

UNDERSTANDING THE EMPLOYEES' COMPENSATION ACT AND TORTIOUS CLAIMS FOR WORKPLACE INJURIES IN NIGERIA

Understanding the Employees' Compensation Act and Tortious Claims for Workplace Injuries in Nigeria

Yussuf Akinola Oyeбанjo and Temilade Adepate



Image credit: Meta AI

Introduction

The Legislative Arm of the Federal Republic of Nigeria passed the Employees' Compensation Act (the "Act") on December 17, 2010, replacing the Workmen's Compensation Act Cap. W6 Laws of the Federation of Nigeria, 2004, which was enacted in 1987. The Act marked a new era in providing redress for employees who suffer injuries or disabilities at their workplace or in the course of employment.

It is noteworthy that several years after the enactment of this Act, injured employees still struggle to navigate their way and identify the appropriate steps to seek compensation for injuries sustained at the

workplace. This struggle is partly because redress for these injuries can be obtained either through statutory means or by resorting to claim under the law of tort, thus giving the aggrieved employee the choice of either making a claim from the Nigeria Social Insurance Trust Fund Management Board ("the Board") or the National Industrial Court of Nigeria ("the Court").

This uncertainty has, over the years, gone on with the general lack of awareness among employees of their legal rights and the benefits and challenges of the two avenues available for them to seek redress against injuries sustained at the workplace. It has therefore become imperative to consider how to seek redress for injuries sustained at the workplace whether statutorily before the Board or by instituting a tortious claim at the National Industrial Court of Nigeria ("the Court").

This article shall explore the statutory framework for seeking redress for injuries sustained at the workplace or in the course of employment, the procedure for making such claims before the Board, the intricacies involved in instituting civil suits in Court to seek redress for injuries sustained at the workplace as well as related issues. Decided authorities on the approach of the court and the board will also be considered in suggesting which of the two venues appears to be the preferred venue.

Keywords: Redress, injury, workplace, tort, statute, compensation, remedies.

Who does the Employees Compensation Act apply to?

Section 2 (1) of the Employees Compensation Act ("Act") provides that the Act shall apply to all employers and employees within the public and

UNDERSTANDING THE EMPLOYEES' COMPENSATION ACT AND TORTIOUS CLAIMS FOR WORKPLACE INJURIES IN NIGERIA

private sectors in the Federal Republic of Nigeria. The Act applies to all employers who have employed persons as employees or apprentices, whether under an oral or written contract. This is irrespective of whether the employer is a government agency or within the formal or informal sectors of the Nigerian economy.

The Act also established the Employees' Compensation Fund ("the Fund"). By **Section 56 (1)** of the Act, all payments, contributions, or funds provided by employers for compensating employees or their dependents due to death, injury, disability, or disease arising from employment must be paid into this Fund. Section 58 of the Act provides that the monies in this Fund shall be used for the following purposes:

- i. Adequately compensating employees or their dependents for any injury, disease, disability or death arising out of or in the course of employment.
- ii. The provision of rehabilitation to employees with work-related disabilities.
- iii. Payment of remuneration and allowances of members and staff of the Board.
- iv. Supporting activities and programmes on the prevention of occupational accidents and hazards and the promotion of occupational safety and health at the workplace.
- v. Purchase of any equipment or material required for carrying out the functions of the Board under the Act; and carrying out any activity or doing anything with respect to any of the functions of the Board.

The Board is statutorily empowered to implement the provisions of the Act, and to manage the Fund.

Compensation Act

The Act makes provisions for compensation to employees who have been involved in an accident, sustained injuries, contacted diseases, and even encountered death in the course of employment.¹ In a case where an employee dies in the course of employment, such employee's family or dependent is entitled to compensation. Beyond this, compensation is available under the Act for the following:

- i. Injury
- ii. Mental stress
- iii. Occupational disease
- iv. Hearing impairment
- v. Injuries occurring outside the normal workplace.

Contribution to Employees' Compensation Fund, Employers or Employees' Duty?

Employers are mandated to make a minimum monthly contribution of 1% of their total monthly payroll into the Fund within the first two years of the commencement of the Act.² The Act further allows the Board to prescribe different contribution and assessment rates for 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 prohibits an employer from deducting any payments made to the Board from the remuneration payable to its employees. Any contravention attracts a fine, along with the repayment of any amount deducted from the relevant employee. This is because contributions to the Fund as a contingency plan in the event of injuries, disease, or death at the workplace ought to be made by the employer and are not similar to pension contributions, which are dual contributions required to be made by both the

¹ Part (iii) & (iv) of the Employees Compensation Act, 2010

² Section 33 (1) and 35

UNDERSTANDING THE EMPLOYEES' COMPENSATION ACT AND TORTIOUS CLAIMS FOR WORKPLACE INJURIES IN NIGERIA

employer and the employee.

