

# **An Introduction to Employment & Labour Laws and Regulations Nigeria 2023-2024**

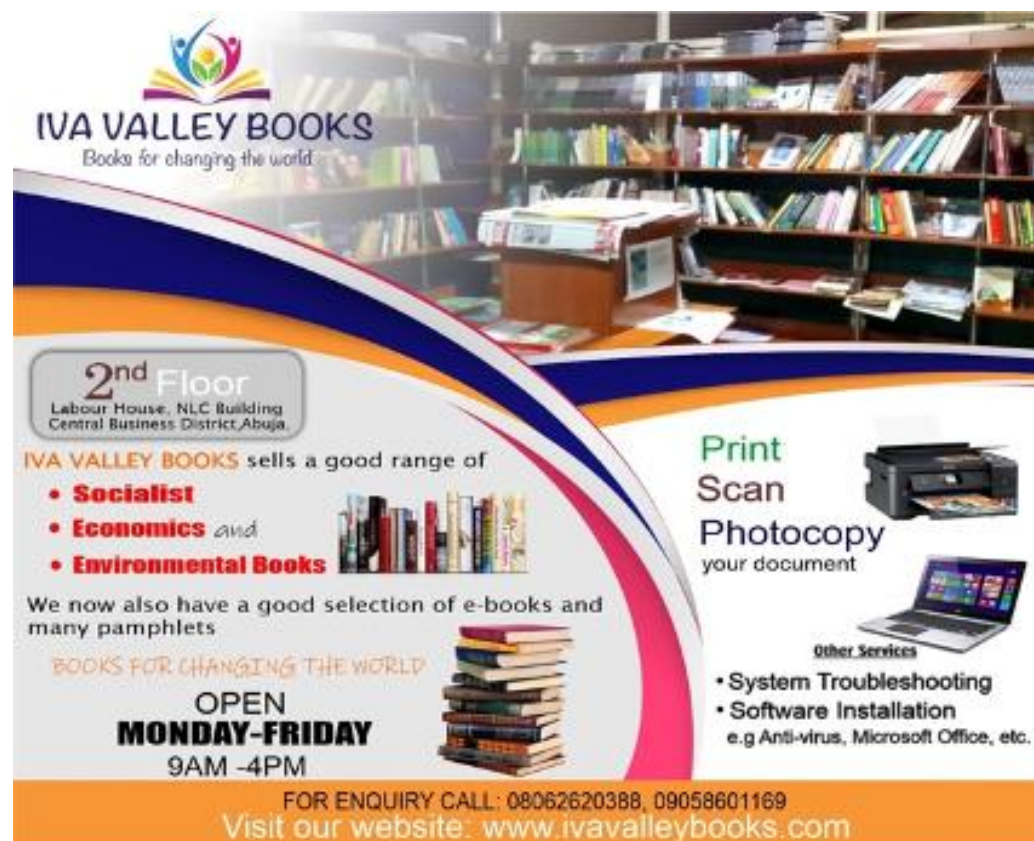


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# Employment & Labour Laws and Regulations Nigeria 2023-2024

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This pamphlet only provides an introduction to employment and labour law. More advice is available from your trade union offices or a lawyer specialising in this area, for example, Femi Aborisade – 0802 302 6222

**Trades union are needed to ensure that the protections available from the law are actually implemented. You are far more likely to win your case promptly if you take collective action with your trade union than if you resort to court action.**

## **Contents:**

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- Terms and Conditions of Employment
  - Employee Representation and Industrial Relations
  - Discrimination
  - Maternity and Family Leave Rights
  - Business Sales
  - Termination of Employment
  - Protecting Business Interests Following Termination
  - Data Protection and Employee Privacy
  - Court Practice and Procedure
-

# **1. Terms and Conditions of Employment**

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

The main sources of employment law in Nigeria are as follows:

