

**The Place of Non-Workers in the Nigerian Labour Equation: Addressing the Lacuna**

<b>For:</b>	Senate Committees on Employment, Labour and Productivity , Appropriations, Finance, National Planning and Economic Affairs, and Sustainable Development Goals (SDGs)
<b>For:</b>	House Committees on Labour, Employment and Productivity Appropriations, Constituency Outreach, Sustainable Development Goals, and Finance
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**1. Introduction**

The legal framework governing the offer, acceptance, and performance of employment in Nigeria consists of a number of statutes. The most pivotal of these legislations, arguably, is the Labour Act, which covers the fine mechanics of the employment process, from hiring to how an employee may be disengaged by his or her employer. The Labour Act, however, admits of a significant lacuna, since it only covers “Workers,” defined by the Act as those engaged in manual or clerical capacity at their places of employment. Employees outside this category are not governed by the Labour Act or any other statutory source made to provide for the terms and processes of their employments. As a result, there is a vacuum in the legal regime governing employment in Nigeria, and this Brief seeks to identify this vacuum and proffer solutions accordingly.

**2. The Legal Framework Governing Employment in Nigeria**

In Nigeria today, the Constitution of the Federal Republic of Nigeria, 1999 (as Amended) (the Constitution) is the sovereign law of the land and all other laws inconsistent with its provisions are to the extent of such inconsistency null and void.<sup>1</sup> As such, the constitution is one of the statutes governing the Nigerian labour space. The Constitution guarantees everyone, including employees, the right to assemble freely and associate with others, and this legal right forms the backbone of the trade union rights of Nigerian employees.<sup>2</sup> The constitution also provides that no one should be discriminated against on grounds of ethnicity, sex, religion, political persuasion, state of origin and so on.<sup>3</sup> And no doubt this provision has implications for the conduct of the hiring, managing, and firing of employees as these should not be done in a manner discriminatory to an employee.

Equally, worthy of mention is the Employees Compensation Act, 2010 (ECA), which establishes the Employee Compensation Fund into which every employer is to make a minimum monthly contribution of 1% of its total monthly payroll.<sup>4</sup> The Nigerian Social Insurance Trust Management Board, founded under the ECA, is charged with implementing the Fund.

For those involved in activities such as the making of any article or part of any article; altering, repairing, ornamenting, finishing, cleaning or washing, or the breaking up or demolition of any article, or the adapting for sale of any article, a statute of interest is the

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<sup>1</sup> Section 1(3) of the Constitution  
<sup>2</sup> Section 40 of the Constitution  
<sup>3</sup> Section 42 of the Constitution  
<sup>4</sup> Section 15 of the Employee Compensation Act

Factories Act, 1987. The Factories Act provides for the registration of factories and the protection of the occupational safety and health of those working as employees in the factory. Employers covered by the Factories Act, among other duties, are to ensure that the place of operations is clean and tidy, not overcrowded, well-ventilated, sufficiently lit and so on.

Another important piece of legislation in the employment space is the Pension Reform Act, 2014, which established the Contributory Pension Scheme to which all employers with more than fifteen employees are required to contribute, whether they are in the private or public sector.<sup>5</sup>

The Personal Income Tax Act governs the deduction and remission, by employers, of pay-as-you-earn (PAYE) from the emoluments paid to their employees at the appropriate percentage whilst the Trade Unions Act provides for the formulation, registration, and organization of trade unions. The Trade Dispute Act, meanwhile, provides a framework for procedures in resolving trade disputes both through litigation and alternative dispute resolution mechanisms such as conciliation, mediation, and arbitration. Last but certainly not the least is the Labour Act, which essentially governs employer-employee relationship. The Labour Act is, however, limited in scope as it regulates the employment of only “Workers” who are employees whose works are manual or clerical in nature, thus leaving a vacuum in the Nigerian labour space, as there exists no enactment to cater for employer-employee relationships where the employee in question is involved in a professional, technical, or administrative work (in other words, non-clerical and non-manual work). This Brief speaks to this identified lacuna.

