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# EMPLOYEES' COMPENSATION IN NIGERIA AND THE SOCIAL INSURANCE TRUST FUND ON EMPLOYEE COMPENSATION ACT: AN APPRIASAL

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## Abstract

*The law has provided ways of compensating injured employees or their dependents in cases involving injuries, disabilities and death. In providing compensation, an employer needs to be held accountable for the employees in the course of employment, which is why the Employee Compensation Act is relevant. Nigerians need to be aware of the present Employee Compensation Act because it was established in order to provide an open and fair system. The research looked at the challenges of Employee Compensation in Nigeria. The research looked at the effective implementation of Nigerian Social Insurance Trust Fund on Employee Compensation in Nigeria. The conclusion looked at the Nigeria Social Insurance Trust Fund as a good opportunity to correct some negative impressions based on their antecedents. The various stakeholders in the Nigerian Social Insurance Trust Fund should come together and provide sustainable strategies to guarantee the integrity of the scheme, especially the management and investment of the Employee's Compensation fund and the compensation process. The Nigeria Social Insurance Trust Fund being the custodian of the fund should ensure that adequate awareness is put in place for the employers and employees to be fully aware of the provisions of Employees' Compensation Act and what benefits await them.*

**Keywords:** Employee, Compensation & Social Insureance Trust

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## 1. Introduction

Nigeria as a nation, has never lacked in policies, right from independence till date, instead it must be stated here that Nigeria as a country has records of enacting wonderful laws but the problem has been a case of lack of implementation. Take the first attempt to provide legislation to handle compensation in Nigeria in 1941, when the colonial authorities enacted the Workers, Compensation Act No 51, of 1941. That Workmen Compensation Act failed because it made provision for the payment of compensation to a workman who sustained injuries at work or to the dependants if the injury resulted in death[2].

Eroke & Oyedele said that as at 2013, which were two years into the commencement of Employee Compensation Scheme, many state governments were yet to register with Nigeria Social Insurance Trust Fund as required by the Act[3]. According to Mallam Munir Abubakar[4], the Managing Director of Nigeria Social Insurance Trust Fund, has been able to register 25,076 employers of labour as at January 2015. According to Mallam Munir Abubakar[5], the major challenge they have is that of accessing the organization that ought to register with Nigeria Social Insurance Trust Fund. The employers of labour presently registered are a far cry from the number of organizations registered in Nigeria. This may reduce the level of compliance by stakeholders and drastically affect the employee who is at the receiving end of the table. Getting employers into the scheme has continued to be a challenge due to failures of similar schemes in the past. To achieve this fate, Nigeria Social Insurance Trust Fund has taken a proactive step of engaging employers of labour in dialogue, while working closely with the Nigerian Employers Consultative Association to help organizations register. But this step seems too little an effort in tackling this problem. An area of concern is the ambiguity of the Employees Compensation Act, 2010, which did not state when contributions are required to be remitted; the Act did not spell it out clearly whether it is monthly or 1st of January of every year.

Humans being who we are will look for excuses to evade the remittance for their employees, since the law did not specify when such should be remitted. This may also have affected the smooth management of the scheme as funds meant for it is not remitted. Another area that Nigeria Social Insurance Trust Fund is finding it difficult to implement the Act is in the area of compensation for mental stress resulting from the employment. This becomes International Journal of Development and Management Review Vol. 11 June, 2016 necessary to be examined because studies carried out by Ismaila and Usul[6], Aliyu and Shebe[7] and Jack-Ide, Makoro, Azibiri[8], all show that mental illness as a result of job-related issues are on the increase in Nigeria. According to Worugji[9], Section 8 of the Act makes compensation payable for mental stress arising from an acute reaction to a sudden and

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[2] R.U. Obi, *Industrial Sociology and Labour Relations in Nigeria*, (Benin: Ethiope Publishing Corporation 1995)

[3] L. Eroke, D. Oyedele, Threat to implementation of employees` compensation scheme in THISDAY Newspapers, Lagos. 24 September, 2013.

[4] M.M. Abubakar, *Driving the Implementation of Employees Compensation Scheme in Nigeria*. THISDAY Newspapers, Lagos. 13 March, 2015.

[5] M.M. Abubakar, *Employee Compensation Act designed to address insecurity*. Vanguard Newspapers, 5th May 2011, Lagos

[6] A.B. Ismaila and N. Usul, A GIS-based Spatial Analysis of Health Care Facilities in Yola, GEO processing *Mediterranean Journal of Social Sciences* [2013]

[7] Y.A. Aliyu and M.W. Shebe, Using GIS in the management of health infrastructure within Kaduna Metropolis, Nigeria. *Mediterranean Journal of Social Sciences.* 4 (12) [2013].

