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## Managing Employment Issues and Employment Contracts amidst COVID-19 Pandemic in Nigeria: Measures for the Future

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**Abstract:** *The coronavirus disease (Covid-19) is a highly contagious disease recording worrying levels of morality. In Nigeria, government response aimed at curtailing the spread of the disease has led to the significant restrictions in the movement of persons and goods all over the country. The impact of the lockdown on many businesses has been near catastrophic resulting in employers in large and small organizations being faced with a dreadful problem of whether to let their staff go, cut their hours of work, device other means of work, or declare them redundant. This paper using secondary data, looked at the impact of the pandemic on employment and employment contract and measures that can be put in place to address such employment issues. The findings of this study revealed that employers and employees had to deal with this unprecedented situation by addressing issues of contracts of employment in Nigeria and adopting new ways of meeting their obligations under their contract of employment. The paper offered several measures that can be put in place to avert such pandemic in the future.*

**Keywords:** Covid-19 pandemic, Employment, Employment Contract.

### 1.0 Introduction

According to the World Health Organization (WHO) the Covid-19 Pandemic is the first known to emerge as the result of a novel coronavirus, identified as SARS- COV-2, which causes the disease Covid-19. This respiratory disease is easily transferable mainly from person to person, in droplet form when an infected individual coughs or sneezes. It can also spread through contact with contaminated objects or surfaces. The symptoms associated with covid-19 have ranged from very mild to severe or fatal. As a result, the Federal Government of Nigeria enforced a lockdown to limit its spread which has created several significant issues that are of grave concern to employers of labour in Nigeria and beyond.

The impact of the lockdown on employment in Nigeria has been devastating. Employers in large and small businesses are faced with problems ranging from loss of profit in their organizations to how to deal with their employees. The crisis has already transformed into an economic and labour market shock, movement restrictions together with lockdown measures decreased trade (import, export and inter-state trade) and caused business closures, leading to unemployment, loss of income to both employers and employees and higher prices of goods and services (ACAPS, 2020). Though the formal sector is affected the informal sector which accounts for 80% of employment in Nigeria were particularly vulnerable to the negative economic effects of movement restrictions and social distancing measures (CECD, 2011). This is because there is no record of informal workers, hence they are less protected by labour laws or included in social protection programmes.

Considering government directions in dealing with the Covid-19 pandemic, this paper looked at the labour relations implication. In Nigeria, employment relationships, especially in the formal sector are governed by the Contract of Employment, Labour Act, Laws of the Federation of Nigeria (LFN) 2004, CAP L1 and other legislations. These laws spell out the terms which have been agreed by both employer and employee to govern their relations during the term of employment. A pandemic of this type is unprecedented and is not unlikely that most employers in drawing up employment contracts would not have contemplated circumstances which would bring about this level of interruption and disruption of work as we now have with the Covid-19. Organizations now must deal with issues of non-performance of obligations in employment contracts and situations, which employment contracts, organizational policies cannot deal with sufficiently. This paper gave some guidance on some common employment and labour related issues that have been thrown up by this pandemic and provided some measures for instigating the effects severe effects on employment.

In 2017, (Pre Covid-19), the National Bureau of Statistics (NBS) reported that Nigeria's unemployment rate rose to 23.1% and under employment rate rose to 16.6% with currently 20 million Nigerians currently unemployed. This figure is likely to increase significantly with the impending job losses as a result of the pandemic. Also, the legal issues which are triggered by the Pandemic will be analyzed in terms of options available to employers for addressing their employment issues under the existing legal formwork of Nigeria.

These legal issues come in form of questions in the mind of both the employers and employee. These include issues like whether an employer can suspend the payment of employee salaries or reduce salaries as a result of inability to generate income due to the outbreak of the pandemic; whether an employer can terminate an employment contract as a result of the impracticability of the employee to do work and earn a salary, amongst other issues. On the way forward the paper among other measures averred that, e- business models among others should be implemented.

### **1.1 Objective of the Study**

This study aims to find out the impact of the Covid-19 Pandemic on Employment, and Employment contracts and seek measures that can be put in place to address any employment challenges that arises.

