

COVID-19 AND CONTRACTS OF EMPLOYMENT: MATTERS ARISING

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Contract of Employment Entails:

- Two Parties – Employer and Employee
- Offer and Acceptance of terms of employment – e.g. role, entitlements/benefits, termination and resignation.
- Attributes rights and obligations between the parties.
- The purpose of an employment contract is to ensure that the employer and employee have a clear understanding of what is expected during the term of the employment.

Contract of Employment Entails:

- The terms of the contract provide for and guarantee the sanctity of the contract as well as serve as the basis of resolving any dispute which may arise between the parties at a later date.
- Protects the “job security” of the employee and protects the employer from certain risks such as the release of confidential employer information after the term of employment ends.

Terms that regulate contracts of employment are usually contained in:

- Offer of employment letter
- Staff manual or Handbook
- Collective Bargaining Agreements – Usually in writing between an employer and a trade union setting forth the terms and conditions of employment or containing provisions in relation to rates of pay, hours of work or other working conditions of employees that constitute membership of the trade union.



THE PANDEMIC

The Pandemic

- As the world grapples with the Covid-19 pandemic, its profound impact across the globe and the debilitating market conditions it has presented, companies are continuously looking for ways to safeguard their people and the long-term future of their businesses. As the market moves through different response and planning stages, employer and employees are struggling to understand their respective rights and responsibilities under their contract at this period.
- The Pandemic has caused disruptions to production and continues to impact negatively on businesses, irrespective of size. There is real threat of significant decline in revenue of businesses, insolvency and job losses.

The Pandemic

- Travel bans/restrictions have been placed, with border closures and quarantine measures, and as a result many employees cannot move to their places of work or carry out their jobs normally, and this has consequent effects on incomes of the workers.
- As the scourge continues to decimate both the human and business spaces creating unprecedented havoc, employers around the globe are deeply concerned about the sustainability of their businesses and their ability to pay their employees. Employers contemplation at this time, revolves around rendering their employees redundant given the impact of COVID-19 on their revenue, pay cut or outright lay-off.

The Pandemic

- The assessment figures of the International Labour Organization (“ILO”) currently released show a significant rise in unemployment and underemployment in the wake of the outbreak of the virus. Accordingly, by the ILO, there is potential growth in global unemployment of between 5.3 million (“low” scenario) and 24.7 million (“high” scenario) from a base level of 188 million in 2019. The “mid” scenario suggests an increase of 13 million (7.4 million in high-income countries).
- The last unemployment report released by the National Bureau of Statistics (NBS) ranks Nigeria 21st among 181 countries with an unemployment rate of about 23.1%. This percentage is expected to spike with the current situation created by the pandemic.

The Pandemic

- Beyond the tragic health hazards and human consequences of the COVID-19 pandemic, the economic uncertainties, and disruptions that have resulted come at a significant cost to the global economy. The United Nations Trade and Development Agency (UNCTAD) put the cost of the outbreak at about US\$2 trillion in 2020.



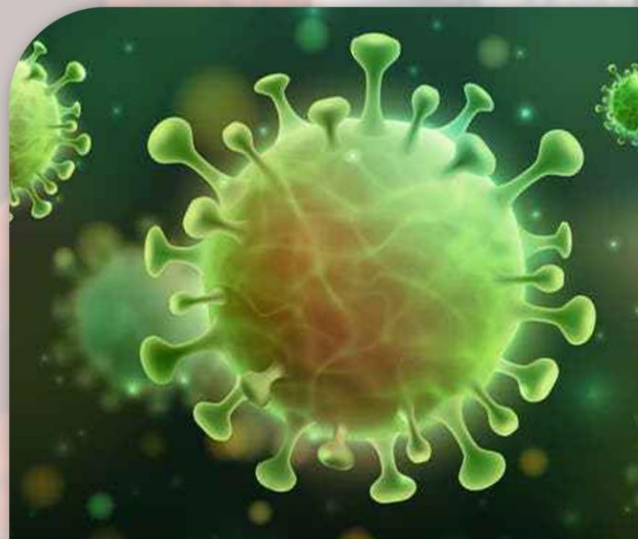
The Pandemic

- Towards ameliorating the suffering of Nigerians and cushioning the harsh effect of the impact of the pandemic on the economy, the government of the day has introduced some monetary and fiscal measures. The latest being the Emergency Economic Stimulus Bill, 2020 (the “Bill”). It is a concerted effort on the part of the government to provide economic support to the Nigerian population. The Bill has been passed by the House of Representatives but awaits the nods of the Senate and Presidential assent.

