

# LABOUR AND EMPLOYMENT LAW IN NIGERIA

## What You Must Know on Labour and Employment Relations in Nigeria

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### 1. What are the statutes applicable to labour and employment in Nigeria?

The main statutes applicable to employment and labour relations in Nigeria include:

- Labour Act
- Trade Dispute Act
- Trade Unions Act
- Employee Compensation Act
- Factories Act
- Pension Reforms Act
- Personal Income Tax Act
- Housing Act
- Industrial Training Fund Act
- National Health Insurance Scheme Act
- Immigration Act, and
- National Industrial Court Act etc.
- The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010

The Labour Act is the principal legislation governing employment relations in Nigeria. Its application is limited to employees engaged under a contract of manual labour or clerical work in private and public sector.

Employees exercising administrative, executive, technical or professional functions are governed by their respective contracts of employment. It is pertinent to note that reliance is sometimes placed on judicial authorities to espouse some labour and employment law principles.

### 2. Which Nigerian Court has Jurisdiction to try labour and employment disputes?

The National Industrial Court (NIC) has exclusive jurisdiction in civil and criminal

matters relating to or connected with labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith. The NIC also has jurisdiction to hear matter relating to or connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment or industrial relations.

Prior to the advent of the Third Alteration Act (the Constitution, as amended), the Industrial Arbitration Panel (IAP), which was established under the Trades Disputes Act (TDA) had primary jurisdiction to hear and resolve trade disputes and where a party objects to the award of the IAP, appeal against such award lies to the NIC. It is important to note that the Constitution has now conferred more powers on the NIC such that the NIC can also exercise primary jurisdiction over trade dispute matters.

### 3. Are Treaties/International Conventions on labour and employment enforceable in Nigeria?

Hitherto, by the provisions of section 12 of the Constitution, a Treaty/International Convention is not enforceable in Nigeria until same has been codified into a statute by the National Assembly. However, It should be noted that the NIC (relying on Constitution of Federal Republic of Nigeria [Third Alteration] Act, 2010) in a recent decision held that it has powers under the amended Constitution to apply International



Conventions on labour and employment which has been ratified by Nigeria but yet to be codified by the National Assembly and did apply the ILO Termination of Employment Convention 1982 (No. 158) and Recommendation No. 166 which govern termination of employment by an employer. The said Decision of the NIC is yet to be reversed by an Appellate Court and therefore remains the current position of the law as it affects labour, employment and industrial relations in Nigeria.

**4. Which Government Ministry/Department /Agency is responsible for labour and employment issues?**

The Ministry of Labour and Productivity is directly responsible for issues relating to labour and employment. There are other government agencies in specific industry sectors whose activities touch directly or indirectly on labour and employment, for example, Nigerian Pension Commission for the pension industry and Department of Petroleum Resources for the oil and gas industry. An aggrieved employee is not precluded from approaching these government agencies for redress where his grievance is such that could be addressed by such other government agencies.

**5. Is there a requirement that employment contracts be written?**

By the provision of Labour Act, the contract of employment is required to be reduced into writing not later than three months after the commencement of the employment. It is instructive to note that the contracts of employment of the classes of employees not covered by the Labour Act need not be in writing, as same may oral or implied. However, it is advisable that all contracts of employment in respect of all classes of workers be in writing for the purposes of clarity.

**6. Is a triangular employment recognised in Nigeria?**

The term “triangular employment” refers to a situation whereby workers are employed by a person for the service of another person. This triangular relationship is recognised under Nigerian law. The Labour Act defines an employer as any person “who has entered into a contract of employment to employ any other person as a worker *either for himself or for the service of any other person...*”. This definition clearly provides a statutory support for a triangular employment relationship in Nigeria. Triangular employment relationships have also been recognised and approved by judicial authorities in Nigeria.

