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Risk Management in Employment Termination, Suspension and Salary Deduction: Strategies for Nigerian Employers

Introduction

Employment termination and suspension are inevitable components of managing a workforce. Whether due to misconduct, underperformance, or organizational restructuring, employers may find themselves in situations where they need to either temporarily relieve an employee of their duties or terminate their employment altogether. However, navigating these processes without adequate preparation can expose employers to significant legal and financial risks. This article offers a detailed guide on proactive risk management strategies in employee termination and suspension, with a specific focus on the Nigerian legal context.

Understanding the Legal Framework

Before delving into proactive strategies, it is important to understand the legal framework governing employee termination and suspension in Nigeria. The country's employment laws, as interpreted and applied by the courts, provide specific guidelines that employers must follow to ensure that their actions are both legally sound and ethically justifiable.

Termination and Dismissal

Termination of employment refers to a lawful and valid end to an employment contract. Termination is deemed valid if it is carried out in accordance with the terms and conditions specified in the contract and it can be done by either the employer or the employee.

Termination in labour law is analogous in this respect to termination of tenancy agreement (eviction) or partnership agreement (dissolution). All it need achieve is compliance with the contract between the parties or the governing law in the absence of contract. Likewise, without accusations or counter-accusations of impropriety, partners can dissolve their firm by following the articles of partnership or the applicable partnership statute. In like manner, an employer can, by following the employment contract to the letter, terminate an employee's employment. It should be borne in mind that an employee could equally serve a notice on the employer that he is leaving.

Dismissal is carried out by the employer to terminate the contract of service of an employee with neither notice nor payment, in lieu of notice on account of gross misconduct on the part of the employee, which strikes at the root of the employment contract. This act must be one that offends the essential provisions of the employment contract. Dismissal, which is for wrongdoing, must be distinguished from termination. A hearing need not precede termination. But merely terming what is in effect or substance a dismissal a termination in order to avoid certain legal consequences will not hoodwink the Nigerian courts. Termination and dismissal are distinct notions in labour law. If any wrongdoing is cited in what purports or pretends to be a termination, the employee must be accorded fair hearing since the process is actually a dismissal.

In *Baba v Nigerian Civil Aviation Training Centre*,¹ the Supreme Court stated that the mere question that “Did the respondents have good cause to terminate the appointment of the appellant?” is a linguistic fallacy. This is because Terminations do not require cause, good or bad; they need only follow the employment contract. Once cause is required or cited, the measure contemplated or implemented is a dismissal.²

 **Note: Once misconduct is alleged, there must be fair hearing.**

When no misconduct is alleged, termination may be lawfully effected by merely complying with statutory or contractual procedure, but whenever misconduct is alleged, the party must be heard before being dismissed. Removal for cause is “dismissal” properly so called, and must be preceded by a hearing. “Termination” is a contractual or statutory option usually reserved for both sides, and exercisable without reference to cause. Any reference to cause (in terms of any conduct or wrongdoing by the party to be removed from service) would trigger the requirement of fair hearing and what follows should properly be termed a “dismissal.”

A contract of employment stipulating for notice or payment in lieu of the constitutional requirement of fair hearing would offend public policy and would be ineffective, being an attempt to contract out of a fundamental constitutional

¹ ([1991] 5 NWLR (Part 192) 388) Nnaemeka-Agu JSC’s question

² See also the Supreme Court case of *Olatunbosun v Nigerian Institute of Social and Economic Research Council* ([1988] 3 NWLR (Part 80) 25, 48E-F), Oputa JSC pointed out an aspect of this distinction.

right. Parties cannot contract out of the fair-hearing canon, nor may the right to fair hearing be waived or compromised. “It is trite law that where a servant is alleged of wrongdoing and he faces the risk of losing his job or faces other disciplinary measures on account of that wrongdoing, he must be given an opportunity to defend himself and this he can do by telling his side of the story. This is an area which a contract of service cannot remove. It is not within the competence of the parties to outlaw the rules of natural justice in a contract of service”.³ The mere fact that an employer complied with statute or contract in removing an employee will not save such removal from vulnerability if misconduct is cited. Such compliance with contract or statute could only avail an employer if termination is intended, expressed and effected, and no mention made of or reference made to conduct.