[8] I.O. Jack-Ide and others, Pathways to Mental Health Care in the Niger- Delta Region of Nigeria. Journal of Research in Nursing and Midwifery (JRNM)2/2:22-29[cit. 2015-03-04]. Available from http//www.inferesjournals.org/JRNM

[9] I.N.E. Worugji, Work Injuries Compensation under the Employees Compensation Act in Nigeria: *What is Next?* Journal of Law, Policy and Globalization. Vol.10.2013.

unexpected traumatic event or from mental or physical condition arising out of or in course of employment[10].

Compensation for mental stress includes mental stress caused by change of work, the working conditions or organization of work in such a way as to unfairly exceed the work ability and capacity of the employee by his employer[11]. This becomes a challenge as cases of mental illness are handled with topmost secrecy and this is because of the stigma associated with mental health[12]. This situation becomes most difficult, because Nigerians believe in the supernatural cause of mental illness[13]. To avoid any disagreement that may arise in respect of any claims for mental stress arising in these circumstances, the Employee Compensation Act 2010 empowers the Board to appoint a Medical Board of Enquiry to ascertain the mental conditions of the employee as the case may be[14]. This type of publicity is what most Nigerians may be avoiding, hence those with mental illness may never benefit from the fund and the Nigeria Social Insurance Trust Fund may not be able to assist those with mental illness. The awareness level of the average Nigerian worker about the existence of the Employee Compensation Scheme is very low. Most workers are not aware of the scheme and their rights to access it. This may explain why some foreigners continue to abuse Nigerian workers in their own soil. For fear of intimidation, some employees are always afraid to report cases of injuries in the workplace. In a recent survey by these researchers the issues of non-awareness of this law was highlighted by a majority of the respondents.

Withholding of information by organizations can be a source of challenge to Nigeria Social Insurance Trust Fund as most organizations are not willing to report cases of accidents and injuries that occur within their premises. Most organizations in Nigeria are more interested in the reputation of their corporate status than staff welfare. Accident occurs in cases of transport lines in Nigeria, the first step taken by the management of the companies is to hide their identities, either by covering their names or immediately removing the vehicles involved in the accidents from the scene. With this type of culture, it becomes increasingly difficult, if not impossible, to assist affected workers. The issue of confidence is another problem as the funds are placed in the hands of the Board of the NSITF. This does not inspire much confidence having become irrelevant with the enactment of the Pension Reform Act and with the establishment of the National Pension Commission. With lack of confidence, it becomes difficult to implement as stakeholders will not have complete trust on the scheme[15].

A staff of Nigeria Social Insurance Trust Fund who pledged anonymity explained that most employees do not have confidence in the scheme. This has become a major setback for the implementation of Employee Compensation Act 2011. This singular fact has brought citizen's mindset against policies, hence skepticism, pessimism, and apathy. The average Nigerian has grown through the years not to believe anything about government policies, programmes and action plan. This situation might make many employees, who this Act has been designed and enacted for to become so wary, and avoid being registered for the programme. This may go a long way to determine the success of Employee Compensation Act 2010. The greatest challenge is the culture of catch me if you can in the observation of laws in Nigeria and it would be unreasonable to expect that the implementation of Employee Compensation Act 2010 will be different[16].

[10] S. 8(1) ECA 2010
[11] S,8(2) ECA 2010
[12] E.O. Ugiabge, and E.O. *Okaka, Social Capital Issues of Mental Health in Nigeria`* Journal of Nursing, Social Studies, Public Health and Rehabilitation. No 3-4 Vol. 2014.
[13] O.F. Aina, Mental Illness and Cultural Issues in West African Films: *Implications for Orthodox Psychiatric Practice.* Med. Humanities 30: 23-26 2004.
[14] S.8(3) ECA 2010
[15] B. Adeyemi, *A Review of the Employees Compensation Act 2010* in Newsletter Issue 004/2012 of Deloitte Corporate Services Limited (DCSL)
[16] O.V.C Okene, *Labour Law in Nigeria* ( 3rd ed Claxton and Derrick Publications 2012)p. 156-157

## 2. Employees' Compensation Act 2010

The Act applies to all employers and employees in the public and private sectors in the federal republic of Nigeria except for any member of the armed forces of the Federal Republic of Nigeria other than a person employed in a civilian capacity. It also provides that the Nigerian Social Insurance Trust Fund Management shall have power to implement the Act and Employee Compensation Fund( into which shall be credited all moneys, funds or contributions by employers for adequate compensation to employees or their dependents for any death, injury or disability or disease arising out of or in the course of employment). The Act also provides that compensation cannot be waived and that any agreement between the employer and employee to that effect is unlawful, void and unenforceable and that the employer is not allowed to deduct (directly or indirectly) from the employee remuneration for the purpose of the contribution to the fund[17].