- a. the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the “Constitution”);
- b. the Labour Act, Chapter L1, Laws of the Federation of Nigeria 2004 (“Labour Act”);
- c. federal laws enacted by the National Assembly (Nigeria’s national legislative houses) and the State laws enacted by the House of Assembly (the state legislative authority) of each state that relate to labour and employment, pension and workplace compensation including the following:
  - Employees’ Compensation Act 2010.
  - HIV and AIDS (Anti-Discrimination) Act 2014.
  - Immigration Act, 2015.
  - Industrial Training Fund Act, Chapter 19, LFN 2004 (as amended).
  - National Health Insurance Authority Act 2022.
  - National Housing Fund Act, Chapter N45, LFN 2004.
  - Pension Reform Act 2014.
  - Trade Disputes Act, Chapter T8, LFN 2004.
  - Trade Unions Act, Chapter T14, LFN 2004 as amended by the Trade Union (Amendment) Act 2005.
  - National Minimum Wage (Amendment) Act 2019.
  - National Industrial Court Act 2006.
  - Factories Act, Chapter F1, LFN 2004.
  - Finance Act, 2021.
  - Personal Income Tax Act, Chapter P8, LFN 2004 (as amended by the Personal Income Tax (Amendment) Act, 2011).
  - Discrimination against Persons with Disabilities (Prohibition) Act, 2018.
  - Lagos State Special Peoples Law 2011.

- Nigerian Oil and Gas Industry Content Development Act 2010.
  - Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry 2019 issued further to the provisions of the Petroleum (Drilling and Production) Regulations 1969 (as amended), made pursuant to the Petroleum Act, Cap P10, LFN 2004 (now the Petroleum Industry Act, 2021).
  - Nigeria Data Protection Regulation 2019 issued by the National Information Technology Development Agency.
- d. decisions of the Nigerian courts – case laws; and
- e. international conventions, treaties and protocols relating to labour, employment, workplace, industrial relations or matters connected therewith that have been ratified by Nigeria.

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

There are, from a legal perspective, two broad categories of employees in Nigeria: “Workers”, who are defined under the Labour Act as those “who are generally employees who perform manual labour or clerical work”; and “Employees” who perform administrative, executive, technical or professional functions (referred to as “Non-Workers”). The Labour Act, which is the principal legislation that regulates the employment of persons in Nigeria, prescribes the minimum terms and conditions of employment and is limited in its scope as it applies only to Workers. The terms and conditions of employment of Non-Workers are primarily subject to the terms of their respective contracts of employment. The other laws, which regulate the employment of persons in Nigeria, do not make a distinction between different categories of employees.

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

Although the Labour Act recognises that an employment contract could be oral or written, express or implied, section 7 of the Labour Act requires every employer to issue a written contract to the employee within three months of the commencement of the employment relationship. With respect to Non-Workers, there is no statutory requirement for their employment contracts to be in writing. It is, however, advisable that contracts be made in writing for ease of reference and clarity of the employment terms.

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

Yes. Some of the implied terms in contracts of employment include the employer's duty to provide work to employees and to provide a safe place of work.

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

Yes. The Labour Act prescribes the minimum terms and conditions of employment that employers must comply with in relation to Workers. These minimum terms include giving the employee a written statement outlining details of the employment, including the nature of the employment, the appropriate notice period, the rates of wages and calculation thereof and the manner and periodicity of payment of wages, terms and conditions relating to hours of work, holiday and holiday pay, sick leave requirements and any provisions for sick pay, and maternity leave for female Workers, etc.

#### **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?**

The use of collective bargaining agreements ("CBAs") is very common in sectors where the employees are members of trade unions. Collective bargaining usually takes place at the industry level between the recognised trade union of the relevant sector and the employers' association. It is, however, not uncommon for the CBA to indicate that certain matters (usually matters not covered in the CBA) may be negotiated at the company level.

