall have the right to return to the same job with the same benefits and entitlements as immediately before her absence, unless the job has ceased to exist because of the economic, technological or organizational requirements of the undertaking; or the worker is incapable of continuing to perform the job.

In either of the circumstances mentioned above, the employer must take reasonable steps to find the employee a suitable alternative job within the undertaking, and if no suitable alternative job can be found or if the employee unreasonably refuses the offer of a suitable alternative job, the employer is entitled to terminate her employment with notice.

Source: §48 of the Employment Act (No. 6 of 2000), last amended in 2010

### **Nursing/Breastfeeding Breaks**

No provisions on breastfeeding could be identified within the law.



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## 07/13 Health and Safety at Work

**Regulations on health and work:**

Occupational Safety, Health and Welfare Act 1997

**Employer Cares**

The principal legislation that regulates OSH in Malawi is the Occupational Safety, Health and Welfare Act, 1997. The Act regulates conditions of employment in workplaces with regard to safety, health and welfare of employees. The Act imposes duties on employers, self-employed, other persons in control of premises, manufacturers and suppliers.

It is the duty of every employer to ensure the safety, health and welfare at work of all his employees. The employer is required to prepare and revise a written statement of his general policy with respect to the safety and health at workplace of his employees, and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees. Employers also have a duty to provide information, instruction, training and supervision to ensure the safety and health at work of his employees.

With regard to first aid, the employer must provide and maintain a first aid box or cupboard of the prescribed standard which is readily accessible and must make arrangements for ensuring the removal for medical attention of employees who have suffered an accident or sudden illness. Similarly, the law requires the employer to provide sufficient and suitable sanitary conveniences for persons employed in the workplace, which must be maintained and kept clean, and effective provision should also be made for lighting the conveniences and, where persons of both sexes are or are intended to be employed, such conveniences are required to afford proper separate accommodation with a distinct approach for persons of each sex.

Other responsibilities which the law imposes on the employer is to provide the workplace with an adequate supply of clean and potable drinking water, to ensure that there are a sufficient number of seats of the use of the employees and to create and maintain suitable facilities where employees may prepare and consume their meals.

Source: §13, 22, and 26-32 of the Occupational Safety, Health and Welfare Act 1997

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## Free Protection

Every employer must provide, for the use of employees at a workplace, adequate and suitable accommodation for hanging or stowing personal clothing not worn during working hours, and where protective clothing is provided to employees. Where in any workplace workers are employed in any process involving excessive exposure to heat, cold, noise, wet or to any injurious or offensive substance, or any welding process, suitable protective clothing and appliances (suitable gloves, footwear, screens, goggles, ear muffs and head covering) should be provided and maintained at no cost to the employee for the use of such workers.

Source: §58 of the Occupational Safety, Health and Welfare Act 1997

## Training

Every worker in a workplace is required to be adequately and suitably instructed and trained in the measures available for prevention and control and protection against health hazards at the workplace. All information, instruction and must be given in a language understood by the worker. In such training, written, oral, visual and participative approaches should be used to ensure that the worker assimilates the information, instruction or training.

Source: §65 of the Occupational Safety, Health and Welfare Act 1997

## Labour Inspection System

The OSH law regulates the labour inspection and mandates the appointment of labor inspectors. An inspector has for the purpose of administering, monitoring, and enforcing the provisions of the Occupational Safety, Health and Welfare Act, the power to enter, inspect and examine without prior notice, at all reasonable times a workplace, and every part thereof, when he has reasonable cause to believe that any person is employed therein. He/she can require the production of the registers, certificates, notices and documents kept and inspect, examine and take copies of any of such documents.

In addition, the inspectors may interview any person, either alone or in the presence of any other person related to the workplace and also have powers to issue improvement and prohibition notices which can direct that the activities may cease unless the matters specified in the notice and any contravention of specified provisions or regulations have been remedied.