The entitlement of an employee or his dependents (in the case of death) to compensation cannot be waived by any agreement made between the employer and employee. Any such agreements made are void and unenforceable.³

It is also important to note that payment of compensation under the Act does not affect the employees' retirement benefits payable under the Pension Reform Act.

Compensation for Mental Stress

The Act provides for circumstances under which an employee may be entitled to compensation for mental stress. An employee who suffers mental stress not resulting from an injury for which the employee is otherwise entitled to compensation, will be eligible for 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.⁴

Compensation for Remote Work Injuries and Injuries Sustained Outside the Workplace

The provisions of the Act encompass injuries sustained beyond the normal workplace. In this sense, where an 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, such employee will be entitled to compensation as if the injury occurred during the

normal workplace.⁵ This is where the concept of *injuries sustained in the course of employment* arises. This is because the Act makes employees eligible to compensation for injuries sustained in the course of employment even though outside the conventional workplace.

The Act defines a workplace as any premises or place where a person performs work or needs to be or is required to be in the course of employment. The concept of *course of employment* has been defined to mean the period where an employee acts in the interest of an employer, particularly where such act has been authorized by the employer.⁶ In essence, remote employees may be entitled to compensation for injuries sustained in the course of employment depending on the circumstances of the case.⁷

An employee is entitled to payment of compensation with respect to accidents sustained while commuting between a place of work and the employee's principal or secondary place of residence or where the employee usually takes meals or receives remuneration, provided that the employer has prior notification of such place.⁸

Shared Responsibility for Compensation

An employer of an injured or deceased person by the provisions of the Act may maintain an action upon contract or indemnity agreement against another employer or independent contractor in respect of the personal injury or death of such employee. In a case where the Board believes that another employer or an independent contractor caused the injury or death of the employee, it may order that the compensation be

⁵ Section 11, Employees Compensation Act 2010

⁶ Julius Berger (Nig.) Plc v. Ogundehin (2014) 2 NWLR (Pt. 1391) 388

⁷ Verizon Pennsylvania, Inc. v. W.C.A.B. (Alston), 900 A.2d 440 (2006)

⁸ Section 7 (2) of the Employees Compensation Act 2010

³ Section 13, Employees Compensation Act, 2010

⁴ Section 8, Employees Compensation Act 2010

UNDERSTANDING THE EMPLOYEES' COMPENSATION ACT AND TORTIOUS CLAIMS FOR WORKPLACE INJURIES IN NIGERIA

charged in whole or in part to the other employer or independent contractor.

Available Redress Under the Act

The Act makes provisions for financial compensation, health care and support, and medicine for injured employees. Similarly, the Nigeria Social Insurance Trust Fund Act LFN 2004 ("NSITF Act") applies to employers and employees for compensation for workplace injuries. Section 12 (b) of the NSITF Act provides for contributions payable by an employer on behalf of an employee against the contingency of employment injury.

Conditions and Procedures for Compensation Under the Employees' Compensation Act

To make a claim for compensation under the Act, an employee in cases of an injury or a dependent in the case of death of an employee is to report to the employer or a representative of the employer providing all necessary details within 14 days of the accident or from the time the occurrence of the injury or death is discovered.⁹ After this, the employer is to make a further report to the Board within 7 days of receiving the report from the employee, except for death, which is to be reported immediately.¹⁰ The Act empowers the Board to issue regulations on minor injuries that need not be reported.

The categories of places where an employee gets injured and is eligible to receive compensation are provided for under the Act. The timeline to apply for compensation under the Act is within one year or three years in special circumstances.

Section 44 (1) of the Act stipulates that where any person or organization employs an independent contractor to perform any work in a workplace, both

the person or organization and the independent contractor shall be liable-

- i. jointly for any assessment under this Act relating to that work; and
- ii. for that amount which may, at the discretion of the Board, be collected from either of them, or partly from one and partly from the other for subsequent compensation of the employee.

Effects of non-compliance with the provisions of the Act

The provisions of the Act, particularly for employers' contribution to the Fund, are mandatory, as **Section 47** makes it an offence for an employer who fails to make payments of any amount due to the Fund in compliance with the provisions of the Act. **Section 71** of the Act also provides that any person who contravenes any of its provisions for which no specific penalty is provided, commits an offence and shall be liable on conviction to a fine of N20,000 for the first case of non-compliance or imprisonment for a term not exceeding 1 year or N100, 000 or every subsequent case of non-compliance or to both imprisonment and fine.

It is important to however note that the provisions of the Act, though mandatory, do not bar an employee from seeking redress in Court.