#### **1.7 Can employers require employees to split their working time between home and the workplace on a hybrid basis and if so do they need to change employees' terms and conditions of employment?**

Yes, employers can require employees to split their working time between home and the workplace on a hybrid basis. However, this is subject to the terms of their respective contracts of employment. Where the contracts of employment do not contain terms on the adoption of such hybrid work, it is advisable that the contracts of employment be amended by the mutual agreement of the parties, to provide for same.

#### **1.8 Do employees have a right to work remotely, either from home or elsewhere?**

An employee's right to work remotely, either from home or elsewhere, is subject to the terms of their respective contracts of employment, as it is usually part of the contract of employment that the employer may require

the employee to work at any location which the employer may direct. In the wake of the pandemic, therefore, employers are advised to include provisions relating to remote working in the contracts of employment.

## **2. Employee Representation and Industrial Relations**

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

We have assumed that the word “recognition” here means the act of an employer acknowledging a trade union for the purposes of collective bargaining. The Trade Unions Act, Chapter T14, Laws of the Federation of Nigeria 2004 (as amended) (the “TUA”) primarily governs the activities of trade unions in Nigeria. The TUA makes recognition of registered trade unions obligatory on an employer. In relation to collective bargaining, the TUA provides that all registered trade unions with members in the employment of an employer shall constitute an electoral college so as to elect members who will represent their unions in negotiations with the employer.

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

The rights of trade unions in Nigeria include:

- a. to negotiate the terms and conditions of employment with employers on behalf of employees who are members of the trade union;
- b. to embark on industrial strike action; and
- c. to engage in peaceful picketing.

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

Yes. The TUA prohibits trade unions from carrying out a strike or lock-out, or engaging in any conduct in contemplation or furtherance of a strike or lock-out, unless:

- a. the trade union is not engaged in the provision of essential services;
- b. the strike or lock-out is in relation to a labour dispute that constitutes a dispute of right;
- c. the strike or lock-out concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of an employee, the trade union or an employer;
- d. the provisions for arbitration in the TUA have first been complied with; and
- e. a simple majority of all registered members voted to go on strike.

### **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?**

We do not have the concept of work councils under Nigerian law.



**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?**

This is not applicable. Please refer to our response to question 2.4.

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

This is not applicable. Please refer to our response to question 2.4.

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

There is currently no general statutory right that entitles employees to be represented at board level.

### 3. Discrimination

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

Yes. The Constitution prohibits discrimination against Nigerian citizens on the basis of their community, ethnic group, place of origin, sex, religion, political opinion or the circumstances of their birth. In addition, the HIV and AIDS (Anti-discrimination) Act 2014 prohibits employers from discriminating directly or indirectly against employees on the basis of their HIV status or HIV-related illness. The Discrimination against Persons with Disabilities (Prohibition) Act, 2018 prohibits discrimination against persons with disabilities. The Lagos State Special Peoples Law 2011, which only applies in Lagos State, also prohibits discrimination on the basis of an employee's disability.

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

All forms of discrimination including discrimination based on sex, or disability, whether direct or indirect, are prohibited.

#### 3.3 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

We do not currently have any special rules relating to sexual harassment. The National Industrial Court of Nigeria (Civil Procedure) Rules 2017, however, provide for the category of acts that constitute sexual harassment. The Lagos State Criminal Law also makes sexual harassment a criminal offence. While there is no statutory requirement for training, an employer that becomes aware of sexual harassment in the workplace is required to take administrative action to investigate and address it, otherwise, the employer may be liable for breaching the duty of care owed to the employee. In the case of *Ejike Maduka vs. Microsoft & Ors* NICN/LA/492/2012, the court held that the refusal of the employer to conclude investigations of the alleged case of sexual harassment made the employer liable for the acts of harassment against the employee.

It is also advisable that employers develop a workplace policy on sexual harassment. The policy should clearly indicate acts that constitute sexual harassment, provide a mechanism for employees to report such actions, the procedure for investigating any allegations and the consequences of breaching the provisions of the policy. In addition, it is recommended that training on this topic be conducted periodically for all employees.