The Pandemic

- The draft bill seeks to protect the employment status of Nigerians who might otherwise become unemployed as a result of businesses decisions to cut work force owing to the prevailing economic realities orchestrated by the covid-19 pandemic. It has provided tax-based incentives for companies to keep people on the payroll for as long as possible even when faced with harsh commercial realities.





IMPLICATIONS OF THE PANDEMIC

Telework/Remote work

- This arrangement allows an employee to perform work, during any part of regular, paid hours, at an approved alternative worksite (e.g., home). The employee works freely by leaving the definition of the classic workplace. The employee is expected to observe working hours in the remote operating system. Whether or not the working hours are respected in the workplaces that have moved to working remotely due to the outbreak of Covid-19. What is important here is the assessment of whether the given task is done by the employee.

Telework/Remote work

- Do your contracts permit home working? If not, can you alter?
- Technological support to remote working? Where an employer cannot provide the necessary work tools in the circumstance – Force majeure or Frustration of contract?
- Employee still entitled to salary and other benefits within the period in accordance with the terms of the Contract of Employment?
- Does working remotely from home discharge the employer's work safety responsibility?
- Are there Health & Safety implications for home working? Do you need to undertake work station risk assessments?

Workplace Safety

Where the work must be performed at the classic work place, e.g., essential workers.

- Employers' Liability – are you at risk of exposing employees to greater risk and does that attract liability?
- Does the business have policies to deal with containment in the case of an infection incident relating to a staff member?
- Any available remedy to an employee who contracts the virus in the course of his employment for failure of the employer to put in place adequate COVID -19 spread precautionary measures.
- Employer's common law duty to take reasonable care for the actions and safety of its employees.
- Liability for breach of duty of care; and employee's claim for damages for the injury caused. Available compensation regime under the Employee's Compensation Act of 2010 (the ECA).

Declaration of Employee Work Role Redundant, Pay Cut or Termination of Contract of Employment

- Total shut down/skeletal services limiting earning potential of businesses resulting in the financial inability of employer to fully remunerate employees.
- Enforce pay cut? Unilaterally?
- Termination of Contract of Employment?
- Utilize the provisions of the Labour Act on the procedure for redundancy?

Constructive Termination of Contract of Employment

- Can an employee's resignation on account of the employer's failure to put in place adequate Covid-19 spread precautionary measures be considered as constructive termination of the employee's employment contract?
- Is the employee entitled to legal remedies in the circumstance?
- Can a plea of Force majeure avail the employer?

Employee Relegation of Work

- Can the risk of contracting coronavirus constitute a good enough reason for an employee to refuse an otherwise legitimate instruction of his employer?
- Is an employer entitled to mete out disciplinary measures against an employee who relegates his duties in the circumstance?
- Can the employer enforce any disciplinary measures in the circumstance outside the provisions of the parties' contract of employment?

Compulsory Annual Leave

- Can an employer compel an employee to embark on compulsory annual leave on the basis that business operations/activities generating income have dramatically down and there will not be much work to do?
- Can an employee take a forced paid annual leave without salary?
- What is the company policy on this and the powers of the employer under the Contract of Employment?

Conclusion

In the context of fighting the Covid-19 outbreak, drastic changes and measures will be taken in business life, as in all areas, in order to protect the health of the community and to compensate for the economic downsides. Employers are implored to exercise flexibility and support during this economically difficult season by exploring mutually agreed arrangements with its employees, rather than resorting to extreme measures. Since the working life in the private sector is based on the agreement of employers and employees, it is the most appropriate method to reach a conclusion with mutual negotiations during this struggle.



QUESTIONS AND ANSWERS