

EMPLOYEE'S COMPENSATION ACT 2010: AN OVERVIEW

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Abstract

This paper examines the Employees Compensation Act 2010 with a view to ascertain the legal framework of employees' compensation in Nigeria and its contributions towards protection of workers in discharging their duties. The ECA is legislation enacted by the government so as to address issues relating to welfare and security of the workers. The ECA contributes in enhancing the development of workers, its application give birth to the operation of Nigerian Social Insurance Trust Fund (NSITF) for the purpose of enhancing the management and maintenance of worker's compensation fund. The paper observed that Employees' Compensation faces some difficulties in terms of accessing their claims from the Fund and which process is crucial to workers. The paper adopted a doctrinal research methodology approach wherein relevant data obtained were analyzed and the observations brought out. The findings of the paper are that the workers has not fully understood the purpose or benefit of the ECA and its objectives, and there is minimal compliance with the provisions of ECA from employers at all level, particularly on contribution to the fund. The paper then recommends that NSITF should ensure that all the stakeholders at Federal and State levels strictly comply with the provisions of ECA and contribute timely to Trust Fund Scheme. It further recommends that stakeholders should ensure routine training of employees and employers on the benefit of the new scheme so as to achieve maximum benefit of ECA.

Keywords

Employees' Compensation Scheme, Employer, Injury at Work, Labour Law, Work Men,

1. Introduction

The negligence of employer is what gives birth to the employer's breach of duty to take reasonable care for the safety of his employees that has been in difficulties.

The statutory invention aimed at reducing the harness suffered by employees, as the operation of common law rules did not prove that satisfactory.³

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³See the Employers' Liability Act 1880.

A workmen's compensation scheme was, therefore, devised not as a substitute for common law action but as an alternative system for compensating injury suffered at work.⁴ The fault principle which is crucial in a common law action, is absent in the scheme but the injured employee suffers a deliberate cut in the amount of compensation he may receive under the scheme in comparison with the damages he may be entitled to at common law for same injury.⁵

Lord James of Hereford explains the nature of workmen's compensation briefly as follows:⁶

The main object was to entitle a workman who sustained injury whilst engaged in certain⁷ employments to recover compensation from the employer, although he (the employer) was guilty of no fault. The intention was to make 'the businesses bear the burden of the accidents that arose in the course of employment, and relief from his liability is not found even if the injured workman be guilty of negligence.

This basic structure is retained in the Workmen's Compensation Act which has repealed and replaced the Act of 1941. The employer remains the insurer. The amount of compensation must be in accordance with its provisions.⁸ The basis for a claim has nothing to do with negligence or otherwise of the employer nor is the negligence of the employee himself or of a fellow employee a relevant consideration. As Lord Atkin said;⁹ 'Once you have found the work which he is seeking to do to be within his employment the question of negligence, great or small is irrelevant'.

Workers' compensation statutes are designed to ensure that employees who are injured or disabled on the job are not required to cover medical bills related to their on-the-job injury, and are provided with monetary awards to cover loss of wages directly related to the accident, as well as to compensate for permanent physical impairments. The intent of these statutes is to eliminate the need for litigation by having employees give up the potential for pain and suffering related awards in exchange for not being required to prove tort (legal fault) on the part of their employer. The aim is not to measure income actually received by workers, but the value which labour contributes to net output along

⁴ The first statute on workmen's compensation in Nigeria was enacted in 1941 based on the English Act of 1925. The first statute in England was enacted in 1897.

⁵ E.E. Uvieghara, *Labour Law in Nigeria*, (Malthouse press Ltd, First Published 2001), p 250.

⁶ Johnson v. Marshal Sons & Co Ltd (1906) AC 409, 412.

⁷ The Workmen's Compensation Act 1897 under which the case was decided applied only to workmen in certain employments.

⁸ Caxton Press (Nig) Ltd vs. Adeshina (1969) 1 NMLR 224.

⁹ Harris v. Associated Portland Cement Manufacturers Ltd (1939) AC 71, 76.

with other factors of production. The underlying idea is that the value of net output equals the factor incomes that it generates. For this reason, some types of remuneration received by employees are either included or excluded, because they are regarded as either related or unrelated to production or to the value of new output.

Over the years, many Nigerian workers have always been treated as slaves by some employers. Looking at the streets to listen to worker's tale of woes; your eyes would be bombarded with stories of work related injuries and various inhuman treatments by employers-most especially those foreign employers. Sometimes even the local employers at home treat their employees in an inhuman manner. ¹⁰

At the industrial area; to visit construction sites or pick any of our weekend newspapers you will surely learn more about the employers we are talking about, areas like Lagos, Kano, Kaduna etc.