There are instances where employers may want to veil dismissal as termination, but the Court has in numerous occasions seen or pieced through such veil. In the case of *Eperokun v University of Lagos*⁴, although the respondent resorted to the otherwise smooth device of termination; but the background and circumstances made it clear that it was removing the appellants for cause, in other words, dismissing them, and the Supreme Court insisted that they ought to have been afforded fair hearing. The respondent’s pretence, and the trial judge’s unconvincing acceptance of that subterfuge, that it was merely invoking its contractual right to terminate the appellants’ appointments, did not escape the notice of the Supreme Court.

The courts has held on numerous occasions that determining an employment on grounds such as incompetence implies dismissal which cannot be unless the employee was given fair hearing⁵. Variants of dismissal are summary dismissal and constructive dismissal.

1. Summary Dismissal

The words “summary dismissal” mean a dismissal done or given immediately without attention to details or formal procedure⁶. A summary dismissal is always predicated on a gross misconduct done by the employee, which goes to the root of the contract of employment. The Supreme Court⁷ defined gross misconduct as

³ Per Tobi JCA in *British Airways v Mkanjuola*,

⁴ [1986] 4 NWLR (Part 34) 162),

⁵ *Nkechi Ogbonna v. MIKANO International Limited* SUIT NO.:NICN/LA/178/2019

⁶ *A.C.B. Plc v. Nbisike* [1995] 8 NWLR Part 729(P. 745, paras. E-F)

⁷ *UBN LTD V. OGBOH* (1995) 2 NWLR 380, 647, at 653

“conduct of grave and weighty character as to undermine the confidence which should exist between the employee and his employer or working against the deep interest of the employer.

In *Ajayi v. Texaco Nigeria Ltd.*⁸ the Supreme Court held: “There is no fixed rule of law defining the degree of misconduct which would justify dismissal. It is enough that the conduct of the servant is of grave and weighty character As to undermine the confidence which would exist between him and the master.

 **Note: It is always advised that so far it is dismissal, whether summary or not, a fair hearing procedure should be considered or set up.**

2. Constructive Dismissal

To determine if an employee’s resignation was in fact a ‘constructive dismissal’ by the employer, it is imperative to consider the legal conditions for an employee’s resignation, to be considered as constructive dismissal. Constructive dismissal or termination as indicated by case law is a situation where an employer creates such working conditions (or so changes the terms of employment) that the affected employee has little or no choice but to resign. In such cases, the employee retains the right to seek legal compensation as having been dismissed or terminated constructively. In the case of *Western Excavating v. Sharp*⁹, Lord Denning listed what an employee must prove in a claim for constructive dismissal as follows:

1. A repudiatory breach on the part of the employer,
2. An election by the employee to accept the breach and treat the contract as at an end,
3. The employee must resign in response to the breach,
4. The employee must not delay too long in accepting the breach, as it is always open to an innocent party to waive the breach and treat the contract as continuing (subject to any damages claim that they may have)

Globally, and in labour/employment law, constructive dismissal, also referred to as constructive discharge, occurs when an employee resigns because his/her employer’s behaviour has become intolerable or heinous or made life difficult that the employee has no choice but to resign. Given that the resignation was not

⁸ (1987) 3 NWLR 62,

⁹ (1978) 1 All ER 713

truly voluntary, it is in effect a termination. In an alternative sense, constructive dismissal or constructive discharge is a situation where an employer creates such working conditions (or so changes the terms of employment) that the affected employee has little or no choice but to resign. Thus, where an employer makes life extremely difficult for an employee, to attempt to have the employee resign, rather than outright firing the employee, the employer is trying to create a constructive discharge. The exact legal consequences differ from country to country but generally a constructive dismissal leads to the employee's obligations ending and the employee acquiring the right to seek legal compensation against the employer. The employee may resign over a single serious incident or over a pattern of incidents. Generally, the employee must have resigned soon after the incident.¹⁰

In the following cases, the Courts held the following circumstances as justifying a holding for constructive dismissal:

- a. Unilaterally changing the employee's duties¹¹
- b. Unilateral reduction of the employee's payment¹²
- c. Insisting upon the employee to work beyond the contractually obliged hours¹³; see
- d. Requiring the employee to work where they are not contractually required to work¹⁴
- e. Breach of the implied term of trust and confidence¹⁵.

