

LEGAL ALERT ? APRIL 2006 ? EMPLOYMENT LAWS IN NIGERIA IN THE 21ST CENTURY.

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Business Quote of the Month.

"It is not how much wealth that you create that brings you financial freedom but how much of that wealth that you keep and re-invest to create more wealth that makes you wealthy" ? Ehijeagbon Oserogho.

Legal Alert for April 2006 ? Applicable Employment Laws in Nigeria in the 21st Century.

Introduction.

Corporations, globally, whether large or small, have at the beginning of the 21st Century realised that technology - without very competent and highly skilled and efficient humans - cannot bring about the maximisation of their business efforts and processes. The 20th century behaviour that

employers had a right to hire and fire at will, and that Human Resource Managers, employee rights, benefits, training and re-training, etc were secondary in a Corporation's business plan are being jettisoned for greater attention to employment and or human resource advantages of each and every Corporation. We recommend that you should do the same in your business.

Employment Contracts, Staff Handbook, etc.

The Labour Act ("The Labour Law") with a commencement date of 1st August 1971 remains the applicable Law in Nigeria in this area - though some commentators have argued that its provisions are only applicable to unskilled and manual workers. While unfortunately, relevant amendments have not being made to this Law to bring it up to speed on modern developments and practices, it remains the applicable Law in Nigeria. It is also a very worthy guide to you in managing your relationship with your employees or employer.

The Labour Law provides that every employer must give to each of its employees a written contract within three months of the employer engaging the services of the employee. The contract of employment must sufficiently state the particulars of the employer and the employee, the position and job description/functions, other terms and conditions of the contract including hours of work, remuneration, holiday and holiday pay, incapacity due to illness or injury, etc.

With the commencement of the implementation of the Pension Reforms Act and the National Health Insurance Scheme, etc it is recommended that the written contracts of employment should enumerate these benefits and liabilities between the employer and the employee in the employment contract.

Most Corporations, in addition to the contract of employment, also ensure that they have a very detailed Staff Handbook which gives fuller details on other matters necessary for high efficiency and harmony in the employer/employee relationship. Examples of what the Staff Handbook should contain include wages and salaries and mechanism for adjustments, hours of work, overtime, annual holidays and vacation pay, disciplinary procedures, "whistle blowing" procedures, redundancy principles, pensions, national health insurance scheme, union activities if any, etc.

Trade Union Membership.

It is unlawful for an employment contract to require or to restrain an employee from joining a Trade Union. In the same fashion, employees' contracts cannot be extinguished by reason of the employee joining a Trade Union.

Collective Agreements.

Many Corporations, especially the ones that have Trade Unions, usually enter into collective agreements with their employees through these Trade Unions. The objective of collective

agreements is to maintain industrial harmony.

The Nigerian Supreme Court has however held in a number of its judgements that collective agreements are only enforceable when the terms and conditions of the collective agreement are incorporated into each and every employee's contract of employment. This is because of the common law rule that contracts of employment are personal to the parties who enter into them willingly.

Annual Holidays, Accrual or Accumulation and Payments.

Nigerian Employment Laws requires that every employee in Nigeria, who has been in the employment of an employer for a continuous period of twelve months, is entitled to a holiday with full pay of at least six working days pay.

Our Law recognises that it may be necessary for an employer and its employee to, by mutual consent, defer an employee's annual holiday but this holiday must still be taken with pay.

Deferment of annual holidays is on the condition that the cumulative holiday is not deferred beyond a twenty-four months period of the employee being in the employer's continuous employment.

It is unlawful under Nigerian Law for an employer to encourage its employee or for the employee to elect to be paid a "special" holiday allowance in order for the employee not go for the annual holiday. This practice, which our Law does not condone, has continued in practice in spite of medical and human resource experts also discouraging it.

Maternity Leave.

Under Nigerian Employment Law, a pregnant woman is entitled to Maternity Leave of at least six (6) weeks before the delivery of her child and six (6) weeks after the delivery of the child. A pregnant woman is also entitled to 50% of the wage she would have earned if she had not been absent from her employment by reason of her carrying and delivering a child.

Where the woman, for medical reasons exceeds the period allowed, she must not be served with a dismissal notice if she produces a Medical Certificate from a registered Medical Practitioner informing the employer of her medical condition. Details should be provided if required by the employer.

