

## The Human Resources Professionals Guide

A working knowledge of employment and immigration laws is one of the most important skills that Human Resources (HR) professionals must have. In Nigeria, these areas of law have entered a dynamic era. Employment law development within the country is driven by the National Industrial Court's focus on ensuring international best practices. On the other hand, immigration law's development has been helped by a focus on accentuating the ease of doing business in Nigeria.

Consequently, it is important to have a working knowledge of the recent developments and legislation in these areas. Below is a review of the:

- Immigration Act 2015;
- Immigration Regulations 2017; and
- Recent developments in labour law.

### The Immigration Act 2015

Prior to the Immigration Act 2015 ("Act"), Nigeria's major immigration law was the Immigration Act, 1963. Within the 50 plus years after its promulgation, the Immigration Act 1963 ('the 1963 Act') became outdated. Consequently, the Act makes broad provisions encompassing the administration of immigration policies and the movement of foreigners within the country. We highlight below, these provisions which have great impact for human resources professionals, business professionals and organisations.

#### Requirement of Security for Obtaining Residence Permit

Foreigners applying for residence permit must show evidence of immigration responsibility or any other security on his/her behalf. Generally, this requirement can be satisfied by a letter of employment from the foreigner's host company. This provision was absent in the former Act.

#### Introduction of Public-Private Partnerships

The Immigration Service is empowered to collaborate with public and private sector interest groups using a Public-Private Partnership (PPP) platform. Such collaboration would be aimed at the acquisition and development of infrastructure and equipment. Via this provision, an opportunity for investors to collaborate with the Nigerian Immigration Service has been provided.

#### Use of Residence Permit for Re-entry

The Act enables holders of Residence Permits or Work Permits to utilize these as multiple entry permits during their validity. Based on this, holders of the Combined

Expatriate Residence Permit and Alien Card (CERPAC) do not need to obtain visas for re-entry into the country while the CERPAC lasts.

- *Operators must, when entering contractual agreements with foreigner suppliers, insert clauses that require the suppliers to comply with the immigration laws.*
- *Suppliers must also refrain from utilizing messages that could suggest incompatibility with the Act's provisions.*

### **Establishment of Immigration Courts**

The Act provides for the establishment of Immigration Courts at recognized ports of entry for quick resolution of immigration matters. Offenders with pending cases can be remanded in custody for a period not exceeding 21 days at the first instance and thereafter, as occasion may demand. However, the total period on remand must not exceed three months (90 days).

### **Employment of Foreign Nationals in Nigeria**

Non-Nigerians are not permitted to:

- Accept employment in Nigeria without the written consent of the Comptroller-General of Immigration. Employment in any level of the government will not require this consent.
- Own solely or in partnership with any other person, a business or practice without the consent of the Minister of Interior. This requirement also applies to take-overs of companies by non-Nigerians.

### **ECOWAS Nationals**

ECOWAS nationals are exempted from the requirements of obtaining entry visas and are allowed to reside, work and undertake commercial activities in Nigeria without the normal permits.

*However, ECOWAS nationals are required to obtain an ECOWAS Residence Card. Countries in the ECOWAS are: Benin Burkina Faso, Cape Verde, Cote D'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.*

### **Offences**

Offences	Penalties
<b>Non- regularization of STR visas within 3 months</b>	3 years imprisonment and/or a fine of N500,000
<b>Failure to renew Residence Permit 30 days after expiration</b>	3 years imprisonment and/or a fine of N500,000
<b>Failure to renew a Business Permit and Temporary Work Permit</b>	5 years imprisonment and/or a fine of N500,000
<b>Accepting employment without the consent of the CGI</b>	Deportation and/or N1,000,000 fine

### The Immigration Regulations 2017

The Immigration Regulations 2017 (the ‘**Regulations**’) were promulgated based on powers derived from the Immigration Act 2015. Consequently, the Regulations’ provisions supplement the Act. The Regulations also replace the former Immigration Regulations 1963.

#### Business Permits

The Regulations codify the requirement to obtain a Business Permit for foreigners who intend to establish a business, profession or trade in the country. However, this does not grant the holders a right of residence within the country. Any change in the name, nature or address of the business to which the Permit relates must be communicated to the Minister or Comptroller-General within twenty-on days of the change.

