Q&A: Labour & Employment Law in Nigeria - Lexology

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Legislation and agencies

Primary and secondary legislation

What are the main statutes and regulations relating to employment?

The main statutes relating to employment of labour in Nigeria are the:

Labour Act (this Act primarily governs the employment of manual labour);

Employees Housing Schemes (Special Provisions) Act;

Factories Act;

Employee’s Compensation Act;

Trade Union (Amendment) Act;

Trade Disputes Act; and

Civil Service Rules.

Protected employee categories

Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

There is no specific employment legislation that prohibits discrimination in employment. However, this is generally provided for under section 42 of the Nigerian Constitution, which gives every citizen a right to freedom from discrimination regardless of his or her ethnic group, place of origin, sex, religion or political opinion.

In addition, section 17(3)(e) of the Nigerian Constitution provides that the state shall direct its policy to ensure that there is equal pay for equal work without discrimination on account of sex or any other grounds whatsoever.

Enforcement agencies

What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The primary judicial body charged with this responsibility is the National Industrial Court, which is empowered to settle employment-related disputes within Nigeria. The Ministry of Labour is also statutorily empowered to perform oversight functions on issues pertaining but not limited to trade disputes, collective bargaining and outsourcing.

Worker representation

Legal basis

Is there any legislation mandating or allowing the establishment of employees’ representatives in the workplace?

The Trade Union Act allows for the formation of trade unions for Nigerian employees. Membership of a trade union is voluntary, and no employee must be forced to join any trade union or be victimised for refusing to join (except in situations where such a person occupies a sensitive senior managerial position and makes key decisions in the organisation) or remain a member.

Powers of representatives

What are their powers?

These bodies are empowered to regulate the terms and conditions of employment of workers who are in their membership. This may include actions taken in furtherance of a trade dispute, strike actions, lockouts and collective bargaining.

Background information on applicants

Background checks

Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There are no central databases for the storage of information in Nigeria, and as such, the information retrievable from background checks is limited. That being said, there are no restrictions against such checks on applicants. However, this is subject to section 37 of the Nigerian Constitution, which guarantees a right to privacy for citizens, their correspondence, telephone conversations and telegraphic communication.

Medical examinations

Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Although not expressly stipulated under Nigerian law, these concerns are governed by the contract of employment between an employer and an employee. Thus, once stipulated therein, the employee becomes bound by such terms.

Notwithstanding the above, people living with HIV or AIDS in Nigeria are protected by legislation and case laws. The legal position in Nigeria is that mandatory employee HIV testing is discriminatory.

Drug and alcohol testing

Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

This is not expressly stipulated under Nigerian law. These concerns are governed by the contract of employment between an employer and an employee, and as such, once stipulated therein, the employee is bound by such terms.

Hiring of employees

Preference and discrimination

Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

There are provisions of law under the Labour Act and the Nigerian Constitution that prohibit discrimination of all forms in employment.

However, there are no legal requirements under Nigerian law that give preference to hiring particular groups of people. These provisions are more applicable to federal employment and appointments that stipulate that the principle of ‘federal character’ be applied to ensure that appointments to public service institutions (exclusively) fairly reflect the linguistic, ethnic, religious and geographical diversity of the country.

Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

The Labour Act (which governs unskilled workers) specifies that not later than three months after the beginning of a worker’s period of employment, the employer shall give to the worker a written statement or contract.

Contracts of employment must be in writing and must contain:

the name of the employer or group of employers and, where appropriate, of the undertaking by which the worker is employed;

the name and address of the worker and the place and date of his or her engagement;

the nature of the employment;

if the contract is for a fixed term, the date when the contract expires;

the appropriate period of notice to be given by the party wishing to terminate the contract;

the rates of wages and method of calculation thereof and the manner and periodicity of payment of wages; and

any terms and conditions relating to hours of work, holidays and holiday pay and incapacity to work owing to sickness or injury, including any provisions for sick pay.

To what extent are fixed-term employment contracts permissible?

Fixed-term contracts are permissible under Nigerian law, and there is no stipulation as to the maximum permissible duration for such contracts.

Probationary period

What is the maximum probationary period permitted by law?