We should also mention that Nigeria recently ratified the Violence and Harassment Convention, 2019 – ILO Convention No. 190 (the

“Convention”). The Convention, among other things, seeks to ensure that employers and workers and their organisation, and relevant authorities, are provided with guidance, resources, training or other tools, in accessible formats as appropriate, on violence and harassment in the world of work, including gender-based violence and harassment.

### **3.4 Are there any defences to a discrimination claim?**

As most discrimination claims are instituted within the context of wrongful termination of employment claims, an employer may be able to defend itself by proving that the termination of the employee’s contract was carried out in accordance with the terms of his/her employment contract and any applicable law.

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

In Nigeria, the most common avenue available to employees to enforce their rights (including discrimination rights) in an employment relationship is by instituting an action in the National Industrial Court of Nigeria (“NICN”) – the court vested with original exclusive jurisdiction in respect of all labour and employment matters in Nigeria. The NICN (Civil Procedures) Rules 2017 provides that where a Claimant alleges workplace discrimination, such Claimant shall state the grounds of the alleged workplace discrimination including grounds of ancestry, religion, gender, marital status, family situation, etc. Employers are able to settle claims at any time before or after they are initiated until the final judgment of the court is delivered.

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

Where a claim of discrimination is successfully proven, the remedy available to employees in most cases is compensation for wrongful or unfair termination. The court may also award damages to the employee.

### **3.7 Do “atypical” workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?**

No, atypical Workers do not have any additional protection.

### **3.8 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?**

We do not have a specific or comprehensive law that regulates whistleblowing requirements. We do, however, have sector-specific

legislation on this issue. Under the Whistleblowing Guidelines for Pensions 2008 (the “Pencom Guidelines”) issued by the National Pension Commission (“Pencom” – the body responsible for the regulation of the pension industry in Nigeria), pension fund administrators and pension fund custodians are obliged to not victimise any employee that blows the whistle. If they do victimise the employee, the Pencom Guidelines would employ appropriate regulatory tools to offer redress to the affected employee. Some of the protections offered to employees under the Guidelines include prohibition from dismissal, suspension or termination of the employee’s appointment, or the demotion or redeployment of the whistleblower, without the prior consent of the Pencom. The employer is also prohibited from denying promotions, salary increases or training to such employees and must obtain the approval of the Pencom before implementing any adverse salary/incentive review that would impact the whistleblower.

In the banking sector, the Central bank of Nigeria’s Guidelines for Whistleblowing in banks and other financial institutions in Nigeria 2014 (the “CBN Guidelines”) offer protection to whistleblowers who disclose concerns, provided the disclosure is made (a) in the reasonable belief that it is intended to show malpractice or impropriety, and (b) to an appropriate person or authority. The CBN Guidelines requires the banks and other financial institutions (“OFIs”) to treat all whistleblowing disclosures in a confidential manner and to keep the whistleblower’s identity confidential. The banks and the OFIs are prohibited from subjecting a whistleblower to any detriment and if the employee suffers any detriment by reason of the disclosure, such employee shall be entitled to compensation and/or reinstatement. Where the employee is to be compensated, the employee’s entitlement shall be computed as if he/she had attained the maximum age of retirement or had completed the maximum period of service, in accordance with his/her conditions of service.

The Investment and Securities Act 2007 (the “ISA”) further provides that no employer shall subject an employee to any detriment by an act or any deliberate failure to act on the ground that the employee has made a disclosure in accordance with the provisions of the ISA.

## **4. Maternity and Family Leave Rights**

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

The Labour Act provides that a pregnant female Worker is entitled to six weeks of leave before the expected delivery date and another six weeks after the delivery. In relation to Non-Workers, employers tend to use the provisions of the Labour Act as a benchmark for determining an employee's maternity entitlement; however, the specific duration of the maternity leave is determined by the provisions of the Non-Worker's contract of employment.

