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The Legal Regulations of Employment Relations and Conflicts in Nigeria

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Introduction

The contract of employment is a typical contract that is the force of law and is governed by general principles of the law of contract, which is known as “consensus ad item”, which means “the meeting of minds”. A contract of employment can be established either by a “simple contract”

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or by a “formal contract”. A contract of employment relates to a relationship that exists between two or more persons for the performance of services, while one person is employed by the other. A contract relates to a relationship that exists between two or more persons in any transaction, generally. Traditionally, a contract of employment implies the power of the employer to control the work of the employee in contrast to a contract with an independent contractor. In *Chadwick v. pioneer private telephone Ltd.* [1941] 1 All ER 522 523D, contract of employment was defined as “contract of services which implies an obligation to serve and it comprises some degree of control by the master”.

Although there is no comprehensive definition for this concept, it will suffice to simply define a contract of employment as a contract entered into by two parties whereby one party submits himself to the service of the other for some considerations, in most cases salary and wages. It is an agreement entered into whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker. It is a contract of service and not for service; what differentiates them is the fact that in a contract of service, a man (employee) places his labour at the disposal of another, resulting in a relationship between the two parties. However, a contract for services involves a situation where a man who operates an independent business agrees to do labour or carry out a task or tasks for another person. In earlier times, the contract of employment was called a relationship of “master and servant”. For a contract of employment to be distinguished from a contract for service, the parties involved must avail themselves of the statutory rights under it. That is, it must be shown that a relationship between employer and employee or master and servant exists between them. Thus, there must be terms agreed upon by both parties for this to be the sole principle that will guide their acts and conduct during the subsistence of employment.

An employment relationship is typically a relationship between two different people viewing their positions from two different dimensions, and when this happens and there is no proper guide or regulation, there are bound to be serious conflicts, and most often than not when such conflicts are not properly managed, the relationship occasions a breakdown to either or both parties rather than provoking a blessing, that is, a good working relationship.

Thus, the essence of this chapter is to be able to enlighten both the employer and the employee on their expectations and duties in regard to the employment relationship, as this will serve as a guide and control their individual actions when in the relationship. The chapter also focuses on providing possible legal remedies for either of the parties whenever a conflict arises in the process of working together. The chapter X-rays the legal framework of employment relationships in Nigeria with a special focus on their vital provisions for the welfare of the employee and the sustainability of the business.

Understanding Employment Relationship

According to Emudainohwo (2020), an employment relationship is one that is based on the agreement of the parties, that is, employer and employee, and such is referred to as the contract of employment. It is expected that such a relationship is properly constituted and legally binding when it provides for duties, obligations and rights. Such agreement must be well stated to the understanding of the parties, and it must also provide for consideration in terms of remuneration (ILO, 2006). An employment agreement must definitely provide for the administration of such a relationship, especially in terms of directional power or authority and the expectation on the path of the employee to obey lawful instructions pertaining to the business (Collins et al., 2012).

The existence of a binding relationship between the employer and the employee arises out of contract, as essential elements for the formation of a contract of employment or service between an employer and employee upon which their rights and obligations depend are generally the same as conditions in ordinary or simple contract. This legal relationship, therefore, presupposes the voluntary consent of the parties to its creation expressed through the process of hiring within limitations imposed only by the general law of contract or statutory regulation. The terms are often not negotiable by the individual employee except in some cases where remuneration is negotiable, depending on the professional skills required by the employer. As such, the rights and duties of the master and servant are essentially the products of free bargaining between the parties, as they have liberty to decide the terms and conditions of service.

Meaning of Basic Concepts

Employer is a person or business that employs one or more people, especially for wages or salary: a fair employer as a person or thing that makes use of or occupies someone or something (Usman Bappi, 2017).

Employee is one who works for someone else or a company in exchange for wages or some other agreement for compensation. An employee is a person who is paid to work for an organization or for another person. As a person who is hired to work for another or for a business, firm and so on, in return for payment (Usman Bappi, 2017).

