

NAVIGATING EMPLOYEE PAYCUTS IN NIGERIA:

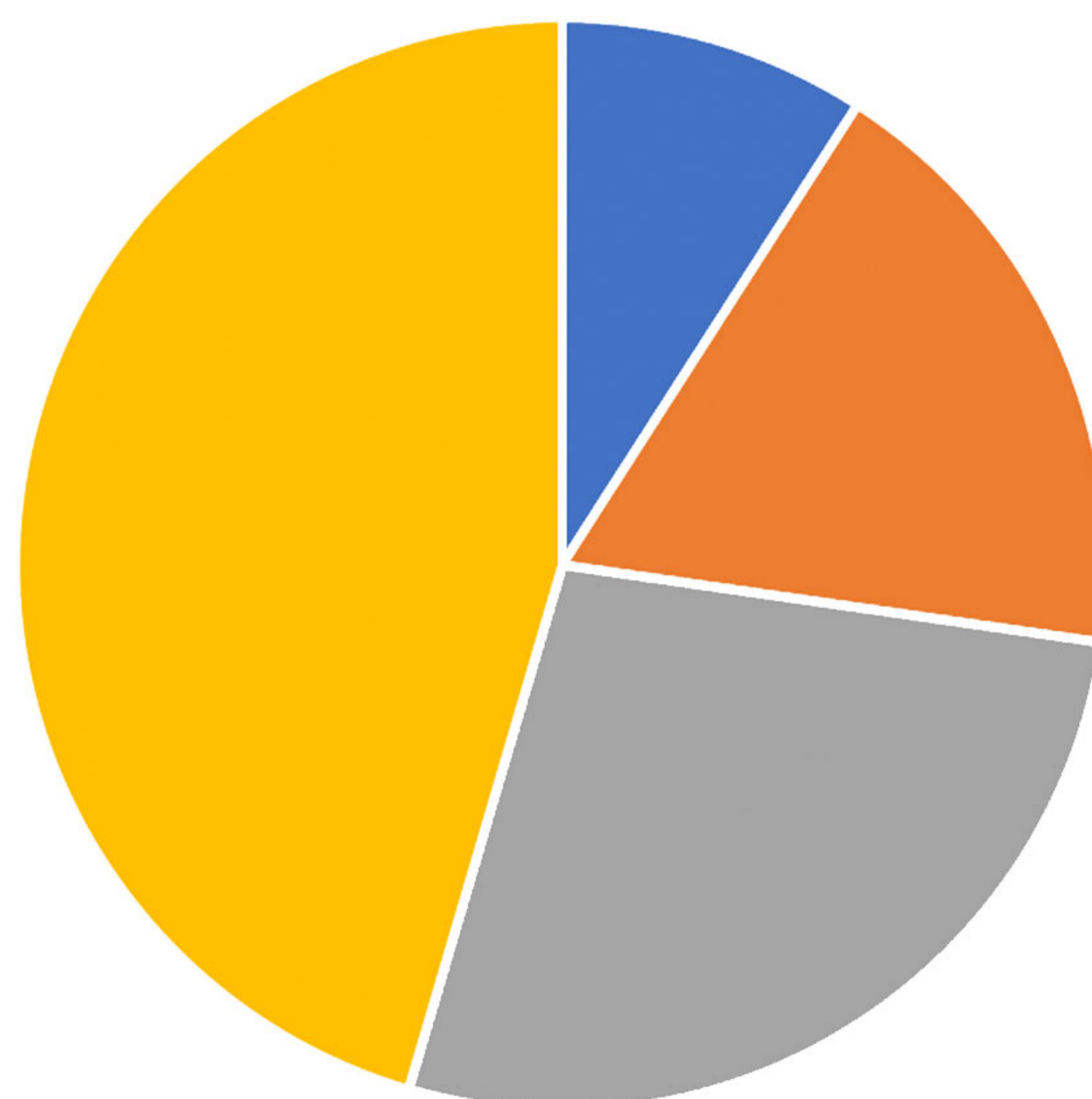
**A COMPREHENSIVE GUIDE FOR EMPLOYERS
AND EMPLOYEES.**



Introduction

The world of work has undergone a seismic shift since the COVID-19 pandemic. The current global landscape, marked by economic volatility, cashflow constraints, and inflation, has compelled employers to engage in a delicate balancing act- preserving fair employment practices while ensuring the survival of their businesses.

