

3.0 INDUSTRIAL LAW, INDUSTRIAL SAFETY LAWS AND LABOUR RELATIONS.

OCCUPATIONAL SAFETY AND HEALTH PROTECTION OF THE NATIONAL LABOUR FORCE

(3.1) THE CONSTITUTIONAL AND LEGAL PERSPECTIVE

- Important Constitutional and Statutory Provisions

Under the present Constitution of the Federal Republic of Nigeria, we have a list of matters placed in the Concurrent Legislative List contained in Part II of the Second Schedule to the Constitution. These are matters with respect to which both the National Assembly of the Federation as well as the House of Assembly of each State are empowered to make laws. The relevant portion of Item 17 of the Concurrent List reads as follows:

"(a) the health, safety and welfare of persons employed to work in factories, offices or other premises or in inter-state transportation and commerce including the training, supervision and qualification of such persons."

It is only the Federal Government that has enacted a Factories Act 1987 No. 16 which is still in force till today. The Factories Act: The long title of the enactment reads as follows:

"An act to provide for the registration, etc. of factories; to provide for factory workers and a wider spectrum of workers and other professionals exposed to occupational hazards, but for whom no adequate provisions had been formerly made; to make adequate provisions regarding the safety of workers to which the Act applies and to impose penalties for any breach of its provisions."

That long title accurately describes the objective of the enactment. It imposes a number of requirements designed to cater for the safety and welfare of all persons who operate in any factory.

What exactly is a factory? This is to be found in section 87(1). **"factory" means any premises in which or within which, or within the close or curtilage or precincts of which one person is, or more persons are, employed in any process for or incidental to any of the following purposes, namely:-**

- (a) the making of any article or part of any article; or**
- (b) the altering, preparing ornamenting, finishing, cleaning, or washing, or breaking-up or demolition of any article; or**
- (c) the adapting for sale of any article,**

being premises in which, or within the close or curtilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the person or persons employed therein has the right of access or control; and the expression "factory" also includes the premises in which ten or more persons are employed.

The section then goes on to empower the Minister to exempt certain premises and it then specifically excludes specific premises including mines from the definition of factory.

A few years ago a case arose in which there was an explosion on an offshore rig. Whilst regulations made under the Petroleum Act clearly control almost all operations in the Oil Industry under the auspices of the Directorate of Petroleum Resources (DPR) the definition of Factory appears wide enough to cover oil rigs and other types of installations in the oil industry. None of the Oil Industry operators seem to be aware of the fact that many of their installations may actually require registration under the Factories Act.

In the building Industry it would appear that it is only in Lagos State that there are Local Government bye-laws that touch on the safety of workmen in this area.

It is clear therefore that one has to cater for the needs of a worker whether that worker is found in an office, a building site, a mine or an oil rig.

(3.1.1) Comprehensive Legislation

Our Factories Act although updated in 1987 is largely modelled on the old colonial statute of the same name. The United Kingdom government had set up a committee in May 1970 under the Chairmanship of LORD ROBENS a former Trade Union Leader to review the provision made for the safety and health of persons in employment ".... consider the changes needed and any further steps required to safeguard members of the public from hazards.... and to make recommendations."

In the same year as the Flixborough Disaster (1974) the Health and Safety at Work Act (HASAWA) was passed. This enactment has since been amended, updated and probably provides one of the more comprehensive safety codes for the protection of workers in a common law jurisdiction. English Law has kept pure with the changing industrial, social and political landscape of the 20th century. It will thus be useful to briefly highlight some of the features of their enactment to illustrate a possible way ahead for us. the main features of HASAWA are :

- (1) It seeks to secure not only the health, safety and welfare of all persons at work but other persons who may be at risk as a result of activities at work.
- (2) Employers have to not only provide and maintain plants and systems that are as far as reasonably practicable safe, they have to ensure they have safe methods of handling, storing and transporting materials and also provide adequate induction, training and supervision in those methods.
- (3) Employers have to keep revised a written safety policy statement showing the arrangement and organization of their safety procedures. These rules and procedures must of course be brought to the notice of all employees.
- (4) Employees are also required by law to cooperate in meeting statutory requirements and must not interfere with or misuse materials provided to secure health safety and welfare.
- (5) Employees have safety representatives often from the Unions who are aware of the legal requirements of HASAWA and who help to coordinate cooperation between employer and employees, assess the effectiveness of measures taken and bring to the employer's notice unsafe conditions or practices.
- (6) The Commission set up by HASWA is empowered to make health and safety regulations or codes of practice for most industries. Failure to observe any provision or code of practice may render an employer liable to prosecution.
- (7) Wide ranging powers are given to inspectors to ensure compliance with the Act.

