

A Review of the Employees Compensation Act 2011



Introduction

In the workplace today, it is not uncommon for workers to suffer work related injuries which have rendered some incapacitated without any compensation to ease their ordeal. Although the Workmen's Compensation Act (WCA) sought to compensate

employees for loss suffered following industrial and other work related mishaps, this Act had several shortcomings, which led to its replacement with the Employees Compensation Act, 2010 (the "Act" or "ECA").

The crux of the Act is the creation of "an open and fair system of guaranteed and adequate compensation for all employees or their dependants in the case of any death, injury, disease or disability, arising out of the course of employment". The Act also seeks to provide an "Employees' Compensation Fund" (ECF) which will be managed in the interest of the employees and their employers. The ECA further makes provision for the rehabilitation of employees affected by work related disabilities including mental illness. Like the WCA, the ECA applies to employers and employees in the public and private sectors. The Act however exempts members of the Armed Forces who are not employed in a civilian capacity.

Salient Provisions of the Act

1. Definition of "Employee" under the Act

The ECA defines an "Employee" as "a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy."

2. Regulator of the Employees Compensation Act

The Nigeria Social Insurance Trust Fund Management Board ("the NSITF Management Board") is statutorily empowered to implement the provisions of the ECA, and to manage the Employees' Compensation Fund.

3. *Employers' Contribution and Assessment*

It is mandatory for every employer to make a minimum monthly contribution of 1% of its total monthly payroll into the Fund within the first two years of the commencement of the Act. The Act further allows the Board to prescribe different contribution and assessment rates to be made by each employer based on the categorization of the risk factors of the particular class or sub-class of industry to which the employer belongs.

The Act provides that the Board shall assess employers, in the first instance, based on estimates of their payroll for the year or as otherwise determined by the Board. The payment of the said assessment shall be due on 1st January in the year for which it relates, and where an employer is not assessed by the Board, such employer shall be liable for the amount for which it should have been assessed, or as much as the Board considers reasonable.

4. *Compensation under the Act*

The Act defines injury to include "bodily injury or disease resulting from an accident or exposure to critical agents and conditions in the workplace". All employees suffering from mental stress, occupational injuries and diseases, as well as the dependants of a deceased employee, whose death is due to occupational injuries, are entitled to compensation under the Act. In addition, the Act empowers the Board to provide health care and disability support to affected employees. It is noteworthy that "mental stress" was not within the contemplation of "occupational injury" under the repealed Workmen's Compensation Act. The ECA provides for the compensation of an employee who suffers mental stress not resulting from an injury for which the employee is otherwise entitled to compensation, only if such mental stress is an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employee's employment, or where such mental stress is diagnosed by an accredited medical practitioner to have arisen out of the nature of the work, or the occurrence of any event in the course of the employee's employment.

5. *Injuries occurring outside the normal workplace*

The provisions of the ECA extend to injuries sustained where the nature of the business of the employer extends beyond the usual workplace i.e. where the employee is required to work both in and out of the workplace or where the employee has the permission of the employer to work outside the normal work place.

6. *Penalties for non-compliance*

Any default in the payment of an assessment attracts a penalty of an amount equal to 10% of the unpaid assessment or the value of the security required. Any employer who fails to make the required payroll information available to the Board may be liable to pay the best of judgment assessment levied by the Board, including a penalty, calculated as a percentage of the assessment to be determined by the Board. In addition, such an employer (or the responsible officer(s)) may be liable to imprisonment, a fine or both. The ECA prohibits an employer from deducting any payments made to the Board from the remuneration payable to its employees.

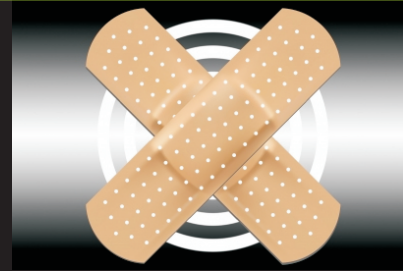
Any contravention attracts a fine, plus the repayment of any amount deducted from the relevant employee.

7. *Appealing the Board's decisions*

An aggrieved employer is entitled to appeal against the decision of the Board and a further right of appeal, against the appellate decision of the Board, may be made to the National Industrial Court.

A Critique of the Act.

Reading through the Act, one would be quick to note the improvements on the Workmen's Compensation Act. Significantly, the ECA covers all employees, unlike the WCA which covered only workmen. In addition, under the ECA (which provides for the rehabilitation of employees with work related disabilities), employees are entitled to compensation whether or not the injury or death is as a result of the misconduct of that employee.



Despite these improvements, the following are some of the shortcomings of the Act:

- Placing the management of the Fund in the hands of the Board of the NSITF does not inspire much confidence in the new scheme having become irrelevant with the enactment of the Pension Reform Act and with the establishment of the National Pension Commission (PENCOM).
- The discretionary powers of the NSITF Board to assess employers at 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, leaves room for arbitrariness.
- There is some ambiguity as to when contributions are required to be remitted under the Act, whether monthly or 1st of January of every year.
- Unlike the Workmen's Compensation Act which spelt out compensation payable for various levels of incapacity, the ECA does not clearly indicate the compensation an employee or his dependents are entitled to. It is expected that the Board will release guidelines in this regard.
- The Act does not adequately define the scope of behavior that should warrant compensation. The ECA ignores the principle of assumption of risk. Where an employee voluntarily engages in reckless activity that may lead to injury or death it appears that he shall be entitled to compensation under the ECA. Without greater restrictions placed on what injuries qualify the employee for compensation, the Act will promote negative employee behavior, as some employees may intentionally endanger themselves to claim



compensation. For instance, it would be most unreasonable for an employee who suffers any disability or injury, or loses his/her life as a result of drunk driving to be entitled to compensation under the Act.

- From the employer's standpoint, the ECA is an additional cost of labour.

Conclusion

As laudable as the ECA may be, the anomalies listed above leave one rather perturbed. The ECA was signed into law to mitigate the inadequacies of the WCA, and in view of this, more effort should have been made to ensure that all issues left unaddressed by the Workmen's Compensation Act are adequately addressed. However, the passage of the ECA is a step in the right direction towards ensuring improved employee welfare in Nigeria.

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