

Knowledge Of Employer/Employee Rights And Obligation In The University System In Nigeria

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ABSTRACT

The article introduced the general perception of the people of Nigeria over their rights and obligations, especially as it affects their work place. It explained the term employer and employee and what is expected of both in their work relationship. It also mentioned the benefits derived from the promulgation of the Freedom of Information Act 2011 in Nigeria which helped the citizenry in obtaining certain information hitherto hidden from them by the government and her agencies. Such rights and obligations among others include, payment of salaries, safety at work place, indiscriminate dismissals at work, sick period, discrimination against women, obedience, fair hearing, salary advances, deductions from salaries. It is recommended that every university management should reduce in a document the rights and obligations of employees during their services.

Keywords: Employer, employee, rights and obligations, university system.

Introduction

Employees of many establishments in Nigeria, including the university system, for one reason or another do not know their rights and obligations in the performance of their duties. This may be due to mere ignorance on the part of the employees to demand to know these rights and obligations in their various places of work or due to the secret nature of certain establishments in concealing such information from the public. The subject matter of this work is very important, and every university should set down the rights and obligations of their staff in a handbook or part of the contract of employment between the university and the employees. This could help reduce some misunderstandings which may arise from the manner employees render their services in their various places of employment or in the manner employers treat their workers when such misunderstandings arise. Most of these requirements are not made known to employees during orientations upon appointment or in the written contract of employment. They only come to know of them when problems arise.

Concept of Employer/Employee Relationship

Man must work or be employed to work in order to cater for himself and his family. Where this is absent, there is bound to be family unrest, hunger, sickness, suffering, etc. In any employment situation, there must exist the relationship between the employer and the employee. This relationship is burdened with rights and obligation on both sides and these rights and duties always formed the express and implied terms of contract of employment, of which if breached attracts sanctions by law. The entrenchment of express and implied terms of contract of employment is anchored on equity to enable the survival of both parties in the employment. The employee survives only when his job is guaranteed, while the employer survives only when the existence of the organization is guaranteed and dependent upon the effectiveness and actual commitment of the employees. It is worthy to note that the survival of the economy and stability of the polity very

much depend on the smooth interface between the employers and the employees, and the proper management of their relationship.

Who is an Employee?

An employee is a person employed by another person (employer) to do certain work for him, the employer, at a certain remuneration or salary and under the control and direction of the employer as to the manner in which he, the employee is to do his work. According to Duhaime's Law Dictionary, an employee is a person who has agreed by contract to perform specified services for another, the employer, in exchange for money.

Who is an Employer?

Employer is a legal entity that controls and directs a servant or worker under an express or implied contract of employment and pays (or is obligated to pay) him or her salary or wages in compensation, (UNICAF).

Proper knowledge of information about employer/employee can be meaningfully understood by the full application of Freedom of Information Act. Freedom of Information Act (2011) is an act that makes provision for the disclosure of information held by public authorities or by persons providing services for them, (Robert, 2000). FOIA Section 2(1) passes the right to any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described. According to the Media Rights Agenda (2011), this act makes public record and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and established procedures for the achievement of those purposes and, for related matters.

According to Bard (2001), every applicant for information must be given such. Unless there is a good reason, the organization must provide the information within seven (7) working days. The culture of secrecy had become entrenched in Nigerian government and members of the public including the media are always denied access to official information which they are entitled to in a democratic dispensation.

Following the promulgation of Freedom of Information Act (FOIA) 2011 in Nigeria, by the then government of President Goodluck Jonathan, it became necessary that librarians being one of the agents of information dissemination, must strive to inform the teeming masses and in particular university workers, who may not have known their rights and obligations in their work places, such rights and obligations for the smooth running of the system. It then becomes possible for the Nigerian masses to get to the information which hitherto have been hidden from them or classified as 'top secrets' by the government. In the light of the above, the author has chosen this topic to enlighten employees of the Nigerian universities in general and of Nnamdi Azikiwe University, Awka, particularly staff of Festus Aghagbo Nwako Library on their rights and obligations in the university.

