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# Labour & Employment

in 41 jurisdictions worldwide

Contributing editors: Mark Dichter, Kenneth Turnbull  
and Matthew Howse

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Law

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Research

|  |            |
|--|------------|
| <b>Global Overview</b> Mark S Dichter, Kenneth Turnbull and Elliot Steelman <i>Morgan, Lewis &amp; Bockius LLP</i>                           | <b>3</b>   |
| <b>Four Years on – Dealing with Age Discrimination in the UK</b> Matthew Howse<br><i>Morgan, Lewis &amp; Bockius LLP</i>                     | <b>8</b>   |
| <b>Argentina</b> Ignacio Funes de Rioja and Eduardo J Viñales <i>Funes de Rioja &amp; Asociados</i>  | <b>11</b>  |
| <b>Australia</b> Karl Blake and Joanna Fitch <i>Maddocks</i>   | <b>18</b>  |
| <b>Belgium</b> Stijn Demeestere, Jan Hofkens, Alexander Vandenberghe and Isabel Plets<br><i>Lydian Lawyers</i>                               | <b>26</b>  |
| <b>Brazil</b> Denise Bastos Guedes and Paulo Lima de Campos Castro <i>Brandi Advogados</i>   | <b>33</b>  |
| <b>Canada</b> Douglas G Gilbert and Rhonda R Shirreff <i>Heenan Blaikie LLP</i>  | <b>39</b>  |
| <b>Chile</b> Enrique Munita Luco <i>Philippi, Yrarrázaval, Pulido &amp; Brunner Ltda</i>   | <b>48</b>  |
| <b>China</b> Vivien Chan <i>Vivien Chan &amp; Co</i>   | <b>54</b>  |
| <b>Colombia</b> Paula Samper Salazar, Patricia Vergara Gómez and Ana Lucía Fernández de Soto Montalvo<br><i>Gómez-Pinzón Zuleta Abogados</i> | <b>60</b>  |
| <b>Cyprus</b> Nicholas Ktenas <i>Andreas Neocleous &amp; Co LLC</i>  | <b>66</b>  |
| <b>Czech Republic</b> Nataša Randlová <i>Randl Partners</i>  | <b>72</b>  |
| <b>Denmark</b> Anne Kathrine Schøn <i>Accura Advokataktieselskab</i>   | <b>78</b>  |
| <b>Ecuador</b> Patricia Ponce Arteta <i>Bustamante &amp; Bustamante Law Firm</i>   | <b>84</b>  |
| <b>Finland</b> Seppo Havia <i>Dittmar &amp; Indrenius</i>  | <b>90</b>  |
| <b>France</b> François Vergne <i>Morgan, Lewis &amp; Bockius LLP</i>   | <b>96</b>  |
| <b>Germany</b> Walter Ahrens <i>Morgan, Lewis &amp; Bockius LLP</i>  | <b>102</b> |
| <b>Greece</b> Theodoros Skouzos <i>Iason Skouzos &amp; Partners</i>  | <b>109</b> |
| <b>Hong Kong</b> Vivien Chan <i>Vivien Chan &amp; Co</i>   | <b>117</b> |
| <b>Hungary</b> Kinga Hetényi <i>Schönherr Attorneys at Law</i>   | <b>123</b> |
| <b>India</b> Roopa P Doraswamy, Ashwini Vittalachar and Kruthi V Narasappa, <i>Doraswamy &amp; Raja</i>                                      | <b>130</b> |
| <b>Ireland</b> Geoffrey Dunne <i>Geoffrey Dunne &amp; Co Solicitors</i>  | <b>136</b> |
| <b>Italy</b> Paola Tradati <i>Toffoletto e Soci</i>  | <b>143</b> |
| <b>Japan</b> Motoi Fujii and Akiko Monden <i>TMI Associates</i>  | <b>150</b> |
| <b>Korea</b> Jeong Han Lee <i>Bae, Kim &amp; Lee LLC</i>   | <b>159</b> |
| <b>Luxembourg</b> Guy Castegnaro <i>Castegnaro Cabinet d'avocats</i>   | <b>166</b> |
| <b>Macedonia</b> Tatjana Popovski Buloski and Ana Hadzieva <i>Polenak Law Firm</i>   | <b>174</b> |
| <b>Mexico</b> Oscar de la Vega and Monica Schiaffino <i>Basham, Ringe y Correa, SC</i>   | <b>180</b> |
| <b>Netherlands</b> TMJ (Dorothe) Smits <i>SmitsDeLange</i>   | <b>185</b> |
| <b>Nigeria</b> Adekunle Obebe and Oluseun Sodunke <i>Bloomfield – Advocates &amp; Solicitors</i>   | <b>192</b> |
| <b>Poland</b> Radoslaw Bieddecki and Katarzyna Zwierz-Wilkocka <i>Bieddecki Bieddecki Olejnik</i>  | <b>196</b> |
| <b>Portugal</b> Alexandra Almeida Mota <i>F Castelo Branco &amp; Associados (FCB&amp;A)</i>  | <b>202</b> |
| <b>Puerto Rico</b> Patricia M Marvez and Radamés (Rudy) A Torruella <i>McConnell Valdés LLC</i>  | <b>208</b> |
| <b>Romania</b> Șerban Pâslaru <i>Țuca Zbârcea &amp; Asociații</i>  | <b>215</b> |
| <b>South Africa</b> Susan Stelzner, assisted by Hanneke Farrand and Zahida Ebrahim<br><i>ENS (Edward Nathan Sonnenbergs)</i>                 | <b>221</b> |
| <b>Spain</b> Iñigo Sagardoy <i>Sagardoy Abogados</i>   | <b>228</b> |
| <b>Sweden</b> Robert Stromberg and Peter Nilsson <i>Advokatfirman Cederquist</i>   | <b>233</b> |
| <b>Switzerland</b> Roberta Papa and Thomas Pietruszak <i>Blesi &amp; Papa</i>  | <b>239</b> |
| <b>Taiwan</b> Chung-Teh Lee <i>Lee, Tsai &amp; Partners Attorneys-at-Law</i>   | <b>245</b> |
| <b>Ukraine</b> Pavel Grushko and Anna Synytsya <i>Schönherr Ukraine LLC</i>  | <b>253</b> |
| <b>United Kingdom</b> Christopher Hitchins <i>Morgan, Lewis &amp; Bockius LLP</i>  | <b>259</b> |
| <b>United States</b> Kenneth Turnbull, Eleanor Pelta and Tram-Anh Frank <i>Morgan, Lewis &amp; Bockius LLP</i>                               | <b>265</b> |
| <b>Venezuela</b> Jorge Acedo and John D Tucker <i>Hoet Peláez Castillo &amp; Duque</i>   | <b>273</b> |