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

The Labour Act provides that a female Worker who has been in employment for a period of six months or more immediately before the maternity leave shall be entitled to at least 50% of her salary during the duration of the maternity leave. There is no corresponding provision in relation to Non-Workers and the benefits accruing to a Non-Worker is subject to the provisions of her contract of employment.

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

The Labour Act provides that any employee nursing her child is to be permitted half an hour, twice a day, during working hours, to nurse her child.

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

The Labour Act does not make any provisions for paternity leave and any employee entitlement in this respect will be subject to the terms and conditions of such employee's contract of employment. The Federal Government of Nigeria recently approved a 14-day paternity leave for male employees in the federal civil service. Some state governments (Enugu and Lagos States), also offer paternity leave to male employees in the service of the state governments. The paternity leave in Enugu State is for three weeks, while that of Lagos State is for two weeks and only applies in respect of the first two children of such male employee.

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

No, there are no other parental leave rights that employers are required to observe.

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

The Labour Act does not contain any provisions to this effect and any employee entitlement in this respect will be subject to the terms and conditions of such employee's contract of employment.

## 5. Business Sales

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

Employees do not transfer automatically in the context of an asset sale, as the consent of each employee is required in order to transfer from one employer to another. Where the employee is a Worker, in addition to obtaining such Worker's consent, the contract pursuant to which the Worker is transferred to the new employer must be endorsed by an authorised labour officer. A labour officer is a public officer serving in the Ministry of Labour and Employment who is authorised by the Minister of Labour and Employment to act as an authorised labour officer, for the purposes of the Labour Act.

In relation to a share sale, other than the changes to the beneficial ownership of the shares of the employer, the employer remains the same. There is, therefore, no requirement to transfer the employees or to obtain their consent to the share acquisition.

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

In an asset sale, where the employment contracts are novated to the buyer, all the rights of the employees under the existing contracts of employment transfer to the buyer. The buyer may also elect to engage the services of the employees directly, in which case the contracts of employment between the seller and the employees are terminated, and the buyer, thereafter, enters into new contracts with the employees.

In the same manner as the novation of employment contracts, collective agreements may also be novated to the transferee entity on the same terms and conditions. Alternatively, the existing collective agreement may be terminated, and a new collective agreement negotiated with the new employer.

In a share sale, employees continue to be employed by the same employer and their rights under the terms and conditions of their employment contracts do not change. Collective bargaining agreements also continue to run in this circumstance as the identity of the employer does not change.

### **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?**

There is generally no statutory requirement for employers to mandatorily inform or consult employees or their representatives before making any

business decisions unless such consultation is specifically required by the terms of the employees' employment contracts. In practice, however, employers would usually notify employees of a proposed business transfer.

In the context of a share sale, as the employer of record does not change, there is no requirement to inform the employees of the share sale.

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

In responding to this question, it is important to distinguish between the use of the term "dismissal" and the term "termination of employment". Under Nigerian law, the term "dismissal" typically refers to the termination of a contract of employment due to the employee's misconduct, and this may be carried out summarily without notice and without payment *in lieu* of notice. Where the employer merely brings the employment relationship to an end, not owing to any fault of the employee, this is referred to as a "termination of employment". A termination must be carried out in accordance with the provisions of the employee's contract of employment and any applicable severance payments, and accrued benefits must be paid to the employee.

In the context of an asset sale, therefore, employees are unlikely to be dismissed but their contracts of employment may be terminated where the transferee entity chooses not to employ them or where the employees refuse to give their consent to the transfer of their employment contracts to the buyer. In this case, such employees will be entitled to receive any applicable severance payments in addition to the accrued but unpaid terminal benefits from the transferor entity.

In a share sale, the buyer (i.e., the new employer) may decide to terminate the employment of certain employees. This must be carried out in accordance with the terms of their respective employment contracts, and any applicable severance payments, contractual payments and terminal benefits must be paid to such employees.