¹⁰ Miss Ebere Ukoji v. Standard Alliance Life Assurance Co. Ltd. Suit [2014] 47 NLLR (Pt. 154) 531

¹¹ Coleman (DA) v. S&W Baldwin [1977] I.R.L.R 342.

¹² Industrial Rubber Products v. Gillon [1977] I.R.L.R 389

¹³ Derby City Council v Marshall [1979] I.C.R. 731

¹⁴ O'Brien v Associated Fire Alarms [1968] 1 W.L.R. 1916 and Courtaulds Northern Spinning v. Sibson [1988] I.C.R. 451.

¹⁵ Malik v Bank of Credit and Commerce International SA (In Liquidation) [1997] 3 All E.R. 1



Termination of Employment with or without reason

1. The Common Law Position

Historically, under common law, employers in Nigeria were granted broad discretion in terminating employees, provided that the termination was carried out in accordance with the terms of the employment contract. This principle is rooted in the “master-servant” doctrine, which posits that an employer can terminate an employee’s contract for any reason, good or bad, or for no reason at all, as long as the contractual terms are adhered to. This principle was upheld in

several landmark cases¹⁶ such as where the courts reinforced the idea that the motive for termination does not invalidate the act itself if it complies with the employment contract.

However, this common law position has evolved, particularly with the introduction of the Third Alteration to the Constitution of the Federal Republic of Nigeria in 2010, which brought significant changes to labour law and the jurisdiction of the National Industrial Court of Nigeria (NICN). This alteration empowered the NICN to apply international conventions and best practices in labour matters, which has led to a shift in how terminations are viewed, particularly regarding the necessity of providing reasons for termination. An employer is liable to pay the entire monthly salary of an employee for the month in which the employment was terminated, where the employee is a salary earner.¹⁷

2. The National Industrial Court's Jurisprudence

The NICN¹⁸, leveraging its expanded jurisdiction, has challenged the traditional common law approach, especially in cases where international labour standards suggest that employers must provide a valid reason for terminating an employment. The Third Alteration to the 1999 Constitution significantly reshaped labour jurisprudence in Nigeria by granting the Industrial Court extensive authority to apply international conventions, best practices, and labour standards in eliminating unfair labour practices. This marked the beginning of a new era in which the International Labour Organisation (ILO) Conventions, along with other international treaties ratified by Nigeria, began to play a crucial role in resolving employment disputes.

Relying on the Third Alteration, the NICN departed from the long-standing judicial precedents set by the Supreme Court and Court of Appeal which did not consider or apply the Third Alteration. Utilizing these broad constitutional powers, the NICN introduced notable changes to the established principles

¹⁶ Chukwuma v. Shell Petroleum Nig. Ltd and Petroleum and Natural Gas Senior Association of Nigeria (PENGASSAN) v. Schlumberger Anadrill Nigeria Limited (2008) 11 Nigeria Labour Law Report Pt 29 Pg 164

¹⁷ Grant Mpanugo v. CAT Construction Nig Limited (2019), Supra

¹⁸ National Industrial Court

governing the termination of private employment contracts in Nigeria, challenging the traditional master-servant relationship.

One of the court's key positions was that terminating employment without providing a reason constitutes an unfair labour practice and is contrary to international best practices. In cases such as *Ebere Onyekachi Aloysius v. Diamond Bank Plc*¹⁹ and *Duru v. Skye Bank Plc*²⁰ among others, the NICN held that it is unfair for an employer to terminate an employee's contract without stating a valid reason, relying on the provisions of the Third Alteration Act. The NICN asserted that this requirement aligned with international labour standards, specifically Article 4 of the ILO Termination of Employment Convention, 1982 (No. 158) and Recommendation 166, which establish that a worker's employment should not be terminated without a valid reason related to the worker's capacity, conduct, or operational needs of the enterprise.

