Legal Alert – March 2011 – Employee's Compensation Act

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Legal News

The Nigerian Upper House of Parliament, the Senate, has passed the "long overdue" Money Laundering (Prohibition) Bill. This Bill seeks to repeal the 2004 Money Laundering Act, which is reported not to be compliant with the recommendation of the Financial Action Task Force ("FATF"). According to reports, this Bill, when signed into law, will avail the financial regulators with more comprehensive statutory provisions prohibiting Terrorism Financing among other money laundering prohibited activities.

This legislation also seeks to increase the penalties for offenders of the provisions of this law to a maximum jail term of ten (10) years when compared to three (3) years in the 2004 Money Laundering Law. The new Money Laundering (Prohibition) Law will also expand the scope of the supervisory role of the various regulatory authorities like the Central Bank of Nigeria, the National Drug Law Enforcement Agency, etc in the area of money laundering prohibition in Nigeria.

Introduction - The Employee's Compensation Act

Various provisions of Nigerian legislations on employment or labour matters have always allowed the employers to wield enormous powers and discretion to the disadvantage of the employees. This legal position has currently not really changed.

The old Workmen Compensation Act was enacted to make provisions for the payment of compensation to employees for injuries suffered in the course of their employment. However, the compensatory provisions of this Act were mostly insufficient and inequitable when a workman gets injured in the course of his or her employment. The insurance provisions of this Act were also held more in disobedience than in compliance due to very weak enforcement machinery in Nigeria.

To address the flaws in the Workmen Compensation Act, the Employee's Compensation Act, 2010 was signed into law in late 2010. The Employee's Compensation Act, 2010 repealed the Workmen Compensation Act and made comprehensive provisions for the compensation that will accrue to an employee or the employee's estate in the event of death, injury, illness or any disability arising out of or in the course of the employee's contract or employment.

This legal Alert is our contribution to the discuss of this law and how it affects the Nigerian employees, employers and the economy.

Employee's Compensation Act

According to the Nigerian Federal Government, when announcing the signing into Law of the Employee's Compensation Act, the latter law is to "provide a more open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability of any kind arising out of or from the course of employment". The Employee's Compensation Act also seeks to provide a "solvent compensation fund which will be managed in the interest of the employees and their employers. This Act further makes provisions for the rehabilitation of employees affected by work related disabilities including mental illnesses.

The Employee's Compensation Fund is required to provide for a fair and adequate assessment system from which an appeal, whose procedure is simple, fair and accessible with minimal delays, is available to both the employers and the employees.

Like the Workmen Compensation Act, which was repealed by the Employee's Compensation Act, the provisions of the Employee's Compensation Act applies to all employers and employees in the public and private sectors of the Nigerian economy with the exemption of members of the Armed Forces who are not employed in a civilian capacity, and who not statutorily covered under the provisions of this law.

Regulator of the Employee's Compensation Fund

The Nigeria Social Insurance Trust Fund Management Board ("NSTF") is statutorily empowered to implement the provisions of the Employee's Compensation Act, and to manage the solvent compensation fund created thereof.

Statutory procedures for reporting and making claims resulting from workplace injury or disabling occupational disease or death can be found in Part 11 of this law. A failure by an Employer to make a report as statutorily required constitutes an offence unless the Employer is exempted in writing from making such a report by the NSITF Board.

The statutory procedures for paying compensation to employees for any disabling injury, death or disease, whether or not such disabling injury, occupational disease or death occurred in a workplace but arose in the course of the employee's employment must be in accordance with part iv of this law.

A waiver to receive compensation, or for an Employer to make the mandatory contributions to the Fund, is prohibited and such infringement attracts criminal conviction(s) and fine(s).

Compensation payments are required to be made on a monthly basis but without prejudice to the pension contributions of the Employee which pension contributions shall continue to be deducted in accordance with the provisions of the Pension Reform Act as will Pension benefits or entitlements not be prejudiced or stopped by the provisions of the Employee's Compensation Act.

The Functions of the NSITF Board

The key function of the Nigeria Social Insurance Trust Fund Management Board ("the NSITF Board") is the charge of the overall formulation of policies for the effective administration of the Employee's Compensation Fund ("the Compensation Fund")

A further function of the NSITF Board is the formulation of policies and strategies for the assessment of compensation, rehabilitation and welfare of employees who sustain injuries or contact occupational diseases at the workforce or in the course of their employment.