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

Generally, an employer can only vary the terms and conditions of an employee's contract of employment with the consent of the affected employee.

In an asset sale, where the transfer of the employees is effected by means of a termination of the existing contract and the re-employment by the new employer, the new employer may propose changes to the terms of employment on which it engages the employees.



## 6. Termination of Employment

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

Yes, employees must be given notice of termination of their employment or salary *in lieu* of such notice.

In relation to Workers, the minimum notice periods to be given to the employees pursuant to section 11 of the Labour Act are:

- one day, if the length of service is up to three months;
- one week, if the length of service is up to two years;
- two weeks, if the length of service is up to five years; and
- one month, if the length of service is five years or more.

Parties, may, however, agree to longer notice periods in their contracts of employment. Sections 11 (6) and (9) of the Labour Act also permit either party to an employment contract, to terminate the contract by paying the other party's salary *in lieu* of notice.

With respect to Non-Workers, the applicable notice period is determined by the terms of their respective contracts of employment.

### 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?

The concept of “garden leave” is not recognised under the provisions of the Labour Act. An employer and an employee may, however, agree to such an arrangement under the terms of a contract of employment.

### 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?

Employees may challenge their dismissal by instituting an action at the NICN. An employee is treated as having been dismissed when his/her contract of employment is terminated for cause. Grounds that constitute cause for dismissal include criminal acts, gross misconduct, sexual harassment, etc.

Also, an employer who holds an oil mining lease, licence or permit (or an interest therein) issued under the Petroleum Act (now the Petroleum Industry Act 2021) or under regulations made pursuant to the Petroleum Act, and desires to terminate the employment of an employee, is required under the Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry 2019 (the Staff Release Guidelines) to obtain approval of the

Minister of Petroleum Resources (“the Minister”) through the erstwhile Department of Petroleum Resources (“DPR”, now the Nigerian Upstream Petroleum Regulatory Commission) for the release of any of such employee. The Staff Release Guidelines define “staff release” as the removal of a worker in a manner that permanently separates the said employee from the employer which includes dismissal, release on medical grounds, redundancy etc. The DPR will conduct an inquiry into the circumstances of the proposed staff release and make a decision on whether to convey the Minister’s approval or otherwise. The Staff Release Guidelines stipulate a penalty, not exceeding the sum of \$250,000 (two hundred and fifty thousand United States dollars) for failure to comply with the Staff Release Guidelines.

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

Yes, under section 54 (4) of the Labour Act, employers are prohibited from terminating the contract of any female Worker who is absent due to maternity leave, or who remains absent from her work for a longer period as a result of illness which arose out of her pregnancy or confinement and which renders her unfit for work.

#### **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?**

The general position is that Nigerian employers are entitled to terminate a contract of employment at any time and without stating the reason or cause for doing so, provided that the appropriate notice of termination is given to the employee or the employee is paid a salary *in lieu* of such notice. The NICN has, however, indicated that the best practice, in accordance with international standards, is that an employer must state the reason(s) for terminating an employee’s contract.

Where an employee is dismissed for reasons relating solely to the individual employee, the employee’s entitlement to compensation is subject to the provisions of his/her contract of employment. Typically, an employee is entitled to receive any accrued contractual payments such as accrued salaries until the effective termination date and such other payments that may be due to the employee, under the terms of his/her employment contract.

Where the termination is for business-related reasons, such termination may be treated as being a redundancy. The Labour Act defines the term “redundancy” as “an involuntary and permanent loss of employment

caused by an excess of manpower”. Typically, in the event of a redundancy, a Worker is entitled to the following payments at the termination of his/her employment:

- a. agreed redundancy or severance payment;
- b. salary *in lieu* of contractual notice (if the company elects not to give the contractual notice);
- c. accrued salary up until the effective termination date;
- d. monetary value of any accrued but unutilised annual leave entitlement as at the effective termination date;
- e. any accrued but unpaid incentives awards or bonuses (if applicable);
- f. any other payments due to any of the employees, under any of the company’s employment and operational policies such as redundancy or gratuity payments; and
- g. reimbursement of any out-of-pocket expense incurred by any employee in connection with the performance of his/her duties prior to the effective termination date.