This stance represents a significant shift from the earlier common law position, which upheld the employer's unfettered right to terminate employment for any reason or no reason at all, as long as it complied with the terms of the employment contract.

3. The Court of Appeal Over-Rule

Despite this, there has been some pushback from the Court of Appeal in its review of the NICN cases, and has maintained that unless an international convention has been ratified and incorporated into Nigerian law, it does not override the existing common law or statutory provisions. It upheld the common law principle that an employer may terminate an employment contract without providing a reason, as long as the termination aligns with the terms agreed upon by the parties. This stance is grounded in the principle of the sanctity of contracts, encapsulated by the Latin maxim *pacta sunt servanda*, which means "agreements must be kept." The Court of Appeal's position contrasts with earlier decisions by the NICN, which had suggested that employers must offer a justifiable reason for termination, even when such a requirement was not explicitly stated in the contract.

¹⁹ (2015) 58 Nigeria Labour Law Report Pt 199 Pg 92

²⁰ (2015) 59 NLLR (Pt. 207) 680

This position was further reinforced in the popular cases of *Keystone Bank v. Afolabi*²¹ and the case of *Oak Pensions Limited & Ors v. Mr. Michael Oladipo Olayinka*²². In the *Oak Pension* case, the Court of Appeal held that claims of unfair labour practices or appeals to international best practices cannot override the contractual obligations agreed upon by the parties. The Court stated that unfair labour practice or international best practice would not arise to govern the rights and interests of parties in relation to their own voluntary agreement on how to end or determine the relationship between them.

The Court of Appeal thus overturned NICN's previous decisions that employers must provide a valid reason for termination. The Court emphasized that in master-servant relationships governed by a contract, the terms of the contract dictate the manner and right to terminate the employment. Any breach of these terms could lead to a claim for wrongful termination or dismissal, but the court is not to interfere with the terms agreed upon by the parties.

Notwithstanding, the position of the Court of Appeal, in the Supreme Court case of *Institute of Health Ahmadu Bello University Hospital Management Board V. Mrs jummal R. I. Anyip*²³ *Chukwuma -Eneh JSC* held thus; "Although it is trite law that an employer is not obliged to give any reason for firing his servant all the same, it is settled law that where he has proffered any reason at all, it is obliged to satisfactorily prove the same as the onus is on him in that regard, otherwise the termination/ dismissal may constitute a wrongful dismissal without more."

²¹ 2017) LPELR-42390(CA)

²² (2017) LPELR-43207(CA)

²³ (2011 LPELR-1517(SC)



Employee Suspension

Employee suspension is a temporary measure used by employers to remove an employee from their duties while investigating alleged misconduct or during disciplinary processes. It is a critical action that often leads to significant legal and organizational consequences. Therefore, understanding the legal complexities, implications, and the proactive ways to manage the associated legal risks is vital for any organization. There are generally two types of suspensions: administrative suspension and disciplinary suspension. Administrative suspension is typically used to protect the organization's interests or to ensure a fair investigation, while disciplinary suspension is a punitive measure following a proven case of misconduct. Administrative suspension can be used as a standard procedure to allow for a fair investigation leading to reinstatement, disciplinary action, termination or dismissal.

Example of Administrative and Disciplinary Suspension

For example, in an organisation where a senior staff is accused of financial misconduct. To immediately protect the integrity of the investigation and prevent any interference, the company decides to place the senior staff on administrative suspension. This means that the staff is temporarily removed from his duties while the company conducts a thorough investigation into the allegations. During this period, the staff may continue to receive their salary and benefits, as the suspension is not a disciplinary action but a precautionary measure to ensure a fair and unbiased investigation which he must be given full opportunity to defend himself. Once the investigation is complete, the company will determine whether the allegations are substantiated. If the staff is found to be innocent, they will be reinstated to his position. However, if the investigation reveals wrongdoing, the company may proceed with disciplinary actions, which could include termination of employment or dismissal. Administrative suspension are usually very short-lived.