**7. Is “casual work” legal in Nigeria?**

Casualisation generally refers to a form of labour practice wherein an employer employs a person on temporary basis. Going by the provisions of Labour Act and Employees’ Compensation Act, one can safely say that Nigerian law recognises casual work. For instance, the definition of an employee under the Employee’s Compensation Act includes casual workers. Also, the Labour Act, though did not use the word “casual”, defines a “worker” to include anyone carrying out “*contract personally to execute any work or labour*”, an expression that accommodates casual workers. The NIC has similarly held that casual work is a reality in Nigeria.

**8. What are the rights of casual workers under Nigerian law?**

The Employee’s Compensation Act provides for payment of compensation to employees including casual workers in the event of accident during employment or to the employee’s dependants in the event of death. Suffice to say that, though casual workers do not enjoy same benefits as permanent workers/employees, an employer owes a casual worker a duty of care to provide safe work environment for the purposes of the employment and may



be held vicariously liable for the act of a casual worker.

**9. Are restraint of trade clauses enforceable in Nigeria?**

Usually, certain clauses are inserted in contracts of employment which provide that an employee must remain in the employment of the employer for a specified period or, upon resignation from or termination of his employment, would not take up a similar employment or will not take up employment from an undertaking who is a direct competitor to the employer. Such clauses are also utilised where the employer has invested on the employee for example by way of training to enable the employer enjoy the returns on his investment by ensuring that the employee remains in the employment for a specified period. Such clauses are referred to as “restraint of trade clauses”. On a general note, restraint of trade covenants is not enforceable in Nigeria. However, the courts will enforce restraint of trade clauses where it can be proven that it is reasonable as it affects the interest of the parties concerned (the employer and the employee), the public and does not amount to unfair labour practice. It must be noted however that a restraint of trade clause merely to prevent competition will not be enforced by the Court.

**10. Would the court uphold payment of salary in lieu of notice where same is not specifically provided in a contract of employment?**

By the provisions of the Labour Act, a party is permitted to waive his right to notice and accept payment in lieu of notice. The question is what happens where a party insists on notice on the basis that his contract does not provide for salary in lieu of notice. It is our view that the court will uphold the right of a party to payment in lieu of notice, which in effect is what the

aggrieved party would have received as damages for failure of the other party to give the required contractual notice. In the absence of any provision on payment in lieu of notice, the paying party is only obligated to pay the component of employee’s emolument constituting his basic salary minus all allowance. In the circumstance, it is advisable that parties are clear on the length of notice and payment in lieu of notice to avoid any uncertainties.

**11. Can an Employer terminate an employment without stating any reason?**

The position of the law which has been upheld by Nigerian appellate Courts has always been that an employer can terminate the employment of his employee without giving any reason or even for no reason at all. By the established principles, an employer has the right to terminate an employment without stating any reason in so far as all laid down procedures are followed in terminating the employment.

It is worthy of note that in a recent decision by the National Industrial Court, it was held that where the contract of employment contains grounds upon which the employment can be terminated, then any termination must fall under any of the agreed grounds and same must be stated when the employment is being terminated.

**12. What is the lawful way to terminate the employment of a managing director?**

Termination of the employment of a managing director of a company requires a little more than the usual way of termination of employment. This is because the managing director holds a dual position in a company, that is, he is an employee in and a director of the company. It is important to note that a managing director does not cease to be a director of the company because he is managing the company and in the same vein he does not



cease to be a director of the company because his appointment as an employee of the company has been terminated. Consequently, for the purposes of terminating the appointment of a managing director, his employment should be terminated in line with his contract of employment and he should be removed as a director of the company in accordance with the provisions of Companies and Allied Matters Act (CAMA).

**13. What reliefs are available to an employee whose employment was wrongly or unlawfully terminated?**

Reliefs available to an employee who alleges that his contract of employment was wrongfully or unlawfully terminated will depend on whether the employment is governed by statute (employments with statutory flavour) or by ordinary contract of employment (master and servant employment). Where the employment is one with statutory flavour, the employee may be entitled to re-instatement and may also be entitled to claim damages. As an alternative to a claim for re-instatement in such cases, damages may be calculated as salary and other benefits from the period when he was unlawfully dismissed to when judgement is delivered. Where the employment is however a mere master and servant relationship, the employee affected would not be entitled to re-instatement as wrongful termination only entitles him to an award of damages and the damages would be calculated as the amount the employee would have earned if the termination was done in accordance with the contract of employment.