Shortcomings of the Employees Compensation Act and Recommendations

Despite the new era that the Act has introduced in terms of compensation for injured or deceased employees, it is not without its attendant shortcomings. One of these is the lack of awareness of the existence of the employee compensation scheme provided under the Act. It is recommended that the Federal Ministry of Labour and Productivity, in conjunction with the Board and other regulators

⁹ Section 4 (1) of ECA

¹⁰ Section 5 (1) of ECA

UNDERSTANDING THE EMPLOYEES' COMPENSATION ACT AND TORTIOUS CLAIMS FOR WORKPLACE INJURIES IN NIGERIA

within specific industries create an awareness of the mandatory provisions of the Act through dialogues, trainings, and conferences with employers and employees. This would broaden the level of awareness about the Act and prevent a case where employers continue to take advantage of workers and act in defiance of the Act. Employers will be aware of their obligations and be held accountable for non-compliance.

Beyond this, another shortcoming is the low level of compliance by employers of labour due to a complacent enforcement of the provisions of the Act by the Board. This has led to exploitation and unfair practices, such as the denial of compensation to employees in deserving cases. The Board must commence sanctioning of employers who violate the provisions of the Act. This will prevent a situation where employers take the provisions of the Act with levity.

Another gap in the Act arises in situations where an employee is injured due to their own negligence or deliberately causes harm to themselves to claim compensation. The Act should provide clearer guidance on such situations, explicitly stating when an employee would be disqualified from receiving compensation. In essence, the right to compensation under the Act should not be absolute. These ambiguities need to be addressed through legislative amendments. For instance, the Board should define the limits of an employee's conduct outside the workplace to help prevent unwarranted claims stemming from careless or reckless behavior, which could otherwise impose undue liability on employers.

Judicial Redress/Tortious Claims for Injuries Sustained in the Workplace

An injured employee in the course of employment

may choose to initiate an action seeking compensation for injuries suffered in the course of employment at the National Industrial Court of Nigeria ("NICN"). Unlike the redress contained in the Act, redress through tortious claim in court is 'fault-based' and requires an employee to prove that the injury occurred because of the employer's fault or negligence. In doing this, such an employee must be able to prove the following:

1. The existence of a duty of care to the employee by the employer.
2. Breach of duty by the employer.
3. Damages arising from the breach of duty.

Proof of claims of this nature normally takes the form of proof in a cause of action arising from the tort of negligence. The failure of the employee to establish the fault of the employer would naturally lead to the refusal of the claim by the Court.

Limitation of Actions under the Act

Section 12 (1) of the Act provides that its provisions are in lieu of statutory rights of action based on breach of duty of care or any other cause of action, whether same arises by reason of law or contract. What this means is that an employee or dependent of an employee cannot seek compensation under the Act and before the court contemporaneously. Instituting an action in court is a bar to seeking redress for compensation from the Board.

In the unreported case of **Mrs. Judith Olubunmi John v. Baker Hughes Incorporated Baker Hughes Company Limited & anor**¹¹, the National Industrial Court per Honourable Justice Z. M. Bashir specifically highlighted that an employee may choose to seek compensation under the Employees' Compensation Act as a whole being a statutory provision for compensation or such employee may

¹¹ Suit No: NICN/PHC/78/2017

UNDERSTANDING THE EMPLOYEES' COMPENSATION ACT AND TORTIOUS CLAIMS FOR WORKPLACE INJURIES IN NIGERIA

seek compensation under any right of action, under any other statute, under an action for breach of duty of care or any other cause of action. The Court further noted that once an employee makes a choice out of all available options, he or she is precluded from exercising the other, in other words, if an employee chooses to institute an action in Court for breach of duty of care, in which case he would be seeking for damages, which is another form of compensation, such employee cannot apply for compensation under the Act anymore.

An employee seeking for statutory and judicial compensation for injury sustained in the course of employment will amount to seeking double compensation which has been strongly prohibited by the Nigerian courts and indeed courts in any other jurisdiction. See the case of **Registered Trustees of Winners Chapel v. Ikenna**.¹²

Conclusion

In conclusion, the courts and even statutes make elaborate provisions for compensating employees injured in the course of employment. The provisions of the Act are encompassing enough to cater for injured employees without having to spend time seeking damages through litigation.

While the procedure under the Act is straightforward and does not involve the establishment of fault on the part of the employer, the amount recoverable appear to be relatively smaller than the amount recoverable in Court through an action in tort. In view of this, employees need to be aware of the appropriate steps to take in seeking remedies through either option and their expectations duly managed by the guidance of legal practitioners and labour law experts.

Contact persons for this article

Yussuf Akinola Oyeбанjo

Senior Associate

yussuf@sskohn.com



Temilade Adepate

Associate

temilade@sskohn.com



¹² (2018) LPELR-45767 (CA)

STREAMSOWERS & KÖHN is a leading commercial law firm providing legal advisory and advocacy services from its offices in Lagos, Abuja, and Port Harcourt. The firm has extensive experience in acting for Nigerian and international companies, government, and industry regulators in the firm's various areas of practice.

Contact us at:

852B Bishop Aboyade Cole Street
Victoria Island, Lagos

Tel: +234 915 119 4092; **Fax:** +234 1 271 2277

Email: info@sskohn.com; **Website:** www.sskohn.com