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# The International Comparative Legal Guide to: Employment & Labour Law 2011

A practical cross-border insight  
into employment and labour law

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### 1 Terms and Conditions of Employment

#### 1.1 What are the main sources of employment law?

The main sources of employment Law in Nigeria are (a) Nigerian legislation, i.e. the Labour Act (Cap. L1 L.F.N 2004), (b) received English law, and (c) Nigerian Case Law.

#### 1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Ogundare JCA in NITEL v. Ikaro (1994) 1 NWLR (Pt. 320) 350 postulated that there are four types of workers protected by employment laws, these are: (1) manual and clerical staff (this class of workers do not have employment contracts); (2) employees with written contracts of employment; (3) public servants whose employment is provided for in a statute; and (4) public servants in the civil service. The first class is provided for by common law. The second class is governed by the terms of the contract, the third class is provided for by statute and the fourth class is guided by the Civil Service Rules.

#### 1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Section 7 of the Labour Act provides that not later than three months after the beginning of a worker's period of employment, the employer shall give to the employee a written statement specifying the name of the employer and the undertaking by which he is employed, and setting out the terms and conditions.

Considering, however, that this Act does not apply to all groups of employees in Nigeria, it is possible, though not common, to find employment relationships that are entered into orally.

#### 1.4 Are any terms implied into contracts of employment?

Yes, there are terms that are implied into contracts of employment. These implied terms are derivable from statutes and judicial decisions. An example is a right to a minimum period of notice for termination of contracts. This is implied by the provisions of the Labour Act.

#### 1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Subject to question 1.1 above, there are minimum employment terms and conditions regulating employers as provided for by relevant statutes, such as (a) termination by notice, (b) hours of work, (c) mode of payment as to wages, (d) holidays on certain days of the year, (e) collective agreements and (f) provision of transport allowance.

#### 1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Terms and conditions of employment are agreed through collective bargaining to the extent that the employers are members of a Union. Trade Union membership in Nigeria is voluntary. Typically, bargaining takes place at the company level - in certain instances where there are employers' unions in certain industries, they engage the employee unions at an industry level.

### 2 Employee Representation and Industrial Relations

#### 2.1 What are the rules relating to trade union recognition?

Section 1(1) Trade Unions Act (Cap. T14 L.F.N 2004) provides that for a trade union to be recognised they must be registered, the law further provides that the trade union must have rules/constitution and their rules/constitution must be approved by the minister of labour.

#### 2.2 What rights do trade unions have?

The Trade Unions Act provides the following rights to employees: (a) the right to determine their membership; and (b) the right to a union office.

#### 2.3 Are there any rules governing a trade union's right to take industrial action?

Yes, Sections 3 and 5 of the Trade Dispute Act (Cap. T8 L.F.N 2004) provides the steps that have to be followed before an industrial action can hold.

**2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?**

No, work councils are not recognised in Nigeria.

**2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?**

Work councils are not recognised in Nigeria, therefore there is no requirement to obtain a works council agreement.

**2.6 How do the rights of trade unions and works councils interact?**

Work councils do not exist in Nigeria.

**2.7 Are employees entitled to representation at board level?**

No, employees are not entitled to representation at board level.

### 3 Discrimination

**3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?**

Yes, employees are protected against discrimination. There are no laws that specifically prohibit discrimination however the Constitution provides for freedom from discrimination regardless of sex, age, political affinity, religion, status, ethnic group or linguistic association or ties or circumstance of birth.

**3.2 What types of discrimination are unlawful and in what circumstances?**

The types of discrimination that are unlawful are discrimination against sex, age, ethnic group, political affinity, religion status, ethnic group or linguistic association or ties, circumstance of birth and, more recently, HIV status. Section 17 provides that all citizens, without discrimination, from any group whatsoever, have the opportunity for securing adequate means of livelihood as well as the adequate opportunity to secure suitable employment.

**3.3 Are there any defences to a discrimination claim?**

The courts have rarely been called upon to determine disputes in relation to discrimination claims with regards to employment. Therefore, there is a dearth of defences to discrimination claims.

**3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?**

Discrimination rights can be enforced via the relevant courts. Settlement can take place before or after the initiation of the claim.

**3.5 What remedies are available to employees in successful discrimination claims?**

The remedies available are: (a) reinstatement/promotion; (b) monetary damages; and/or (c) compensation.

## 4 Maternity and Family Leave Rights

**4.1 How long does maternity leave last?**

The Labour Act does not specifically provide for maternity leave, however, the leave is usually determined by the contract of employment. The practice is usually that the employee is granted a leave period of 3 months with or without pay depending on the contract of employment.

This clause must however be included in the contract of employment for it to be enforceable.

**4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?**

The rights are usually determined by the terms in the contract of employment.

**4.3 What rights does a woman have upon her return to work from maternity leave?**

The rights are usually determined by the terms in the contract of employment.