Conflicts may be defined as the incompatibility of interests, goals, values, needs, expectations and/or social cosmologies (or ideologies). According to Coser (1956), conflict is a struggle between opponents over values and claims to scarce status, power and resources.

Sources of Employment Law in Nigeria

- i. The Nigerian 1999 Constitution as Amended
- ii. The Labour Act, Chapter L1 of the Laws of the Federation of Nigeria 2004
- iii. Other State and Federal Legislations such as:
 - a) Employees Compensation Act, 2010
 - b) Factories Act, Chapter F1-LFN 2004
 - c) National Health Insurance Scheme Act, Chapter N42, LFN 2004
 - d) National Housing Fund Act, Chapter N45, LFN 2004
 - e) Trade Disputes Act, Chapter T8, LFN 2004
 - f) Trade Unions Act, Chapter T14 LFN 2004 as amended by the Trade Union (Amendment) Act, 2005
 - g) Nigeria Data Protection Regulation 2019 as provided by the National Information Technology Development Agency
- iv. Court Decisions
- v. International Treaties and Conventions

Creation of Employment Relationship

Oral contractual relationship: This is an agreement entered into only by words of mouth between the parties without any written document. This kind of relationship can only be established in times of adversity by calling witnesses. Therefore, in this situation, the party with few or no witness will be at the losing end.

Written contractual relationship: Section 7 of the Labour Act provides for subjecting all contracts of employment into writing, although generally employment relationships could be created orally or in writing, but for the sake of proper and ease of proof, contractual relationships should be subjected to writing as provided by the law.

Relationship by implication of law: This applies in a situation where there is no express relationship agreement between the parties but the law will read the existence of a relationship into the conduct of the parties.

Categories of employee: The Labour Law in Nigeria provided for only two categories of employees: employees performing labour and clerical work and employees performing administrative, technical, executive and professional tasks, which are referred to as “non-workers”. Take note that the second category known as the “non-workers” have the terms of their employment subject primarily to their individual contract of employment.

Employee Rights

Under Nigerian law, particularly the Labour Act, there are some inalienable rights of the employees that are provided for, and these are highlighted as follows:

1. Right to have a written contract.
2. Right to salary and wages, which must be monetary.
3. Right against illegal deductions except loss or injury caused by the employee to the employer and such deductions must be reasonable.
4. Right to join trade unions and labour associations.

5. Right to rest, sick leave and holiday: Working more than six hours deserves a rest of at least one hour. One day off must be granted for seven days of work. Employees are entitled to 12 days of sick leave. Having worked up to 12 months, the worker is entitled to be given a holiday of at least 6 days with full pay, and such a holiday must not include public holidays.
6. Right to maternity (paternity) leave: Female employees are entitled to 12 weeks of maternity leave. However, note that recent development now provides for right to paternity leave though not expressly provided by the law; for example, Lagos now grants ten days of paternity leave to male workers whose wives delivered babies.
7. Right against transfer of employment from one employer to another without due consent of the employee.
8. Right to adequate notice for termination: If termination of employment occurs, reasonable notice must be given as follows: having worked for three months or less, a minimum of one day notice must be given; having worked for three months but less than two years, a minimum notice of one week must be given; having worked for two years but less than five years, a minimum notice of two weeks must be given; and having worked for five years and above, a minimum notice of one month notice must be given. It is worth noting that such a notice of termination must be put in writing. Note that where the contract of employment provides for the type and terms of notice to be issued for termination, it will be valid and legal except where it falls short of the provision of the law.

Duties of Employer and Employee

A perfect understanding of the employment relationship will be achieved by X-raying the duties of both the employer and the employee, which are discussed in this chapter. The employer's duties will be examined under three main headings: the general duties of the employer, employer's duties under the Factories Act and employer's duties under the Labour Act.