# Nigeria

## Adekunle Obebe and Oluseun Sodunke

Bloomfield – Advocates & Solicitors

### Legislation and agencies

1 What are the main statutes and regulations relating to employment?

The main statutes and regulations relating to employment include:

- Labour Act, 2004;
- Trade Union Act, 2004;
- Workers Compensation Act, 2004;
- Factories Act, 2004;
- Pensions Act, 2004;
- Trade Disputes Act, 2004; and
- Civil Service Rules.

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

There are no laws that specifically prohibit discrimination or harassment in the course of employment. The Constitution, however, provides for freedom from discrimination regardless of sex, age, political affinity, ethnic group or any other grounds.

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

There are no laws that specifically protect employee privacy or personal data. The Constitution, however, provides for freedom of privacy of citizens and their personal details, which includes personal data.

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

The main government regulatory agency is the Ministry of Labour and Productivity. The agencies responsible for the enforcement of employment statutes and regulations are the state high courts, the Federal High Court and the Nigerian Industrial Court.

### Worker representation

5 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

There is no specific legislation that mandates the establishment of a works council or workers' committee; however, the Constitution provides that any person shall be entitled to assemble freely and associate with other persons and in particular may form or belong to any trade union.

### Background information on applicants

6 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 specific restrictions or privacy laws against employers carrying out background checks on applicants. It is, however, instructive to note that the Constitution provides for the protection of citizens' rights to privacy.

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

There are no specific restrictions against an employer requiring a medical examination as a condition of employment. It is instructive to note that the Labour Act provides that an employee shall undergo medical examination at the expense of the employer. The effect of the foregoing is that the employer has a right to require a medical examination as a condition of employment.

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

There are no specific restrictions against drug and alcohol testing of applicants. It is instructive to note that the Labour Act grants an employer the right to request a medical examination as a condition of employment. It is therefore safe to reason that since the law does not restrict the extent of medical examination, the employer may also request drug and alcohol testing.

### Hiring of employees

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

There are no legal requirements to give preference in hiring. The Constitution, however, provides for freedom from discrimination regardless of sex, age, political affinity, ethnic group or any other grounds.

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

The Labour Act provides that the employer must within three months of the employee's commencement of employment provide an employment contract setting out the terms and conditions of the employee-employer relationship.