## 3. Nigeria Social Insurance Trust Fund

The National Provident Fund was established by an Act of Parliament in 1961 to provide a poverty alleviation measure as required by convention No.102 of the International Labour Organization. The Scheme was targeted at protecting private sector employees (whose employers were then mostly multinationals) from financial difficulties in the event of either old age, cessation of employment, invalidity or death since most employers then did not have such provisions in their employment policies.

Under the provision of the Nigeria Social Insurance Trust Fund, all employers of labour in the Private Sector registered under the Companies and Allied Matters Act 1990, either as companies or partnerships, irrespective of the number of their employees or were sole businesses with a work force of not less than five (5) employees, were required to register as members of the Nigeria Social Insurance Trust Fund Scheme and remit their contributions monthly. It was mandated to provide the following benefits: Retirement pension benefit, survivors benefit, retirement grant, death grant, invalidity benefit and invalidity grant and such other benefits as may be approved from time to time by the Board. The Nigeria Social Insurance Trust Fund scheme has a defined benefit scheme which enabled contributions to enjoy pension and grants far beyond their contributions. The new rate of contribution, which was effected after an actuarial review of the scheme, took effect from January, 2002. It was from the cumulative contribution that the cost of administering the Fund was funded and the surplus was invested in safe, liquid and profitable investment to generate income for the payment of benefits[18].

## 4. Effective Implementation of Nigeria Social Insurance Trust Fund on Employee Compensation Act

A future challenge of Nigeria Social Insurance Trust Fund may have to contend with is the amendment to the Employee Compensation Act establishing the organization. The amendment to the Employees Compensation Act will empower Nigeria Social Insurance Trust Fund to provide social security to the aged and unemployed individuals in Nigeria. This may guarantee that all Nigerians will have access to a nationally defined set of essential healthcare services including maternal healthcare. This will ensure that all children enjoy income security at a nationally defined minimum level through family/child benefits in cash or in kind aimed at facilitating access to nutrition, education and care.

Another major challenge is the ability of Nigeria Social Insurance Trust Fund to identify Nigerians to benefit from the security. This section of the Employee Compensation Act becomes a plus for the scheme to succeed, as it can use it to appeal to the conscience of Nigerians who love children. There is no cogent reason why Nigeria Social Insurance Trust Fund should not realize those targets if it rises to the occasion. To begin with, it has at its disposal the largest working population in Africa.

[17] S. 73 ECA 2010

[18] www.NSITF.org Accessed on August 22nd 2022

Nigeria Social Insurance Trust Fund may find it a real challenge in reaching workers especially in a country where records are nothing to write home about. The big problem here is having at its disposal the statistics of employers and employees in Nigeria. Some organizations have the culture of hiding their identity and profile for the sake of evading taxes and industrial laws. All the challenges, no matter how huge they may be, can be matched with the equally robust estimated revenue profile.

It is evident that for many years, issues relating to the welfare of the Nigerian workers have not been taken seriously. In effect, these individuals who sacrifice daily for the economic development of our dear country Nigeria are left to the whims and caprices of their capitalist employers, who are more interested in their profits and in most cases, treat their employees' welfare with levity. Several foreign companies operating in the country are also known to be notorious for their unfair labour practices[19]. They often subject their workers to inhuman conditions without hindrance. This is why this new law is welcome, given that it will safeguard the rights, well-being and morale of the workforce not only in the interest of the workers themselves but also that of the investors/employers and the economy. The law would also go a long way in creating harmonious industrial relationships between labour groups and organizations. In the end, Nigeria would be seen as a nation that cares for the well-being of its citizens.

A major strength of the Employees' Compensation Act 2010 is the aspect that states that compensation should be paid to an employee for life, if injured or deceased, or to the dependents of the deceased notwithstanding that the employer might have made contributions in respect of that worker for only one year. This is one aspect of the Employee Compensation Act that the Nigeria Social Insurance Trust Fund should capitalize on to sell its products to Nigerian employees and employers, as this part of the Employee Compensation Act is very humane. This aspect of the Employee Compensation Act equally recognizes that some Nigerian employers might not take the scheme serious hence the protection of the worker. There have been cases of workers not getting their benefits when they die. The Employees Compensation Act 2010 makes adequate provision for the families of the deceased. These provisions will give some respite in the face of the harsh economic condition we find ourselves in Nigeria. Nigeria Social Insurance Trust Fund can also take advantage of the part of the Employee Compensation Act that makes it mandatory for injuries to be investigated to ensure that the injuries were not as a result of negligence of the employee, and if it is proven, the worker may not be paid compensation.