**14. Can arbitration clauses be inserted in a contract of employment?**

A contract of employment, like any other contract is an agreement freely negotiated and entered by parties; an arbitration clause is regarded as a separate contract

independent of the main contract wherein the arbitration clause is inserted. As such, parties are free to insert an arbitration clause into a contract of employment and where same is inserted it will be enforceable. The provisions of the Constitution [Third Alteration] Act and the NIC Act support the use of arbitration for resolution of employment related matters with the NIC having supervisory jurisdiction over such arbitral tribunal.

**15. What is the procedure for carrying out redundancy exercise in Nigeria?**

Redundancy is defined by the Labour Act as an involuntary and permanent loss of employment caused by an excess of manpower. The Act requires an employer seeking to undertake a redundancy exercise to inform the workers concerned of the reasons for and extent of the anticipated redundancy; apply the principle of “last in, first out” in the discharge of the worker subject to factors like relative merit, including skill, ability and reliability; and use his best endeavours to negotiate redundancy payments to any discharged employees. On the other hand, the Courts have defined redundancy as a mode of removing an employee from service when his position is declared redundant by the employer. It is not a dismissal from service neither a voluntary or forced retirement.

Redundancy concerning employees that are not covered by the Labour Act would be regulated by the terms of the company’s contract of employment. Where the employment contract or employee handbook does not contain provisions on Redundancy, it is important that employer informs the affected employees and negotiates the applicable redundancy payments with them. Similarly, in cases where the employees belong to a trade union, redundancy is carried out in accordance with the terms of any existing





Collective Bargaining Agreement (CBA) between the Company and the Union Executives.

**16. Are employers allowed to conduct background checks on employees before completing a contract of employment?**

There is no legislation that forbids conduct of background check by an employer. It is however important that an employer seeking to conduct background check on a potential employee ensures he does not do anything that will breach the fundamental human rights of employees guaranteed by the Constitution to avoid potential liability arising from such breach.

**17. What restrictions are there in respect of foreign Nationals seeking to take up employments in Nigeria?**

In line with the provisions of the Immigration Act, no foreigner can take up employment in Nigeria without the written consent of Comptroller General of Immigration except if the employment is with the Federal, State or Local Government. Such consents are usually in form of Work Permits in addition to the necessary visas required for entry into Nigeria. An employer seeking to secure the service of a foreign national is required to apply for Expatriate Quota Approval before engaging the foreign national and failure to do so amounts to an offence under the Immigration Act. It should be noted that citizens of countries that are members of the Economic Community of West African States (ECOWAS) are exempted from the requirement of entry visas and can reside and work in Nigeria without residence permits; they are however required to apply for ECOWAS Residence Card within 90 days of their arrival in Nigeria.

**18. What are the statutory deductions employers are obligated to withhold from employees' emoluments?**

Employers are obligated to deduct at source the following from employees' emoluments:

- (i) personal income tax - employers are required to withhold income tax from the monthly emoluments of their staff in accordance with the rates stipulated in the Personal Income Tax Act and remit same to the relevant State Inland Revenue Service on or before the 10<sup>th</sup> day of the month following the payment of salaries
- (ii) Pension Contribution - employers are mandated to withhold 8% of each employee's salary and remit same (together with employer's 10% contribution) to the employee's chosen pension fund administrator within 7 days from payment of salary
- (iii) National Housing Fund - employers are required to deduct 2.5% of employee's basic salary and remit same to Federal Mortgage Bank within 1 month of such deduction
- (iv) National Health Insurance Scheme - employers are required to deduct 5% of employees basic salary (employers are to contribute 10% of employee's basic salary) as contribution towards National Health Insurance Scheme. The Scheme gives all employees access to affordable health care.