The essential clauses of the employment contract include:

- 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, 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, due regard being had to section 11 of the Labour Act;
- the rates of wages and method of calculation thereof and the manner and frequency of the payment of wages;
- any terms and conditions relating to:
  - hours of work;
  - holidays and holiday pay; or
  - incapacity for work due to sickness or injury, including any provisions for sick pay; and
- any special conditions of the contract.

**11** To what extent are fixed-term employment contracts permissible?

There are no statutory limitations or restrictions on a fixed-term employment contract. It must, however, be noted that the agreement must be in writing and both parties must agree to the terms of the contract.

**12** What is the maximum probationary period permitted by law?

The Labour Act does not specifically provide for a probationary period. It must, however, be noted that the Act provides that an employer shall within three months after the beginning of the worker's employment give to the worker a written statement detailing the terms and conditions of the agreement.

In practice, the employer is at liberty to determine the probationary period of their employees. The probationary period would also be one of the terms in the employment contract.

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

Covenants not to compete are valid and enforceable if the employer can show that:

- he or she has a valid interest to protect;
- the employee has agreed not to breach the said covenant; and
- notwithstanding the agreement, the employee had breached the agreement.

The parties are at liberty to determine the maximum period for the covenants.

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

The main factors that distinguish an independent contractor from an employee are:

**Liability**

An employer will be vicariously liable for torts committed by an employee in the course of the execution of the employee's service, whereas the contractor would be personally liable for similar torts committed while executing the service.

**Control**

The employer determines the terms and conditions that the employee would follow to carry out his duties. On the other hand, an independent contractor is instructed on the objective of the service and achieves the stipulated objective by his own devices free from directives from the employer.

**Foreign workers**

**15** 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?

There are no numerical limitations on short-term visas. A foreigner may apply for as many short-term visas as required, as long as he or she meets the conditions for the grant of the visa.

There are two types of visas depending on the length of the transfer. For short-term assignments, the employer will need to apply for a Temporary Work Permit (TWP) which allows the employee to carry out some specific tasks. The visa is a single-entry visa, which once it is granted remains valid for a maximum of three months, provided that the employee resides in the country for that long.

For long-term assignments, the employer should apply for a subject to regularisation visa (STR visa). It is instructive to note that the employer must have applied and obtained an expatriate quota, which states positions in the company that will be occupied by expatriate staff. On arrival in Nigeria, the employee will need to regularise his or her visa by applying for a work and residence permit.

**16** Are spouses of authorised workers entitled to work?

The spouse of an authorised worker may work in Nigeria. The spouse must, however, obtain a work and residence permit before the spouse can take up the employment.

**17** 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?

An employer must seek the consent of the Federal Ministry of Interior by applying for an expatriate quota. The quota permits the company to employ foreigners to occupy specifically approved job designations, and it also specifies the validity period of the designations provided for on the quota.

The penalties for employing a foreigner without a right to work are sanctioning and blacklisting of the foreigner's employer and deportation of the foreigner.

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

There is no standard labour market test required to obtain a short or long-term visa. It is important, however, to note that there is a recently enacted Nigerian Content Act, which is tailored to promote more local participation in the Nigerian oil and gas industry.

**Terms of employment**

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

Working hours are determined by the employer and employee's mutual agreement, by collective bargaining or an industrial wage board. The Labour Act, however, provides for compulsory break times and rest intervals of an aggregate of one hour per six hours of work per day. Also, in every seven days an employee shall be entitled to one full day's rest of not less than 24 consecutive hours.

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

The Labour Act provides that any employee that works in excess of the working hours agreed in the employment contract is deemed to have worked overtime. The employee is therefore entitled to overtime pay. Although the Act does not state the rate of calculation of overtime pay, the practice is to calculate on an hourly rate.

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

The Labour Act provides that every worker shall be entitled after 12 months' continuous service to a holiday with full pay of at least six working days or in the case of persons below the age of 16, 12 working days.

The annual leave entitlement is calculated on the basic salary. The practice, however, is that the employee pays a monthly salary as leave allowance.

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

Section 16 of the Labour Act provides that a worker shall be entitled to be paid wages for up to 12 working days in any one calendar year during absence from work caused by temporary illness certified by a registered medical practitioner.

**23** 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 does not specifically provide for an employee taking a leave of absence. Consequently, the employer would determine whether the employee may take a leave of absence. The duration for the leave and whether the employee would be paid during the leave of absence is determined by the employer.

**24** What employee benefits are prescribed by law?

The benefits prescribed by law are:

- pension scheme;
- workers compensation;
- holidays;
- limitations of working hours;
- group life insurance; and
- employee housing scheme.

