The New Employees' Compensation Act

The Federal Government of Nigeria, in its bid to improve the welfare of Nigerian employees recently enacted the Employees' Compensation Act 2010 ('ECA' or 'the Act') which introduces a new social security scheme for workers in the country. The Act makes provisions for compensation to employees and their dependants for any death, injury, disease, or disability arising out of or in the course of employment and other related matters and repeals the Workmen's Compensation Act Cap W6 LFN 2004.

The objective of the Act is to, amongst others, make comprehensive provisions for compensation to employees who suffer from occupational diseases or sustain injuries arising from accidents that occur at the workplace or in the course of employment. It is intended to bring the system of compensation for employees in line with global best practices and trends. The welfare of employees is of paramount consideration under the Act.

A notable feature of the ECA is that it is applicable to employers and employees in both the public and private sectors of the economy. Even self-employed persons may eventually be covered. However, members of the Armed forces, except those employed in a civilian capacity are excluded from the scheme.

The Act establishes a contributory compensation fund referred to as the Employee's Compensation Fund ('the Fund') managed in the interest of both employers and employees. The Fund is managed by the Nigeria Social Insurance Trust Fund Management Board ('the Board') established under the Nigeria Social Insurance Trust Fund Act No. 73 of 1993. Contributions to the Fund derives from various sources including— a take-off grant by the federal government, compulsory contributions, fees and charges assessed to employers, gifts or other grants from local or international organizations, and also earnings from profitable investments of the surplus fund by the Board.

It is compulsory for every employer to contribute to the Fund on a yearly basis. Within the first 2 years of the commencement of the Act, the rate of contribution by the employer will be calculated at an amount representing 1% of the total monthly payroll. In line with this, employers are required to submit to the Board, at the close of each year, accurate statement of the total earnings of all the employees. It is expected that the Board will use this 2-year window to determine the different classes and sub-classes of industries for the purposes of determining the appropriate assessment rate of each employer.

Assessments by the Board is based on report submitted by employers containing estimates of all earnings paid to employees for both the preceding and current year, including a statement of the nature of work activities and any additional information as the Board may require.

It must be noted that the employer of an independent contractor shall be liable jointly with the independent contractor for any assessment relating to that work and the Board may in its discretion collect the contribution from either of them, or pro-rate the same between the parties. This, in our view, is intended to protect all categories of workers including casual workers engaged in special projects. For instance where a Company engages the services of a contractor for the execution of a special project which may in turn require the contractor to engage 'casual employees' who are not on the regular pay-roll of either the Company or contractor, the Board, in relation to that project, may at its discretion assess either the Company or contractor whether jointly or individually for the contribution payable to the Fund for the benefit of employees engaged under that project. In the same vein, where any work is performed under a sub-contract, the principal, the contractor and the subcontractor may be liable jointly for any assessment relating to that work and the Board may collect the assessment from any of them or pro-rate the same among the parties.

It is not clear at this time how the Board intends to avoid double assessment in the case of regular employees involved in special project who would otherwise be covered under the annual contribution of their respective employer.

Employees are prohibited from contributing to the Fund as the Act imposes sanctions against employers who attempt to deduct assessments that are payable to the Fund from the remuneration of an employee. Another important feature of the ECA is that the benefit or right of employees or dependants to compensation under the Act cannot be waived by any agreement made between the employer and employee. In fact, agreements that are made with the aim to waive the employee's right to compensation are rendered void and unenforceable under the Act. Moreover, the Board has power to impose a penalty of 10% on unpaid assessments.

For the purpose of the Act "employer" includes any individual, body corporate, Federal, State or Local Government or any of the government agencies that has entered into a contract of employment to employ any other person as an employee or apprentice. The definition of "employee" is also all encompassing as the Act includes arrangements on temporary, part-time, apprenticeship or casual basis including a domestic servant who is not a member of the family within the definition.

The current employee compensation scheme now recognizes new categories of work place injuries such as mental stress resulting from exceptional circumstances in the course of employment. In addition the scheme provides rehabilitation for injured employees.

The scheme will have the effect of easing the burden on employers who will not be required to contribute further to the welfare of an injured employee in the event of any accident or injury, no matter the amount of liability involved. As a general rule, an employee or his dependant is entitled to apply to the Board for compensation within 1 year after the date of the death, injury or disease or disability arising from an occupational accident or disease. Where special circumstances exist, an application for compensation may be made within 3 years of the occurrence of the accident or injury for which a claim is being made. Payments of compensation under the Act do not affect the employee's retirement benefit payable under the Pension Reform Act 2004.

It is a very crucial point to note that for any claim for compensation to be sustained by the employee, the claim must be for injury 'arising out of or in the course of employment'. Even though there is no judicial pronouncement specifically relating to the Act, previous judicial decisions have attempted to define the phrase. The courts have stated that the "course of the servant's employment can be extended to acts which are outside the employee's working hours and outside the employer's premises, provided the acts are done for the purpose of the employer's business." This definition is consistent with the definition provided in the Act.

The Act also provides that an employee will be entitled to payment of compensation with respect to any accident sustained on the way between the place of work and— employee's principal or secondary place of residence; the place where the employee usually takes meals; the place where he usually receives remuneration, provided that the employer has a prior notification of such place.

Employers are obliged to report the death of an employee arising out of and in the course of employment to the Board and its local representative. The National Council of Occupational Safety and Health in the State where the accident or disease occurred must also be given notice that a claim for compensation has been made to the Board prior to the settlement of such claim by the Board.

It must be observed that the workmen's compensation insurance portfolio is now optional for employers who are willing to provide additional cover for their employees.

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