#### Residence Permits

Residence permits will be granted to persons who have obtained lawful entry into the country. These are temporary and have a maximum validity period of two. A key point is that foreign nationals who have imported an annual minimum ‘**threshold of capital**’ over a period of time may be issued a **Permanent Residence Permit**, as long as the investment is not withdrawn and other prescribed conditions are met.

The Regulations do not provide the time period and the minimum capital requirements to obtain the permanent residence permit. However, the Immigration Act 2015, which the Regulations complement, provides that this threshold and time period may be specified in the National Visa Policy periodically.

#### Visitors Permit

Visitors to Nigeria can obtain a permit that allows them to stay in Nigeria for a period not exceeding ninety days. The port of entry, date of entry and period of stay will be endorsed on the permit. The issuance of this permit is based on the possession of a return ticket or onward transportation ticket to another country by the applicant.

### Transit Permit

Transit permits are issued for an initial period of seven days. However, they can be extended upon application to the relevant Immigration office **before** the expiration of the original permit. These extensions are not generally available and will be granted to only certain classes of persons (which are not specified) or in special cases of authorisation by the Comptroller-General of Immigration.

### Temporary Work Permit (TWP)

The Regulations, unlike the former regulations, codifies provisions on the Temporary Work Permit. TWPs may be issued beyond stipulated quotas upon a letter of approval by the Comptroller-General.

### Visa on Arrival

The Regulations states that visas can now be issued on arrival to any person, after approval of the Comptroller General.

### Stay of Action

In practice, while an application for the renewal of an **Expatriate Quota (EQ)** is pending, the EQ could expire making the relevant expatriates, liable to deportation. The Regulations have codified a solution to this problem by providing that the Minister can issue a stay of action for such deportations. Eligibility for such stay is dependent on the existence of a pending application for the EQ(s).

### Foreign Nationals Married to Nigerians

Foreign nationals who are married to Nigerians can obtain residence permits. These permits will serve as multiple re-entry permits, notwithstanding the class of visa such a foreigner holds. This will not apply to same-sex marriages or civil partnerships as these are not recognized under Nigerian law.

### Change of Status of Residence

Registered immigrants are required to give notice to an Immigration Officer in the State where they resides if:

- **there is any circumstance which changes the accuracy of his registered information;**
- **they have to leave their residences for a period beyond seven days;**
- **they intend to change residence from one state to another;**
- **they intend to change residence within the same state.**

Also, an immigrant who moves to a new state must, within seven days inform an Immigration Officer in that state.

### Responsibilities of House Holders

Householders of properties that immigrants reside are required to take reasonable measures to ensure immigrants' compliance with the regulations. The failure of the immigrants to comply with the regulations entitles the householders to make a report to an Immigration Officer. Managers and owners of hotels and boarding houses are also expected to keep records, in the form of a register, of persons who stay in their lodgings.

By this provision, the Regulations impose a rule similar to the Know Your Customer (KYC) Guidelines in other industries. While the Regulations state that householders should reasonably ensure compliance with all the regulations, it is doubtful that this can be practically enforced. Beyond ensuring that their tenants are not in the country illegally and keeping proper records, a lessor or a landlord will not be expected to go above and beyond in ensuring his/her tenant complies with all the regulations.

### Powers of Immigration Officers

Several powers have been granted to Immigration officers under the Code. These are enumerated below:

- **Power of examination;**
- **Power to demand for particulars of immigrants**
- **Power of arrest (with or without warrant), detention or prosecution;**
- **Power of search**

### Offences Relating to Renewal of Permits

Any expatriate who fails to apply for:

- **a regularization of stay within three months;**
- **renewal of Business Permits, Transit Visas, Visitors Pass or Temporary Work Permits after expiration or**

- a renewal of his/her residence permit , thirty days after its expiration, will be liable to a fine of Five Hundred Thousand Naira and/or an imprisonment term of three years.

It is important to note that prior to the issuance of these Regulations, there was no requirement of renewal of Business Permits. They were issued as a one-off permit. Subsequently, guidance on the modalities of the renewal of these permits will have to be obtained from the Ministry of Interior.

a. Offences by Body Corporates

- For body corporates, if an offence occurs based on the instigation, connivance or neglect of an officer of the body, the officer shall be liable to an imprisonment of three years and/or a fine of Two Million Naira. A body corporate convicted of an offence under the Immigration Act is also liable to a fine of Five Million Naira and may be wound up by Court Order. However, proof of due diligence or unawareness of any connivance may act as a defence for officers of a body corporate.
- Also, corporate bodies that refuse to renew their EQs within stipulated periods or render **EQ Monthly Returns** are liable to a fine of Three Million Naira. Companies with expatriate quotas are required to employ Nigerians to understudy expatriate employees. Failure by a corporate body to comply with this provision makes it liable to a fine of Three Million Naira for each month the position has been occupied without an understudy. The relevant expatriate employees will also be deported.