Source: §72-77 of the Occupational Safety, Health and Welfare Act 1997

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**08/13 Sick Leave****Regulations on Work and Sickness:**

Employment Act (No. 6 of 2000), last amended in 2010

Workers' Compensation Act, 2000

**Income/Paid Sick Leave**

An employee is entitled, after completing twelve months' continuous service, to at least four weeks' sick leave on full pay and eight weeks sick leave on half pay during each year. During sick leave, an employee is paid the normal wages.

An employer will not be bound to grant sick leave unless the employee produces a certificate from a registered medical practitioner stating the nature of the employee's incapacity.

Source: §46 of the Employment Act (No. 6 of 2000), last amended in 2010; ISSA Country Profile 2017

**Free Medical Care**

No provisions on free medical care for sick workers could be identified within the law. The public health system provides some free medical services in government health centers and hospitals, including immunizations and treatments for tuberculosis, malaria, HIV/AIDS, and other sexually transmitted diseases.

**Job Security**

The employer cannot terminate an employees' service during his/her temporary absence from work because of sickness or injury. However, the law has not specified the duration of this temporary absence from work because of sickness or injury. The minimum duration is at least 12 weeks as specified in the Employment Act.

Source: §46 & 58 of the Employment Act (No. 6 of 2000), last amended in 2010

**Disability/Work Injury Benefit**

Disability and work injury benefits are regulated under the Workers Compensation Act of 2000. Work injuries are can lead to the following four situations: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

For temporary disability, a percentage of the insured worker's earnings are paid. The benefit is paid after a three-day waiting period until full recovery or certification of permanent disability.

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For permanent disability where the insured worker is assessed with a total disability, a lump sum of 54 months of the insured worker's earnings is paid. In the case of partial disability, a percentage of the full benefit is paid depending on the assessed degree of disability.

The employer pays the cost of reasonable medical expenses for medical, surgical, dental, and hospital treatment; skilled nursing services; medicine; prostheses; mechanical aids; and transportation.

In the case of fatal injury leading to death, a lump sum of 42 months of the deceased worker's last monthly earnings (minus any disability benefit paid before the date of death) is paid to the survivors. Eligible dependents include members of the insured worker's family. If worker leaves no dependents behind, employer is required to bear the reasonable expenses of medical attendance on the deceased worker and the burial expenses.

Employers are not required to pay work injury benefits in the following cases: if the work injury leads to incapacity for less than seven days; if the injury or death is a result of deliberate self-injury; and if the injury is a result of willful misconduct of the worker.

Source: §7-16 of the Workers' Compensation Act, 2000

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## 09/13 Social Security

### Regulations on social security:

Pension Act 2010

### Pension Rights

The Pension Act 2010 contains provisions on pension rights, however the information within is very limited. The retirement age ranges between 50 (minimum) to 70 (maximum) years although there is no mention whether this limit is either for men or women or both. For qualifying to old age pension, at least 20 years of service/contribution are required. Every employer is required to ensure that their employees are part of the National Pension Scheme as introduced by the Act. The minimum contribution rate for the National Pension Fund is 10% for the employers and 5% for the employees. There is only a limited mention of qualification requirements, according to which a person may be eligible for pension benefits if they have served a minimum of continuous twenty years with one employer. No provisions on the amount of pension that is paid to a retired worker could be identified. Prior to this law, there was no public pension system for private-sector workers in Malawi. However, voluntary occupational retirement plans were provided by the state run enterprises and private sector firms. The public-sector workers are covered under the pay-as-you-go Government Public Pension Scheme (GPPS).

Source: §3 & 12 of the Pension Act 2010

### Dependents' / Survivors' Benefit

An employee entitled to pension can nominate his/her family members and the amount of pension that will be shared between them after his/her death and the amount will then be paid accordingly. There is no mention of the qualification requirement in terms of contributions for entitlement to pension.

Source: §70 & 71 of the Pension Act 2010

### Unemployment Benefits

In accordance with the Pension Act, Workers who are unemployed for more than 6 months may withdraw a portion of their individual account balances (only their own contributions) prior to reaching the minimum retirement age. Permission for early payment of benefits is granted under specified conditions.