A. Employer Duties

General Duties of the Employer

Duty to provide work: Since the reason for the establishment of the employment relationship is to get the employee to work for the employer, it is reasonably expected that such services to be rendered with full description should be stated in clear terms to the employee. Generally, most contracts of employment will always state the particular work that the employee is expected to do while under the instruction of the employer. It is worthy of note that whether or not job specification is given to an employee, once he or she is engaged, the employer must ensure that such employee is paid for services rendered.

Duty to pay wages: The Contract of employment must provide for the entitlement of the employee which may be in terms of wages or salary. Since the employee is in his/her service, it is the employer's responsibility to pay for the services rendered by the employee under his/her control. Under the Nigeria law, such payment must be expressly provided under the contract of employment. However, where the contract of employment does not expressly provide for payment to the employee, the law will automatically assume that such provision to make payment to the employee exists. This is because it is the position of Common Law that contract of such nature will be read to mean that the employee must be paid for the services rendered. This was the position in the case of *Higgins v Hopkins* (1848) 3 Exch. 163, 166, see Park B, where it was stated that a presumption of law will arise for the right of the employee to be paid when he has worked for the employer. Note that under Section 43(1)(a) of the Trade Dispute Act, every employee is entitled to be paid his/her remuneration except in a given situation such as during a strike, where such payment can be withheld legally. Notwithstanding the above provision, in a lock-out situation by the employer, the employees are entitled to be paid their wages or salary for the period of the lock out. See Section 43(1)(b) of the Trade Dispute Act.

It is worth noting that the Nigeria law under Section 3(3) of the National Minimum Wage Act, 2019, provides for the payment of minimum wages for employees, and thus, it is illegal to pay any employee less than the stipulated minimum wages, but there are certain exceptions to this provision.

Exemption for Payment of Minimum Wage

Section 4(1) of the National Minimum Wage Act, 2019, provides for exemptions as follows: The provisions of Section 3(1) of the National Minimum Wage Act do not apply to

1. an establishment in which fewer than 50 workers are employed;
2. an establishment in which workers are employed on a casual basis;
3. an enterprise where workers are rewarded on piece-rate or commission basis;
4. holders in periodic engagement, such as farming; and
5. worker engaged in a ship or aircraft regulated by shipping or aviation law.

Duty of recognition of trade union and collection of check-off dues:

The law allows employees to fraternize with people of the same working skills in the form of organized unions, so the employer must give recognition to the labour/trade union with which his employees associate and must ensure that the said unions are aided in collecting check-off dues for their operations from his employees. According to Emuobo Emudainohwo (2021), this position has been given a full back-up by judicial authority as projected in the case of *Management of Tuyil Nigeria Limited v National Union of Chemical, Footwear, Rubber, Leather and Non-metallic Product Employee*, Unreported Suit No: NIC/9/2003, judgement delivered by Justice B.A. Adejumo (presided) on 23 January 2008. The decision of the court expressly stated that the employer has a duty to grant recognized union access to eligible members of the trade union in its employment. It was also specifically stated in that judicial decision that by virtue of Section 16A of the Trade Union Act, for an employee to become a member of a trade union is the yardstick, test or standard to determine the deduction of employees check-off dues and the employer is believed to have no reason for the denial. The duty to deduct check-off dues is mandatory, and no employer is permitted to choose whether or not to deduct.

Duty to keep record of attendance: This is the expectation of the law that an employee must be at his/her duty post at all material times and must be seen to be punctual to work. To ensure this, it is expected that

the employer should keep a record of the employee's presence at work. Such duty is not in any way transferable to the employee, and this position has been legalized by the court decision in the case of *Vincenti Engineering Ltd. v Civil Service Technical Workers Union*, Unreported Suit No: NIC/23/78, judgement delivered by Justice P.A. Atilade (presided) on 16 November 1978. When such a record is kept, the attendance of the workers at work will not be in dispute, which will enable the employer to make reasonable decisions and take action against absenteeism, lateness and lack of a situational work attitude.