## **2 Conceptual Review**

### **COVID-19**

Covid-19 is caused by a new strain of corona- virus. The disease known as 2019 novel corona virus or '2019- n cox' is a member of viruses – Severe Accute Respiratory Syndrome (SARS) and some types of common cold, Abulude et al (2020). The signs are fever influenza or the common cold, cough and shortness of breath in severe cases. It may cause Pneumonia or difficulty in breathing. For somebody to be pronounced a Covid-19 patient, a test is needed. Individuals are infected by direct contact with respiratory droplets of an infected person who coughs and sneezes, touching surfaces contaminated by the virus and touching their face (WHO, 2020). To prevent the spread, preventative actions include staying at home, covering mouth and nose with mask when coughing or sneezing and dispose of used mask immediately, hand washing with soap and water, use of hand sanitizer, cleaning frequently touched surfaces and objects, and social distancing (IASC, 2020).

The pandemic was first identified in Wuhan, China, in December 2019 (Hung et al, 2020). The first official case of Covid-19 in Nigeria was pronounced on February 27<sup>th</sup>, 2020. This was traced to an Italian who came into Nigeria and a Nigerian from Ogun state who contacted the virus from the Italian (Abulude, et al). The

declaration of this index case spurred the Nigerian Government, with the support of relevant health agencies to embark on measures targeted at curtailing the spread of the diseases. Amazingly, despite all preventive and control efforts of the Nigerian government following the outbreak, the disease as at 30<sup>th</sup> April, 2020 had spread to 36 states with 1932 confirmed cases, 319 discharged and 58 deaths. (Nigeria Centre for Disease Control (NCDC), 2020).

Due to the adverse implications of the disease on people's health, the need therefore arose for a total eradication of the virus and ensure preventive effort to eradicate it.

### **Employment and Employment Contract**

Employment is analysed in terms of its indicators as guided by International Labour Organization (ILO). The ILO defines employment from a people centred perspective (i.e whether an individual is employed, underemployed or unemployed), rather than focusing on a job as a unit of analysis. The 'employed' comprise all persons who work for pay, profit or family gain for at least one hour in the reference week plus the number of persons who are temporarily absent from their jobs. (ILO, 2013). Three different employment status are captured by the technology: "for pay" captures any person who performed some work for wages or salary; in cash or kind (wage and salaries workers). "For profit" aims to include workers who are self- employed; and "for family gain" allows for the inclusion of contributing family workers who worked in a family establishment or landholding (ILO, 2013).

Persons that are considered as not employed are either classified as being "unemployed" or outside of the labour force". To be classified as unemployed, a person must be both (i) carrying out activities to seek employment (during a specified recent period, for example last week) and (ii) currently available to take up employment giving a job opportunity (ILO, 2009).

The unemployed are also seen as members of the economically active population who are without work but available for and seeking work, including people who have lost their jobs due to some reasons like intervening circumstances beyond their control (e.g, Covid-19 Pandemic) and those who voluntarily left work (World Bank, 1999).

Underemployment on the other hand is a condition that exists when there are people who are able to work, wishing to work, failed to obtain suitable employment, but instead they are just employed to keep the body and soul together (Okun, 1995). In another word, underemployment results, when labour is not utilized for a maximum time or to full advantage (Amaechi, 2000).

Whether a person is employed underemployed every employment has its status. Employed persons are classified according to the following categories:

- (a) Employees: All those workers who hold "paid employment jobs" who have an explicit (written or oral) or implicit contract of employment with an employer.
- (b) Self-employed: All those who are working on their own account where the remuneration is directly dependent upon the profits derived from the goods or services produced.
- (bi) Self-employed (employers): those who on a continuous basis, have engaged one or more persons to work for them in their business as 'employee (s)'.

(bii) Self-employed (own-account): those self-employed workers who have not engaged on a continuous basis any “employees “ to work for them during the reference period (ILO, 1993). These can also be referred as informal workers.

A declaration by the World Health Organization (WHO) on 11<sup>th</sup> March, 2020 that the novel corona virus was a global pandemic left a lot of employed, underemployed and unemployed “stuck” at home due to the resultant lockdown by the WHO. This temporary order of restriction/ suspension official order generally means that relevant employees are temporarily unable to work, which does not affect the employee’s claim to remuneration, though it depends on the terms of the contract of employment.