For more information, refer to the section on severance pay. Apart from that no provisions on a scheme for unemployment benefits could be identified within the law.

Source: §65 of the Pension Act 2010

### Invalidity Benefit

No provisions on invalidity benefits could be identified within the law.

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## 10/13 Fair Treatment

**Regulations on fair treatment at work:**

Constitution of Malawi 1994

Employment Act (No. 6 of 2000), last amended in 2010

Gender Equality Act 2013

**Equal Pay**

Under the Constitution of Malawi, every person has the right to fair and safe labour practices and to fair remuneration. Furthermore, every person will be entitled to fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, in particular on basis of gender, disability or race.

Under the Employment Act, every employer is required to pay employees equal remuneration for work of equal value without distinction or discrimination of any kind, in particular, on basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities.

Source: §31 of the Constitution of Malawi 1994; §6 of the Employment Act (No. 6 of 2000), last amended in 2010

**Sexual Harassment**

A person commits an act of sexual harassment if he or she engages in any form of unwanted verbal or physical conduct of a sexual nature in circumstances in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated. Such a person will thus be liable to a fine of MWK1, 000,000 (one million) or up to five years of imprisonment.

The Government is required to take active measures to ensure that employers have developed and are implementing appropriate policy and procedures aimed at eliminating sexual harassment in the workplace, which will entitle all persons who have been subjected to sexual harassment in the workplace to raise a grievance about its occurrence and be guaranteed that appropriate disciplinary action should be taken against perpetrators; entitle a non-employee who has been subjected to sexual harassment to lodge a grievance with the employer of the perpetrator where the conduct giving rise to the complaint has taken place at the workplace or in the course of the perpetrators employment; entitle all employees, job applicants and other persons who have dealings with the workplace to be treated with dignity; and oblige the person in charge of the workplace to implement the policy and procedures and impose disciplinary action against employees who do not comply, deal seriously, expeditiously, sensitively and confidentially with all allegations of sexual harassment; protect employees against victimization, retaliation for lodging grievances and from false accusations; explain the procedure which will be followed by persons who are victims of sexual harassment; communicate the sexual harassment policy and grievance procedures effectively to all employees and

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designate a person outside of line management whom a person who has been subjected to sexual harassment may approach for confidential advice or counseling.

Source: §6-7 of the Gender Equality Act 2013

### Non-Discrimination

Under the Constitution, discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.

All persons and peoples have a right to development and therefore to the enjoyment of economic, social, cultural and political development. Such measures include, among other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure. In addition, every person has the right to fair remuneration and they will also be entitled to fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, in particular on basis of gender, disability or race.

Under the Employment Act, no person will discriminate against any employee or prospective employee on the grounds of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital status or family responsibilities in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship. Discrimination on the ground of sex is prohibited under the Gender Equality Act.

The 2012 Disability Act recognizes the work and employment related rights of persons with disabilities. The law requires that no person may be discriminated against on the basis of disability with regard to matters concerning all forms of employment including conditions of employment, hiring and restructuring, continuation of employment, career advancement, and safe and healthy working conditions. On contravention of these provisions, the law provides for a fine of K 100,000.

Source: §29-31 of the Constitution of Malawi 1994; §5 of the Employment Act (No. 6 of 2000), last amended in 2010; §4 of the Gender Equality Act 2013; §12-13 of the Disability Act 2012

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## Equal Treatment of Women at Work

The constitution guarantees for women the right to full and equal protection by the law, and also the right not to be discriminated against on the basis of their gender or marital status which includes the right to be accorded the same rights as men in civil law, including equal capacity:

- a. to enter into contracts;
- b. to acquire and maintain rights in property, independently or in association with others, regardless of their marital status;

Furthermore, every person has the right freely to engage in economic activity, to work and to pursue a livelihood and as mentioned earlier all persons and peoples have a right to development and therefore to the enjoyment of economic, social, cultural and political development and women, children and the disabled in particular are to be given special consideration in the application of this right.