Also, nursing mothers in employment are entitled under the Law to half an hour, twice daily, to nurse and feed their infant. However, in cosmopolitan cities, this may be a challenge for both the mother and her employer unless there is a close-by nursery or the employer's premises has a Nursery like some establishments are now doing in Nigeria.

Non Return to Work After Annual Leave or Leave of Absence.

The practice of employees claiming that they are going on their annual holiday and not returning

to their employment or returning after taking a longer period than approved by the employment contract can lead to the termination or dismissal of the employment contract; election of which of the latter options depends on the employer vis-à-vis the gravity of the employee's conduct.

We have not found any direct statutory provision in our statute books on what should occur on an employee absconding from his employment contract. Despite this, there are sufficient case Law directions where the Nigerian Supreme Court has decided that if an employee exceeds the period of his study leave or annual holidays without the consent of his employer, this behaviour would amount to gross misconduct and a fundamental breach of the contract of service on the part of the employee upon which the employer is entitled to either terminate or dismiss the employee from the employer's services.

Further, where an employee does not return to work after his permitted holiday, it must be implied that the employee has by his conduct repudiated his employment contract himself with no liability to the employer save that the employer can demand for payment in lieu of notice for such a repudiation based on the terms of the formal contract between it and the employee.

Redundancy of Employees.

Redundancy is the involuntary and permanent loss of employment caused by excess manpower. Nigerian Employment Law recommends the principle of "last in, first out" to be adopted by an employer in the discharge of the particular category of employees affected subject to factors such as relative merit including the employee(s) skill, ability and reliability.

Factories Act.

There is still in existence in Nigeria a Factories Act ("the Factories Law"). The Factories Law is a legislation that provides that all factories in Nigeria must be registered, within a month of its commencement of business, with the Director of Factories who is statutorily required to keep a Register of all the Factories in Nigeria.

It is the intendment of the Factories Law to also protect all employees and other spectrum of workers and professionals that are employed in factories and are exposed to possible occupational hazards. Also, every factory is required to be kept in a clean state free from all sanitary nuisances, etc. Further, a factory must not be over crowded so as to cause risk or injury to the health of the employees engaged in the factory.

Workmen Compensation Act.

The Workmen Compensation Act ("The Workmen Compensation Law") is an employment legislation that provides a mechanism for the payment of compensation to employees who sustain injuries in the cause of their employment.

Where death results from a workman's injury, his dependant are entitled to 42 months of his

earnings from his employer. Where the injury causes permanent and total incapacity to the employee, the employer is required to pay to the employee a sum equal to 54 months of the employee's earnings. And where permanent partial incapacity results from the injury, the workman is required to be paid the same amount as when permanent total incapacity occurs. An employer is not liable under the Workmen Compensation Law where the injury does not incapacitate the workman for a period exceeding three consecutive days, where the injury is directly attributable to the negligence or misconduct of the workman, or where false prior representation of the workman's injury is made.

A beautiful modern practice of managing this liability is for the employer to take out a Workmen's Compensation Insurance for its entire staff from a reputable Insurance Company. Short Comings with Labour Laws.

1. Glaring non effectiveness of the Regulator for this sector which is the Ministry of Labour and its field administrative officers.
2. Insufficient and ridiculous penalties for breaches of the provisions of the Labour Laws by employers.
3. Restriction of the application of the provisions of the Labour Laws more to employees in the private sector and the over protection of employees in the public service by the Civil Service Rules. This does not enshrine competitiveness and merits in the public service.

Conclusion.

It is recommended that whilst we have commended to you most of the provisions of our Labour Laws more as a guide because of lack of enforcement, best global practices including those enshrined by the United Nations are strongly recommended for business success.

Advantages also lie for employers who take care of their employees and employers who increase the skills of their employees by sending them on training programs; this is because the expenses for those training programs could be termed as tax deductible expenses in the accounting books of a Corporation.

Another advantage is that employers who are regular contributors to the Industrial Training Fund ("ITF") are allowed to receive refunds for training programs approved by ITF. Aware that the ITF may not be as effective as enshrined in its operating Law, the network and facilities available are worth considering.

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