There is no corresponding statutory obligation for Non-Workers in relation to the computation of redundancy payments, and whether they would be entitled to receive any redundancy payments, is subject to the terms of their respective contracts of employment. Non-Workers are, however, entitled to the payments listed in (b) to (g) above.

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

If the dismissal is not for cause, it would be termed a termination and an employer is required to comply with the terms of the contract including the notice requirements under the contract.

Where the dismissal is for cause such as for misconduct, then prior to dismissing the employee, the employer must have offered the employee an opportunity to defend himself/herself. If a disciplinary tribunal is constituted, the tribunal must be independent and impartial and must comply with the rules of natural justice and the principles of fair hearing. Where the allegations are of a criminal nature, the same burden of proof applies as in criminal cases (i.e., the allegation must be proved beyond a reasonable doubt).

For employers in the oil and gas sector, please refer to our response to question 6.3.

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

If an employer terminates an employee's contract of employment without following the procedure laid out in the contract, the employee could institute an action for wrongful termination. If the employee is successful, the NICN has been known to award significant damages to such an employee and in some cases has ordered the employer to reinstate the appointment of the affected employee.

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

Employers may settle claims before or after they are initiated but this must be done before the judgment of the court is entered in respect of the claim.

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

If the employees to be dismissed are Workers under the Labour Act, and the dismissals are not connected to the conduct of the employees, such dismissals would usually be regarded as a redundancy, and the employer must:

- a. inform the trade union or Workers' representative concerned of the reasons for and the extent of the anticipated dismissal;
- b. adopt the principle of "last in, first out", subject to a consideration of the factors of relative merit, skill, ability and reliability; and
- c. use its best endeavours to negotiate payments and entitlements.

There is no corresponding statutory requirement for Non-Workers.

For employers in the oil and gas sector, please refer to our response to question 6.3.

**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?**

In relation to Workers, if the employer does not comply with its statutory obligation, this could be a ground on which the Workers may challenge the validity of the mass dismissals. If the Workers institute an action, this will delay the disengagement process until the completion of the action. There is a likelihood that if the Workers are members of a trade union, the officials of the trade union will institute an action on behalf of the Workers.

With respect to Non-Workers, if any of the Non-Workers are members of a trade union, the officials of the trade union are likely to institute an action challenging the process.

## 7. Protecting Business Interests Following Termination

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

Under Nigerian law, restrictive covenants are *prima facie* unenforceable; however, the courts may enforce such covenants if they are reasonable with reference to the interest of the parties concerned and the general public, and if there is a proprietary interest that is sought to be protected. In deciding the question of reasonableness, the courts will take into account the nature of the business, trade or occupation, the area over which the restraint is to be imposed and the length of time for which it is to continue. Restraint of trade covenants of 12 months or less are usually enforceable in practice. We should, however, mention that Section 68(1)(e) of the Federal Competition and Consumer Protection Act, 2018 permits a covenant in restraint of trade of not more than two years.

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

Please see our response to question 7.1 above

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

Employees do not have to be provided with financial compensation in return for covenants. The employer may, however, agree to provide financial compensation in return for the employee's agreement to be bound by the covenants. Nigerian courts are also more likely to uphold the covenants against the employee if the employee receives compensation in exchange for his/her consent to be bound by the covenants.

### 7.4 How are restrictive covenants enforced?

A party that wishes to enforce the terms of a restrictive covenant would institute an action in court for this purpose.