Source: §24 & 29-31 of the Constitution of Malawi 1994



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## 11/13 Minors and Youth

### Regulations on children at work:

Constitution of Malawi 1994

Employment Act (No. 6 of 2000), last amended in 2010

Education Act 2013

Employment (Prohibition of Hazardous Work for Children) Order 2012

### Minimum Age for Employment

The constitution states that children under sixteen years of age are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to be hazardous; interfere with their education; or be harmful to their health or to their physical, mental or spiritual or social development.

It further guarantees that all persons are entitled to education and that primary education will consist of at least five years of education. Under the Education Act, the compulsory education age is 18 years.

Under the Employment Act, no person under the age of fourteen may employed or work in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof. However, this does not apply to work done in homes, vocational technical schools or other training institutions where the work done in a vocational technical school or other training institutions is:

- (a) approved and supervised by a public authority; or
- (b) an integral part of the educational or vocational training programme for which the school or institution is responsible.

Source: §23 & 25 of the Constitution of Malawi 1994; §21 of the Employment Act (No. 6 of 2000), last amended in 2010; §13 of the Education Act 2013

### Minimum Age for Hazardous Work

Employment in hazardous work is regulated under the Employment Act and a 2012 Order. The minimum age for hazardous work is 18 years. No person between the age of fourteen and eighteen years may work or be employed in any occupation or activity that is likely to be

- (a) harmful to the health, safety, education, morals or development of such a person; or
- (b) prejudicial to his attendance at school or any other vocational or training programme.

Under the Employment (Prohibition of Hazardous Work for Children) Order 2012, a person aged between 14 and 18 must not work for more than 40 hours per week. A person aged below 18 who is enrolled in school may not work for more than twenty hours in a week during the school term, forty hours in any week that falls entirely within school holidays, three hours on any school day which is followed by another school day, and four hours on any school day followed by a non-school day (Friday or last day of the school term).

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Night work (18:00 to 05:00) is prohibited for workers under 18 with the exception that a worker aged between 15 to 18, who is not expected to be at school the following day may work between 18:00 and 21:00 if the work is in a restaurant or shop where there is adequate adult supervision and at least one supervisor is of the same sex as the person; or the work is baby sitting or child minding. An employer of such an employee will ensure that the parent or guardian of the person in the night work agrees in writing to such employment.

The employer cannot require or permit a person below the age of eighteen years to work in an environment involving extreme temperatures below six degrees Celsius or above 30 degrees Celsius unless the cold and hot temperature are as a result of natural climatic conditions and adequate measures are taken to protect the person which may include provision of protective equipment, and reasonable work breaks.

A schedule to the Employment (Prohibition of Hazardous Work for Children) Order 2012 lists the occupations where work from minors is prohibited, however in this case there may be an exception where the person is between the age of 16 and 18, health and safety of that person is fully protected; and the person has received adequate training in performing the activities.

This schedule broadly includes work related to the agricultural sector, industrial sector, entertainment sector, tourism sector and health sector and sets out an exhaustive list of activities that may be prohibited in work related to these sectors.

Lastly, a person under the age of 18 years will only lift weight that is substantially less than that lifted by adult workers of the same sex.

Source: §22 of the Employment Act (No. 6 of 2000), last amended in 2010; Employment (Prohibition of Hazardous Work for Children) Order 2012

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## 12/13 Forced Labour

### Regulations on forced labour:

Constitution of Malawi 1994

Employment Act (No. 6 of 2000), last amended in 2010

Penal Code

### Prohibition on Forced and Compulsory Labour

The Constitution states that no person will be held in slavery or servitude; that slavery and the slave trade are prohibited; that no person will be subject to forced or tied labor that amounts to servitude

Under the employment Act, “forced labour” means any work or service that is exacted from any person under the threat of any penalty and is not offered voluntarily. Furthermore, no person will be required to perform forced labour, and any person who exacts or imposes forced labour or causes or permits forced labour is guilty of an offence and liable to a fine of MK 10,000 and to imprisonment for two years.