Across the globe (Nigeria inclusive), employers are tackling this challenge head-on, and are increasingly adopting a common remedy - employee pay cuts. As a result of a miserable quarterly financial result in January 2021, Intel announced that it would slash base pay for employees above its mid-level ranks by at least 5% effective March 1, 2023, Vice Presidents will take a 10% cut, more senior executives will receive 15% less, and CEO, Pat Gelsinger will go home with a 25% reduction in his base pay.¹



■ Employees above mid-level ranks: ■ Vice Presidents ■ More senior executives ■ CEO, Pat Gelsinger:

For employers in sectors (such as Tech, Media and Telecommunications, Supply Chain, Life Sciences and Manufacturing) predicted to experience global talent scarcity in the coming years, the prospect of layoffs is a bitter pill to swallow. Instead, the vast majority in this category have opted for the alternative of reducing salaries to retain their valuable workforce and keep their businesses afloat.

This article serves as a compass through this curve and an enlightening guide for both employers and employees in Nigeria. This article unpacks the intricate dynamics, legal considerations, and best practices in implementing employee pay cuts, helping global CEOs and Human Resources (HR) with Nigerian talent, steer the ship to calmer seas, while safeguarding the team and the future of the organization.

1. <https://www.oregonlive.com/silicon-forest/2023/02/intel-slashes-wages-bonuses-after-disastrous-quarterly-results.html> (Last Accessed 7/11/23)

1. The Unprecedented Need for Employee Pay Cuts

The economy of Nigeria is a middle-income, mixed economy and an emerging market with expanding manufacturing, financial, service, communications, technology, and entertainment sectors. However, the Nigerian economy is characterized by routine structural issues, including inadequate infrastructure, tariff and non-tariff barriers to trade, obstacles to investment, lack of confidence in currency valuation, and limited foreign exchange capacity.²

These factors have triggered a number of consequences—leading to diminishing revenues, escalated operational expenses, inflation and pervasive market instability.³ Consequently, numerous employers have contemplated relocating their operations beyond national borders, driven by the notable reduction in their profit margins (GSK recently announced its exit from Nigeria). These factors collectively underscore the reasons why employers might increasingly contemplate pay cuts.



2. Legal Aspects of Employee Pay Cuts

2.1 Know the Labour Laws

Nigeria, like many countries, upholds the sanctity of contractual agreements in employer-employee relationships, allowing both sides to negotiate and determine the terms of employment. However, this freedom, however business-friendly, must operate within the ambit of local labour laws. The guidance of local labour laws in the contractual relationships between employer and employee ensure a fair and equitable balance between employers and employees.

Local legislations do not directly provide for reduction/pay cuts in a positive sense. However, deductions from an employee's salary are only expressly allowed in specific instances such as pension contributions, damage to employer, and check-off dues.⁴ The current wave of decisions by Nigeria's labour court, the National Industrial tilts towards salary reduction as long as the process does not violate the rights and interests of employees.

2. Economic growth and trade <https://www.usaid.gov/nigeria/economic-growth> (Last accessed 20/10/2023)

3. According to research by Statista conducted in August 2023, accessible at <https://www.statista.com/statistics/1118955/year-on-year-inflation-rate-by-area-in-nigeria/>, the inflation in urban areas of Nigeria grew by 27.69 per cent compared to August 2022. Inflation in rural Nigeria experienced an increase by 24.1 per cent compared to the same period of the previous year.

4. Section 5 of the Labour Act, 1974

In **Omole v. Mainstreet Bank Microfinance Bank Ltd**⁵, the National Industrial Court held that a unilateral reduction in the wages and salaries of workers is not acceptable and that the reduction of the salary of the employee by the employer without her consent violated the spirit of both Section 5(1) and the ILO Convention No. 95 (Protection of Wages Convention, 1949).