### **Contract of Employment**

A contract of employment is an agreement or contract between employer and employee in which the terms and conditions of the employment of the employee are provided (Blacks Law Dictionary 6th ed). An employee is employed in the service of an employer to perform specific task in consideration of wages or salary and under a contract of hire, express or implied, oral or written (Union Bank of Nigeria v. Edet). The employer has power or right to contract and direct the employee in the material details of how work is performed (Apena v. National Union of Printing & Paper Products).

On the other hand, an employer is one who employs the services of others; one for whose workers work for and who pays their wages or salaries (Riverbend Country Club v. Patterson Gv. App.) According to the employee’s Compensation Act (2012), an employer includes any individual, body corporate, or Federal, State or Local Government agency, that enters a contract of employment to employ another as an employee or apprentice (Employee Compensation Act, 2010). Another definition of employer is one who enters into a contract of employment to employ any other person as a worker, either for himself, or for the service of any other person, and includes the agent, manager or factor of that first mentioned person, and the personal representative of the deceased employer (Nigerian Labour Act).

The primary legislations on labour and employment matters in Nigeria is the Labour Act (2004). The other relevant legislations are the Trade Union Act (2004), the Trade Disputes Act (2004), The National Industrial Court Act (2004) and the National Industrial Court Rules (2007). (Oguntuga et al, 2020). Though employers and employees are free to negotiate and agree on the terms of employment, these terms must be in agreement with the existing employment regulations in Nigeria. In other words, employers and employees are free to negotiate and agree on the terms and conditions of employment provided that they do not violate the provisions of the Employment ordinance Okoye (2014). Hence any term of an employment contract which purports to extinguish or reduce any rights, benefit or protection conferred upon the employee by thus ordinance, shall be void.

### **Impact of Covid-19 on Employment**

The effect of the Covid-19 pandemic in Nigeria includes job losses, a sharp drop in the income of the informal workers. According Adesoji (2020), Nigerians are losing their jobs as both individuals, firms face undaunted challenges due to the snowballing effect of the Covid-19 pandemic currently ravaging the economy.

Survey monitoring reports released by the National Bureau of Statistics (NBS) on the impact of Covid-19 Pandemic on employment and income of Nigerians have been widespread. Out of the household or informal sector surveyed on a nationally representative sample, 90% of the respondents who were working before the

outbreak were no longer working for reasons related to Covid-19. Also, a high rate of the informal sector reported income loss since mid- March 2020, as 79% of them reported that their total income decreased. Basically, while income from all sources were affected, the rate was highest for income from non- farm family business (85%) compared to household farming, livestock or fishing (73%) and wage employment (58%) (NBS,2020).

Farayibi et al (2020), averred that the level of unemployed increased in Nigeria as a result of the Covid-19 and is projected to be about 33.5% due to the pandemic. To him this is possible because it caused shocks to labour demand and labour supply. According to him, the ministry of labour and productivity put the total number of job losses to be about 39.5 million. This is because the employment sector is dominated by informality hence the livelihood of those involved in the informal sector of the economy was seriously affected during the lockdown. The education sector was mostly affected in relation to unemployment too since it consists of both private and public stakeholders. Since schools were not opened, most private institutions stopped paying their staff thus throwing them into the job market again (Farayebi et al, 2020).

Sectors identified as also most impacted by the Covid-19 pandemic include tourism, leisure, aviation, manufacturing, construction, and real estate. This is because the current restrictions hampered the ability of these businesses to function and generate revenue. For example, Airlines remained grounded and made zero revenue for months and continued to incur maintenance costs. According to Arik Airline's CEO, the airline suffered a sharp decline of over 98% in revenue since the pandemic, (Shittu, 2020). As a result, Arik ordered a 90% of its staff to proceed on leave without pay until further notice, and implemented an 80% salary cut for April, Shittu (supra).

As a result, hiring activities and other expansion plans were halted due to the economic strain and a looming recession.

### **Contract of Employment and Legal Issues during the Covid-19**

The outbreak of the novel coronavirus disease- (Covid-19)-has brought about a global economic downturn and negative impact on global commercial activities with economies at the brink of a recession. Generally, labour relations are governed by labour legislations and more specifically by contracts of employment, which spell out terms which have been agreed to by both employer and employee to govern their relations during the term of the employment. It is however unlikely that most employers, in drafting the contracts of employment would have contemplated the current circumstances; particularly the level of interruption and disruption of work as we know it, which has been occasioned by the government 's response to the Covid-19 pandemic.