Under the Penal Code, any person who unlawfully compels any person to labour against the will of that person will be guilty of a misdemeanor (a minor offence).

Source: §27 of the Constitution of Malawi 1994; §3-4 of the Employment Act (No. 6 of 2000), last amended in 2010; §269 of the Penal Code

### Freedom to Change Jobs and Right to Quit

As mentioned above, the law of Malawi prohibits the use of forced or compulsory labour and guarantees the right to work. A worker has the right to terminate his/her employment relationship after serving due notice.

The minimum period of notice in respect of a contract of employment for a specified period of time is fourteen calendar days.

For more details on this, please refer to the section on employment security

Source: §27-30 of the Constitution of Malawi 1994; §29 of the Employment Act (No. 6 of 2000), last amended in 2010

### Inhuman Working Conditions

The normal working hours are 48 hours per week. The Employment Act sets the premium pay for overtime hours however does not set the overtime hour limits.

For more information, please refer to the section on Compensation.

Source: §36 & 39 of the Employment Act (No. 6 of 2000), last amended in 2010

**Regulations on trade unions:**

Constitution of Malawi 1994

Labour Relations Act 1996

**Freedom to Join and Form a Union**

Under the Constitution, every person has the right to freedom of association which includes the freedom to form associations and all persons have the right to form and join trade unions or not to form or join trade unions.

The Labor Relations Act 1996 defines trade union as a combination of persons, the principal purposes of which are the representation and promotion of employees' interests and the regulation of relations between employees and employers, and includes a federation of trade unions but not an organization or association that is dominated by an employer or employers' organization.

Discrimination on the ground of trade union membership or trade union activities is prohibited. Trade union membership (or lack of it) should not be a condition for gaining or maintaining employment.

Source: §31-32 of the Constitution of Malawi 1994; §2-6 of the Labour Relations Act 1996

**Freedom of Collective Bargaining**

Trade union(s) representing employees in a sector, may request one or more duly authorized employers' organizations representing employers in that sector to enter into collective bargaining. Similarly, employers' organization(s) may request one or more duly authorized trade unions representing employees in that sector to enter into collective bargaining. The respondent organization, must give the requesting party a written reply within sixty days of receiving the request.

Where trade union(s) representing at least fifteen percent of employees in a sector, has made a written request to enter into collective bargaining, and the employers' organization has failed to reply within sixty days of receiving the request, or has refused the request, the trade union may apply in the prescribed form to the Minister requesting the establishment of an industrial council. This is the same in the case of an employers' organization seeking to initiate collective bargaining with a trade union.

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If the Minister is satisfied that such notices were given but were not complied with by another party, he or she can establish an industrial council, the functions of which can include any matters agreed by the parties. These can be:

- (a) negotiating wages and conditions of employment;
- (b) the establishment of dispute resolution machinery;
- (c) the development of an industrial policy for the industry/sector concerned.

All parties to the negotiation of a collective agreement are required to bargain in good faith and make every reasonable effort to conclude a collective agreement. A collective agreement once concluded, must:

- (a) be in writing and signed by the parties to the agreement;
- (b) contain the date on which it is to become effective;
- (c) contain procedures for the avoidance and settlement of disputes arising out of the interpretation, application and administration of the agreement, which may include a reference to conciliation or arbitration; and
- (d) provide for such other matters as may be agreed between the parties.

A collective agreement is binding upon the parties to the agreement. The terms of the collective agreement must be incorporated into the employment contract of each employee who is covered by such collective agreement.

The Tripartite Advisory Council was established in 1996 to advise the Minister on all issues relating to labor and employment, including the promotion of collective bargaining, the labor market, human resources development and the review of the operation and enforcement of the Labor Relations Act and any other Act relating to employment. This board is composed of 12 members, four each from the government, trade unions and employers' organisations.