Disciplinary Suspension are Suspension that emanates from the decision of an independent disciplinary panel set up, independent of the persons laying the accusations.

Legal Framework and Precedents

The legal landscape surrounding employee suspension in Nigeria is governed by various laws, including the Labour Act, the Constitution, and judicial precedents. It is important to note that suspension, while a powerful tool, must be exercised within the confines of the law and the contract of employment. This means that employer's right to suspend an employee must be explicitly provided for in the employment contract or the organization's policies²⁴.

In the case of *Globe Motors Holding (Nig) Ltd v. Akinyemi Adegoke Oyewole*²⁵ the Court of Appeal held that since suspension is not a termination of the employment contract nor a dismissal of the employee, the implication is that the employee is still in continuous employment of the employer until he is recalled or formally terminated or dismissed. Pending his recall or dismissal, a suspended

²⁴ City Central Group of Companies Limited v. Eze (2021) LPELR-55725 (CA)

²⁵ (2022) LPELR-56856 (CA)

employee is entitled to his wages or salary during the period of suspension, unless the terms of the contract of employment or the letter of suspension itself is

specific that the suspended employer will not be paid salaries during the period of suspension. Where a suspension did not indicate that the suspended employer will not be paid salary or will be on half pay, the suspended employer is entitled to his emoluments during the period of the suspension.²⁶ This also means that an indefinite suspension without pay is an unfair labour practice.²⁷

 **Note: An employee cannot turn suspension into termination of employment or dismissal**

Employers must understand that violation of these principles leaves the organisation at risk of damages. Moreso the National Industrial Court can award damages far beyond the payment of notice if it deems it so²⁸. Also in *Badmus & Anor v. Abegunde*,²⁹ the Supreme Court on general damages held that-

“On the other hand the quantum of general damages need not be pleaded and proved; for it is the loss which flows naturally from the defendant’s act and it is generally presumed by law. The manner, therefore, in which general damages is quantified is by relying on what would be the opinion and judgment of a reasonable person.”³⁰

Proactive Risk Management in Employee Suspension

1. Establish Clear Policies and Procedures

To mitigate risks associated with employee suspension, it is important to have clear, well-documented policies and procedures in place. These policies should outline the grounds for suspension, the types of suspension, and the procedures

²⁶ See also *Longe v FBN Plc* (2010) 6 NWLR (Pt. 1189) 1

²⁷ *Ogbody v. Global Fleet Oil & Gas Ltd. & Anor Supra*

²⁸ See *MOBIL PRODUCING NIG. UNLT & ANOR v. UDO*(2008) LPELR-8440(CA) and *BRITISH AIRWAYS V MAKANJUOLA* (1993) 8 NWLR (PT. 311) 276 AT 288.

²⁹ (1999) LPELR-705(SC) Per SYLVESTER UMARU ONU, JSC (Pp 24 – 25 Paras E – A)

³⁰ See *Odulaja v. Haddad* (1973) 11 S.C.357 at 360; *Incar.(Nig.) Ltd. V. Benson Transport Ltd.* (1975) 3 S.C.117; *Omonuwa v. Wahabi* (1976) 4 S.C. 37; *Lar v. Stirling Astaldi Ltd.* (1977) 11- 12 S.C. 53 at 62 and *Odumosu’s case* (supra). See also *Sommer v. F.H.A.* (1992) 1 N.W.L.R (Pt.219) 548 at 561.

to be followed. The policies must be consistent with the Labour Act and any other relevant laws and case laws.

2. Ensure Compliance with Contractual Terms

Suspension must be in accordance with the terms outlined in the employee's contract or the company's handbook. At the heart of an employer-employee relationship is the contract of employment and company handbook where the handbook is effectively incorporated into the contract of employment. These documents are the holy grail of the employment relationship and they dictate the terms. This reinforces the need for employers to include specific clauses in employment contracts that details necessary circumstances within the ambit of the law.

3. Avoid Indefinite Suspensions

Indefinite suspension without pay has been repeatedly challenged in court and is generally viewed as an unfair labour practice. In *Globe Motors Holding (Nig) Ltd v. Akinyemi Adegoke Oyewole*³¹ the court emphasized that suspension must be time-bound, and an indefinite suspension could amount to constructive dismissal. To avoid legal pitfalls, employers should specify the duration of the suspension and provide timelines for the resolution of investigations.