Improving and updating regulations is one thing but the time has come when the Ministry has to go further and promote for our own Health and Safety at Work Act. It is hoped that the Ministry in formulating a bill for this purpose will arrange for the active cooperation and participation of the appropriate stage of the relevant committees of the Senate and House of Representatives. This is absolutely necessary having regard to the realities of our constitutional frameworks in Nigeria. In addition it is expedient for the Ministry to have consultations with Labour Organizations and Employers of Labour for the purpose of ascertaining and selecting leaders of thought within these associations for their input into the legislation.

3.2 NIGERIAN LABOUR LAW

1. Introduction

Labour law is very well developed in Nigeria; with laws defining the rights and obligations of labour, and regulating most aspects of the relationship between the employer and labour. This article shall examine these laws and seek to distill the mandatory obligations of an employer under Nigerian law.

2. Nigerian Labour Statutes

The following statutes regulate labour in Nigeria:

Labour Act, cap L1, Laws of the Federation of Nigeria (LFN), 2004

Trade Union (Amendment) Act, Cap. T14, LFN, 2004

Trade Disputes Act, Cap. T8, LFN, 2004,

National Minimum Wage Act, Cap. N61, LFN, 2004

Employee Compensation Act, Cap. W6, LFN, 2004,

Factories Act, Cap. F1, LFN, 2004,

National Housing Fund Act, Cap. N45, LFN, 2004

Pension Reform Act of 2004

Employees Housing Scheme (Special Provisions) Act, Cap E8, LFN 2004

Local Content Act of 2010

3.2.1 Minimum Obligations of an Employer under Nigerian Law

1. Obligation to Pay Wages

The obligation of an employer to pay the wages of an employee is usually the primary basis upon which the latter offers services to the former. The Labour Act in Section 1(a) provides that the wages of a worker shall in all contracts be made payable in legal tender and not otherwise.

Section 7(1) of the Labour Act also provides that an employer shall give to his employee (not later than 3 months after the commencement of employment) a written statement, specifying, among other things, the rate of wages; the method of calculation, the manner of payment and the periodicity of payment. Section 7(6) of the Labour Act discountenances the need for a written statement where this particular has already been specified in a written contract.

Section 15 of the Labour Act provides that wages shall become due and payable at the end of each period for which the contract is expressed to subsist, that is, daily, weekly, or at such other

period as may be agreed upon; provided that where the period is more than one month, the wages shall become due and payable at intervals not exceeding one month.

The manifest effect of these provisions is to make the payment of wages mandatory for employers under Nigerian law. It is noteworthy the Labour Act does not apply to all categories of Nigerian workers, in particular Section 91 of the Act defines a worker to exclude any persons exercising administrative, executive, technical or professional functions as public officers or otherwise.

Under the National Minimum Wage Act, section 1 and 3 provide that it shall be the duty of every employer to pay a wage not less than the national minimum wage of N 5, 500. 00 per month to every worker under his employ clear of all deductions (except any deductions required by law or deductions in respect of contributions to provident or pension funds or schemes agreed to by the workers). It goes further to make null and void any agreement for the payment of wages less than the national minimum wage.

Note however, that the National Minimum Wage Act exempts the following establishments from the obligation to pay the national minimum wage:

- i) An establishment in which less than fifty (50) workers are employed;
- ii) An establishment in which workers are employed on a part time basis (part time work is defined by the Act as “work of a duration of less than forty (40) hours per week”);
- iii) An establishment at which workers are paid on commission or on piece rate basis;
- iv) Workers in seasonal employment;
- v) Any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply.

2. Obligation to Provide Written Contract Of Employment

Section 7 (1) of the Labour Act mandates that an employer provide the employee with a written contract of employment specifying the particulars of employment not later than 3 months after the beginning of the employee’s period of employment with the employer.