There are no provisions for probationary periods under the Labour Act and, as such, where they are in operation, they are stipulated under the relevant contract of employment. The Supreme Court of Nigeria has upheld the validity of probationary periods.

Classification as contractor or employee

What are the primary factors that distinguish an independent contractor from an employee?

The main distinguishing features are the general conditions of employment and the related benefits available provided in the engagement contract.

Temporary agency staffing

Is there any legislation governing temporary staffing through recruitment agencies?

The Labour Act and judicial precedent provides that all employees must have a contract of employment within three months of engagement. However, there is no legislation that states any other stipulations of employment, and as such, temporary staffing is governed by contracts of employment with temporary employees.

Foreign workers

Visas

Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Short-term visas and visas on arrival are available to foreign nationals engaging in employment in Nigeria, whether or not they are transferring from entities in one jurisdiction to another.

There is no numerical limitation to these visas. However, where a short-term visa is granted, it is valid for 90 days, renewable for another 60 days. Once this is exhausted, the foreign national must exit the country and apply for another short-term visa.

The other visa applicable is the Subject to Regularisation Visa, which allows for the granting of permanent working and residence rights within Nigeria.

Spouses

Are spouses of authorised workers entitled to work?

Generally, spouses are not authorised to work. In order to work, the spouse must have working and residence rights in Nigeria.

General rules

What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

Every company that seeks to employ a foreign worker must apply for the grant of an Expatriate Quota, renewable yearly. Every foreign national intending to work in Nigeria must have the valid working and residence permits (the Combined Expatriate Residence Permit and Aliens Card), usually applied for by the company seeking to employ the expatriate.

The sanctions applicable for the absence of these permits are imposed on the company in default.

Resident labour market test

Is a labour market test required as a precursor to a short or long-term visa?

A local market test is a precursor in Nigeria. Before the grant of an Expatriate Quota, the company must show that such labour is not currently available in the Nigerian market, and as such, the employment of foreign labour is required.

Terms of employment

Working hours

Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Although the Labour Act does not specify general working hours, an employer may resolve to create rules on overtime and pay for overtime either by mutual agreement with each employee or via collectively bargaining with all employees within the establishment. An employer, in formulating overtime policies, should take into consideration that the general understanding is that full-time hours in Nigeria amount to 40 hours per week. Anything in excess of the fixed normal working hours, which the employee agrees to be bound by, will generally be considered to be overtime. It is germane to state that there are no statutory provisions on the overtime work limit and overtime pay. Overtime compensation is entirely a matter of mutual agreement (employment contract), a collective bargaining agreement or an order by the industrial wages board. What many employers do is to state expressly in each employee’s contract of employment (especially for skilled, professional and managerial employees) that payment for overtime is deemed to have already been factored into their salaries or financial benefits.

Overtime pay

What categories of workers are entitled to overtime pay and how is it calculated?

Nigerian law, inasmuch as it does not stipulate payment of overtime pay, also does not stipulate the categories of workers for which this is applicable.

Can employees contractually waive the right to overtime pay?

As the provisions of employment contracts govern the payment of overtime allowances, this may be permissible at the instance of the employer.

Vacation and holidays

Is there any legislation establishing the right to annual vacation and holidays?

The Labour Act provides for mandatory annual leave. The Labour Act provides that 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. For employees outside the scope of the Labour Act (skilled workers), there is no statutory provision regulating annual leave, but the norm is 15 to 20 working days during each 12 months of service, usually with pay. In many cases, there is also a leave allowance ranging from 50 per cent to 100 per cent of monthly pay.

Sick leave and sick pay

Is there any legislation establishing the right to sick leave or sick pay?

The Labour Act provides that workers are entitled to a maximum of 12 working days of paid sick leave. The affected employee must, however, furnish the employer with a doctor’s report, certified by a registered medical practitioner. Sick leave is fully paid leave and is calculated as the worker’s basic wage exclusive of overtime pay and other allowances.

There is no statutory entitlement to parental leave, paternity leave or leave to care for sick family members. The only statutory forms of leave are for sickness, maternity and periodic leave.