The Employees' Compensation Act 2010 states that compensation will be paid irrespective of the circumstances that led to the injury. This aspect does not give room to Insurance firms to avoid payments based on some excuses which at times are technical. With this Act the cause of injuries are not relevant and cannot prevent payment, what a relief for workers. The beauty of this Employee Compensation Act can be seen from its ability to pay for injuries that occur outside the normal work place subject to certain conditions prescribed under the Act. Compensation is in lieu of any right of action, statutory or otherwise founded on breach of duty, of care or any other cause of action. Another area of concern to stakeholders is the unavailability of database of employed persons, and organizations with persons in its employment in Nigeria. The big question is how do you reach this large number of persons with the new Employee Compensation Act 2010? This is a cause of concern for stakeholders. How does the Act cover all employees, as the supervising agency does not have data of all organizations qualified for the scheme so as not to leave out any that may qualify to participate in this laudable initiative? In his own submission Oshin[20], the National Chairman, Nigeria Insurance Association claimed that the Nigeria Social Insurance Trust Fund has been unable to effectively manage funds from workers resulting in non-payment of Nigeria Social Insurance Trust Fund benefits to retirees. This situation has resulted in complaints and loss of confidence in the entire process.

[19]E.O. Okaka, *Government Intervention in Industrial Relations in Nigeria*, 1861- 2004 and The Trade Union Amendment Act 2005. University of Benin, Benin City, (Unpublished M.Sc. Thesis)

[20] W. Oshin, Federal Government on workers' compensation scheme in *Tribune*, 27 May 2010, Lagos Nigeria Accessed August 25th 2022.

The issue of foreign companies on sharp practices in the country and known for their unfair labour practice is a problem. These companies often subject their workers to inhuman conditions without hindrance. The Employees Compensation Act 2010 is a welcome development. It will assist to protect and safeguard the rights, well-being and morale of the workforce. It will eventually turn out to be of interest to the workers themselves, the investors/employers and the economy. The law would also go a long way in breaching the gap in industrial relationships between labour groups and organizations. The awareness level of the average Nigerian worker about the existence of the Employee Compensation Scheme is very low. Most workers are not aware of the scheme and their rights to access it. This may explain why some foreigners continue to abuse Nigerian workers in their own soil. For fear of intimidation, some employees are always afraid to report cases of injuries in the workplace. Nigeria Social Insurance Trust Fund being the custodian of the fund should ensure that adequate awareness is put in place for the employers and employees to be fully aware on the provisions of Employees' Compensation Act and what benefits await them.

The Employee Compensation Act has so much to give to the Nigerian workers. Imagine compensation being paid for injuries that occur outside the workplace, this can motivate workers to give their best thereby increasing productivity. Employers are not allowed to deduct (directly or indirectly) from the employee remuneration. In addition to payment of compensation, the Board is mandated to offer vocational, rehabilitation and counseling services to an injured employee with a view to getting such employee back to work or lessening or removing the resulting disability. A major problem the Nigeria Social Insurance Trust Fund may be facing is that of acceptance, a majority of the respondents do not have confidence in the scheme. Majority of Nigerian workers are not aware of the existence of this laudable Act. Nigeria Social Insurance Trust Fund must as a matter of urgency change its modus operandi so as to reach out to workers and employers of labour to key into the scheme.

The Employees Compensation Act now empowers Nigeria Social Insurance Trust Fund to provide social security to the aged and unemployed individuals in Nigeria. This may guarantee that all Nigerians will have access to a nationally defined set of essential healthcare services including maternal healthcare. This will ensure that all children enjoy income security at a nationally defined minimum level through family/child benefits in cash or in kind aimed at facilitating access to nutrition, education and care. One major challenge with the amendment is the ability of Nigeria Social Insurance Trust Fund to identify Nigerians to benefit from the security. This section of the Act becomes a plus for the scheme to succeed, as it can use it to appeal to the conscience of Nigerians who love children. There is no cogent reason why Nigeria Social Insurance Trust Fund should not realize those targets if it rises to the occasion it has at its disposal the largest working population in Africa. That asset is also a challenge, as Nigeria Social Insurance Trust Fund may find it a real challenge in reaching workers especially in a country where records are nothing to write home about. The big problem here is having at its disposal the statistics of employers and employees in Nigeria.

