

Lagos, Nigeria. Thursday, 9th April, 2020.

Does Covid-19 pandemic prevent an employer from terminating the employment of an employee?

In Nigeria, employment relationships are strictly contractual¹ and are governed by the contract of employment and the Labour Act, LFN 2004 CAP L1. Either party can withdraw from the employer-employee relationship upon meeting the conditions (and following the procedure) set out in the contract of employment. Employers are not required to provide reasons for the termination.² There is currently no law or regulation that prevents a Nigerian employer from terminating the employment of an employee due to the Covid-19 pandemic.³

Is an employer allowed to convert this lockdown period to a paid or unpaid leave?

By virtue of **Section 18(1) of the Labour Act LFN 2004 CAP L1**, every adult worker is entitled to annual leave with full pay of at least six (6) working days. **Section 18 (3) of the Labour Act LFN 2004 CAP L1**, further provides that it shall be unlawful for an employer to pay wages in lieu of the holiday mentioned in subsection (1) of this section to a worker whose contract has not been terminated.

Although the law provides for a minimum requirement for annual leave periods, in practice the specific leave period is based on the agreement between the parties.

In view of this public health crises and the consequent movement restrictions, employers can consider converting the lock down period to a paid or unpaid leave. It is advisable that an employer should engage and negotiate with the employees before considering any of the options

Can an employer be liable in negligence when an employee contracts Covid-19 at work?

Under the Labour Act, LFN 2004 CAP L1, employers cannot contract to exempt themselves from liability where employees suffer personal injuries while attending to their duties. This includes *diseases* contracted at work as personal injury. The employee would however have to prove that he/she was exposed to Covid-19 at work for a claim against the employer to succeed.

¹ This excludes employees whose position and conditions of service are provided for and protected by statute or regulations. Such employees may only be disciplined or disengaged by strict adherence to the provision of the statute. Mohammed M. Alhassan V. Ahmadu Bello University, Zaria & Ors (2009) LPELR-8138(CA).

² Ativie v. Kabelmetal Nig. Limited (2008) LPELR-591(SC).

³ Under Nigerian law, an employer cannot be mandated to retain an employee Adewunmi v. Nigerian Eagle Flour Mills (2014) LPELR-22557(CA).

Is the downward review of an employee's salary "legal" due to the pandemic and restriction of movement?

An employer has a responsibility to pay the agreed wage for the services rendered by the employee. The payment of an agreed wage must be in the legal tender as stipulated in **Section 1 of the Labour Act LFN 2004 CAP L1**, therefore any payment in any other manner shall be illegal, null and void.

More so, **Section 3(1) of the National Minimum Wage Act, 2019** further provides that every employer (except as exempted under the Act) is to pay a wage not less than the sum of ₦30,000.00 (Thirty Thousand Naira) per month to every worker under his establishment.

However, a downward review of the employees' remuneration not less than the minimum wage is not illegal but a matter of contract and negotiation between the employer and employee. As a result of the recent outbreak of the Covid 19 pandemic in Nigeria, it is expected that the outbreak will negatively affect a number of business operations, income streams and their contracts of employment. Also, the health crisis has far-reaching effects across the labour market and the well-being of the global economy. It is not surprising that the International Labour Organization (ILO) has estimated that about 25 (Twenty-Five) Million jobs could be lost worldwide due to the COVID-19 pandemic.⁴

In view of current uncertainties, employees may consider accepting wage reductions. Nevertheless, employers should engage their employees on the available options before implementing the pay cut.

Can redundancy be used to mitigate the business risks associated with COVID-19 pandemic?

Section 20(3) of the Labour Act LFN 2004 CAP L1, defines "redundancy" to mean an involuntary and permanent loss of employment caused by an excess of manpower". In a redundancy situation, the employer may give preference to the employees needed for the growth of the business and this could be based on merit, expertise, competence, requisite skill, and capacity. Furthermore, redundancy may be implemented after considering the organisation's policy, revenue generation and the employer-employee agreement.

The employer who elects the option of redundancy is required to use its best efforts to negotiate redundancy payments to employees. Finally, the employer is obliged to inform the trade union or workers representatives concerned of the reasons for and the extent of anticipated redundancy.

⁴ https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_738742/lang-en/index.htm Last accessed 9th April, 2020.

Would the ripple effect of the COVID 19 pandemic include termination of employment or worse still mass lay-offs?

The answer lies in the business activities, industry or regulations governing the employer. For instance, the legal industry may embrace remote work for their workers during this period whilst the construction industry, might consider mass lay-offs as little or no work can be done during this period and there is a projected contraction in revenues which would enable employers pay staff employments.

In some industries, there are guidelines issued by regulators which impact on the ability of companies to downsize unilaterally. An example is the Nigerian Banking Industry, where the Central Bank of Nigeria (CBN) issued Circular dated 22nd February, 2020 which mandates that Nigerian banks must obtain the CBN's approval before the laying off more than five (5) staff.

Is there a proposed law to protect the employment status of employees?

The Nigerian National Assembly is deliberating on The Emergency Economic Stimulus Bill, 2020 which seeks to amongst others protect the **employment status** of Nigerians who might otherwise become unemployed as a consequence of management decision to retrench personnel in response to the prevailing economic realities.

Is the Bill effective presently?

No, the Bill is not effective presently. The Bill will have to be passed by National Assembly and receive the President's assent to by the president before it becomes effective.

How will the Bill affect the employee when it becomes effective?

The Bill proposes to allow a fifty percent (50%) Pay As You Earn (P.A.Y.E) tax rebate to employer businesses registered under the Companies and Allied Matters Act⁵ who maintain the same employee workforce status, without retrenching any staff from 1st March, 2020 until 31 December 2020.

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⁵ Cap C20, LFN 2004 ("CAMA").



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