Source: §26, 27 & 30-33 of the Labour Relations Act 1996

### Right to Strike

Under the law, the term "strike" means concerted action resulting in a cessation of work, a refusal to work or to continue to work by employees, or a slowdown or other concerted activity of employees that is designed to or does limit production or services, but does not include an act or omission required for the safety or health of employees, or a refusal to work where essential services are required.

Any dispute, whether existing or imminent, may be reported to the Principal Secretary responsible for labour by, or on behalf of, any of the parties to the dispute. If a dispute is reported to the Principal Secretary responsible for labour and he or she is satisfied that the dispute settlement procedures established in a collective agreement covering the parties to the dispute have been exhausted, unless all parties have consented to waive those procedures, the Principal Secretary responsible for labour or any person authorized by him or her to do so, must endeavor to conciliate the parties.

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The conciliation must be completed within twenty-one days of the receipt of the report, unless the parties to the dispute agree to extend the time. A dispute will be deemed to be unresolved if a party fails to attend or the parties fail to reach agreement on the settlement of the dispute within the time of 21 days. Where the unresolved dispute concerns the interpretation or application of any statutory provision or any provision of a collective agreement or contract of employment; or an essential service, either party to such dispute, or the Principal Secretary responsible for labour in the case of essential service, may apply to the Industrial Relations Court for determination of the dispute. However, where it concerns matters other than those referred to above the parties may either refer the dispute to court or may give notice that they intend to strike or lockout. A party may not take action by way of strike or lockout if there the procedure for attempting conciliation has not been complied with; or the dispute has been referred for determination to the Industrial Relations Court.

Where a party to a dispute intends to strike or lockout, it must give notice in writing to the other party and the Principal Secretary responsible for labour at least seven days before taking such action.

An employer or employee carrying on or engaged in an essential service cannot strike or lockout in connection with any such essential service and the determination of whether a service is essential will be decided by the Industrial Relations Court. During the Strike or Lockout, the provisions of a collective agreement, if any, between the parties will not be deemed to have been breached by reason only of such action; and similarly, the contract of employment with respect to each employee involved in the strike or lockout will also not be deemed to have been breached by reason only of such action.

No civil proceedings can be brought against any employee, employer, organization or federation of organizations, or officer or member of such organizations, in respect of any strike or lockout which is in conformity with the law. If an employee who has participated in a strike in conformity with this Act or who has been locked out by his or her employer, presents himself or herself for work after the end of the strike or lockout, the employer will, with is a reasonable period, reinstate such employee in the employment that he or she held immediately prior to the strike or lockout, unless material changes to the employers' operations have resulted in the abolition of such employment.

An employer cannot employ a person to perform the work of an employee participating in a strike or who is locked out unless such work is necessary to maintain minimum maintenance services. Where minimum maintenance services are not defined in the collective agreement between the parties, these are the services the interruption of which would result in material damage to a working area or machinery. An employee has the right to refuse to do any work normally done by an employee or employees who are on strike or locked out, except in the case of an essential service.

Source: §2 & 42-53 of the Labour Relations Act 1996

## 01/13 Work & Wages

### ILO Conventions on Work and Wages

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

***Malawi has not ratified any of the above Conventions.***

### Minimum wage

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups.

### Regular Pay

Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## 02/13 Compensation

### ILO Conventions on Compensation

Compensation overtime: Convention 01 (1919); Night work: Convention 171 (1990)

***Malawi has not ratified the Conventions 01 & 171.***

### Overtime Compensation

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

### Night Work Compensation

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

### Compensatory Holidays/Rest Days

If you have to work on a national/religious holiday or a weekly rest day, you should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

### Weekend/Public Holiday work Compensation

If you have to work during the weekend, you should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if you have to work on a public holiday, you must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take your right to a holiday/ rest.