Duty with regard to care of employee at workplace: The employee is expected to be protected against imminent risk in the workplace, and this calls for the reason an employer is mandated to safeguard the life of the work by ensuring that the workplace is free from all forms of danger to the employer. Under common law, an employer is expected to take reasonable care in ensuring that workers are not exposed to the risk of injury at work. Where an employee suffers injury at work due to the negligence of the employer in taking reasonable care, the employer will be mandated to pay for such impropriety that caused the injury to the employer. It is noteworthy that under Section 12 of the Labour Act, 2004, if in the cause of office operation, a worker's negligent activity resulted in injury to another worker, the liability will still be taken by the employer. Therefore, to alleviate the burden of unexpected injury during office operation, it is expected that the employer must insure himself with respect to vicarious liability for injuries caused by his employees to coworkers.

Duty to register employee on pension scheme: The Pension Reform Act, 2004, ("Pension Act") LFN provides for contributory pension scheme for employees in the public and private sectors 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 explain that the provisions of the Pension Act shall apply to all employees in the public service of the federation and the private sector, and in the case of the private sector, employees who are in employment in an organization in which there are five 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.

Duty to register the employee on National Housing Fund: By virtue of the provision of the National Housing Fund Act, Cap 45, Laws of the Federation of Nigeria, 2004, as amended by the National Housing Fund (Establishment) Act, 2018, it is mandatory that the employer must deduct 2.5% of the employees' basic salary as contribution to the National Housing Fund on behalf of the employee and the same must be remitted as and when due and remit; the said deduction must be remitted to the Federal Mortgage Bank within one month of such deduction (see Section 8(1–3) of the Act).

Duty to register the employee on the National Health Scheme: The employer is under the obligation to register the employees on the National Health Insurance Scheme. This position is provided by the National Health Insurance Authority Act, 2022, which repealed the National Health Insurance Scheme Act, Cap 42, Laws of the Federation of Nigeria, 2004. Section 14(2) of health makes it compulsory for all employers both in the public and private sectors, which have five staff members and above to register their employees on the Housing Scheme. Under the 2004 law, employers are required to deduct 5% of employees' basic salary (employers are to contribute 10% of employees' basic salary) as a contribution to the National Health Insurance Scheme. However, it is noteworthy that the new law was silent about the amount to be contributed but rather left it at the purview of the council as provided for under Sections 30–32 of the Act. The scheme gives all employees the opportunity to access affordable health care.

Duty to make remittance for employee compensation: Under the Employee's Compensation Act, 2010, which repealed the Workmen's Compensation Act Cap. W6 LFN, 2004, it is mandatory for employers of labour in Nigeria to make contributions towards the care of injured workers in the cause of their employment. Part VI Section 33(1) of the Act provides that every employer shall, within the first two years of the commencement of this Act, make a minimum monthly contribution of 1.0% of the total monthly payroll into the fund.

Duty to make remittance for industrial training: Section 6(1) of the Industrial Training Fund Act Cap 19, Laws of the Federation of Nigeria,

2004, as amended provides for a mandatory contribution of employers to the government for the training purpose of the employees. Such an employer must have 25 employees or more and must contribute 1% of the amount of his annual payroll.

Employers duties under the Factory Act: The duties of employers as stated under the Factories Act (2004) include the following:

- (i) Sections 7–12 and 40–48 safeguard the health of the employee.
- (ii) Sections 14–19 provide for the fencing of flywheels and dangerous parts of equipment.
- (iii) Section 21 provides for the duty to protect employees from contracts with dangerous liquids.
- (iv) Sections 21–34 provide for the duty to install and use only steam boilers and steam receivers that meet the prescribed requirements.
- (v) Section 23 provides for not putting new machinery into use in a factory without prior compliance with the preconditions.
- (vi) Sections 24–26 provide for the duty to provide and maintain proper conditions, such equipment and appliances as hoists, lifts, pipes, lifting tackles and chains used for lifting workers.
- (vii) Sections 29–30 provide for the duty to take measures to safeguard employers and other persons from fumes, exposure to dangerous fumes, explosives or inflammable dust, gas vapour and substance.
- (viii) Sections 35–36 provide for the duty to install equipment that alerts employees of fire and extinguishing the same.