Duties And Rights Of Employees

Duties and rights of employees are set out in the Universities Conditions of Service or in the Statutes like the Nigerian Labour Laws, Laws of the Federation of Nigeria. Under staff Conditions of Service in Nnamdi Azikiwe University, Awka and Nnamdi Azikiwe University Act, every staff or employee is bound by the contract of employment or by statute to do or not to do certain things during his employment.

- **Code of conduct/practice:** There is code of conduct/practice guiding certain professions or officer, for instance, the medical profession. A code of conduct is a statement of the standards to which an individual, professional or enterprise adheres to, and the responsibilities and restrictions that are to be observed. In the medical profession, it is against the code of conduct/practice for doctors, nurses or any staff of the health unit to disclose source/sources of a patient's illness. Likewise, it is immoral for a lecturer to use his position to sexually influence any student of the opposite sex.
- **Duty To Be Punctual To Work:** It is the duty of the employee to ensure that he gets to his place of work at the stipulated time and leaves at the agreed time. Generally, work starts at 8.00 a.m. and closes at 4.00 p.m. There are however some workers that operate a 24 hour service, for example, the security, medical personnel, etc. Lateness to duty in most Universities is checked by the individual university's SERVICOM.
- **To Act In Utmost Fidelity:** Employee is expected to act in utmost good faith during his employment. He has the duty to always act in the employer's interest. In other words, he is not expected to do anything that will undermine the interest of the organization. For instance, section 2.5(d) of Conditions of Service, Nnamdi Azikiwe University, Awka states that "an employee shall maintain the confidentiality of the University's information acquired by him in the performance of his duties to the University and shall not unduly put to his personal

advantage or to the advantage of any other person any such confidential information". In *Sinclair Vs Neighbour* [1967], an employee engaged as manager of a pool betting shop, took some money from her till to place on a bet elsewhere without the knowledge or consent of his employer. The court held that his conduct was incompatible with his employment.

- **Obey The Employer:** An employee is duty bound to always obey lawful orders of his employer. Obedience to the employer could be express or implied. The express terms are provided by the statute or specified in the terms of the contract of employment. Employee should obey all lawful orders by his employer, but he is not obliged to obey unlawful orders, for instance, orders that will expose life or health to danger. If he carries out such orders, he is doing so at his own risk. Employee may be dismissed from duty if he willfully disobeys orders of his employer. See *Turner Vs Mason* [1845]. In *Turner Vs Mason* [1845], a domestic servant's request for permission to go and visit her sick mother was refused by her employer, she nonetheless did so and her disobedience was held to be a sufficient ground for her dismissal.
- **Duty to Exercise Care and Skill:** At common law, the employee is required to exercise reasonable care and skill in his work. If he professes to have a particular skill but proves to be incompetent, the employer is entitled to dispense with his services summarily, (*Oji and Amucheazi*, (2015). In *Nunnink vs Constain Blansevort Orsoging Ltd* [1960] LLR 90 at 93, it was held that the employer is not duty bound to continue to engage a skilled employee who proved to be incompetent. In the case of *Useni vs Bank of West Africa Ltd* (1965) 1 All NLR 244, the court approved the determination of employee's contract of employment because of his negligence in causing the bank to lose a certain sum of money.
- **Duty Not To Disclose Confidential Information:** Employee is under obligation not to disclose confidential information of his employer. In *Bents Brewery Vs Hogan* (1945), *Lynskey J* said, "it is quite clear that an employee is under an obligation to his employers not to disclose confidential information obtained by him in the course of and as a result of his employment".
- **Duty Not to Accept Bribes and Secret Profits, or Use of Spare Time:** It is an offence triable by the Code of Conduct Tribunal for a public servant to accept bribes and secret profits. The Code of Conduct Bureau also regulated the use of one's spare time. The regulation said that a public officer must not put himself in a position where his personal interest conflicts with his duties and responsibilities. An employee is duty bound to give full account of all money and property received. It means that the employee must not utilize the position afforded him by his employment to make any secret profits, nor must he take bribes from customers. What is the position wherein most Bursary staff or cash officer receive tips from contractors as incentives to motivate them into speeding up their claims?
- **Right to Fair Hearing:** It is an established rule that before an employee is dismissed for any misconduct, such an employee must be given a reasonable opportunity to answer to the case of charge made against him. This is expressed in the maxim "audi alteram partem". It is also

established that no one who has direct interest in a matter or in its result is qualified to take part in its resolution. This is also expressed in the maxim "*nemo iudex in causa sua*". The above two maxims are seen as the rule of natural justice.