The essential clauses of the employment contract include;

- i) The name of the employer or group of employers, and where appropriate, of the undertaking by which the employee is employed;
- ii) The name and address of the employee and the place of his engagement;
- iii) The nature of the employment;
- iv) If the contract is of affixed term, the date when the contract expires;
- v) The appropriate period of notice to be given to the party wishing to terminate the contract, due regard being had to section 11 of the Act (section 11 deals with the termination of contracts by notice, and it is later treated in the body of this opinion);
- vi) The rates of wages and method of calculation thereof and the manner and periodicity of payment of wages;
- vii) Any terms and conditions relating to –
. Hours of work; or

- . Holidays and holiday pay; or
- . Incapacity for work due to sickness or injury, including any provision for sick pay; and
- viii) Any special conditions of contract.

Section 7(2) further provides that where there is a change in the terms of the written contract of employment, the employer is mandated to inform the employee not later than one month after the said change and a copy of the written contract of employment as altered must be made available to the employee. Where a copy of the written contract of employment cannot be made available to the employee, the employer is mandated to preserve a copy of the written contract and ensure that the employee has opportunities of reading it in course of his employment or that the written contract is made accessible to the employee in some other way.

3. Obligation to Conduct Medical Examination of Employees

Section 8 of the Labour Act provides that every employee who enters into a contract shall be medically examined by a registered medical practitioner at the expense of the employer; but an exemption can be granted from this requirement by an order made by the State Authority (means the Governor or Administrator of a State) where the contract is for employment in agricultural undertakings not employing more than a limited number of workers, or where the employment is in the vicinity of the workers' homes in agricultural work or non – agricultural work which the State Authority is satisfied is not of a dangerous character.

4. Termination of Contract of Employment

The Labour Act provides for the termination of contracts in three (3) ways, namely:

- i) By the expiry of the period for which it was made;
- ii) By the death of the employee before the expiry of that period;
- iii) By notice in accordance with section 11 of the Act, or in any other way in which a contract is legally terminable or held to be terminated.

Section 11 of the Act provides that either party to a contract of employment may terminate the contract on the expiration of notice given by him to the other party of his intention to do so.

Period of Notice to be given for the purposes of this provision are as follow;

- i) One day, where the contract has continued for three months or less;
- ii) One week, where the contract had continued for more than three months but less than two years;
- iii) Two weeks, where the contract has continued for a period of two years but less than five years;
- iv) One month, where the contract had continued for five years or more.

It is noted that Section 11(3) provides that any notice for a period exceeding one week shall be in writing. Section 11(5) provides that nothing in the section with regards to Notice shall affect the right of either party to a contract to treat the contract as terminable without notice by reason of such conduct by the other party as would have enabled him to treat it before the making of this Act.

Similarly, subsection 6 of the Act provides that nothing shall prevent either party from waiving his right to notice or from accepting payment in lieu of notice. Note that the Act also provides that all wages payable in money shall be paid on or before the expiry of any period of notice; and in the calculation of a payment in lieu of notice, the Act provides that it is only that part of the

wages which a worker receives in money, exclusive of overtime and other allowances that shall be taken into account.

5. Obligations with Regards Work Hours

Section 13 of the Labour Act provides that normal hours of work in any contract of employment shall be those fixed;

- i) By mutual agreement;
- ii) By collective bargaining within the organisation or industry concerned; or
- iii) By an industrial wages board (established by or under an enactment providing for the establishment of such boards) where there is no machinery for collective bargaining.

Overtime is defined under the Act as hours which an employee is required to work in excess of the normal hours fixed (by mutual agreement, by collective bargaining, or by an industrial wages board). The Act does not state the rate of calculation of overtime pay, but the practice is to calculate on an hourly rate.

Section 13(3) of the Act further provides that where an employee is at work for a period of six (6) hours or more a day, his work shall be interrupted (to the extent which is necessary, having regard to its character and duration and to the working conditions in general) by allowing one or more suitably spaced rest intervals (rest interval is defined to mean an interruption of work of which the length is fixed beforehand and during which the employee is free to dispose of his time and not required to remain at the place of work) of not less than one hour on the aggregate.

