

Legal Alert – March 2012 – Industrial Training Fund (Amendment) Act, 2011

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Introduction

The Industrial Training Fund Act, 2004 has been amended by the Industrial Training Fund (Amendment) Act, 2011.

The Industrial Training Fund is established to utilise contributions to the Fund to “promote and encourage the acquisition of skills in industry and commerce with a view to generating a pool of indigenously trained manpower sufficient to meet the needs of the private and public sectors of the economy.”

The Industrial Training Fund is also established to utilise the contributions to the Fund to provide training for skills in management, technical and entrepreneurial development in the public and private sectors of the Nigerian economy.

The Industrial Training Fund (“ITF”) is further established to set training standards in all sectors of the Nigerian economy and to evaluate and certify vocational skills acquired by apprentices, craftsmen and technicians in collaboration with other relevant organisations.

Obligatory Contributions

Every employer with five or more employees or with an annual turnover of ~~N~~50 Million and above, is obligated by Section 6 of the Industrial Training Fund (Amendment) Act

2011 to contribute one per cent (1%) of its total annual payroll to the Industrial Training Fund as the employer's contribution to the training of employees in Nigeria.

The mandatory one per cent (1%) ITF contribution must be made not later than the 1st Day of April of the following year.

Employees, Expatriates, FTZ, etc

Employees are defined by this law to include Nigerians and non-Nigerian nationals employed by a Nigerian company, whether on part-time or on full-time basis or as temporary employees or consultants.

Suppliers, Contractors and Consultants bidding or soliciting for government contracts or businesses are obligated to make the ITF one per cent (1%) total annual payroll contributions to ITF.

Companies requiring expatriate quota positions or utilising customs services including companies located in the free trade zone (FTZ) are also required to comply with the provisions of this law.

Refund of Contributions

The Industrial Training Fund Governing Council ("the ITF Council") may make a refund of up to fifty per cent (50%) of the employer's contribution to the IT Fund if the ITF Council is satisfied that the training programmes of the employer are in accordance with the ITF reimbursement schemes.

ITF is however required to notify the Federal Board of Inland Revenue Service of any refunds made in pursuance of the provisions of this law as contributions

and refunds will ultimately affect the tax obligations of the employer concerned.

Duty to Train and Penalty for Breach

The Industrial Training Fund Act (as amended) requires all employers to pay their annual training contributions, which is one percent of their annual payroll, with the objective of ensuring that at all times, employers provide adequate training to their indigenous employees which training will improve on the employee's skills and capacity.

Evidence of the mandatory training of employees must be communicated to the ITF Council before any application for refunds can be entertained by ITF.

The penalty for not making the ITF training contributions and actually training the employees is a fine of ₦500,000 for a first breach, and ₦1,000,000 for each subsequent breach.

The liability ascribed to the Chief Executive Officer, the Company Secretary and other principal officers of a company where such a company breaches the above provisions is a fine of ₦500,000 or two years imprisonment for a first breach; and two years imprisonment without the option of paying a fine for each subsequent breach.

A further penalty for the non-payment of the one per cent (1%) annual payroll training contribution to ITF is the additional fine of five per cent (5%) per annum of the amount or ITF contributions unremitted to ITF, added to each month or each year's unremitted one per cent of employees' total payroll, as the case may be. The Director General of the ITF is however authorised to waive this

interest penalty if he or she thinks it is in the public interest to do so.

Recovery of Contributions

Contributions to the Industrial Training Fund, with any under-payment discovered, and their monetary penalties accruing are recoverable by civil action within a time-frame of six years from the date when the contribution became due.

Other Offences under ITF Act

Any employer who fails, neglects or refuses to furnish the required employees' ITF returns is liable to have charged against it a best of judgment assessment that is appropriate for the employer to pay to the Fund.

Also, any person who knowingly or recklessly furnished any information or returns which is false, or who wilfully makes a false entry regarding contributions to the Fund shall be guilty of an offence which on conviction for a corporate body carries a fine of ₦500,000 for a first offence, and ₦1,000,000 for each subsequent offence.

The penalty for any principal officer of any company that commits any of the above mentioned offences is a fine of ₦50,000 or two years imprisonment for a first offence, and three years imprisonment without the option of a fine for each subsequent offence.

Conclusion

The impact of the Industrial Training Fund in the past three decades of its existence remains to be felt in both the private and the public sectors of the Nigerian

economy. This is particularly highlighted by the deterioration in the educational standards in Nigeria.

Organised private sector will do well to promote and institutionalise the objectives of the industrial training fund as this will make Nigerian products and brands to be more competitive in the regional and international markets.

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