Employee consent in paycut situations, is fundamental and skewed against employers who prefer to act unilaterally in decisions to slash employee salaries and benefits. Thus, it is important that employers carefully procure the consent of their employees before reducing an employee's salary.

2.2 Employee Contracts and Agreements

Employment contracts govern the relationship between parties (the Employer and the Employee). In analyzing the importance of an employment contract, a learned Justice of the apex labour court in Nigeria stated as follows:

“It is important to state that although much of modern employment law is contained in statutes and statutory instruments, the legal basis of employment (by whatever means) remains the employment contract between the employer and the employee. The contract of employment is important in itself, in that it may give rise to a common law action for its enforcement or for damages for its breach.⁶”

Thus, employment contracts of Nigerian employees have transitioned over time into a tool for employers in making enterprise-friendly decisions as long as lawful consent and best global practices are embedded. Consequently, employment contracts and other ancillary agreements between the employer and employee ought to be elegantly worded to ensure that they anticipate pay cuts under certain circumstances. Where they do, employers have to comply with the prescribed procedure on how the pay cut should be implemented. Where they do not, the pay cut has to be conducted lawfully and fairly.

Employers may choose to rely on the “Variation Clause” which allows the employer to vary the terms of the employment contract without seeking the consent of the employee. However, the variation clause should not be relied on by the employer to reduce the employee's pay without prior information and consultation of the employee. The employee is left with the option of initiating an employment dispute claim in this case on grounds of discrimination, and unfair labour practices. Power is also vested in the local labour courts to regard as unconscionable, where the paycut is underpinned by elements of coercion or undue influence.

5. NICN//LA/341/2012

6. Per IBRAHIM TANKO MUHAMMAD, JSC (Pp 21 - 21 Paras B - D), IYERE v. BENDEL FEED AND FLOUR MILL LTD

3. How to Conduct Employee Pay Cuts Lawfully and Fairly

3.1 Maintaining transparent and open communication:

Wages and salaries rank high among the conditions of work that have the most direct and tangible effect on the everyday life of workers as they are necessary for the maintenance of workers and their families. Thus, cutting an employee's salary may have ripple negative effects.⁷ This is why the employer should maintain transparent and open communication between employers and employees during such trying times. The decision to cut the employee's pay should be communicated to the employee timeously in writing, stating the reasons for such a decision to enable the employee to understand the employer's financial constraints.

3.2 Adopting a Fair and Proportional Structure:

It is safe for an employer to adopt a pay cut structure which is fair and proportional to the impacted Employee's salary. A fair pay cut structure may differ based on the employee's level and remuneration. However, it may range from:

Cutting the basic rate of pay

Withdrawing or reducing overtime

Withdrawing or Reduction of Bonus payments

Reductions in the amount of extra paid holidays that are offered to employees in addition to their contractual entitlement

Reduction in paid working hours.

Introducing a hybrid work environment without reducing hours or raising salaries for employees.

7. <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/wages/lang--en/index.htm> (Last Accessed 25/11/2023)

4. Employee Rights and Protections

When faced with the prospect of a pay cut, employees are granted specific rights and protections to ensure a fair and transparent process. Some of these rights are

Right to Be Heard:

Employees facing a potential pay cut have the fundamental right to be heard. This means that employers must engage in open and constructive communication with their employees, allowing them to express their concerns, provide input, and discuss the proposed changes. This ensures a fair and inclusive decision-making process.

Negotiation and Consent:

Employees are not merely passive recipients of pay-cut decisions. They possess the right to negotiate the terms and conditions of the proposed adjustments. Employers should engage in meaningful discussions with employees, taking their perspectives into account. Furthermore, any agreement or offer concerning a pay cut requires the explicit consent of the employee involved. This emphasizes the importance of mutual agreement in preserving a healthy employer-employee relationship.

Protection Against Discrimination:

It is imperative for employees feel secure in exercising their right to refuse consent without facing discrimination. Rejecting a pay cut should not lead to adverse consequences such as unfair treatment or termination. Employees have the right to resist the employer's proposals, without fear of reprisal, fostering a work environment built on trust and respect.