This interruption of work stated above, however, may not be possible where unforeseen circumstances render them necessary (unforeseen circumstances are not defined or listed in the Act, this leaves the category of what makes up unforeseen circumstances open ended and capable of manipulation by an employer). Furthermore, where it is found unavoidable in view of the nature of the work and the working conditions in general, time off for a meal at the worksite or in the immediate vicinity may be substituted for the rest interval.

Section 13(7) of the Act provides that in every period of seven (7) days, an employee shall be entitled to one day of rest which shall not be less than 24 consecutive hours. Where any reduction takes place in the weekly rest period as immediately mentioned, the Act provides that;

- i) Corresponding time off from work shall be allowed as soon as is possible (and this shall not be later than fourteen (14) days thereafter); or
- ii) Wages at overtime rates shall be paid in lieu thereof.

6. Obligations with Regards Pregnant Employees

The Labour Act provides in section 54 that in any public or private industrial or commercial undertaking or in any branch thereof, or in any agricultural undertaking or any branch thereof, a woman:

- i) shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six (6) weeks;
- ii) shall not be permitted to work during the six (6) weeks following her confinement;
- iii) if she is absent from work pursuant to paragraphs (i) and (ii) above and had been continuously employed by her then employer for a period of six (6) months or more immediately prior to her absence, shall be paid not less than fifty percent (50%) of the wages she would have earned if she had not been absent; and
- iv) shall where she is nursing a child, be allowed half an hour (30 minutes) twice a day during her working hours for that purpose.

Furthermore, Section 54(4) provides that, where a woman is absent from work as a result of the six (6) week confinement period or remains absent from her work for a longer period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement and to render her unfit for work, then, until her absence has exceeded such a period (if any) as may be prescribed, no employer shall give her notice of dismissal during her absence or notice of dismissal expiring during her absence.

7. Prohibition of Night Work for Women

The Labour Act in Section 55 prohibits the employment of women for night work in a public or private industrial undertaking or in any of its branches, or any agricultural undertaking or any of its branches.

The word “Night” for the purposes of this section is defined to mean:

- i) with respect to industrial undertakings, a period of at least eleven (11) consecutive hours, including the interval between ten o’ clock in the evening and five o’ clock in the morning; and
- ii) with respect to agricultural undertakings, a period of at least nine consecutive hours including the interval between nine o’ clock in the evening and four o’ clock in the morning.

We note, however, that the prohibition of employment of women for night work does not extend to women employed as nurses in any public or private industrial undertaking or agricultural undertaking, or to women holding responsible positions or management who are not ordinarily engaged in manual labour.

Section 55(5) does provide also that the Minister charged with Labour may by an order exclude from the prohibition of night work for women, women covered by a collective agreement in force which permits night work for women. However, before making any such order, the Minister must satisfy himself that adequate provision exists for the transportation and protection of the women concerned.

8. Obligations to Members of Trade Unions

The phrase “Trade Union” is defined in Section 1 of the Trade Unions (Amendment) Act to mean any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from the Act, be an

unlawful combination by reason of any of its purposes being in restraint of trade and whether its purposes do or do not include the provision of benefits for its members.

Of particular interest in the Trade Unions (Amendment) Act is section 12 (4) of the Act which provides that membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimised for refusing to join or remain a member. This provision of the Trade Unions (Amendment) Act is supported by section 9(6)(a) of the Labour Act which provides that, no contract of employment shall make it a condition that an employee shall or shall not join a trade union or shall or shall not relinquish membership of a trade union.

Furthermore, section 9(6)(b) of the Labour Act provides that no contract of employment shall cause the dismissal of, or otherwise prejudice an employee;

- i) By reason of trade union membership; or
- ii) Because of trade union activities outside working hours or, with the consent of the employer, within working hours; or
- iii) By reason of the fact that he has lost or been deprived of membership of a trade union or has refused or been unable to become, or for any other reason is not, a member of a trade union.

