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**REDUNDANCY PROCEDURE UNDER
NIGERIAN LABOUR LAW**

JUNE 2023

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There appears to be a recent wave of retrenchment in the global employment market (especially for technology companies like Google, Meta and Microsoft). The Covid-19 pandemic had a significant impact on the global economy and many businesses have been forced to cut costs to survive, in addition to the pandemic, artificial intelligence has replaced jobs that are repetitive, and rule based[1] The Nigerian employment market has experienced a similar surge in the retrenchment of employees based on declining revenues, political instability, security concerns and operational requirements. This article seeks to highlight the legal process/requirement for redundancy in Nigeria.

REDUNDANCY UNDER THE NIGERIAN LABOUR ACT

The Nigerian Labour Act (the “Act”) is the principal legislation on labour and employment in Nigeria. However, most of the provisions of the Act are only applicable to workers – who are defined as “*any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour*”. This definition however excludes persons exercising administrative, executive, technical or professional functions[2].

Consequently, the terms of employment and other labor issues relating to professional and skilled workers are largely governed by the contract of employment between the employer and the employee, the terms of any collective agreement between the employer and relevant trade unions and other employment documents agreed upon during the course of the employment.

Notwithstanding that the provisions of the Act are primarily applicable to Workers, most employers use the provisions of the Act as a minimum guide or standard in establishing the terms of the employment relationship between the company and all its employees, including managing redundancy process.

DEFINITION AND SCOPE OF REDUNDANCY

Redundancy is defined under section 20(3) of the Act to mean the ‘...involuntary and permanent loss of employment caused by excess manpower’. The Act contains no reference as to the events that could lead to excess of manpower, however, factors such as the acquisition of a company, restructuring, cessation of business operations or operational requirements could be considered as valid grounds for declaring redundancy. In *Alexander O. Ejah & Ors v Niger Mills Co. Ltd*[3],

[1] According to the International Labour Organisation (ILO), the number of unemployed people worldwide is projected to increase by almost 3 million to 208 million in 2023, indicating a 5.8% global unemployment rate.

[2] Section 91 of the Labour Act

[3] NICN/CA/97/2013, 27-2-2015

the National Industrial Court (“NIC”) reasoned that from the evidence which showed that the mass termination of employment of the Defendant’s employees arose from a change from a manual to an automated process requiring fewer staff, the disengagement was necessitated by economic and technological reasons, and being justified, was thus within the contemplation of the Act as a ground for redundancy.

Also, the Court had the opportunity to explain the nature of redundancy in *Peugeot Automobile Nigeria Ltd v Oje*[4] where it described redundancy: *“as a mode of removing of an employee from service when his post is declared ‘redundant’ by his employer. It is not a voluntary or forced retirement. It is not a dismissal from service. It is not a voluntary or forced resignation. It is not a termination of appointment as is known in public service. It is a form unique only to its procedure where an employee is quietly and lawfully relieved of his post. Benefits payable in a redundancy situation are governed by the employment contract”*.

PROCEDURE TO BE FOLLOWED IN CARRYING OUT A REDUNDANCY IN NIGERIA.

The major issue to note in a redundancy scenario is that reliance on the Act will only cater for employees who fall within the statutory definition of workers as defined in the Labour Act.

[4] (1997) 11 NWLR (Pt. 530) 625

[5] Please note that there are currently no regulations, and the Act does not provide a compensation guide.

Barring any collective agreement between the affected employees and the employer which streamlines a procedure for seeking compensation for such disengagement, workers who are administrative staff, management staff and skilled workers may not be protected in such instances.

For Workers, the Act expects the employer to be open and transparent about the redundancy process and that such employees be informed of the intention of the employer to declare a redundancy as well as negotiate a disengagement package.

On the procedure, the Act in section 20 (1) (a) – (c) provides that in the event of a redundancy:

1. The workers to be affected are to be informed through their representative or union of the reasons for and extent of the proposed redundancy exercise (this will only seem to apply if they have a union).
2. The employer must adopt the principle of ‘last in, first out’ in discharging the categories of workers, subject to such factors as relative merit, skill, reliability and ability.
3. The employer is expected to use its best endeavours to negotiate redundancy payments with any discharged worker who is not covered by any regulation made by the Minister of labour for compulsory payment of redundancy allowance[5].

It is worthy to note that the court has observed that when an employer relies on redundancy to disengage the services of an employee, the burden is on the employer to satisfy the court on the reason and furnish facts or law in support of his action[6]. Besides the duties imposed by section 20 (1) of the Act, where there is no collective agreement reached between any employees' union and the employer, the courts will often resort to the common law principles with respect to fairness and reasonableness in relation to redundancy. In *Mr. J. M. J. Asinobi & Ors v Nigerian Breweries Plc*[7], the NIC reasoned that apart from what a collective agreement provided regarding compensation for affected employees in the event of a redundancy or additional ex gratia payments flowing from a redundancy policy, the redundant employees could not claim any other benefits or allowances under the defendant company's personnel policy and handbook

However, if there exists a collective agreement, or the company's redundancy policy is engrafted in the employees' individual contracts, there would be contractual expectations and the employer will be duty bound to meet those expectations. In *SPDCN v. Nwaka*[8], following a re-organization of staff and roles within Shell Nigerian, Mr. Nwaka challenged his replacement by an expatriate which rendered him redundant. The Court noted that judges were not empowered to interfere in the affairs of a company beyond the jurisdiction to give effect to the parties' contractual obligations.

INTERNATIONAL BEST PRACTICE

In recent times and in line with section 12 of the 1999 Constitution, the NIC has adopted and pronounced on provisions of the International Labour Organization Conventions even though such convention may not have been ratified and domesticated. The adoption of these international conventions flows from the provision of section 254C(f) and (h) of the third alteration to the 1999 Constitution and section 7(6) of the National Industrial Court Act. Section 7(6) of the National Industrial Court Act provides that “...*the Court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act, have due regard to good or international best practice in labour or industrial relations*”

In the case of *Bello Ibrahim v Ecobank Plc*[9], the Court employed the Termination of Employment Convention 1982 (“Convention No. 158”) as a basis to determine what amounts to “international best practice” for dismissal under Nigerian employment and labour law.

[6] National Electricity Power Authority v. Friday Edokpayi Eboigbe (2008) LPELR-8576,
[7] NIC/EN/05/2009, 18-10-2010
[8] (2003) 6 (NWLR) Part 815, pg 184
[9] Suit No. NICN/ABJ/144/2018

There are some salient provisions of the ILO Convention No. 158 as they relate to redundancy. The procedure for redundancy is provided for in Articles 13 and 14 of the Convention No 158. Article 13 of Convention No 158 provides that; when the employer contemplates terminations for reasons of an economic, technological, structural, or similar nature, the employer shall:

1. Provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
2. Give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

Article 14 of Convention No 158 provides that; "When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations,

the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out."

From the foregoing, the obligation of an employer under the convention includes information, consultation, and notification. An important improvement on the position under the Act is the requirement for the employer proposing redundancy to enter consultations as to efforts to mitigate the job losses.

In conclusion, the lack of regulation on the issues revolving around compensation for redundancy by the Minister of Labour means that the National Industrial Court will be called upon to determine the protection in terms of rights and privileges accorded to workers under a redundancy procedure. It is our recommendation that the Minister of Labour take steps to provide regulation to properly define redundancy disengagements and the scope of calculating compensation. We also propose an amendment to the Act to embrace all categories of workers in Nigeria.



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