



NUGGETS ON LABOUR LAW

1. What are the regulatory framework for labour and employment matters in Nigeria?

The legislations applicable to employment and labour relations in Nigeria include:

- a. The Constitution of the Federal Republic of Nigeria 1999(as amended);
- b. The Labour Act, Chapter LI, Laws of the Federation of Nigeria 2004 (Labour Act)
- c. The federal laws enacted by the National Assembly;
- d. Decisions of the Nigerian courts- case law; and
- e. International conventions, treaties and protocols relating to labour, employment, workplace, industrial relations or matters connected therewith that have been ratified by Nigeria.

However, 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.

2. Who is an employee under the Labour Act?

There are two broad categories of an employee in Nigeria; the workers and non-workers. The workers can be defined under the labour act as those who are generally employees who perform manual labour or clerical work.

On the other hand, non-workers are employees who perform administrative, executive, technical or professional functions.

3. Which court has jurisdiction over labour matters?

By virtue of **Section 254C(1) of the 1999 Constitution** (Third Alteration) Amendment Act, 2010, 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

4. Is there a requirement that employment contracts be written?

By virtue of **Section 7 of the Labour Act**, a contract of employment is required to be reduced into writing not later than three months after the commencement of the employment.

It is pertinent 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.

5. Can an employee be terminated without reason?

Generally, an employer has the right to terminate the employment of an employee provided the appropriate notice of termination is given to the employee or the employee is paid a salary in lieu of such notice.

However, in the case of **ALOYSUS V. DIAMOND BANK 2015 58 NWLR (PT. 199) 92**, the Court held that an employer has a duty to state the reason for the termination.

6. What is the position of law with respect to Sexual Harassment in the workplace?

The Labour Act and other allied labour laws in Nigeria do not make specific provisions for sexual harassment.

However, Section 262 of the Administration of Justice Law, Lagos State, 2015, criminalizes Sexual Harassment of an employee in the workplace.

7. Are employees protected against Discrimination based on HIV?

Section 42 of the 1999 Constitution(as amended) prohibits discrimination against a citizen on the basis of their community, ethnic group, place of origin, sex, religion, political opinion or the circumstances of their birth.

Also, the **HIV and AIDS(Anti-discrimination) Act, 2014** prohibits employers from discriminating directly against employees on the basis of their HIV status or HIV related illness.

In **ONUHIKEMI V. SMRIDU NIGERIA LIMITED NICN/LA/265/2015**, the Court relied on Section 42 of the 1999 Constitution to hold that the action of the employer in sacking the employee due to HIV status was discriminatory.

8. Can an employee be Suspended, disciplined or dismissed for whistle blowing?

There is no general legislation that governs whistle blowing , however, there are sector specific legislation on the subject.

Some of the protection afforded to employees under some sector specific legislation is prohibition from dismissal, suspension or termination of employment of a whistle blower.

In **OLU IBIROGBA V. THE COUNCIL, THE FEDERAL POLYTECHNIC YABA (2015) 63 NLLR (PT. 223) 343**, the claimant, the College Bursar, was suspended for whistle blowing on the defendant, his employer. However, the Court ordered his reinstatement on the ground of public interest.

9. Is annual leave a statutory right for an employee?

The Section 18 of the Labour Act provides for mandatory annual leave. Every employee shall be entitled to an annual holiday with full pay for a minimum of six working days after 12 continuous months of service.

In **AKINFEMIWA AKINYINKA V. MORE TIME CO2 GAS PLANT LIMITED NIC(2011) 4 LLER 2**, the Court held that denial of annual leave to an employee is unfair labour practice.

10. Can an employee be subjected to a retroactive policy?

In a notable decision by the National Industrial Court of Nigeria, in the case of **EKEOMA AJAH V FIDELITY BANK PLC NICN/LA/588/2017**, the court considered the propriety of an employer introducing and retrospectively applying a retirement benefits policy to an employee instead of the policy that was in place at the time of the employee's notification of retirement.

The Court held that although in certain circumstances an employer is, as of right, entitled to vary any part of the contract of service without seeking and obtaining the consent of its employee, the Court will discountenance variations which have the effect of taking away any accumulated benefit of an employee. The Court further held that the retroactive application of a policy variation will be ineffective against an employee where it divests the employee of accrued benefits because "the Court does not protect retroactive action capable of denying accrued benefits."



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