Employers duties under the Labour Act: The duties expected of an employer to the employee under the Labour Law are summarized as follows:

- (i) Duty to deliver terms of employment to the worker within three months of the period of employment. See Section 7.
- (ii) Duty to pay employee during sickness: The employee should be paid his wages for up to 12 working days in any one calendar year during absence from work caused by temporary illness. See Section 16.

- (iii) The duty to provide work is stipulated by Section 17(1); this duty is subject to the four conditions stipulated by the subsection.
- (iv) Duty to grant annual holiday with pay to employees. See Section 18.
- (v) Duty to reduce contract of apprenticeship to writing and such writing must be attested to be valid: An employer who contravenes this provision would be liable to a fine of not more than N200 or imprisonment not exceeding six months or both Labour Act (2004) Section 50(1).
- (vi) Duty to keep record of young persons engaged: Every employer of young persons in an industrial undertaking must keep a register of all young persons in his employment with particulars. See Section 62.
- (vii) Duty to conduct medical examination: The Act provides for the conduct of medical examination on every employee engaged by the employer. Such an employee who enters into a contract of employment 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 (meaning 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 and is not of a dangerous character. See Section 8.

B. Employee Duties

The duties of the employee include but are not limited to the following:

Duty to obey employer's instruction: The employee is under strict obligation to comply with all legal instructions of the employer in the cause of his service, and whenever this obligation is compromised, the contract becomes automatically repudiated. This position has its weight leaned on the common law position as decided in the case of *Linford v Stephen* (1819). Note that an employee is not under any obligation to obey the order, which will expose him to the danger of health risk or loss of life.

Duty to be faithful: Faithfulness of service by the employee is paramount, as that will enhance a good working relationship and an action of the employee to the contrary could warrant a termination of that relationship. An employee must be loyal, trustworthy and committed to the work, and this is regarded as acting in “good faith”, “fidelity”. It is thus worth noting that such a display of loyalty does not mean a disservice to the nation by covering the criminal activities or action of the employer.

Duty of compliance with safety measures: An employee is expected to keep to all safety precautions in the workplace, according to ILO (2008), which will help to prevent diseases and accidents. To ensure this, the employer must ensure that employees are given sufficient information on safety steps taken by the employer. The employer must ensure that the duties of an employee concerning safety in the workplace are well set out and clearly understood by the employee. When this is done, the burden of action becomes shifted to the employee who now has the duty to take care of their safety and others who may be injured by their acts, follow safety instructions, use safety equipment correctly, report any situation that can lead to hazard and report any injury or accident in the workplace.

Termination of Employment

Both the employer and the employee have the right to bring employment to an end, but this must be within the framework of their contract. It is expected that a contract of employment should make provisions for the employment relationship, termination inclusive. The general law in Nigeria is that you cannot force a willing employee on an unwilling employer and vice versa. Therefore, whenever any party is no longer willing to work with the other, it is expected that such a relationship must be dissolved.

With regard to termination, you must take cognizance of the fact that in Nigeria, there is the position of law with regard to employment with statutory flavour and employment without statutory flavour. Employment with statutory flavour applies to those in the service of the government (federal, state and local government); they are known as civil servants or public servants. The employment of this group of people cannot just be

terminated without the due process of law. On the other hand, those employed under the private sector are those whose employment does not enjoy statutory flavour and can only enjoy their employment at the will of their employer. The terms of their employment are within the purview of their contract of employment.