9. Obligation to Provide Work

For employees who fall under the category of workers to whom the Labour Act is applicable, there is a mandatory obligation upon their employer to provide to provide them with work. Section 17 of the Act provides that insofar as the collective agreement does not provide otherwise, the employee has presented himself fit for work and has not broken his contract, he must be given work suitable to his capacity. Where the employee is not provided such work, the employer will still remain under an obligation to pay for the period, except there occurs a supervening emergency (in such cases pay will be limited to the first week only of the period) or if the failure to provide work is a result of suspension arising from disciplinary measures.

For employees who are not under the purview of the Act, it appears that an obligation to provide work may only be deduced from the terms of their contract of employment. In the reported Nigerian case of *SPDCN v. Nwaka* (2003) 6. Nigerian Weekly Law Reports (NWLRL) Pt 815, p.184, where the issue were, inter alia, whether a Nigerian employee of Shell could obtain declarations against the employment of an expatriate into a position which he claimed to be qualified and also whether he could obtain declarations against rendering him redundant ad his ultimate termination.

The Supreme Court held that If the contract of employment stipulates that an employee should be found a job after re-organization, the court will enforce such contractual term but for the court to assume jurisdiction to review the decision of the company to redeploy an employee within its organization in the absence of contractual term to guide it, will not only be an unwarranted interference with the freedom of contract and in the affairs of the company but also an exercise for which the court is ill-suited.

10. Obligation in cases of Redundancy

The Labour Act defines redundancy as the involuntary and permanent loss of employment caused by excess manpower. The Act places an obligation upon the employer to inform the workers union of the reason for and anticipated extent of the redundancy; operate the principle of 'last-in' 'first out' (subject to relative merit) and use best efforts to negotiate redundancy payments to employees who are not protected by regulations made under the Act for compulsory redundancy payments.

11. Obligation to Provide Safe System of Work

The Labour Act places a qualified obligation upon an employer to provide a safe system of work i.e. to carry out his operations in a manner that complies with safety regulations. Sections 66 and 67 of the Act provide for the creation of Labour Health Areas and the matters in such areas for which regulations can be made. Labour Health Areas are areas designated as such due to their remoteness from modern amenities like medical facilities; water and communications. The matters for which regulations can be made include the provision of sanitary arrangements; supply of water, food and fuel; medical examination of workers; measures to be taken to check spread of infectious diseases; establishment of proper hospitals and employment of qualified medical personnel.

Similarly, the Factories Act places an obligation upon employers/ owners or occupiers of a factory to ensure the health, safety and welfare of employees within the factory. Thus, it is the duty of the employer to ensure that the provisions of the Factories Act relating to cleanliness, overcrowding, ventilation, lighting, drainage and sanitary conveniences are complied with. Furthermore, the Act makes it the duty of the employer to provide a safe means of access and safe place of employment, sections 47 and 48 of the Act also make it mandatory for factory workers to be provided with protective clothing and appliances, where they are employed in any process involving excessive exposure to wet or to injurious or offensive substance. Similarly, where necessary, suitable gloves, footwear, goggles and head coverings should also be provided and maintained for use by the workers.

There remains however, a common law duty of care that is owed to an employee, which entails, among other things, the provision of a safe system of work. In the Nigerian case of *Western Nigeria Trading Co. Ltd v. Busari Ajao* (1965) Nigerian Monthly Law Reports (NMLR), a case where the Respondent had lost an eye as a result of an accident that occurred while working as an employee in the Appellant's workshop. One of the points contention between the parties was whether there existed a burden upon under the under common law to not only provide safety goggles but to ensure that the Respondent actually used the goggles. The court held that under common law a duty of care existed to not only provide the goggles but to ensure that the goggles were used by the Respondent.

12. Obligation to Provide Transport in Certain Circumstances

Section 14 of the Labour Act provides that where an employee is required to travel sixteen kilometres or more from his normal place of work to another worksite he shall be entitled to free transport or an allowance in lieu thereof.

Where free transport is provided in the form of a vessel or vehicle, it is mandatory of the employer under the Act to ensure that the vessel or vehicle is suitable, is in good sanitary condition and is not overcrowded.

Subsection 5 of section 55 of the Labour Act does provide also that the Minister charged with Labour may by an order exclude from the prohibition of night work for women, women covered by a collective agreement in force which permits night work for women. However, before making any such order, the Minister must satisfy himself that adequate provision exists for the transportation and protection of the women concerned.