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**03/13 Annual Leave & Holidays****ILO Conventions on weekly rest days and paid annual leave**

Convention 132 (1970) on Holidays with Pay Convention Conventions 14(1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

***Malawi has not ratified the Conventions 14, 47, 106 & 132.***

**Paid Vacation/Annual Leave**

An employee is entitled to at least 21 consecutive paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

**Pay on Public Holidays**

You should be entitled to paid leave during national and officially recognized public holidays.

**Weekly Rest Day**

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7 day period, i.e., a week

**04/13 Employment Security****ILO Conventions on employment termination**

Convention 158 (1982) on employment termination

***Malawi has ratified the Convention 158.***

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

**Written Employment Particulars**

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

**Fixed Term Contracts**

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

**Probation Period**

A reasonable probation period must be provided to a worker to learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

**Notice Requirement**

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

**Severance Pay**

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).



## 05/13 Family Responsibilities

### ILO Conventions on family responsibilities

Convention 156: Workers with Family Responsibilities Convention (1981)

Recommendation 165: Workers with Family Responsibilities (1981)

***Malawi has not ratified the Convention 156.***

### Paternity Leave

This is for the new fathers around the time of child birth and is usually of shorter duration.

### Parental Leave

The accompanying recommendation (No. 165) to ILO Convention on Family Responsibilities provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

### Flexible Work Option for Parents / Work-Life Balance

Recommendation 165 asks for looking into measures for improving general working conditions through flexible work arrangements.

## 06/13 Maternity and Work

### ILO Conventions on maternity and work

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

***Malawi has not ratified the Conventions 103 & 183.***

### Free medical care

During pregnancy and maternity leave, you should be entitled to medical and midwife care without any additional cost.

### No harmful work

During pregnancy and while breastfeeding, you should be exempt from work that might bring harm to you or your baby.

### Maternity leave

Your maternity leave should last at least 14 weeks.

### Income

During maternity leave, your income should amount to at least two thirds of your preceding salary.

### Protection from Dismissals

During pregnancy and maternity leave, you should be protected from dismissal or any other discriminatory treatment.

### Right to return to same position

Workers have the right to return to same or equivalent position after availing maternity leave.

### Breastfeeding/Nursing Breaks

After child birth and your rejoining your organization, you must be allowed paid nursing breaks for breastfeeding your child.

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**07/13 Health & Safety****ILO Conventions on Health and Safety**

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here. Labour Inspection Convention: 81 (1947)

***Malawi has ratified the Convention 81 only.***

**Employer cares**

Your employer, in all fairness, should make sure that the work process is safe.

**Free protection**

Your employer should provide protective clothing and other necessary safety precautions for free.

**Training**

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

**Labour Inspection System**

You and your colleagues should receive training in all work related safety and health aspects and you should have been shown the emergency exits.

**08/13 Sick Leave & Employment Injury Benefits****ILO Conventions on Sickness and Employment Injury**

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

***Malawi has not ratified the Conventions 102, 121 & 130.***

**Income/Paid Sick Leave**

Your rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally you should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). You should be entitled to paid sick leave.

**Medical Care**

During illness, you should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

**Job security**

During the first 6 months of your illness, you should not be fired.

**Disability/Work Injury Benefit**

Whenever you are disabled due to an occupational disease or accident, you ought to receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

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**09/13 Social Security****ILO Conventions on Social Security**

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

***Malawi has not ratified the Conventions 102, 121, 128, 130 & 168.***

**Pension Rights**

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

**Dependent's/Survivors' Benefit**

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

**Unemployment Benefit**

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

**Invalidity Benefits**

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

**10/13 Fair Treatment****ILO Conventions on Fair Treatment**

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

***Malawi has ratified both the Conventions 100 & 111.***

**Equal Pay**

At workplaces equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

**Sexual Harassment**

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

**Non-Discrimination**

Your employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

**Equal Choice of Profession**

People have the right to work and there can't be occupational segregation on the basis of gender.

