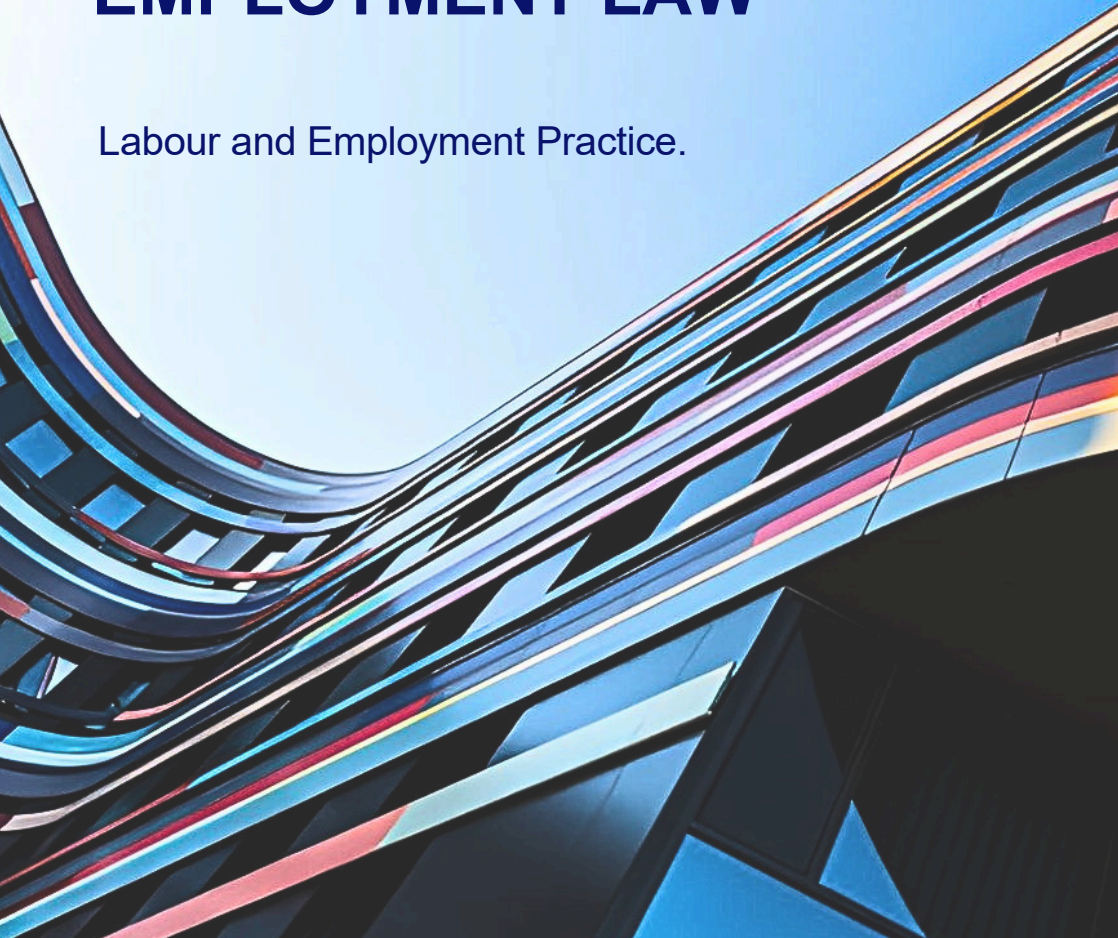


WHAT EVERY NIGERIAN EMPLOYERS & EMPLOYEES SHOULD KNOW ABOUT EMPLOYMENT LAW

Labour and Employment Practice.



On 1st May, Nigeria joined over 160 countries in celebrating International Workers' Day, a public holiday that offers not just celebration, but a time for reflection. It is also a reminder of how wide the gap is between Nigerian labour law as written and the realities in many Nigerian workplaces. – This gap is not merely academic, but has real commercial consequences. For businesses that are unaware they are being targeted for unfair dismissal claims, for employees whose rights are not known, and for employers who think a one-page offer letter is sufficient for an employment contract, this article examines both sides of the employment relationship, because Workers' Day is not about one without the other.

THE LEGAL FRAMEWORK: WHAT GOVERNS NIGERIAN EMPLOYMENT

The main legislation governing employment is the Labour Act (Cap L1), Laws of the Federation of Nigeria 2004 alongside the Employees Compensation Act, 2010, the Factories Act, LFN 2004, the 1999 Constitution (as amended) amongst others. The Act itself was passed in 1971 and has received little substantive reform since, thus, it does not adequately reflect the current realities of the modern Nigerian workplace

Other sources of employment law in Nigeria include the Trade Unions Act Chapter T8, LFN 2004 and the National Industrial Court Act 2006 which made the National Industrial Court of Nigeria (NICN) the employment disputes court of record.

In practice, however, the NICN sets the standard for how employer-employee disputes are settled in Nigeria and its judicial pronouncements in the last decade have moved decisively in the employees' favour.