**19. What are the statutory remittances Employers are required to make?**

Employers are required to make two major statutory remittances, namely:

- (i) Employee Compensation Scheme - employers are required to remit 1% of their total monthly payroll into the Employee Compensation Fund to compensate employees who suffered death or permanent



incapacity resulting from accidents in the course of their employment

- (ii) Industrial Training Fund - Every Nigerian company with 5 or more employees or with less than 5 employees but with turnover of N50,000,000 is required to remit 1% of its total annual payroll to the Industrial Training Fund not later than 1<sup>st</sup> April of every year.

**20. What is the position of Nigerian law in respect of Transfer or secondment of employee?**

Both the Nigerian case law and the Labour Act permit an employer to transfer his employee to a third-party subject to the consent of the employee. Such consent can be obtained in advance through the employment contract or subsequently as the need arises.

The right of an employer to second his employee is typically subject to contract. An employer who has the right to second an employee also has the right to de-second the said employee.

**21. What is the position of the law regarding accident in the work place?**

By the provisions of the Employees Compensation Act, 2010 (ECA), an employee who suffers injury as a result of accident in work place or outside the work place if such accident occurs out of or in the course of employment shall be entitled to compensation in accordance with the provisions of the ECA. If death occurs due to the accident, the dependants of the employee involved would be entitled to compensation under the ECA. It is important to note that the provisions of the ECA are in lieu of any other action, whether in tort or in contract, maintainable by the employee against the employer. It is important to note that by virtue of the ECA,

the scope of an employee being “in the course of duty” has been extended to cover accidents occurring while an employee is on his way to work from his place of residence.

**22. What is the status of NYSC members and Students on Industrial Training in a work place?**

Industrial Trainees and NYSC members are generally not employees of a company as they do not have any contract of employment whether express or implied, written or unwritten and they cannot be bound by the terms of engagement of the company. However, if an employer elects to engage Industrial Trainees and NYSC members after the completion of their programme, only then can they be deemed full employees of the company and will be bound by the terms of their contracts of employment or statutes governing their employment where applicable.

**23. What are the legal principles applicable in respect of whistle blowing and corporate governance?**

All corporate governance issues including employees’ training and whistle blowing procedures are usually contained in the Staff /Employee Handbook, company’s HR Policies, manuals, conditions of service and other similar documents. It is however important for the employer to ensure that the relevant document containing the policies is made to be part of the contract of employment executed by the employee so that the contents of the document can be binding on the employee.

**24. Is there any statutory probation period for employees?**

There are no specific statutory provisions as to the length of probation or evaluation period before an engaged employee could be confirmed by an employer. In practice however, such probation and evaluation periods are contained in the contract of



employment and are binding on the parties. Where the confirmation of an employee is made conditional on the employee's satisfactory performance during the probation period, the employer will have the right not to confirm the employment if the employee does not perform satisfactorily during the evaluation period.

## 25. Is the Principle of Co-employment Recognised in Nigeria?

Co-employment refers to a situation where an employee would be regarded as being employed by two employers any one of which may be bound by the terms of the contract of employment; a relationship between two companies, usually between a parent company and one of its subsidiaries, and where each party has duties and obligations as an employer towards the employee.

The principle of co-employment has been recognised by Nigerian Courts and they have in appropriate cases upheld the fact of co-employer status between two employers in relation to an employee. The question as to whether two employers would be held to be 'one' in respect of an employee will depend on the contract of employment and the surrounding circumstances. The position of the law with respect to co-employment is that where the two companies are such that the subsidiary is totally integrated into and under the control of the parent company, the Court will hold that there is co-employment relationship and both companies would be held to be bound by the duties and obligations in respect of the employment.

## 26. Is Garden Leave Enforceable in Nigeria?

Garden Leave period refers to a time between when an employee has put in his notice for termination of his employment and when the employment is properly

terminated. Garden leave is where pursuant to employee's notice of termination, the employer requests the employee to refrain from coming to work whilst his contract of employment continues and his emoluments paid. The employee cannot work with any other employer within the Garden Leave period. The Nigerian employment law does not prohibit Garden leave, thus, where same is contained in a contract of employment, the court may enforce same on the basis of sanctity of contract.

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