13. Obligation to Grant Leave with Pay

The Act provides in Section 18 that every employee shall be entitled after 12 months' continuous service to a holiday of; At least six (6) working days; or In the case of a person under the age of sixteen (16) years (including an apprentice), at least twelve (12) working days.

The same section provides that the above stated holiday period shall be with full pay to the employee. However, an exception to the entitlement to a holiday after 12 month's continuous service is that such holiday can be deferred to a later date by agreement between the employee and employer provided that the holiday earning period shall not be increased beyond 24 months' continuous service.

Subsection 3 of section 18 of the Act makes it unlawful for an employer to offer or pay wages to an employee in lieu of the holiday period mentioned in section 18 (1) above.

14. Obligation to Grant Sick Leave

The Labour Act in section 16 makes it the obligation of the employer to grant an employee paid sick leave of up to twelve working days in one calendar year where absence from work is caused by a temporary illness certified by a registered medical practitioner. Where, however, the sickness is so serious and so protracted as to frustrate the purpose or objects of for which the employee was engaged, the contract may be discharged, and the employer absolved from further liabilities without prejudice to the earned entitlements before discharge,

In calculating leave pay and sickness benefits, section 19 of the Labour Act provides that only that part of an employee's wages which he receives in money (excluding overtime and other allowance) shall be taken into consideration.

15. Employer's Pension Obligations

The Pension Reform Act 2004("Pension Act") was enacted for the establishment and attainment of a contributory pension scheme for employees in the Public and Private sector of the Nigerian economy.

The Pension Act in Section 1 provides for the establishment in Nigeria, of a

Contributory Pension Scheme (the Scheme) for payment of retirement benefits of employees to whom the Scheme applies. The section goes on to provide that the provisions of the Pension Act shall apply to all employees in the Public Service of the Federation and the Private Sector, in the case of the Private Sector, employees who are in employment in an organisation in which there are 5 or more employees. One of the main objectives of the Scheme is to ensure that persons who have worked in either the Public or Private Sector receive their retirement benefits as and when due.

Section 9 of the Pension Act makes provision for the amount of contribution to be made by an employer and employee to the Scheme. It provides that subject to the approval of the National Pension Commission “the Commission” (the body charged with the regulation, administration and supervision of the Scheme established under the Pension Act), the contribution for an employee shall be made relating to his monthly emoluments, for a private employer in the following manner;

- i) A minimum of seven and a half percent by the employer, and
- ii) A minimum of seven and a half percent by the employee.

Section 9(2) goes further to state that notwithstanding the fact of the above rate of contribution, an employer may agree or elect to bear the full burden of the Scheme provided that in such case, the employer’s contribution shall not be less than 15% of the monthly emoluments of the employer.

Section 11 of the Pension Act provides that for the purpose of the Scheme, every employee shall maintain an account (to be known as the retirement savings account) in his name with any pension fund administrator of his choice.

Subsection 3 of section 11 mandates the employee to notify his employer of the pension fund administrator chosen and the identity of the retirement savings account opened.

The employer is mandated under the Pension Act by virtue of Section 11 (5) to deduct at source, the monthly contribution of the employee in his employment.

Such deduction (which comprises the employee’s contribution) should not later than seven (7) working days from the day the employee is paid his salary, be remitted along with the employer’s contribution to the custodian specified by the pension fund administrator chosen by the employee.

Any employer who fails to remit the contributions within the seven (7) days specified in the Pension Act shall, in addition to making the remittance already due, be liable to a penalty to be stipulated by the Commission provided that the penalty shall not be less than 2% of the total contribution that remains unpaid for each month or part of each month that the default continues and the amount of the penalty shall be recoverable as a debt owing to the employees retirement savings account as the case may be.

Section 9 (3) of the Pension Act makes it mandatory for an employer to maintain a life insurance policy in favour of the employee for a minimum of three (3) times the annual total emolument of the employee. Thus section 5 (1) of the pension

Act provides that where an employee dies, his entitlements under the life insurance policy shall be paid into his retirement savings account.