4. Conducting Fair and Thorough Investigations

Before deciding to suspend an employee, it is crucial to conduct a preliminary investigation to assess the validity of the allegations. This helps to ensure that the suspension is based on credible evidence rather than assumptions or biases. During an administrative suspension, a more detailed investigation should be conducted, adhering to principles of fairness and transparency. The outcome of the investigation should determine the next steps, whether it leads to reinstatement, disciplinary action, or termination.

5. Communication

Clear communication is essential throughout the suspension process. The employee should be informed in writing of the reasons for the suspension, the

³¹ Supra

duration, and their rights during the suspension period. This communication should also clarify that the suspension is not an assumption of guilt but a standard procedure to allow for a fair investigation or as a disciplinary measure. Effective communication can help reduce the likelihood of litigation.

6. Seeking Legal Counsel

Given the complexities and potential legal consequences of employee suspension and the evolving legal landscape of Nigeria employment law, seeking legal counsel is advisable. Legal professionals can provide guidance on the appropriate steps to take, ensuring that the suspension process is legally sound and minimizing the risk of future litigation.

7. Training Managers and HR Personnel

Managers and HR personnel play a crucial role in implementing suspension policies. Therefore, it is essential to train them on the legal requirements and best practices for handling suspensions. This training should cover the legal framework, the organization's policies, and how to manage suspensions in a way that is fair, consistent, and legally compliant.

8. Documenting the Process

Documentation is a critical component of risk management. Every step of the suspension process should be documented, including the reasons for suspension, the investigation process, the panel and any communications with the employee. This documentation can serve as evidence in case of legal challenges, demonstrating that the suspension was handled in accordance with the law and organizational policies.

Mitigating the Risk of Constructive Dismissal

Constructive dismissal occurs where an employer, by words or conduct, procures or attempts to procure the compulsory resignation or early retirement of an employee from his employment with the employer. It is a situation where an employer's conduct towards an employee becomes so unreasonable that the employee is forced to leave their employment with the employer. The element of involuntariness in the employee's actual termination, or contemplated termination, of his employment with the employer, at the employer's instance, grounds the cause of action for a claim in constructive dismissal against the employer.

Constructive dismissal occurs when an employee resigns due to the employer's conduct, which creates a hostile or intolerable work environment. Indefinite or unjustified suspension can be grounds for a constructive dismissal claim. To mitigate this risk, employers should ensure that suspensions are justified, time-bound, and conducted in a manner that does not unduly burden the employee. For example, in *Mr. Adelabu Patrick Olasumbo v Ecobank Nigeria Ltd.* (2017), the court ruled that indefinite suspension without pay could amount to constructive dismissal, underscoring the importance of fair treatment

FINES AND DEDUCTIONS FROM EMPLOYEE'S SALARY

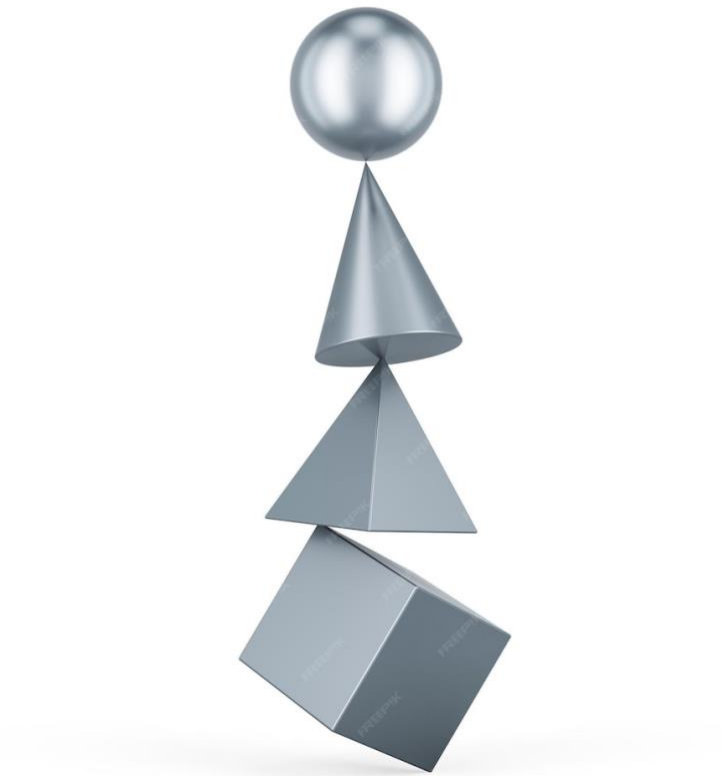
Employers have always exercise or imposed fines or deductions on employees salary for various reasons, yet the decision or powers to deduct employee salary for various reasons is not at the total whims of the employer. The National Industrial Court has held that such deductions and fines must follow a legal procedure.³²