There is no way one would write about employee's compensation in Nigeria without making reference to bad practices of some employers, or classes of employers- most especially those factories owned by foreigners¹¹.

It is against this background that this paper examines the ECA 2010 with a view to ascertains the legal framework of employees' compensation in Nigeria and its contributions towards protection of workers in discharging their duties. However, it is not within the scope of this paper to discuss other legislations designed to promote the health, safety, welfare and security of workers like Factories Act¹², Pension Reform Act 2004 and Minerals Oil Safety Regulation of 1997.

2. Methodology

The paper adopts doctrinal methodology approach, as it relies on primary and secondary sources of data. The primary sources include legislations on the subject area both local and international and the secondary sources are the relevant literature consulted on the area. The analysis in this paper is descriptive in nature.

3. Scope of Workers' Compensation

Workers compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory

¹⁰ MegaInsights, 'Employee's Compensation Act 2010: Know Your Rights', available at MegaInsights <http://megainsights.com/employees-compensation-act-2010-know-your-rights>. Accessed on 14/4/2014.

¹¹ Ibid.

¹² Cap 126 Laws of the Federation of Nigeria (LFN) 1990.

relinquishment of the employee's right to sue his or her employer for the tort of negligence.¹³

Workers compensation is not compulsory in Nigeria but it's surely of great benefits to those who have it. Generally, workers' compensation insurance is purchased through independent insurance companies, but recent development made the Federal Government of Nigeria, in its bid to improve the welfare of Nigerian employees enacted the ECA, which changed the status of workers compensation.¹⁴

Workers Compensation is a social insurance system falling under stated regulations that gives partial wage replacement for temporary or permanent loss of earnings for job-related injuries and illnesses. It started in the 1800's in Germany and spread throughout the United States in the 1930's and 1940's. Workers' compensation provides workers with the knowledge that job related injuries are taken care of without the need to sue their employers.¹⁵

In line with The Workmen's Compensation Decree of 1987, all businesses must provide Workers' Compensation coverage for the benefit of their employees who may be injured or incapacitated while on the job. This is a requirement of the law in Nigeria. This requirement is said to satisfy by purchasing Workers' Compensation insurance, which is available from private insurance companies that are licensed by the National Insurance Commission (NAICOM). This law applies compensation to four types of mishap viz: Permanent partial incapacity, Permanent total incapacity, Temporary incapacity, Fatal accidents, where death results.¹⁶

The pricing for workers' compensation is based on rates per 100 of payroll and depend on the job classification an employee is included within. Throughout the years different premium modification factors have been devised to help offset the cost for an employer depending on the specific employer's loss history, premium size and type of work.¹⁷

Workers compensation's sole purpose is to cover the medical expenses accumulated by the injury, as well as financial support for the employee while recovering. As an incentive to encourage businesses to accept full responsibility for the premium costs of workers compensation, the workers gave up the right to sue the employer for damages resulting from a job related injury. Many seem to think workers compensation should be treated as

¹³ Worker's Compensation', Wikipedia, available at en.wikipedia.org/wiki/Workers'-Compensation – Accessed on 14/4/2014.

¹⁴ 'The Brief', Updated may 22 2013 @10:01 in Workmanship Insurance. Available at <http://www.insured.ng/articles/the-brief> -Accessed on 14/4/2014.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

an employee benefit. However rather than a benefit, workers compensation is a legally mandated right of the worker. As a mandated right, all medical bills and loss wages relating to an on-the-job injury are covered by the workers compensation coverage¹⁸

4. Employee's Compensation Act 2010

The President of the Federal Republic of Nigeria signed the Employee's Compensation Bill into law in 2010. The ECA 2010, which repeals the Workmen's Compensation Act (WCA) of 2004 and it is designed to provide an open and fair system of guaranteed and adequate compensation for employees or their dependents in the event of death, injury, disease or disability arising out of or in the course of employment. The ECA is also intended to provide safer working conditions for employees by ensuring that all relevant stakeholders contribute towards the prevention of workplace disabilities and other occupational hazards.¹⁹

ECA applies to all employees in both public and private sectors in Nigeria, which is an effort to bring Nigerian Labour law consistent and in conformity with International Best Governance Practices and relevant International Labour Organizations (ILO)²⁰.