## **8. Data Protection and Employee Privacy**

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### **8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?**

Section 37 of the Constitution guarantees and protects the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications. The provisions of this section are very wide, and employers are deemed to be caught by it and are, therefore, required to respect the employee's right to privacy. With respect to the transfer of employee data outside Nigeria, the Nigerian Data Protection Regulation 2019 (the "NDPR") prescribes minimum data protection standards for all organisations or persons that control, collect, store or process the personal data of Nigerian citizens. The NDPR provides that personal data cannot be transferred outside Nigeria except such transfer is carried out under the supervision of the Attorney General of the Federation ("AGF"). One of the exceptions to the requirement to obtain the AGF's consent for the transfer of personal data is where the data subject (in this case, the employee) consents to the transfer of his/her personal data after being notified that adequate provisions for the protection of the personal data exist in the country to which the data is sought to be transferred.

### **8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?**

Yes, an employee has a right to obtain copies of any personal information held by his/her employer.

### **8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?**

There are no prohibitions against pre-employment checks; however, an employer that intends to carry out such checks must ensure that it does not do so in a manner that breaches the employee's constitutional right to privacy. In practice, this requires an employer to obtain the consent of the prospective employee before carrying out such background checks.

The HIV and AIDS (Anti-Discrimination) Act 2014, however, prohibits employers from carrying out HIV and AIDS tests on employees or prospective employees without the prior consent of such persons.

### **8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?**

Employers may monitor work emails in order to ensure compliance with the policies of the workplace and any applicable laws and regulations. It is,

however, advisable that employees are expressly informed that the monitoring is taking place.

### **8.5 Can an employer control an employee's use of social media in or outside the workplace?**

An employer may prescribe rules around the use of social media in the workplace and may implement systems that prevent employees from accessing and/or using social media with the employer's resources while in the workplace.



## 9. Court Practice and Procedure

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

The NICN has exclusive original jurisdiction over employment-related complaints and cases. Appeals from decisions of the NICN go to the Court of Appeal and the decision of the Court of Appeal, on any appeal arising from any civil jurisdiction of the NICN, is final. Appeals from decisions of the NICN in respect of criminal cases can, however, be made to the apex court of Nigeria, the Supreme Court. The NICN is composed of a President and such number of judges of the NICN as may be prescribed by an Act of the National Assembly. For the purpose of exercising its jurisdiction, the NICN is duly constituted if it consists of a single Judge or no more than three Judges as the President of the NICN may direct.

### **9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?**

The NICN (Civil Procedure) Rules 2017 (the “Rules”) provides for the practice and procedure to be adopted at the proceedings before the NICN, which is in line with the common law adversarial judicial system that is practised in Nigeria.

Under the Rules, a Judge of the NICN may refer any matter instituted at the NICN to the Alternative Dispute Resolution Centre (the “Centre”) established within the NICN premises, for amicable settlement through conciliation or mediation. The Centre shall endeavour to conclude the mediation or conciliation process within 21 working days from the date the process commences, with the possibility of an extension of no more than 10 working days. Where parties are unable to settle their disputes through the mediation or conciliation process, the NICN would hear the matter in accordance with its Rules.

Parties to a matter before the NICN are required to pay the applicable filing fees as stated in the Rules when commencing or defending a matter at the NICN.

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

The NICN Rules seek to create a system for the speedy dispensation of justice and fast-tracking proceedings at the NICN. This notwithstanding, cases could typically be concluded between eight months and two years from the date on which the matter was filed at the NICN.

#### **9.4 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 the decision of the NICN. Prior to 2017, there was uncertainty on whether there was a general right of appeal against decisions of the NICN. The Nigerian Supreme Court, however, resolved this uncertainty on 30 June 2017 in the case of *Skye Bank Plc vs. Victor Anaemem Iwu*, where it held that parties could appeal any decision of the NICN to the Court of Appeal. An appeal could be concluded within two to four years from the date on which the appeal is lodged at the Court of Appeal, but it is not unusual for an appeal to the appellate court on any matter, including employment law-related matters, to take a longer period to be concluded.