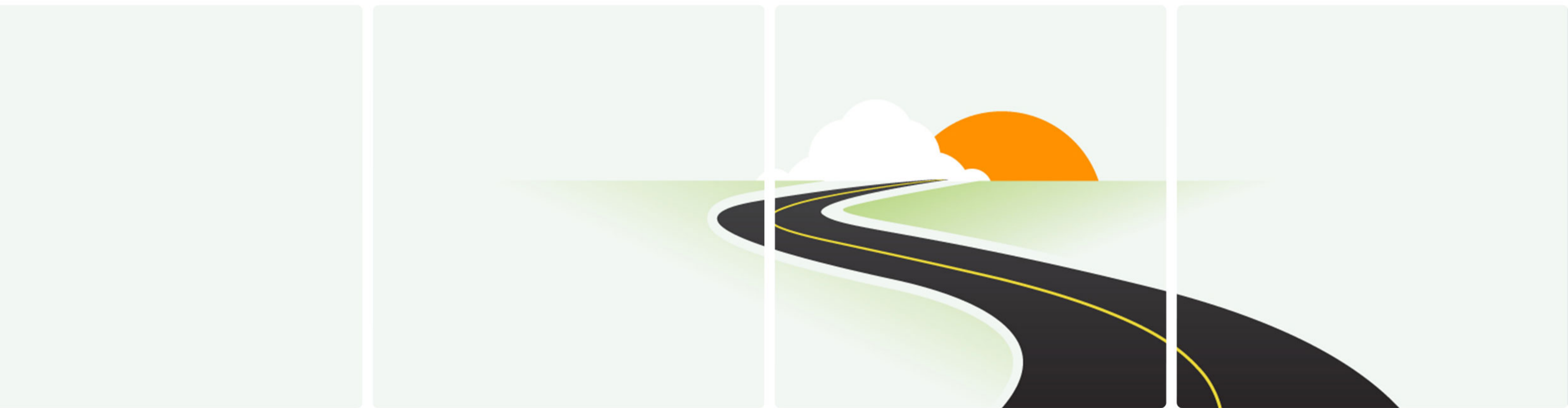
Termination Following Refusal:

While employees have the right to decline a proposed pay cut, employers also have the prerogative to terminate employment based on the terms outlined in the employment contract. It is essential for both parties to adhere to the agreed-upon contractual terms, ensuring a clear understanding of the potential consequences of refusing a pay cut. However, initiating a termination immediately on refusal of a paycut might seem untidy and demonstrate bad faith on the part of the employer.

Legal Representation:

Employees are entitled to legal representation to ensure a fair review of the conditions and terms of the proposed pay cut. **Hiring an employment law specialist can help employees navigate** complex negotiations, ensuring that their rights are protected and that they have a comprehensive understanding of the implications of the proposed changes. On the employer side too, in-house counsel in most cases already have resources spread out too thin and not be able to effectively cater for specialist advice in such situations, hence external help is advisable particularly where middle to senior managers are involved.

Conclusion: A Path Forward



During times of economic uncertainty, comprehending the complexities associated with employee salary reductions becomes crucial for both employers and employees. As employers strive to strike a balance between financial challenges of the organization and the retention of valuable talent, employees grapple with the shock and uncertainty that accompany a reduction in pay. Pay cuts should only be resorted to when there are no viable alternatives, taking into account the rights of employees and potential legal claims that may ensue.

The intricacies involved in such transactions underscore the utmost importance for labour and employment law specialists. These professionals can navigate the complexities of employee pay cuts, ensuring a strategic approach that minimizes risks and safeguards the interests of both parties. For employers who are probably not cutting pay presently, skillfully-updated contracts of employment anticipating paycuts, can help in saving ahead for the rainy day when it comes.



TEMILOLUWA DOSUMU

Senior Associate

temiloluwa.dosumu@famsvillesolicitors.com



RACHAEL OLAYEMI

Associate

rachael.olayemi@famsvillesolicitors.com



CONTACT US:



+234 (0) 90 68909 300

+234 (0) 80 62801 020



info@famsvillesolicitors.com



214b Eti Osa, Dolphin Estate.
Ikoyi