5. Significance of the ECA

ECA is significant in several aspects, but broadly it does two significant things. First, it abolishes the Workmen's Compensation Act, 2004 and second; it established a new Compensation Scheme for injuries sustained at work or to and from work.

The NSITF is a trust fund set up to manage the funds of the worker's and to address all issues relating to worker's insecurity, safety and anxiety.²¹

That the primary objective of the Scheme is the protection of citizens against problems associated with descriptions and changes in their income situation which could expose them to poverty, suffering and indignity.²²

¹⁸ Ibid.

¹⁹ KPMG, 'Newsletter on Employee's Compensation Act, 2011'. (2011), available at www.resourcedat.com.ng/wp-content/uploads/2011/08/Newsletter-on-Employee-Compensation-Act-2011.pdf.> Accessed on 14/4/2014.

²⁰ O.L. Ifedayo, 'The Employee Compensation Act, 2010' (2012) <http://greymile.wordpress.com/2012/03/22/> Accessed on 14/4/2014.

²¹ A press statement issued by the Acting Managing Director of the Fund, Alhaji Umar Munir Abubakar in Lagos to the Press. Reported by Victor Ahiuma-Young, title 'Employee Compensation Act designed to address insecurity', Vanguard Newspaper, April 29, 2011, at <http://www.vanguardngr.com/2011/04/employee-compensation-act-designed-to-address-insecurity/> Accessed on 14/4/2014.

²² Ibid.

6. Analysis on Some of the Sections of the ECA

Section 1²³ provides that the objectives of the Act are to:-

- (a) Provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment;
- (b) Provide rehabilitation to employees with work-related disabilities as provided in this Act;
- (c) Establish and maintain a solvent compensation fund managed in the interest of employees and employers;
- (d) Provide for fair and adequate assessments for employers;
- (e) Provide an appeal procedure that is simple, fair and accessible, with minimal delays; and
- (f) Combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.

Section 2,²⁴ this section discusses the scope and application of the Act:

- (1) Subject to the provisions of sections 3 and 70 of this Act, this Act shall apply to all employers and employees in the public and private sectors in the Federal Republic of Nigeria.
- (2) The Nigeria Social Insurance Trust Fund Management Board (in this Act referred to as "the Board") shall have power to implement this Act and the Fund established under section 56 of this Act.

In analyzing the scope of the ECA, it is important to states that it saddles the Board with the responsibility of coordinating and implementing its provisions, managing the Fund and compensating the employees (or their dependents) out of the Fund, in the event of any injury, disability or death. The Fund is to be finance with a take-off grant from the Federal Government and through mandatory contribution by employers, gifts and grants from national and international organizations and proceeds derived from investment by the Board.²⁵

²³ Employees Compensation Act 2010, Act No 13, An Act to Repeal the Workmen's Compensation Act cap W6. LFN, 2004.

²⁴ Ibid.

²⁵ *KPMG* (n17).

Section 3 ²⁶ discussed exemptions of members, Where it provides Without prejudice to the generality of the provisions of section 2 of this Act, this Act shall not apply to any member of the armed forces of the Federal Republic of Nigeria other than a person employed in a civilian capacity.

Section 4 ²⁷ discusses Employee's Notification of Injury and the sub-section:

- 1) In every case of an injury or disabling occupational disease to an employee in a workplace within the scope of this Act, the employee, or in case of death the dependant, shall within 14 days of the occurrence or receipt of the information of the occurrence, inform the employer by giving information of the disease or injury to a manager, supervisor, first-aid attendant, agent in charge of the work where the injury occurred or other appropriate representative of the employer, and the information shall include-...

Section 5 ²⁸ discuss Employer's obligation to report death, injury or disease of an employee and further provides in

- (1) Subject to sub-section (6) of this section, employer shall report to the Board and the nearest office of the National Council for Occupational Safety and Health in the State within 7 days of its occurrence every injury to an employee that is or is claimed to be one arising out of and in the course of employment.
- (2) Subject to sub-section (6) of this section, an employer shall report to the Board, within 7 days of receiving information under section 4 of this Act, every disabling occupational disease or claim for or allegation of an occupational disease.

Section 6 ²⁹ it discuss the Application for compensation and provides in

- (1) An application for compensation shall be made on the form prescribed by the Board and shall be signed by the employee or the deceased employee's dependant.
- (2) Unless an application is filed or a determination is made within one year after the date of death, injury or disability arising from an occupational accident or disease, no compensation shall be payable, except as otherwise provided in sub-section (3) of this section.