For employees outside the scope of the Labour Act, the contract of employment (together with the employee manual or handbook and other judicial decisions) determine sick leave. Conventionally, the practice is that such employees are entitled to nine to 12 weeks of sick leave and, in many cases, bereavement leave of up to one week and other compassionate leave, which may range from one to two weeks. Each employer generally sets its own rules but typically adopts the Labour Act as a minimum and exceeds it depending on how employee-friendly the employer wants to be regarded.

Leave of absence

In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

The Labour Act provides that workers are entitled to a maximum of 12 working days of paid sick leave. The affected employee must, however, furnish the employer with a doctor’s report, certified by a registered medical practitioner. Sick leave is fully paid leave and is calculated as the worker’s basic wage exclusive of overtime pay and other allowances.

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Mandatory employee benefits

What employee benefits are prescribed by law?

Employees are entitled to certain benefits.

Group life insurance policy

The Pension Reforms Act 2014 makes it mandatory for an employer to procure at its own cost a group life insurance policy in favour of each employee for a minimum of three times the annual total emolument of the employee. It further stipulates that defaulting employers shall be liable for claims arising from the death of an employee should they fail to arrange the compulsory group life insurance cover for their employees. This applies to employers of all categories of employees.

Transportation

The Labour Act makes it mandatory for an employer to either provide free transportation or an allowance in lieu where a clerical, manual or unskilled employee is required to travel 16km or more from his or her normal place of work to another worksite. If the employer provides a vehicle or vessel for this purpose, it must ensure that it is suitable, in good sanitary condition and not overcrowded.

Housing

Under Nigerian law, the provision for housing benefit is not stipulated as mandatory for employers to provide to employees, save for foreign (expatriate) employees, who must be provided with a housing allowance.

Health, safety and occupational hazards

The Employee Compensation Act 2010 (ECA) provides for an Employees’ Compensation Scheme. This is essentially an insurance for occupational injuries and illnesses for all employees. It is a scheme based on an employees’ compensation fund and is administered by the Nigeria Social Insurance Trust Fund. The ECA provides compensation for employees who sustain injuries or disabilities because of an accident, or contract an occupational disease, in the course of employment, whether at their usual place of work or elsewhere. Accidents include those sustained on the way between the place of work and the employee’s home or the place where the employee usually takes meals or receives remuneration.

Medical insurance

The Labour Act provides that an employer who has a minimum of 10 employees may, together with every person in his or her employment, pay contributions under the National Health Insurance Scheme. This provision is not mandatory, but is suggested in legislation. In practice, employer health contributions may be necessary to obtain certain permits and approvals in some industries. For employees outside the scope of the Labour Act, there are no mandatory rules, conventions or implied (by judicial decision, convention or practice) terms of contract to provide any medical insurance to employees. However, some employers provide this to be considered employee-friendly and upscale.

Part-time and fixed-term employees

Are there any special rules relating to part-time or fixed-term employees?

Part-time employees need not be provided with these benefits by virtue of their employment.

Public disclosures

Must employers publish information on pay or other details about employees or the general workforce?

There is no provision mandating the publishing of such information under Nigerian law.

Post-employment restrictive covenants

Validity and enforceability

To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

These provisions are governed by the contracts of employment with each employee, and as such, the post-employment periods are stated under each contract.

Post-employment payments

Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Generally, this is not the case under Nigerian law as remuneration is tied to the duration of employment under the employment contract. Once the employee resigns or the employment contract is terminated, there is no obligation to continue to pay the employee.

Liability for acts of employees

Extent of liability

In which circumstances may an employer be held liable for the acts or conduct of its employees?

The concept of vicarious liability is stated under Nigerian law and is implied in Nigerian employment contracts. An employer is generally held liable for any acts performed within the scope of the employment contract performed by the employee.

Taxation of employees

Applicable taxes

What employment-related taxes are prescribed by law?

Personal income tax

This is a compulsory tax applicable to all classes of employees and is based on provisions contained in the Personal Income Tax Act. All income from an employment derived from Nigeria shall be taxable and remitted to the Board of Internal Revenue of the state in which its registered office address is located.