The procedure for fair hearing is entrenched in S.36(1) of Constitution of the Federal Republic of Nigeria, 1999 and S.7(vii) a- h, Nnamdi Azikiwe University Conditions of Service. Specifically (d) and (f) provide opportunities for the staff to appear in person and put questions to any witness, and call in his own witnesses in the matter. It appears from Section 1.3 of Nnamdi Azikiwe University Conditions of Service that it is the Registrar that interprets and clarifies all matters, except financial matters which are the responsibility of the Bursar. Such matters may go on appeal to the Vice Chancellor and finally to the University Council whose decision shall be final. S.36(1) of Constitution of the Federal Republic of Nigeria, 1999 states "in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

It is said that failure to afford a hearing of the employee before removal was a breach not only of the audi alteram partem rule but also of S.33(1) of the 1979 Constitution of the Federal Republic of Nigeria. This was evident in the case of Aiyetan Vs NIFOR. In the case of Union Bank of Nigeria Ltd Vs Ogbob, the collective agreement, which the court held was the contract between the parties provided for a hearing before dismissal for misconduct. The plaintiff was issued a query over what was described as suppression of cheques and was later dismissed without hearing. The plaintiff claimed a declaration that his dismissal was unlawful, ultra vires and of no effect as being against the principles of natural justice. The Court of Appeal held that there was a violation of S.33(1) of the Constitution of the Federal Republic of Nigeria, 1979.

It appears from most decided cases where employees were wrongfully removed, either by a summary dismissal which has not been justified or by the giving of insufficient notice; the normal remedy to which they are entitled is damages. Their reinstatements were not normally ordered.

- **Duty of care:** L.J. Irwin proposed two examples in which duty of care can exist.
 1. Where the defendant had control over the person causing the abuse and it was foreseeable that damage might ensue unless care was exercised in that control.
 2. Where the defendant has assumed a responsibility to safeguard the claimant. In *CN & GN v Borough Council* [2017] EWCA Civ 2185, the Court of Appeal gave judgment in favour of the claimants where the claimants were two children (one of whom was severely disabled) who alleged that the defendant local authority had negligently failed to take appropriate and necessary steps to safeguard them.

They were the target of prolonged abuse perpetrated by members of a family who lived on the estate on which they were housed by the defendant between May 2006 and December, 2011.

- **Probation ship:** A probationary employee is a recently hired employee whose ability and performance are being evaluated during a trial period or employment. For instance, Section 9(1) of Nnamdi Azikiwe University, Awka Conditions of Service (Junior Staff) states that any person appointed to an established post shall be on probation for two years after which he/she becomes eligible for confirmation subject to a report of satisfactory work and conduct by the Head of the Department/Unit concerned. The temporary service period of a person subsequently appointed to an established post shall count as part of the period of probation. It is the duty of the employer to provide direction, support, training and motivation to develop the employee in their role. This probationary period gives the employer the opportunity to access the employee as to his ability to deliver in all respect. It also offers the employee the opportunity of taking a decision on whether to continue on the job or not. The probation period gives the employer the opportunity to terminate the appointment of an employee who lacks commitment to duty, even before the probation period, see the case of *Ihezukwu vs University of Jos* [1990] 4 NWLR, 596 where Justice Olatawura JSC held inter alia, that "the sole purpose of putting an employee on probation is to give the employer an assurance that the employee is a fit and proper person to be placed on permanent appointment".

Duties Of The Employer

Equally, employers are bound by statute or terms of agreement to perform certain obligations during employment.