Where the above is the case, it is the duty of the pension fund administrator to apply the money paid into the retirement savings account in favour of the beneficiary under a will or the spouse and children of the deceased or in the absence of a wife and child, to the recorded next-of-kin or any person designated by the deceased employee during his life time or in the absence of such designation, to any person appointed by the Probate Registry as the administrator of the estate of the deceased.

16. Employer's Housing Obligations

There is established by the National Housing Fund Act ("the Housing Act") a fund known as the National Housing Fund (the Fund) for the purpose of facilitating the mobilisation of the funds for the provision of houses for Nigerians at affordable prices.

Under the Housing Act, section 4 provides that Nigerian workers earning an income of N3, 000 and above per annum in both the public and private sectors of the economy shall contribute 2.5% of their basic monthly salary to the Fund.

Section 9 of the Act makes it the duty of employers who have employees earning a basic salary of N3, 000 and above per annum to deduct 2.5% of the monthly salary of that employee as the employee's contribution to the Fund. The amount deducted shall then be remitted to the Federal Mortgage Bank of Nigeria within one month of the deduction.

Section 20 of the Act makes it an offence for any employer who fails to make deductions from the basic salaries of his employees or deducts such sum of money from the basic salaries of his employees but fails to remit same to the Federal Mortgage Bank of Nigeria. Anyone found guilty of the offence is liable on conviction, in the case of;

- i) A body corporate to a fine of N 50, 000; and
- ii) An individual who is a staff in the employment of an employer and who is authorised to make deduction or payment to the Bank (Federal Mortgage Bank) to a fine of N 20, 000 or imprisonment for a term of five years or to both such fine and imprisonment.

Also the Employees Housing Schemes (Special Provisions) Act ("Employees Housing Act") was passed in order to make it obligatory for every employer of labour so designated by an order of the Minister charged with the welfare of Labour, to establish, execute and maintain a housing scheme for its employees in every state or part thereof where its establishment is not less than 500 employees.

Section 1 of the Act provides that every designated employer (whether corporate or unincorporated) shall not later than six (6) months after the requisite order is made submit for the consideration of the Minister, proposals for the establishment of a housing scheme for his employees in respect of each state in the federation.

“Designated employer” by the Act means any employer who:

- i) Has not less than 500 persons in his employment in any State in the Federation or any part thereof; or
- ii) Is designated as such by the Minister, with the approval of the President, either by reference to the number of employees (whether or not more than 500) or the turnover of profits of the trade or business of the employer concerned.

Every housing scheme under the Act shall make provision for not less than fifty units of accommodation in respect of each designated employer and the units shall form part of an integrated development with other similar units and shall be located contiguous or as near as may be reasonable in the circumstances to the places of work of the employees concerned. The provision of housing schemes under the Act includes the provision on a rental basis, of separate dwellings or of block of flats for employees.

17. Obligation to Provide Reasonably Competent Workforce

Under the relevant labour Law statutes there is no express provision for the employer to provide a reasonably competent workforce, however, at common law the employer is under a duty to provide a reasonably competent and responsible workforce, especially where the duties of one staff are closely linked with those of another.

Under the Mineral Oil (Safety) Regulations, for example, Regulation 6 thereof provides that it shall be the duty of the Manager (a Manager is defined as the person appointed by a Licensee under a license or by a Lessee under a lease to be in charge of all operations authorized by the Licensee or Lessee) to appoint in writing competent persons for the purposes of supervising all drilling, production, transmission and loading operations.

Similarly under the Petroleum Refining Regulation, Regulation 6 thereof also provides that it is the duty of the Manager to appoint in writing competent persons for the purpose of general supervision of all operations in the refinery including all aspects of construction, maintenance and refining.

Conclusion

The employer under Nigerian law is saddled with very comprehensive obligations and these obligations affect both the public and private sectors; with the intention of creating certain uniform standards and conditions for labour in Nigeria.

In addition, the existence of very well organized labour movements in almost every sphere of endeavour and a specialized court, i.e. the National Industrial Court, presumably created to determine all cases arising from labour relations, creates the necessary legal framework to ensure employers’ compliance with these obligations. Labour law is very well developed in Nigeria; with laws defining the rights and obligations of labour, and regulating most aspects of the relationship between the employer and labour. This article shall examine these laws and seek to distill the mandatory obligations of an employer under Nigerian law.