As a result, several legal issues or questions that have been thrown up by the pandemic and needs to be discussed. Questions like:

- (1) Can an Employer terminate an Employment contract as a result of the impracticability of the Employee to do work and earn a salary?

Employment contracts may be susceptible to termination by frustration due to those occurrences beyond the control of the parties which can be illness, imprisonment, an outbreak of war, disease (in this case pandemic), change in law or regulations and death of either party (Madike-Ugha, 2019). While any of these occurrences may be termed a frustrating event capable of discharging the parties from their contractual obligations, employers must be careful not to be too quick to terminate employments on the incidence of such frustrating

events. What is crucial is that both employment and employee must be seen to make reasonable adjustments to ensure there is a continued exercise of rights and fulfilment of obligations as permitted in the circumstance, (Ellan, 2020).

Instead of termination, the employer consider issues like adjustments in expenditure to retain liquidity and working capital, the nature of the job and whether the employee has developed translatable skill that can be useful to the organization during a recession, the nature, length and effect of the event, whether in the circumstance a reasonable employer could have been expected to wait any longer before terminating the employment Ellan (supra).

(2) Can an Employer suspend the payment of salaries or reduce salaries as a result of its inability to generate income due to outbreak of the pandemic

The principles of the law of contract binds the employer and employee to its terms and can only vary the terms by the consent of both parties except a specific labour legislation provides for derogation from the general principles. The National Industrial Court of Nigeria (NICN) in determining controversies relating to the forfeiture of employment an employment benefit following a variation of the terms of a contract will usually find in favour of the employee, *Ajah v. Fidelity Bank*, 2017. Variation and material changes to an employment contract must be communicated to the employees well in advance of when the same would be made/implemented and this is to promote industrial harmony. Every Employer should engage its employees before making such changes as salary suspension or reduction, (Ellan).

(3) Can an organization defer Promotions and Bonuses in view of the effect of Covid-19 on income Generation?

Promotions are not employment rights, but conditional entitlements of employee and an organization is at liberty to create the parameters for assessing performance and consequently promoting deserving individuals in each circumstance. On the other hand, bonuses can be a part of contractual terms (where it is inserted in the employment contract or in policies which form part of the employment contract) and such terms can be binding on the employer, (Ellan, 2020).

According to Ellan, a deferment of such bonuses by the employer without consulting with the employee may amount to a unilateral variation of the employment contract for which the employer may be liable for breach. They aver that a deferment of the promotion on the other hand will have to be considered on a case-by-case basis. Also, where an employee has become entitled to a promotion upon an assessment of his performance, the employer should have a consultative dialogue with such employee so as to give the basis for possible deferments of the promotion.

(4) Can there be disciplinary proceedings against an employee for misconduct during the shutdown?

The right of an employer to discipline an earning employee in the interest of the organization or institution is guaranteed. It is well within an employer's right to carry out disciplinary proceedings against an earning employee, during the shutdown; this can be done online by email exchanges, teleconferencing online meetings, etc, (Templars, 2020).

(5) If after the lockdown is lifted, an employee becomes infected with Covid-19 in the course of work, what is the employer's obligation in relation to wages and salaries?

Under the Labour Act, a worker is entitled to wages up to 12 working days in any one calendar year during absence from work caused by temporary illness certified by a registered medical practitioner. For employees that are governed strictly by contract, the terms of employment establish the amount payable. Benefits may be increased at the discretion on the employer, (Oyewole et al, 2020).

(6) Can employers insist that employees undertake medical tests before resuming work?

As a precautionary measures and if allowed by the authorities, employers could request or insist that workers or employees undergo medical examinations before resuming work, provided it complies with contractual terms, Human Resource Policies, etc, (Oyewole, Supra).

(7) Can an Employer insist that its employees obtain vaccine whenever they become available?

For an employer to insist that employees obtain vaccines, it must be supported by legislation, a directive by an authorized agency or the terms of employment. Employers should review their contracts of employment and or Human Resource Polices to require employed comply with such instructions, (Oyewole).

Employer should continue to evaluate the impact of Covid-19 on their businesses, take lawful measures necessary to protect their business and employees and seek advice where in doubt. The above notes are for general information only and does not constitute advice.