- **Duty to Create Job:** It is normally the employer who creates the job and offers work to the employee. Generally, an employer is not under a duty to provide work for his employees to do. His duty is fulfilled once he pays their wages. In the case of *Collier Vs Sunday Referee Publishing Co.*, Asquith J. said "that a contract of employment does not necessarily, or perhaps normally, oblige the master to provide the servant with work. Provided I pay my cook her wages regularly, she cannot complain if I choose to take any or all of my meals out". In other words, an employee cannot complain of breach of contract where an employer keeps him idle but pays him the agreed wages or salary.
- **To Take Business Decisions:** Generally, the employer has a moral duty to make business decisions in a manner that demonstrates concern for and seeks to advance the welfare of employees. This duty includes duty to treat employees respectfully, to pay them fairly and provide good working conditions. Employees should be treated fairly and with respect by the supervisors, and they should be free to raise ethical or other issues without fear of retaliation.
- **Duty To Pay Wages:** This duty arises from statute law and it is normally also provided in the contract of employment. Statute law provisions are resorted to when this duty is not stated in the contract of employment. For

instance, the Nigerian National Minimum Wage (Amendment) Act 2011 states that an employer is to pay the national minimum wage of ₦18,000.00 to every worker under his employment. It is therefore null and void for any agreement to seek to pay a worker less than the national minimum wage.

- **Payment of Wages During Strikes:** An employee who takes part in a strike is not legally entitled to any wages or salary or any other remuneration for the period of the strike but, where there is a lock-out by an employer, the employees are entitled to be paid their wages or salary for the period of the lockout, (S.42 Trade Disputes Act Cap. 432).
- **Payment Of Wages During Suspension:** The contract of employment has to make it express that an employee under suspension will not be paid his wages for the period of his suspension, see *Okunorem Vs UAC Ltd*, where the plaintiff was suspended without pay for stealing. He sued his employer for his wages for the period of his suspension. His case failed on the ground that he knew from the beginning that it was a condition of the contract that the employer had the power to suspend him without pay.
- **Payment Of Salary During Sick Leave:** Payment to a worker who is sick should be expressly provided for in the contract of employment, and where the terms of the contract are silent on that, the court would apply the provision of the Nigerian Labour Act which is less favourable to the employee who is entitled to be paid wages up to twelve working days in any one calendar year. The medical practitioner nominated by the employer must certify that the employee is sick and the employee must consent to such medical examination.
- **Advance on Wages/Salary Advance:** Employee may be entitled to advance of wages or salary advance during his employment but such advance shall not be in excess of one month's salary, except in cases of necessity and approved by the employer. The minimum period for the recovery of such advance shall not be less than 3 months and the employer cannot deduct interest, discount or any similar charge on account of the advance. Section 12.1(a) of *Nnamdi Azikiwe University, Awka Condition of Service* states "a member of staff (i) on assumption of duty, and (ii) on regular employment, shall be entitled to apply through the normal channels to the Vice Chancellor for one month's salary advance, provided that he has no salary advance outstanding against him." Section 12.1(b) says that the advance shall be refunded in six consecutive and equal installments commencing in the month immediately following the one in which the advance was taken.
- **Employee's Safety:** There is the duty of the employer to ensure safety of lives of employees, safety of the premises and place of work, safe plants and equipments, supervision and compliance with safe system of working, employment and supervision of competent staff in the organization. At common law, one primary duty of the employer is the duty of care (see *Donoghue vs Stevenson*, [1932] AC 562). According to *Oji and Amucheazi*, (2015), the employer was obliged to exercise reasonable care for the safety of his employees while he employs them. Employers must:
 - a. provide and maintain a safe workplace, machinery and equipment,
 - b. prevent risks from use of any article or substance and from exposure to physical agents, noise and vibration,
 - c. prevent any improper conduct or behavior likely to put the safety, health and welfare of employees at risk e.g. bullying at work,
 - d. provide instruction and training to employees on health and safety,
 - e. Provide protective clothing and equipment to employees at no cost to the employees, and ensure compliance to their use.
- **Employer's Indemnity:** The employee is entitled to be indemnified by the employer in respect of expenses and liabilities reasonably incurred in the course of the employees lawful duties carried out for the employer. These are express terms provided for in rules 130101 to 130114 of the Nigerian Federal Public Services Rules. The duty does not cover an employee who knows that the instructions of the employer are unlawful and goes ahead to carry out the unlawful order.
- **Medical Examination:** It is the duty of the employer to bear the expense of the employees' medical test and under S.8 of Nigerian Labour Act, every worker who enters into a contract of agreement must be medically examined by a registered medical practitioner. The expense is borne by the employer see *Charles Nwosa v Ports and Terminal Multiservice Ltd & 1 or*, where the court held "that nowhere in the Workmen's Compensation Act, is the employer allowed to deduct the medical expenses before paying any balance to the claimant as compensation under the Act, (unreported, Suit No: NIC/LA/262/2012).
- **Duty against sexual harassment:** It is required that employers shall take immediate action with respect to sexual harassment claims. This involves documenting the complaint, taking measures to stop any alleged harassment, beginning an investigation, providing support for the victim, for example, an employer shall take immediate and appropriate action to correct any act of sexual harassment towards employees in the workplace, where the employer, his agents or his supervisors know or are informed of such conduct. In November, 2003 for example, the Labour Court of South Africa, presiding in Cape Town, in the case of *Bongiwe Ntsabo Vs Real Security CC* delivered its judgment in a landmark case that held an employer liable for failing to take any action to investigate reported sexual harassment or to protect its employee from such conduct. In 2008, in Costa Rica, the court decided that companies have an obligation to act quickly and diligently to resolve complaints of harassment in the workplace. Employers also are obligated to report incidents of sexual harassments to the Ministry of Labour. See *Sentencia [S.] No 00038, de las 23 Enero 2008, Sala Segundo de la Corte Suprema de Justicia [Supreme Court], Chamber II*, Cons. IV.
- **Discrimination again women:** All forms of discrimination against women, apart from being unlawful, are unethical, (*Oji and Amucheazi*, 2015). In the Convention for the Elimination of All Forms of