You cannot touch or deduct an employee salary except after you strictly. Follow the following procedures:

1. Set up an investigative panel: which will investigate the guilt of the employee on record. The panel must afford such employee all vestige of fair hearing.
2. A hearing to specifically justify the deduction and the exact yardstick for measuring such deduction. All these must be painstakingly put on record.

Failure to follow the above to the letter, such organisation is setting itself up for payment of likely damages. It may be reasonable for employers to specifically state deductions for petty issues such as late coming etc in the employment contract or employee handbook which is effectively incorporated into the employment contract, thus making it part of the contractual agreement and binding between the organisation and the employee.

³² *Shefiu Adejare v. MDS Logistics Plc* unreported Suit No. NICN/LA/20/2013; *Omolola Shafqat Ogungbuaro v. Access Bank Plc* SUIT NO. NICN/LA/289/2014



Proactive Risk Management Strategies

Given the evolving legal jurisprudence, it is crucial for Nigerian employers to adopt proactive risk management strategies to navigate employee termination and suspension processes effectively. The following sections outline key strategies that can help minimize legal risks and protect the organization's interests.

1. Comprehensive Employment Contracts

The foundation of proactive risk management in employee termination lies in the employment contract. A well-drafted employment contract should clearly outline the terms and conditions of employment, including provisions related to

termination and suspension. This clarity helps to avoid ambiguities that could lead to disputes.

Key Elements To Include

- **Termination Clause:** Clearly define the grounds for termination, notice periods, and the procedure for termination.
- **Suspension Clause:** Include a clause that details the circumstances under which an employee can be suspended, whether with or without pay, and the duration of such suspension. This is particularly important, as courts have ruled that suspensions without pay are unlawful unless expressly provided for in the employment contract.³³
- **Dispute Resolution Mechanism:** Incorporate a dispute resolution clause that outlines the steps to be taken in the event of a disagreement over termination or suspension. This could involve mediation, arbitration, or other alternative dispute resolution methods before resorting to litigation.

By ensuring that these elements, among other things, are included in employment contracts, employers can significantly reduce the risk of legal challenges arising from termination or suspension decisions.

2. Comprehensive Employee Handbook:

Draft a detailed and comprehensive Handbook online with the recent decisions and interpretations of the Court. A number of employee handbooks are drafted based on old positions of the law.

3 Adherence to Procedural Fairness

Even where the contract grants the employer the right to terminate without cause, adhering to procedural fairness is critical. Procedural fairness refers to the process that must be followed before making a decision to terminate or suspend an employee. This is especially important in light of the NICN's emphasis on fairness and the application of international labour standards.

³³ Ibid

Steps to Ensure Procedural Fairness:

- **Notice and Hearing:** Before terminating or suspending an employee, especially in cases of alleged misconduct, provide the employee with notice of the allegations and an opportunity to respond. This is consistent with the principle of fair hearing, which is a cornerstone of any disciplinary panel or committee.