#### **Protect workers in the Workplace**

- ❖ Encourage appropriate flexible working arrangements, such as teleworking.
- ❖ Enhance universal access to collectively-financed health services for all, including uninsured workers and their families;
- ❖ Expand access to collectively financed paid sick leave, sickness benefits and parents/ care leave to ensure income security for the sick.
- ❖ Improve occupational safety and Health (OSH) measures, including social distancing, provisions of protective equipment (especially for health and allied workers, volunteers and other in permanent contact with people), hygiene procedures and forms of work organization.

#### **Stimulate the economy and Labour demand through economic and employment policies to stabilize economic activities through:**

- ❖ Active fiscal policies particularly social protection measures, including targeted transfers and automatic stabilizers such as unemployment benefits,, along with public investment and tax relief for low income earners and Micro, Small and Medium Enterprises (MSMES)  
Accommodative Monetary Policy (Interest reductions, reserve rate relaxation, targeted liquidity provisions)
- ❖ Targeted lending and financial support for workers in specific sectors to protect enterprises, especially MSMES. Investing in health systems is crucial in building resilience against Covid-19 but also offers an opportunity to create decent jobs.

#### **Protect employment and incomes for enterprises and workers negatively impacted by the indirect effects (factory closures, disruption to supply claims, travel bans, cancellation of public events) etc.**

- ❖ Social protection through existing schemes and or ad-hoc payments for workers, including informal, casual, seasonal and migrant workers, and the self- employed (eg through access to unemployment benefits, social assistance and public employment programmes).

### **Adoption of E- Business Model**

With the lesson learnt from the Covid-19 pandemic, business organizations need to come to terms with the new order of doing business, which is e-business. Business Organizations must go on-line if they must remain in business and be competitive.

Moreover, we are living in a digital world, thus business organizations must digitalize their operations. They must adopt emerging automation technology such as Robots and artificial intelligence in the performance of their activities.

Additional, business organizations must make sure that their employees are equipped and trained with relevant ICT digital skills to enable them adjust to the new order of doing business.

### **Adoption of E-Learning**

The outbreak of the Covid-19 pandemic has made virtual classrooms or online education system (ie e-learning) indispensable. Online education system enables students to learn from home. With the lockdown policy and other containment measures enforced during the pandemic, many educational institutions have adopted online education system so that academic activities will not be disrupted. The need now arises for workers to be trained in ICT skills.

### **3 Methodology**

This paper relied extensively on secondary data. Data was drawn from well researched journals, government documents, social science papers, Textbooks, Newspapers, etc.

### **4. Findings and Discussion**

The (Covid-19) coronavirus disease has globally affected the economy of nations, had a negative impact on commercial activities, especially issues of labour relations. Labour relations are generally governed by contracts of employment which govern the employment relationship. With the current disruption of work because of the Covid-19 pandemic, the following legal issues were found:

1. Employment contracts are susceptible to termination by intervening circumstances like war, illnesses, diseases, etc. Employers having such in contemplation should not be quick to terminate employments but can make reasonable adjustments to ensure continued exercise of rights and fulfilment of contractual terms. These can come in form of adjustment in expenditure to retain liquidity and working capital, applying any skill the employee has and use it during the recession, consider the length and effect of the events and not be quick to terminate the contract.
2. Changes in salary can be made considering the recession in the form of salary reduction but the employee should be adequately engaged before it is done.
3. Entitlements like promotion, bonuses which are conditional entitlements of the employee can be deferred after a consultative dialogue with the employees.
4. Earning Employees can be disciplined during the shutdown.
5. In relation to employees who become infected by Covid-19 pandemic in the course of work, the terms of employment in relation to such will be considered and benefits may be increased at the employer's discretion.



6. As a precautionary measure, on resumption of work employers reserve the right to insist on medical tests before resumption.
7. An employer can insist on employees obtaining vaccines, but only if such insistence is supported by legislation or directives from constituted authority or agency.

## 5. Conclusion

The paper examined the management of employment and employment contract during the Covid-19 pandemic. It went on to reveal some challenges encountered by Nigerian workers there on and proffered some measures for the future. Among the measures are the adoption of E-Learning and E-business model in organizations for a better future; etc. It encouraged the protection of workers and their incomes for a better post Covid-19 era.

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