The best way to fast-track the implementation of the Employee Compensation Act is to engage in a massive, effective sensitization drive aimed at enlisting the cooperation of workers and employers alike. We are convinced that the new Act, which is in line with the International Labour Organization's recommendations and global best practice, will enhance the productivity of Nigerian workers as a result of the motivation they would derive from many of its provisions.It is evident that for many years, issues relating to the welfare of the Nigerian workers have never been taken seriously.In effect, these individuals who sacrifice daily for the economic development of our dear country Nigeria are left to the whims and caprices of their capitalist employers, who are more interested in their profits and in most cases, treat their employees' welfare with levity. Several foreign companies operating in the country are also known to be notorious for their unfair labour practices[21]. They often subject their workers to inhuman conditions without hindrance.This is why an effective implementation of the Nigeria Social Insurance Trust Fund new on Employee Compensation Act will safeguard the rights, well-being and morale of the workforce not only in the interest of the workers

[21] Ibid E.O. Okaka, Government Intervention in Industrial Relations in Nigeria, 1861- 2004 and The Trade Union Amendment Act 2005. University of Benin, Benin City, (Unpublished M.Sc. Thesis)

themselves but also that of the investors, employers and the economy. The law would also go a long way in creating harmonious industrial relationships between labour groups and organizations. In the end, Nigeria would be seen as a nation that cares for the well-being of its citizens.

Another effective implementation on Employee Compensation Act is that Nigeria Social Insurance Trust Fund should capitalize on selling its products to Nigerian employees and employers, as this part of the Employee Compensation Act that is very humane and will equally recognize some Nigerian employers who might not take the scheme serious hence the protection of the worker. There have been cases of workers not getting their benefits when they die. The Employees Compensation Act 2010 makes adequate provision for the families of the deceased. These provisions will give some respite in the face of the harsh economic condition we find ourselves in Nigeria. The Nigeria Social Insurance Trust Fund can also take advantage of the part of the Act that makes it mandatory for injuries to be investigated to ensure that the injuries were not as a result of negligence of the employee, and if it is proven, the worker may not be paid compensation.

The Employees' Compensation Act 2010 states that compensation will be paid irrespective of the circumstances that led to the injury. This aspect does not give room to Insurance firms to avoid payments based on some excuses which at times are technical. With this Act the cause of injuries are not relevant and cannot prevent payment, what a relief for workers. It is a real victory for the working class. The beauty of Employee Compensation Act can be seen from its ability to pay for injuries that occur outside the normal work place subject to certain conditions prescribed under the Act.

## 5. Conclusion

The Employee's Compensation Act is a laudable and commendable social security system, it is however, one thing to have a scheme in place with elaborate legal framework, and it is another thing to drive the scheme to fruition. The Employees' Compensation Act presents the Nigeria Social Insurance Trust Fund a good opportunity to correct some negative impressions based on their antecedents. It is a matter of common knowledge that the scheme got the active support of the labour movement and the Nigerian Employers Consultative Association and as such they should ensure that the scheme delivers on its mandate.

The various stakeholders in this scheme should come together and evolve sustainable strategies to guarantee the integrity of the scheme, especially the management and investment of the Employee's Compensation fund and the compensation process. It is what the stakeholders make of the scheme that they will be remembered for. Nigeria Social Insurance Trust Fund must endeavour to embark on enlightenment campaign to sensitize the Nigerian workers of their rights and how they could benefit from the provisions of the Employees Compensation Act 2010.The management of Nigeria Social Insurance Trust Fund should liaise with the Corporate Affairs Commission, state Boards of Inland Revenue, Federal Ministry of Labour and Productivity, Federal Inland Revenue Services to get a comprehensive data of registered companies in the country. The Nigeria Social Insurance Trust Fund being the custodian of the fund should ensure that adequate awareness is put in place for the employers and employees to be fully aware on the provisions of Employees' Compensation Act and what benefits await them.

Social security scheme was the essence of the Workmen's Compensation Act which was enacted in 1987. The workmen compensation Act was unsuccessful in meeting the socials security objectives and these gave rise to agitations which resulted in the enactment of Employee Compensation Act 2010. The Employee Compensation Act 2010, made comprehensive provisions for compensation for death, injury, mental stress, occupational disease and other hazards arising in the course of employment.
Since the enactment of employee compensation Act some issues have arisen in the course of interpreting and application of the employee compensation Act which may likely hamper a smooth and successful operation of the employee compensation Act. Though there are still a lot of shortcomings that need to be addressed vide a statutory intervention. There should be an amendment of the relevant labour statutes in Nigeria to correct the statutory lapses.