Discrimination Against Women (CEDAW), the term "discrimination against women" means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field. Based on the above, it is now not surprising the recent appointment of the first ever woman, Prof Carol Umeobi as Deputy Vice Chancellor (Admin) in Nnamdi Azikiwe University, Awka.

- **Medical Expenses (Pregnancy):** No employer is under any obligation in his capacity as an employer to pay any medical expenses incurred by a woman during or on account of her pregnancy or confinement, S.54(3) Labour Act.
- **Pregnant Women:** S.54(1) of the Nigerian Labour Act made the following provisions:
 - a. A woman shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks;
 - b. A woman shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks;
 - c. A woman shall have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks;
 - d. Shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for that purpose.
- **Maternity Leave:** The issue of maternity leave is provided in S.54 of the Nigerian Labour Act, and this provision applied practically to the Public Sectors. Here, S.54 provides that women shall receive full salaries during the period of their maternity confinement. The Private Sectors can adjust this provision as it suits them. There is also the provision that entitles women to go on twelve weeks maternity leave from work during which time women shall be entitled to their full salaries and medical care. Section 6.12(a) states 'that all female members of staff who are pregnant are entitled to 12 weeks maternity leave with full pay in an annual leave year'. The annual leave for that year shall, however, be regarded as part of the maternity leave. Where this annual leave has already been enjoyed before the grant of maternity leave, that part of the maternity leave equivalent to the annual leave shall be without pay.
- **Production of Pay slips:** In Ireland and some other places, it is the duty of the employer to give to the employees pay slips showing their wages and any deductions that have been made. It is an implied duty on the part of the employer to issue pay slips to the employees every time salaries are paid to them. This will enable the employees to know the arithmetical or mathematical calculations involved in computing their salaries.
- **Hours of Work, Annual Leave/Public Holidays:** The working hours and holidays are usually stated in the