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

There are no special rules relating to part-time or fixed-term employees.

#### Liability for acts of employees

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

Where an employee carries out an act or fails to carry out an act in the process of carrying out his or her duties to the employer, the employer would be vicariously liable for any tort to a third party.

#### Taxation of employees

**27** What employment-related taxes are prescribed by law?

Employees are prescribed to pay personal income tax, which is remitted on a 'pay as you earn' basis by the employer on behalf of the employees.

#### Employee-created IP

**28** Is there any legislation addressing the parties' rights with respect to employee inventions?

The Patents and Designs Act provides 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 employer owns the patent right.

Where the inventor is an employee whose employment contract does not require him or her to exercise any inventive activity but the employee has in making the invention used data or means that his or her employment has put at his or her disposal or where the invention is of exceptional importance, the employee shall be entitled to fair remuneration.

#### Business transfers

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

There is no specific legislation that protects employees in the sale of a business. Apart from contracts of employment and collective agreements, the employer determines the fate of the employees.

#### Termination of employment

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

An employer may terminate an employment contract with or without a reason for dismissal. Case law has however, stated that if an employer gives a reason for the termination of the contract, the employer must justify the reason.

It is instructive to note that the word 'dismissal' in contemporary Nigerian jurisprudence is used separately from 'termination' in contracts of employment. It refers to special cases of discipline for repudiation by the employee.

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

The employer may issue a notice of termination prior to dismissal. Case law has, however, stated that even if the employer fails to issue a notice of termination, the liability for such a claim is the amount the employee would have received in lieu of the notice of dismissal.

The Labour Act also permits the employer to terminate the contract without notice if there is a breach of the terms of the employment contract.

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

If the employee commits gross misconduct as provided for in the employment contract, the employer may summarily dismiss the employee without notice or payment in lieu. It is instructive to note that the employer would need to justify the reason for the summary dismissal if the dismissal is contested in court.

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

There is no specific legislation that provides for severance pay. Severance payments are determined by the employment contract. The pay is determined by the number of years in employment and last salary.

**34** Are there any procedural requirements for dismissing an employee?

In private employment, an employer that intends to dismiss an employee must notify the employee of the reason for the dismissal and also give the employee an opportunity to make representation in his or her own defence to satisfy the constitutional requirement for a fair hearing.

In statutory employment or employment in government departments, agencies and institutions the employer must:

- carry out a fact-finding inquiry or nominate a committee to establish if there is a basis for the allegation of wrongdoing against the employee; and
- if a basis exists, then the matter is submitted to a judicial panel where the employee is afforded the opportunity to make a representation in his or her defence before the decision of the employer.

In the oil and gas industry, prior approval of the director of the Department of Petroleum Resources must be sought before an employee in the management team of an oil company is dismissed.

**35** In what circumstances are employees protected from dismissal?

The Labour Act protects employees from dismissal because of:

- trade union membership;
- trade union activities outside working hours or with the consent of the employer during working hours; or
- the employee having lost or been deprived of membership of a trade union or has been refused or has been unable to become or for any other reason is not a member of a trade union.

**36** Are there special rules for mass terminations or collective dismissals?

The Labour Act provides that if there is redundancy, the employee must adhere to the following provision:

- the employer shall inform the trade union or workers' representative concerned of the reasons for and the extent of the anticipated redundancy;
- the principle of 'last in, first out' shall be adopted in the discharge of the particular category of workers affected, subject to all factors of relative merit, including skill, ability and reliability; and
- the employer shall use its best endeavours to negotiate redundancy payments to the discharged workers.

**Update and trends**

The Nigerian courts have recently put to rest the issue of enforcement of collective bargaining agreements (CBA). The courts have held that the terms of the CBA are unenforceable, except where they have been adopted as forming part of the terms of employment. It is considered to be an extra-legal document, totally devoid of sanctions and a product of trade unionist pressure. The enforcement of such agreement is by negotiation between the parties to the agreement.

**Dispute resolution**

**37** May the parties agree to private arbitration of employment disputes?

The parties may agree to private arbitration to resolve disputes that may arise. If this is the case, it is instructive to note that the employment contract must include an arbitration clause.

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

An employee cannot waive statutory rights to a potential employment claim but may for valuable consideration agree to waive contractual rights. For a waiver to be valid it must be voluntary, unequivocal and in writing.

**39** What are the limitation periods for bringing employment claims?

The limitation period for employment claims in private companies is six years. In the case of public employment, claims are governed by the Public Officers Protection Act, which provides that such claims must be brought within three months or in the case of continuance of injury within three months after the injury ceases.



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