Termination Without Reason

Based on judicial decisions in Nigeria, an employer can terminate the employment of his employee at any given time without giving any reason. By the established principles, an employer has the right to terminate an employment without stating any reason in thus far as all laid down procedures are followed in terminating the employment. It is only expected that whenever the employer intends to lay off the employee, the procedures as laid down by the working handbook must be followed but where such is negated the employee as a right to bring an action in court against the employer for wrongful termination of employment.

Take note that issuance of notice is expected before termination, but noncompliance with this will not in any way reverse the termination when payment is made in lieu of such notice. Either the employer or the employee can end the relationship by giving payment in lieu of notice.

Relief for Wrongful Termination

An aggrieved employee in the private sector who believes that his/her employment has been wrongfully terminated cannot in any way seek to be reinstated, which will be against the law and unethical. Such relief is only available for an employee who had employment with statutory flavour. An aggrieved employee from the private sector who had his/her employment terminated can only be entitled to claim damages, which might be salary, other entitlements or both.

Employment and Arising Conflict

In any given environment, there is the probability of arising conflicts that might be in different forms and arising from different factors. Conflict in a business place is surely inevitable. A conflict usually occurs when two or more people communicate (Huan & Yazdanifard, 2012). Therefore, at any point when conflict arises in a workplace, it is the responsibility of both the employee and the employer to ensure that it is nibbed promptly to prevent its negative effect on the business. Conflict may arise in the work environment in the following ways:

1. ***Between workers:*** These are scuffles, whether major or minor, that may arise among the workers themselves. Many factors may be responsible for these issues, such as attitude towards work, poor responses, disrespect for seniors and insubordination.
2. ***Between employer and employee:*** This may happen when the employee has grievances against the employer and vice versa. Such occasioning factors may include but are not limited to discriminatory treatment, insensitivity on the part of both the employer and employee, poor welfare package, non-availability of working equipment, lack of provision for training and development and so on.
3. ***Company and third parties:*** Conflicts can arise between the company (whether employee or employer) and the third party, which can be the customer, supplier or contractor. As extraneous as this factor may be, if not promptly attended to, it can cause grievous harm to the image of the company.

Settlement of Conflicts

When conflict arises in the workplace, there are different strategies that could be employed to address such conflict, most particularly when the personnel of the human resources department of the organization are well trained and equipped.

The concern of this chapter is more of looking at the procedures that could be adopted in times of conflict in the organization, and three major procedures are acceptable under the Nigerian law, which are examined as follows:

Internal policy: Every functional and effective organization is expected to have its own policy book or handbook that provides for the rules and regulations, offences and procedures of dealing with different matters. Under the Nigeria Employment Law, the company's handbook is very important and material evidence for dealing with conflict in the workplace. Most often, the court will always demand the company's handbook to use its provision to give justice to the aggrieved party. Thus, when the company's handbook is in place, the employee could always take advantage of its provision in dealing with their grievances at work.

Alternative dispute resolution: ADR as it is simply referred to implies different ways or methods of resolving disputes among disgruntled parties. ADR enables parties to settle their disagreements before the use of formal legal processes. ADR processes include mediation, negotiation, conciliation and arbitration. An aggrieved worker could take advantage of any of these processes for the settlement of their problems. It is worth noting that some of the Nigerian courts have now introduced ADR processes into the system, thus trying to project possible settlement of grievances outside the walls of the court.

Litigation: This is the process of instituting an action in the court of law for the purpose of obtaining justice. This process will require the aggrieved party to obtain the aid of a legal practitioner who can prepare the claims and present the matter in the court.

Conclusion

This chapter examined the nature of the employment relationship in Nigeria, the remedies available to the employee and expectations of the law concerning the employer in the cause of the relationship and the ways conflicts can be adequately resolved. In as much as conflict will always arise in any relationship, an employment relationship may potentially present conflicts; hence, this chapter concludes by providing for how

such conflicts can be resolved, and the two major ways examined are either through proper litigation as provided by the legal framework or a decision to opt for Alternative Dispute Resolution, which may either be provided for in the contract of employment or otherwise be embraced when the need arises.

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