contract of employment, and this is covered by the Nigerian Labour Act. S.13 (1) of the Act states that normal working hours in any employment shall be fixed either by mutual agreement, collective bargaining within the industry concerned, or by an Industrial Wage Board, where there is no machinery for collective bargaining (Labour Act, Cap LI, LFN, 2004). It then means that any work done in excess of the normal working period constitutes overtime. Normal working hours in the universities in Nigeria is 8.00 am to 4.00 pm. Equally, the provision for holidays, vacation or leave is always embodied in the contract of employment, (S.18 (1) of the Act). All employees, fulltime, part time, temporary or casual, have annual leave and public holiday's entitlements from the time they started work. Workers are entitled to certain number of days every year, depending on their cadre and rank as their annual leave entitlement. Public holidays are observed as work free day in favour of the employees.

- **Deduction of Taxes and other approved levies:** S.5 of the Nigerian Labour Act makes provision for any deductions from the wages of employees. Under the section, the employer has no right/powers to make deductions from the worker's wages in respect of any fine, unless it is expressly permitted by the Act or any other law. However, under S.5(2) of the Act, the employer may make deductions from the wages of the worker and pay same to any person any contributions to a provident or pension fund or other schemes agreed upon by the worker and approved by government. This deduction, however must be done with the full consent of the employee. This is the type of agreement entered into by some employees with Nnamdi Azikiwe University, Awka Multipurpose Cooperative Society whereby certain amount are deducted from employees' salaries every month as agreed.

Under S.5(3) of the Act, an employer is permitted to deduct money from employees wages and pay same to any Trade Union, provided such a Trade Union is registered and recognized. The deduction shall be in respect of only members of the union. An employee is however, free to contract out of the system, and this must be in writing. Once he contracts out in writing, the deduction must stop.

- **Employee Rights to Privacy:** All employees have basic rights in the workplace – including the right to privacy, fair compensation, and freedom from discrimination. The right to privacy applies to the employee's personal possessions, including handbags or briefcases, storage lockers accessible only by the employee, and private mail address only to employee. Employees may also have a right to privacy in their telephone conversations or voicemail messages. However, employees have very limited rights to privacy in their e-mail messages and Internet usage while using the employer's computer system.
- **Provide Equal Employment Opportunities:** It is illegal for an employer to discriminate against someone on any grounds except if the person did not meet the employment requirements. The laws against discrimination apply: (i) during the recruitment process,

including advertising, interviewing and other selection procedures.

- i. In deciding who will get the job.
 - ii. When negotiating terms and conditions of employment, such as pay rates, work hours and leave.
 - iii. In the dismissal, demotion or retrenchment process.
 - iv. In the upgrading, promotion, transfer, redeployment, training and other benefits associated with employment.
- **Provision of Transport:** Where a worker is required to travel sixteen (16) kilometers or more from his normal place of work to another work-site, he is entitled to free transportation or an allowance in lieu, (S.14(2) Nigerian Labour Act). Where transport is provided, the vehicle or vessel must be suitable, in good sanitary condition and not over crowded.
 - **Duty to Issue Testimonial or Reference:** This duty is better stated in the negative. There is no legal duty on an employer to provide an employee with a testimonial or character or to answer questions from interested parties concerning an employee's character. But an employer may do so, but where he opts to do that, he should be careful not to expose himself to actions for damages. There are three possible actions:-
 - a. An action for deceit, will lie where an employer knowingly makes a statement or representation which he knows to be false or which he makes recklessly not caring whether or not it is true and from which loss has resulted to the party to whom it was made and who acted upon it as was intended.
 - b. An action for negligent mis-statement which causes or results in financial loss.
 - c. An action for defamation against an employer where he makes a statement to another, which statement holds an employee to ridicule or contempt by reasonable persons or makes such persons shun him.

Conclusion

The FOI Act 2011 has done great service to the general public who may have wished to get certain information hitherto not at their disposal. The public is hereby advised to always go out to seek for information from the government and its agencies, no matter the nature and secret of such information.

Knowledge of the contracts of employment by the employers and employees will help to reduced work misunderstanding. It is therefore recommended that every university management should reduce in a document or made known to the employees at interview or during appointment their rights and obligations during their services.

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