### **3. The Need for a Bespoke Legislation for Non-Workers**

At the risk of repetition, the point will be made once more that the Labour Act, as a statutory regulator of the employer-employee dynamics, covers only “Workers,” who are those employed in manual, clerical capacities. The employer-employee dynamics of “Non-Workers”—i.e. those whose scope of work under a contract of service is professional, technical, or administrative—are as documented in their respective contracts of employment and any applicable staff handbook or similar documents.

This means that such employees as doctors, lawyers, software developers, engineers, accountants, and so on are not governed by the Labour Act, but only by their contracts of employment and other relevant documentation. While this is not an issue, problems arise where the said contract of employment or staff handbook does not provide certain salient terms regarding the employment. For Workers (those covered by the Labour Act), an item not covered in the employment letter or contract of employment, say, on the length of notice to be given before termination of employment, is provided for in the Labour Act, bringing a lot of clarity and certainty to the situation. For those not under the governance of the Labour Act i.e. Non-Workers, however, the situation is not so clear as the court when, faced with a dispute, has to go on an elaborate expedition for some laid down case law, principle or international best practices. This lack of certainty on issues not covered by the contract of employment or other documentation is particularly troubling because it is difficult if not impossible for a contract of employment of an employee or even a staff handbook to which he/she is bound to provide for each and every aspect of such employee’s work.

Certain areas that are most likely not to be covered by the employee’s contract of employment or other governing corporate material include medical examination of the employee, termination and the requirement as well as length of notice before termination thereof, annual holidays and leaves, redundancy, *force majeure*, deferment of wages, and so on. With respect to redundancy, for instance, it is a loss of employment, often by many

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<sup>5</sup> Section 2 of the Pension Reform Act

employees, when there is excess manpower.<sup>6</sup> For Workers, the position on redundancy is clear, as the Labour Law requires the relevant employer to contact the trade union or Workers' representatives of those to be made redundant before laying off the affected staff based on the principle of "last in, first out."<sup>7</sup> Redundancy packages shall then be negotiated for the departing staff.

For Non-Workers, since, in theory, they are not governed by the Labour Act, this provision does not apply. Instead, redundancy is as provided for in their contracts of employment or staff handbooks. It goes without saying that not all such contracts of service or staff handbooks have redundancy provisions, and employers typically capitalise on this gap to arbitrarily lay off employees within any commensurate redundancy package or involvement of the employees' trade unions. A labour legislation to provide for Non-Workers is therefore very much needed.

#### **4. Conclusion and Recommendations**

The protection, preservation, and regulation of the workforce is germane to the social and economic progress of any country interested in genuine progress in this so-called Fourth Industrial Age. Whilst the Nigerian labour sphere has no dire dearth of governing legislations, strangely, it has failed to sufficiently provide for the regulation of the employment of the Non-Worker. This identified lacuna is uncalled for and should be rectified as a matter of urgency, in order to create a sense of wholesomeness and clarity as far as the fortunes of millions of Nigerian Non-Workers at their respective places of employment are concerned. On this note, the following are recommended:

- a) A comprehensive study should be carried out on all or most hypothetical issues that can arise in the course of the employment of a Non-Worker, whether such "Non-Worker" is working remotely or at a physical address.
- b) Upon the identification of these issues that can arise in the course of the employment of a Non-Worker, realistic, prudent, and commercially viable solutions should be proffered to address each of these issues.
- c) Trade unions, employees, employers, leaders of industry, and other stakeholders should be consulted in the process of identifying these employment-related issues and proffering solutions to them.
- d) A bespoke legislation should be drawn up, based on this comprehensive study of relevant employment issues that can serve as a statutory guide for the employment nuances, including, but not limited to, hiring, firing, retrenchment, and the general regulation of the employment of Non-Workers in Nigeria.

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<sup>6</sup> Section 20(3) of the Labour Act

<sup>7</sup> Section 20(1) of the Labour Act