Employers Contributions to the Fund

Section 33 of the Employee's Compensation Act provides that "every employer shall within the first two years of the commencement of this Act, make a minimum monthly contribution of 1% of the total monthly payroll into the Fund." After the first two years, the NSITF Board is authorised to "… assess employers for such sums in such manner, form and procedure as the Board may, from time to time, determine for the due administration of this Act."

The NSITF Board is further authorised by Section 33(2) of this Act to from time to time, make regulations prescribing the categorisation of risk factors of each class or sub class of industry and the amount of contribution to be made and for different assessment rates applicable to each class or sun-class of industry, sector or work place.

The provisions of this Act also apply to independent contractors and subcontractors as their principals are required to withhold from the remuneration payable under such contract or sub-contract any amount that the principal is otherwise liable to remit under the provisions of the Employee's Compensation Act, and ensure the remittance of such amount to the Board,.

The penalty for non-payment of the assessment is an amount equal to 10% of the unpaid assessment or the value of the security required. It is an offence where an employer defaults in providing the security required or defaults in making the payment of any amount due to the Fund or contravenes the decisions of the Board.

Any person aggrieved with a decision of the Board is entitled to appeal against such a decision within 180 days from the date the decision was pronounced and the Board must determine such a decision within 180 days following the filing of the appeal. A further right of appeal, against the appellate decision of the Board, must be made to the National Industrial Court.

Employee's Compensation Fund

All contributions under this law with the take–off grant from the Federal Government of Nigeria, fees and assessments charged or made pursuant to this Law with the proceeds from the investments of the Fund, gifts and grants, etc, are required to be deposited in the statutorily created Employee's Compensation Fund.

All Income of the Fund shall be used to pay adequate compensation to employees or their dependents for any injury, disease or disability arising out of or in the course of the employee's employment. The fund is also required to make provisions for employees with work related disabilities.

Also established under this law is the Independent Investment Committee with the mandate to advise the Board on the investment of any income standing to the credit of the Fund.

Miscellaneous Provisions

In the event of an employer becoming insolvent, the Employer's contributions to the Fund shall constitute a lien in favour of the NSITF Fund for a period of five years from the end of the calendar year from when the assessment was levied, over and above all other liens, charges or mortgages of every other security or charge, wherever or however created, on the employer's property. Section 70(3) of the Law requires that where the employer is a body corporate and the body corporate becomes insolvent, the property of the body corporate shall include the property of any director, manager, secretary or other officer of the body corporate used in connection with the business of the body corporate.

Every offence that is committed under this Law by a body corporate shall be deemed to have also being committed by every Director, Manager, Secretary or other officer or officers of the body Corporate, or where a firm, by a partner or other officer of such a firm save where such a person is able to establish that the act or omission constituting the offence took place without his or her knowledge, consent, connivance or neglect and or that he or she took reasonable steps to prevent the commission of the offence.

Conclusion

As commendable as this legislation may be, the appointment of NSITF as the Regulator of the Employee's Compensation Fund gives cause for much concern in the light of the historical inability of NSITF to manage its statutory functions before the enactment of the Pension Reform Act. Under the new pension regime, there is no evidence that NSITF has practically improved on the discharge of the functions assigned to NSITF under the Pension Reform Act. To assign further statutory responsibilities and resources on NSITF places the Nigerian employee at further statutory and implementation risks and disadvantage.

The Employee's Compensation Act also grants to the NSITF Board over-bearing unfettered discretionary powers to assess employers more than the statutorily provided one per cent (1%) of total monthly payroll after the initial two years of the commencement of the Employee's Compensation Act. Of equal concern is the provision that an employer will be liable to make its contributions to the Fund even where the NSITF Board does not carry out its statutory duty of raising the assessment in the first place.

The addition of a one per cent payroll charge or tax, which percentage is expected to increase after the initial two years of the commencement of the Employee's Compensation Act, is a further tax burden on employers of labour who are presently unable to profitably overcome the problems of multiple taxation and poor infrastructural facilities in Nigeria. The latter will ultimately increase the cost of doing business in Nigeria, discourage direct foreign investments and continue to escalate and exacerbate unemployment in Nigeria.

Provisions in this statute that make the employers liable for outside work related injuries is open to future disputes on its interpretation and application to the disadvantage of the weak employee.

In spite of the flaws with this law, Employers will be better served by ensuring compliance while looking forward to the implementation of the law drawing up enough resistance to warrant some amendments.