Contributory pension scheme under the Pension Reform Act 2014

Under this scheme, the employer will be expected to deduct pension contributions for onward remittance to the retirement savings account of an employee. The Pension Reform Act is applicable to all categories of employees. It provides that every employee must contribute a minimum of 8 per cent from his or her salary, which the employer withholds, while a minimum contribution of 10 per cent is imposed on employers (which is not a deduction from employees’ pay). It further provides for a 20 per cent contribution by an employer who chooses to contribute fully to the scheme.

National Housing Fund scheme

This requires all classes of employees earning the minimum national wage and above to make a compulsory contribution of 2.5 per cent of their salary on a monthly basis to the National Housing Fund scheme.

Employee-created IP

Ownership rights

Is there any legislation addressing the parties’ rights with respect to employee inventions?

Section 2(4) of the Patent and Designs Act states that, where an invention is made in the course of employment or in the execution of a contract for the performance of specified work, the right to a patent in the invention is vested in the employer or, as the case may be, in the person who commissioned the work.

Trade secrets and confidential information

Is there any legislation protecting trade secrets and other confidential business information?

There is no specific legislation offering such protections. However, non-disclosure agreements between parties ensure that confidential information is maintained.

Data protection

Rules and obligations

Is there any legislation protecting employee privacy or personnel data? If so, what are an employer’s obligations under the legislation?

There is no such specific legislation. However, section 37 of the Nigerian Constitution enshrines the right to privacy of individuals (including employees).

Business transfers

Employee protections

Is there any legislation to protect employees in the event of a business transfer?

Such protections are afforded under industry-specific legislation, and as such, there is no overarching central legislation. For example, under the Investment and Securities Act, there are provisions applicable to the merging of companies, which stipulate that where a merger is to be engaged in, the consent of the trade union or employee representatives representing most of the employees must be sought.

Termination of employment

Grounds for termination

May an employer dismiss an employee for any reason or must there be ‘cause’? How is cause defined under the applicable statute or regulation?

Generally, an employer has the right to terminate the employment of an employee. However, by virtue of a recent decision of the National Industrial Court in Nigeria, an employer has a duty to state the reason for the termination.

With respect to dismissal, an employer has the right to dismiss an employee when the conduct of the employee is of a serious and weighty nature. This would include offences with a criminal element, such as fraud, assault and sexual harassment. Other offences include dereliction of duty and gross insubordination. Where an employer dismisses an employee, the employer is duty bound to justify the dismissal from employment and establish that the requisite investigation procedure was adhered to. Contrary to the earlier position, which provides for an automatic forfeiture of all entitlements due to the employee in the event of dismissal, the current legal position is that all earnings of an employee prior to the dismissal must be paid by the employer to such an employee. The rule that a dismissed employee is not entitled to such earnings is largely no longer practised law.

Notice

Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

An employer is only bound to provide notice or payment in lieu in the case of termination. However, in the case of a dismissal, notice is usually not given.

In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

This would occur in cases of dismissal.

Severance pay

Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Severance pay is regulated by the terms of the contract of employment and is usually calculated in relation to length of service, age and the final salary of the employee.

Procedure

Are there any procedural requirements for dismissing an employee?

The employee should usually be notified in writing of the reasons for the dismissal and should be provided with a right of response. However, there is no prior approval required for this to occur.

Employee protections

In what circumstances are employees protected from dismissal?

There are generally no circumstances in which employees may not be dismissed.

Mass terminations and collective dismissals

Are there special rules for mass terminations or collective dismissals?

This is generally not provided for under Nigerian law.

Class and collective actions

Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Class actions are permitted under Nigerian law, based on the commonality of a cause of action by all the employees within the class.

Mandatory retirement age

Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Retirement age generally differs depending on the sector of employment. However, it generally ranges from the age of 60 to 65 years.

Dispute resolution

Arbitration

May the parties agree to private arbitration of employment disputes?

This is stipulated under contracts of employment, and as such, arbitration may be offered as an option to dispute resolution.

Employee waiver of rights

May an employee agree to waive statutory and contractual rights to potential employment claims?

An employee may voluntarily choose to waive his or her rights. However, in the event of a dispute, the National Industrial Court may choose to look into the substance of such waivers in determining the enforcement of any such claims by the employer.

Limitation period

What are the limitation periods for bringing employment claims?

There are no known limitation periods for employment-related disputes in the National Industrial Court, or generally under Nigerian law.