Furthermore, the practice of allowing the utilization of one company's quota positions by another company (quota trafficking) is expressly prohibited. It is necessary for HR Managers and Secretaries of companies to take note of these provisions.

b. Enabling Illegal Residence

A person who, for material or financial benefits, facilitates, procures or enables the illegal residence of a non-citizen in the country via fraudulent permits is liable to an imprisonment term of ten years and/or a fine of One Million Naira.

c. Obstruction of Justice

If any person interferes with evidence, witnesses or exhibits such as to obstruct justice, that person is liable to a term of fourteen years in prison and/or a fine worth Two Million Naira

Recently, the Vice-President signed and issued two Executive Orders that have great impact on the immigration landscape. Via these Orders:

*Business and Tourist visas are to be issued within a period of 48 hours from the receipt of application.*

*Ministries, departments and agencies (MDAs) are to publish definitive timelines for treatments of all permits and approvals. Applications made for approvals and permits must be either accepted or rejected with reasons within the stipulated statutory periods. Any permit that is not treated within this time limit will be deemed as **approved by default.***

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### Employment Law Review

Presently, chances are that Nigeria's employment case law is developing faster than domestic Human Resources professionals can keep up. The days where the legality on all labour practices was certain have ended. In these times, not much is set in stone, as the National Industrial Court (NIC) makes decisions with an eye on international best practices.

Below, we provide a highlight of the findings of in recent case law which HR professionals will find useful. These highlights also include decisions which contain principles that hold true even till now.

- An employer has the right to dismiss an employee even if not specifically written in the contract of service. (**Simon Ansambe v. Bank of the North Ltd [2005] 8 NWLR (Pt. 928) 650**)
- A query disclosing the infraction and a reply by the employee before any decision is taken is enough to satisfy the requirements of fair hearing in disciplinary actions. (**Isong Udofia v. Industrial Training Governing Council [2001] 4 NWLR (Pt. 703) 281**)
- A questionnaire does not serve as a query and will not pass the fair hearing test. (**Mr. Valentine Ikechukwu Chiazor v. Union Bank of Nigeria Plc unreported Suit No. NICN/LA/122/2014**)
- A letter of dismissal cannot have retrospective effect. (**Underwater Eng. Co. Ltd v. Dubefon [1995] 6 NWLR (Pt. 400) 156 SC**)

- Whistleblowing cannot be a ground for dismissal of an employee (**Olu Ibiroga v. The Council, the Federal Polytechnic Yaba** ) [2015] 63 NLLR (Pt. 223) 343)
- Employers are not permitted to interfere in the internal affairs of a trade union. (**Nestoil Plc v. NUPENG** [2012] 29 NLLR (Pt. 82) )
- A notice of resignation becomes effective on the date it is received by the officer to whom it is addressed. (**Abayomi Adesunbo Adetoro v. Access Bank Plc unreported Suit No. NICN/LA/293/2013**)
- It is advisable that termination notices state a reason for the termination (**Aloysius v. Diamond Bank** [2015] 58 N.L.L.R 92). This is even more so in certain sectors where an individual's reputation could be marred by clouds over previous employment records.

### Unfair Labour Practices

The following acts have been held to constitute unfair labour practices:

- Holding employees' certificates and documents as a condition/security for employment
- Dictating investment instructions for an employee's gratuities
- Vindictive suspensions / denials of promotions of employees
- Compelling employees to bank with a bank chosen by the employer

*Note: Ordering employees to undergo compulsory medical check-ups might be interpreted judicially as an invasion of their privacy. It is best to acquire legal advice on a case-by-case basis.*

### Conclusion

In this Guide, we have provided an overview of recent legislation in the domestic immigration law space. We have also provided a brief overview of cases that HR professionals need to know. Clearly, there is a leaning towards ease of business and more respect for the individual (as opposed to the Company) in these two areas of law respectively.

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