## 11/13 Minors & Youth

### ILO Conventions on Minors & Youth

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

***Malawi has ratified both the Conventions 138 & 182.***

### Minimum Age for Employment

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

### Minimum Age for Hazardous Work

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

## 12/13 Forced Labour

### ILO Conventions on Forced/Bonded labour

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

***Malawi has ratified both the Conventions 29 & 105.***

### Prohibition on Forced and Compulsory labour

Except for certain exceptions, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

### Freedom to change jobs and Right to quit

Employers have to allow you to look for work elsewhere. If you do, you should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

### Inhumane Working Conditions

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

**13/13 Trade Union****ILO Conventions on Trade Union Rights**

Freedom of association and protection of the right to organize: Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

***Malawi has ratified both the Conventions 87 & 98.***

**Freedom to join and form a union**

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

**Freedom of Collective Bargaining**

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

**Right to Strike**

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

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## About Decent Work and Decent Work Check

Compare your own situation with the international labour standards and how they are applied in Malawi. At the end of the checklist you will see how things stand for you. You may be better off than what the international standards prescribe, but you should not be worse off. Behind every answer, you can find a short explanation of what your rights are; nationally and internationally. So you see right away if you can improve your situation.

The Decent Work Check makes the pretty abstract Conventions and legal texts tangible. Because, in the end, you want to know what your rights on the job mean in practice, what you may claim and what protection you are entitled to in case something unexpectedly does go wrong. The Decent Work Check employs double comparison system. It first compares national laws with international labour standards and gives a score to the national situation (happy or sad face). It allows workers to compare their real situation with national regulations in the country. Workers then compare their own score both at national and international levels. The Decent Work Check is based on de jure labour provisions, as found in the labour legislation. The real practice is informed by the employees themselves. This Check is different from other indices like World Bank's Doing Business Indicators or even ISSA's Social Security Programs throughout the World as it is not only descriptive in nature (bereft of any subjective opinions) but also that it covers a lot of different variables. The Revised Decent Work Check is also designed while taking into account upcoming Decent Work Indicators. While Decent Work Indicators focus more on statistics, our priority is informing workers about their rights through this Decent Work Check. Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work.

WageIndicator teams, around the world, have found out that workers, small employers and labour inspectors don't even know the labour law.

When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector). As soon as you complete the DecentWorkCheck, you see which issues need improvement in your work life.

This is exactly the strategy chosen in the debates in many WageIndicator countries. In the debates with roughly 20-30 people around the table from all sides, the decent Work Check has soon the effect of a mini social dialogue. The people who run the dialogue are equally well informed.

The international labour standards are laid down in ILO-Conventions. ILO is the specialised body of the United Nations working on labour issues and was founded in 1919. In the ILO, negotiations are always going on between governments of the member states, national trade unions and employer's associations regarding work related issues like rights at work and social protection. These negotiations may take years, but eventually lead to so called Conventions or Recommendations. In Conventions, minimum standards are laid down. Conventions are not the law, but the intention is that member states subscribe to the standard in question. The proper way to do that is to have these Conventions ratified by parliament and then make national laws (Some countries may follow the system of self-executing treaties). National law can be enforced. ILO-Conventions are usually accompanied by Recommendations on how to implement the standards.

Since 1999, the ILO works according to the so called Decent Work Agenda. In the meantime, the Decent Work Agenda has been widely accepted as an important strategy to fight poverty and foster development. The Agenda has been incorporated in the Millennium Development Goals of the United Nations. In short, the idea behind Decent Work is first of all an income which allows the working individual a good life. Moreover, at work, everybody has an equal chance to develop themselves; working conditions are safe; there is no instance of child and forced/bonded labour; and discrimination does not occur. Trade unions are allowed a real say in work related matters and the state has created a social safety net for all especially for the sick, weak, elderly and expecting women.

**Decent Work Checks are developed and updated by Iftikhar Ahmad, Labour Law Specialist, and Team**

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