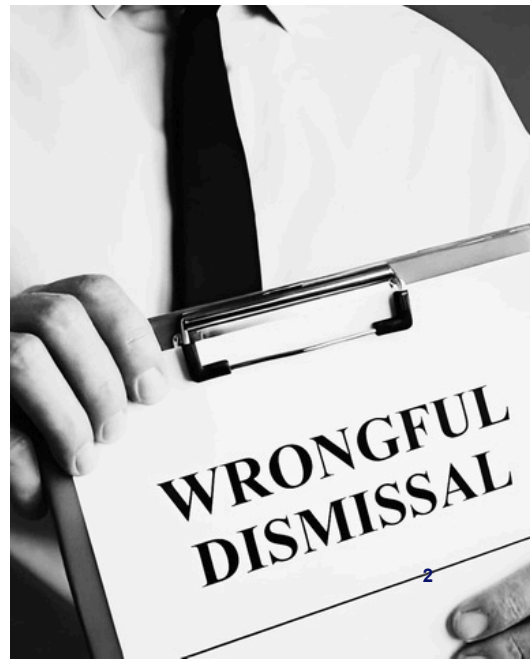
FIVE THINGS NIGERIAN EMPLOYERS SHOULD AUDIT TODAY

1. YOUR EMPLOYMENT CONTRACTS ARE NOT OPTIONAL

Section 7 of the Labour Act requires employers to give employees a written declaration of terms of employment within 3 weeks of engagement. Most Nigerian employers satisfy this obligation with offer letters confirming salary, job title and start date - and little else. This is legally inadequate. A legally compliant employment contract should include: probation terms

& conditions; grounds for termination & procedure; discipline and grievance procedures, confidentiality & intellectual property ownership; for senior staff, non-competition obligations (which must be drafted carefully to be enforceable under Nigerian law).

An unfinished contract does not protect the employer. This creates ambiguity which courts will resolve against the drafter - the employer.



2. WRONGFUL DISMISSAL

The NIC has in a plethora of decided cases held that a fair hearing is an implied term in every employment contract in Nigeria, whether or not the contract provides for it explicitly. A company that fires an employee for gross misconduct without first investigating and without giving the employee time to respond is placing the employer at great legal risk. This is true even where the contract provides for a "termination with cause" or a "termination on notice" provision. The NICN has in several decisions required employers to exercise procedural fairness even where the substantive right to terminate is not in dispute.

3. SALARY ARREARS, UNPAID LEAVE & UNREMITTED PENSION CONTRIBUTIONS REMAIN LIABILITIES

Employers are obligated under the Pension Reform Act 2014 to pay employer and employee pension contributions directly to a licenced Pension Fund Administrator no later than seven working days after employee salary payment. Non-compliance is punishable by up to 2% of the contribution outstanding per month - a liability which builds quietly and becomes apparent during due diligence.

Similarly, unearned annual leave accrued but not used and not paid out at the end of employment remains an employer debt. Some Nigerian companies bear this liability without tracking it. It should show on your HR register.

4. YOUR INDEPENDENT CONTRACTORS COULD BE EMPLOYEES

The Nigerian courts and the NIC use substance-over-form analysis to differentiate between genuine independent contractors and misclassified employees. The relevant factors include: how much control the worker has; if the worker works exclusively for the organisation; whether the organisation supplies the tools and equipment and the regularity and character of payment.

An organisation that engages fixed-hour, conducts internal performance reviews and unrelated "*consultancy agreements*" that do not reflect the actual working relationship is likely to be found to have created an employment relationship. Misclassification may result in liability for unpaid pension contributions, PAYE tax obligations and unfair dismissal claims.

5. LEGALLY BINDING STAFF HANDBOOK

The terms of employment are incorporated in a staff handbook issued to employees and acknowledged in the employment contract. Discipline provisions, grievance provisions and performance management provisions set out in the handbook but not followed by the employer may be grounds for wrongful dismissal. If your handbook was last updated before 2020, it probably needs a review.

NIGERIAN EMPLOYEES MUST KNOW FIVE THINGS!

A written statement of your terms is your right. Unless of course your employer has provided one, you might request one.

If you do not have a written contract, this does not mean you have given up your contractual rights. The NIC will take reasonable terms from the employment relationship.

Your dismissal is not automatic without cause and opportunity to respond. No contract expressly provides for the right to a fair hearing before dismissal. You may have a claim if you were fired without explanation or without being allowed a chance to respond to the allegation made against you.

It is your pension! Check your Retirement Savings Account balance (RSA) with your Pension Fund Administrator anytime.

Your employer is robbing contributions from your salary but is not remitting them - that is a criminal offence under the Pension Reform Act. A worker complaints channel exists through the National Pension Commission (PenCom).

For workers covered under the Labour Act, the statutory minimum wage is payable. This applies to employees within the scope of the Labour Act and was most recently reviewed in 2024. The rights and entitlements for senior employees and managers are governed by their contracts of employment and they can enforce the terms of their contracts in full.

The National Industrial Court of Nigeria is available. While a claimant may commence an action at the NICN without legal representation, engaging a lawyer significantly increases the chances of a successful outcome, particularly given the procedural and evidentiary requirements involved. The NICN exercises exclusive jurisdiction over both individual and collective employment disputes, and its decisions are binding.

A NOTE FOR BOTH PARTIES

This Workers' Day is an occasion to honour labour. In practical legal terms, it also serves as a prompt for the audit most Nigerian organisations never manage to get round to: review of employment contracts, confirmation of pension remitting organisations, review of staff handbook to ensure it reflects current practice and documentation of HR processes from hiring to exit.



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