²⁶ ECA (n21).

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

- (3) If the Board is satisfied that there existed special circumstances which precluded the filing of an application within one year after the date of the occurrence, the Board may pay the compensation provided by this Act if the application is filed within 3 years after that date.

Section 7³⁰ discuss the compensation for injury and provides in

- 1) Any employee, whether or not in a workplace, who suffer any disabling injury arising out of or in the course of employment shall be entitled to payment of compensation in accordance with Part IV of this Act.

Compensation is payable only in respect of personal injury. Compensation is not payable in respect of damage or loss of property. However, personal injury is not limited to wounds, cuts or bruises which are visible to the eye but includes any other trauma such as nervous shock which produces a psychological injury³¹

Section 8³² also discuss compensation for mental stress and in

- 1) Subject to sub-section (2) of this section, an employee shall be entitled to compensation for mental stress not resulting from an injury for which the employee is otherwise entitled to compensation, only if the mental stress is...

Section 9³³ discusses compensation for occupational diseases and in sub-section

(1) Where-

- (a) an employee suffers from an occupational disease and is disabled from earning full remuneration at the workplace ;
- (b) the death of an employee is caused by an occupational disease ;
- (c) the disease is shown to be due to the nature of any employment in which the employee was employed, whether under one or more employments ; or
- (d) an employee suffers from any occupational disease listed in the First Schedule to this Act, compensation and health care benefits shall be payable under this Act.

Section 10³⁴ discusses compensation for hearing impairment and further provides that sub-section:

³⁰ Ibid.

³¹ Yates v. south Kirkby, etc. collieries, Ltd (1910) 2 KB 538.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

- 1) Where an employee suffers from hearing impairment of non traumatic origin, but arising out of or in the course of employment under this Act, the employee shall be entitled to compensation under this Act.

Section 11³⁵ provides that:

Where the injury to an employee occurs while the employee is working outside the normal workplace which would otherwise entitle the employee to compensation under this Act if the injury occurred in the workplace, compensation shall be paid to the employee under this Act if...

Also there is established the Employee's Compensation Fund (in this Act referred as 'the Fund') into which shall be credited all moneys, funds or contributions by employers for adequate compensation to employees or their dependents for any death, injury, disability or disease arising out of or in the course of employment.³⁶

An independent Investment Committee ('the Investment Committee') will act in an advisory capacity to the Board.³⁷

8. Employees' Compensation Fund

Every employer is required to keep complete and accurate particulars of its payroll. The employer is required, within the first two years of commencement of the ECA³⁸ to make a minimum monthly contribution of 1.0 percent (1%) of its total monthly payroll into the Fund.

However, the Board may, by regulations, determine the actual contribution or rate of contribution to be made by each employer, which will vary based on the categorization of the risk factors of the particular class or sub-class of industry to which the employer belongs.³⁹

The ECA⁴⁰ also provides that the Board shall assess employers, in the first instance, based upon estimates of their payroll for the year or as determined by the Board. The payment of the said assessment shall be due on 1st January in the year for which it relates.⁴¹ The Board may also approve payment of the contribution in installments.

³⁵ Ibid.

³⁶ Section 56 (1) ECA (n23).

³⁷ Section 62 (1) Ibid.

³⁸ Section 33 (1) Ibid.

³⁹ KPMG, (n17).

⁴⁰ Section 35 (2) ECA (n23).

⁴¹ Section 35 (1) *ibid.*

Where an employer is not assessed by the Board, the employer shall be liable for the amount for which it should have been assessed, or as much as the Board considers reasonable, and payment of that amount may be enforced as if the employer had been assessed for that amount. The payments made by each employer are to be credited to each employer's "Experience Account" (EA), maintained by the Board.

The EA will indicate the assessments levied on the employer and the cost of all claims chargeable in respect of the employer. An employee is not permitted to agree with his employer to waive or forgo any benefit or right to compensation to which he or his dependants is, or are or may become entitled to, under the ECA. Any agreement in respect of such waiver shall be void and unenforceable.⁴²

9. Challenges of Implementation of the ECA

The implementation of the ECA is not without its own challenges. Currently, the effective implementation of the scheme is being threatened by the refusal of some state governments and private sector employers to comply with the ECA. As of 2012, only 804 private sector employers have registered with the NSITF, one year after the take-off of the scheme. Of greater concern is the fact that large number that registered with the scheme is not complying fully with the provisions of the ECA. Also some state governments are yet to key into the scheme.⁴³

Further investigation revealed that over 60 per cent of employers in the construction and manufacturing sector, where the highest level of workplace accidents occur, are not complying with the ECA in terms of remitting their contributions to the fund. Rather, employers are limiting the definition of "total payroll" to the basic salary, housing allowance and transport allowance, and have also set certain conditions which the NSITF must meet for them to key into the scheme.