The principle of fair hearing stipulates that:

- a. Audi alteram partem, which means that you must hear the other party
 - b. Nemo iudex in causa sua, which means a man shall not be a Judge in his own case.
- **Documentation:** Keep thorough records of all steps taken during the disciplinary process, including investigation reports, correspondence with the employee, and minutes of any hearings. These documents can be crucial in defending against claims of unfair termination or suspension.
 - **Consistent Application:** Apply the same procedures and standards consistently across all employees to avoid claims of discrimination or favouritism. Inconsistent application of disciplinary measures can lead to accusations of unfair labour practices.

3. Suspension as a Risk Management Tool

Suspension, when used appropriately, can be an effective tool for managing risks associated with employee misconduct or ongoing investigations. However, it is essential to use suspension judiciously and in accordance with the law to avoid potential legal pitfalls.

Guidelines for Effective Use of Suspension:

- *Differentiate Between Administrative and Disciplinary Suspension:*
Understand the distinction between administrative suspension (pending investigation) and disciplinary suspension (a consequence of established misconduct). Administrative suspension is often used to protect the business or other employees during an investigation, while disciplinary

suspension is a punitive measure following a fair hearing and determination of misconduct.

Either for administrative suspension or disciplinary suspension, it is safer for employers to state the terms in the employment contract or the staff handbook which has been effectively incorporated into the employment contract. By so doing such administrative suspension or disciplinary suspension will be in accordance with the terms of employment

- *Clear Communication:*

When suspending an employee, clearly communicate the reason for the suspension, the expected duration, and any conditions attached to it. For example, if the suspension is without pay, this must be explicitly stated, and the employment contract must authorize such a measure. Effective communication reduces the likelihood of disputes and confusion.

- *Avoid Indefinite Suspensions:*

Nigerian courts have deemed indefinite suspensions to be an unfair labour practice, particularly when they are used as a tactic to avoid formal termination or to bypass the contractual notice period. Employers should set a clear timeframe for suspension and either reinstate the employee or move forward with formal termination once the suspension period concludes.

- *Compliance with Legal and Contractual Obligations:*

Ensure that the suspension aligns with the terms of the employment contract and applicable labour laws. For instance, unless explicitly provided for in the contract, suspension without pay may be deemed unlawful. Additionally, employers must respect any statutory entitlements, such as those related to annual leave or sick leave, during the suspension period.

4. Strategic Use of Termination

Termination should be approached as a last resort after other corrective measures have failed. When termination becomes necessary, it is crucial to consider the difference between termination and dismissal and also their legal implications in order to manage the legal risks.

5. Managing Legal Risks in Termination and Suspension

Employers must be vigilant in managing the legal risks associated with

termination and suspension. Failure to do so can result in costly litigation and reputational damage.

Legal Risk Management Strategies

- **Consult Employment Lawyers :** Before initiating termination or suspension, especially in complex cases, seek legal advice to ensure that the process complies with all applicable laws and regulations.
- **Stay Informed on Evolving Jurisprudence:** The legal landscape surrounding termination and suspension in Nigeria is continually evolving, particularly with the NICN's expanding role. Employers should stay informed of recent court decisions and legislative changes that could impact their practices.
- **Internal Audits and Training:** Regularly conduct internal audits of HR practices to ensure compliance with employment contracts, labour laws, and company policies. Additionally, provide training for HR personnel and managers on the legal aspects of termination and suspension, emphasizes the importance of procedural fairness and consistent application of policies

Conclusion

Proactive risk management in employee termination and suspension is not just about avoiding legal challenges; it's about ensuring a fair workplace and building a fair workplace culture. By understanding the legal framework, adhering to procedural fairness, and implementing strategic and ethical practices, employers can manage the attendant legal risks involved in employment termination, dismissal or suspension. As the employment law jurisprudence is gradually evolving in Nigeria, particularly with the NICN's growing influence, employers must remain vigilant and adaptable.

Contact Us for Further Inquiry

At Legalify Attorneys, we understand that matters of employment and labour law requires proactive legal risk management and a strategic approach tailored to safeguard your interests.

Our experienced legal team is here to provide you with the guidance and support you need to protect your interest and ensure compliance with the law.

If you have any questions or require further assistance regarding employment and labour related matters, please do not hesitate to contact us. We are committed to providing tailored legal solutions that meet your specific needs.



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