**4.4 Do fathers have the right to take paternity leave?**

The rights are usually determined by the terms in the contract of employment.

**4.5 Are there any other parental leave rights that employers have to observe?**

The rights are usually determined in the contract of employment.

**4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependents?**

Section 54(1) (d) of the Labour Act provides that nursing mothers shall be allowed half an hour twice a day during her working hours to attend to her baby. However, the employment contract may make provisions for work hour flexibility.

## 5 Business Sales

**5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?**

No, employees do not automatically transfer to the buyers.

**5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?**

Except where there is an agreement between the employer and the employee with regards to a business sale, no employee rights

transfer on a business sale. The new employer may decide to adopt the collective agreement from the previous employer or decide to negotiate a new collective agreement.

**5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?**

No, there are no information and consultation rights, however the purchaser of the business may decide to enter into consultation in order to enjoy a smooth transfer of the business. The time frame for the process would depend on the nature of the business to be transferred. There are no sanctions for failing to consult on a business sale except specifically provided for in a collective agreement.

**5.4 Can employees be dismissed in connection with a business sale?**

Yes, however the employer may need to pay compensation to the employees. This could be one month's wages or salary.

**5.5 Are employers free to change terms and conditions of employment in connection with a business sale?**

Yes, they are.

## 6 Termination of Employment

**6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?**

Yes, the notice period is determined by the terms of employment and the Labour Act.

**6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?**

"Garden leave" is not recognised under Nigerian law.

**6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?**

The employee may file a civil action against the employer for wrongful dismissal and unless the employer has a reason for dismissal, the employee will be entitled to damages.

An employee is treated as being dismissed where he intentionally breaches fundamental terms of the agreement.

Consent from a third party is not required, however an employee has the right to contest the dismissal at the relevant court and employer must show that there was a fundamental breach.

**6.4 Are there any categories of employees who enjoy special protection against dismissal?**

Yes, employment which is covered with statutory flavour enjoys special protection against dismissal.

**6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?**

It is instructive to note that case law has differentiated between termination and dismissal of an employee.

In the case of termination, the employer does not need to give a reason for termination; however with regards to dismissal the employer must show that there was a fundamental breach of the employment contract.

Yes, compensation or damages are calculated as the sum of money the employee would have received if the employment was properly terminated which is usually one month's salary.

**6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?**

The employer must give sufficient notice of termination or salary in lieu of notice.

However, if the employer dismisses the employee he must give reason for the dismissal. In the case of employment covered with statutory flavour, the procedure for dismissal as contained in the enabling law must be strictly adhered to.

**6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?**

Employees can bring a claim for unlawful or wrongful dismissal. The remedies are (a) damages and/or (b) compensation.

**6.8 Can employers settle claims before or after they are initiated?**

Yes, employers can settle claims either before or after they are initiated.

**6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?**

No, it does not.

**6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?**

The employees may bring an action before the relevant court to enforce their rights; the employer may be liable to pay damages for the wrongful dismissal.

## 7 Protecting Business Interests Following Termination

**7.1 What types of restrictive covenants are recognised?**

The following types of restrictive covenants are recognised (a) non-competition and/or (b) restriction of use of confidential information.

**7.2 When are restrictive covenants enforceable and for what period?**

Restrictive contracts are enforceable if either party determines the contract; the duration wherein the restrictive covenant is enforceable is stated in the contract of employment.

**7.3 Do employees have to be provided with financial compensation in return for covenants?**

No, they do not.

**7.4 How are restrictive covenants enforced?**

Restrictive covenants are enforced by the relevant courts.

**8 Court Practice and Procedure**

**8.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?**

The State high court, Federal high court and the National Industrial court have jurisdiction to hear employment-related complaints.

Each State of the federation has a State high court. The State high courts have unlimited jurisdiction. The Federal high court decides matters that affect Federal government agencies or parastatals. The National Industrial court determines issues relating to intra and inters union trade disputes, interpretation of collective agreements and awards of the industrial arbitration tribunal.

**8.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed?**

No, conciliation is not mandatory before a complaint can proceed.

**8.3 How long do employment-related complaints typically take to be decided?**

There is no particular timeline for employment-related complaints to be decided.

**8.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?**

It is possible to appeal against a first instance decision; there is no specific time line for the appeals.



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Bloomfield is the foremost labour and employment law firm in Nigeria. The firm provides specialised employment advisory services to both local and multinational companies in Nigeria.

The firm provides advice to both employers of labour and employees. Our staff of Partners, Associates and Support Staff, provide professional service of the highest standard to our clients by combining awareness of the client's needs with a practical and constructive approach to legal issues. The ease of access to our Partners and accountability to our clients ensures that the firm is more client-focused, placing quality of service before growth.

The firm is presently advising a multinational mining company with regards to a review of its employee labour policies and ensuring compliance with Nigerian labour regulatory provisions. This advice is unique in the sense that the mining industry in Nigeria is a novel industry.

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