One of the greatest challenges is getting employers to key into the scheme. The NSITF director, who spoke at enlightenment forum on employees' compensation in Lagos, said 804 employers registered with the fund as at June ending, 2012, when the scheme has a year old, but noted that not all of them are complying fully with the provisions of the ECA. This, he said, has been a major challenge for the fund. He revealed that all categories of employers in the public and private sectors have been formally notified of

⁴² *KPMG*, (n17).

⁴³ 'Employees Compensation Scheme under Threat' (2012) Thisday Live Articles, 8 Aug, at <http://www.thisdaylive.com/articles/employees-compensation-scheme-under-threat>. Accessed on 14/4/2014.

the take-off of the Employees' Compensation Scheme (ECS) with effect from July 1, 2011.⁴⁴

He further acknowledged that some employers had been remitting their contributions to the fund and appealed to those who are yet to register and remit their contributions to do so for effective management of the scheme. He explained that though emphasis is still on voluntary compliance with the ECA by employers, however, reminded those defaulting in the payment of their contributions of the legal implications of their action.⁴⁵ He further stressed that NSITF had received request from employers calling for a review of the rate of contribution but was swift to add that no action can be taken until after June 2013, two years into the implementation of the scheme as provided in the ECA⁴⁶

He pointed that 11 banks have been appointed as contribution banks, from which an employer can make a choice. He listed the banks to include Skye Bank Plc, FCMB Plc, Zenith Bank, GT Bank and UBA. Others include Fidelity Bank Plc, Unity Bank Plc, First Bank Plc, Diamond Bank Plc, Enterprise Bank and Union Bank Plc. He reiterated that the management of NSITF was doing everything possible to ensure that the administrative cost of managing the scheme does not exceed ILO's benchmark for the Social Insurance Scheme.⁴⁷

And he finally noted that incomplete documentation by those applying for claims has been another challenge for the NSITF. He observed that the claims applications received were not fully completed by the beneficiaries before submission.⁴⁸

9. Findings

Flowing from the above, The findings of the paper reveals that there exist an ECA which is an important legal framework established for the purpose of covering employees in all work places where in cases of accidents or injury, an employee can prove that he or she sustained the injury whether in the work place or at home or probably on the way to work, the employee is covered by the scheme. It suffices to say that the scheme covers employees while working or even on leave. The findings of the paper

⁴⁴ Speech by NSITF Executive Director (Administration), Mr. Ibrahim Wakawa- (n19).

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

indicates that the ECA is a first-hand creation of law so as to cover the workers social security and paper further reveals that NSITF, a government agency is saddled with the management of the Trust Fund and that the Trust Fund Scheme is not fully implemented in some level of social security system. In the circumstance, it requires a lot more to push for the effective implementation of scheme throughout the federation. Further, the paper finds that the procedure for processing the Trust Fund is lengthy, as the period within which to process the claim award is wide and the procedure for the payment of compensation fund seems to be not consistent.

9. Conclusion

The Workers compensation laws protect and are designed to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. The ECA provides benefit for dependents of those workers who are injured or killed because of work related accidents or illness. It also protects employers and fellow workers by limiting the amount an injured employee can recover from employer and by eliminating the liability of co-workers in most employment. For instance, ECA covered both employees at the federal and State levels.

From experience, placing additional funds in the hands of a government agency is the last thing that employers (and, indeed, employees) would want to do. Given the situation of the Country, with the way government agencies work in Nigeria, delays can be anticipated during the process of recovery of claims. This is, therefore, not good news for employees and their dependants.

It is therefore recommended that NSITF being the custodian of the fund should ensure that adequate awareness is put in place for the employers and employees to be fully aware on the provisions of ECA and what benefit await them. The Trust Fund has to be practical, with strict penalties or sanctions in cases of failure by an employer to contribute to the scheme.

Reference

1. Employers' Liability Act 1880.
2. Employees Compensation Act, No 13 2010.
3. Workmen's Compensation Act cap W6 Laws of Federation of Nigeria, 2004.
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