

## LEGAL REGIME FOR THE COMPENSATION OF WORK-RELATED INJURY, DISEASE AND DEATH IN NIGERIA

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### ABSTRACT

*Changes in human ecosystem due to globalization, population explosion and urbanization have far-reaching consequences on Occupational Safety and Health (OS&H). It is therefore not surprising that the safety of workers against workplace related injury, disease and death has been a burning issue for the international Labour Organization (ILO) since its formation in 1919 till date. In Nigeria, laws have been put in place to compensate employees for injury sustained, and disease and death that occurred in the course of employment. These laws are far more convenient than the common law principles that offers no compensation to workers. The paper examines compensation for work-related injury, disease, and death under the Nigerian law. Adopting the doctrinal research methodology, the paper argues that the Employees' Compensation Act (ECA) 2007 that repeals the Workman Compensation Act (WCA) made innovative requirements for reimbursement of employees in case of workplace related injury or disability, disease, and death. However, the ECA is far away from achieving the desired objectives due to daily occurrence of workplace related injuries leading to permanent disabilities or death with inadequate and inaccessible compensation to the affected victims. The paper concludes that for a healthy workforce, there is the need for a healthy workplace that will ensure that workers' rights and welfare are legally protected.*

**Keywords:** Legal Regime, Compensation, Workplace Injury, Disease, Nigeria

### Introduction

At common law, the principles of compensation for work related injuries were quite restrictive and the process of implementation proved highly cumbersome. An injured worker's only recourse was through torts, and this was an exceptionally expensive legal affairs beyond the limited means of an average worker. In the course of time, employers became wary of the unpredictable characteristics and high cost of fighting civil litigations.<sup>1</sup> The promulgation of the Workmen's Compensation Act<sup>2</sup> (WCA) mitigated the hardship of the common law regime for the compensation of work-related injury, disease, and death in Nigeria.

Recent developments have shown that globalisation of the world's economies and its attendant consequences brought about changes in both positive and negative ways in relation to Occupational Safety and Health (OS&H). Trade liberalization, speedy technological advancement, substantial advances in transportation and information technology (IT), ever-changing forms of employment, size, structure, and life cycles of businesses generates new

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<sup>1</sup> AA Adeogun, 'Thirty Years of Workmens' Compensation Act in Nigeria' <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/nlj5&div=8&id=&page=>> accessed 17 August 2024

<sup>2</sup> Cap W6 LFN 2004.

patterns of exposures to risks.<sup>3</sup> The socio-economic implications of OS&H have been a cause for concern in the global workplace. Over the years, several policies and measures have been designed to regulate and prevent OS&H threats to keep pace with technological advancements. In view of the sluggish progress of these measures, workplace injuries and diseases have become a recurrent issue and the effects in relations to human and socio-economic burden remains notable.<sup>4</sup>

Workers are exposed to dangers in form of offensive smells, noise and heat caused by using heavy machines, plants and equipment that may lead to accidents, injuries and other related diseases.<sup>5</sup> These injuries and diseases are life-threatening and subsequently leads to the death.<sup>6</sup> Accordingly, law and various institutions emerged as a source of aid to affected employees, ensuring that they are compensated for these injuries and unfortunate circumstances.<sup>7</sup> It has been acknowledged globally that employers are responsible for ensuring a safe and healthy working environment to prevent and protect workers from occupational hazards and this entails consciousness of safety and health implications; the choice of technology to be employed,<sup>8</sup> risk assessments, prioritizing safe business operations, and providing flexible solutions to achieve workplace safety, while the government provides the legal and institutional frameworks.<sup>9</sup>

By ratifying the International Labour Organisation (ILO) Conventions and other treaties on OS&H, Nigeria is under obligation to ensure that workers are protected from hazards and enjoy an environment that promotes their well-being. These Conventions underscore the obligation of Nigeria to protect workers from harm in the workplace and provides a comprehensive basis for ensuring that the Employees' Compensation Act (ECA)<sup>10</sup> which repealed the WCA aligns with international standards, thereby safeguarding the economic, social, and cultural rights of workers.

The ECA is a dividing line in the antecedent of the workers' reimbursement schemes in Nigeria in that it unlocked a new frontier and increase the possibilities of compensation including the amount for work related risks. However, recent research has shown that the ECA is far from achieving its desired objectives due to some salient challenges affecting its effective implementation. The purpose of this paper is to examine compensation for workplace related injuries, diseases, and death under the Nigerian law with the view to proffering recommendations that will enhance further development of compensation regulation in Nigeria.

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<sup>3</sup> Benjamin Alli, *Fundamental Principles of Occupational Health, and Safety*, (2<sup>nd</sup> Edn ILO Office Geneva 2008) 3

<sup>4</sup> *Ibid.*

<sup>5</sup> WHO, 'Occupational Health' (2022) <<https://www.who.int/india/health-topics/occupational-health>> accessed 10 June 2024.

<sup>6</sup> Dawodu Adeyemi Akinkunmi, 'Occupational Accident and Protection of Temporary Workers' Rights in Nigerian Manufacturing Companies: A Case Study of Selected Manufacturing Companies in Lagos State, Nigeria' *E-Journal of International and Comparative Labour Studies* (2016) (5) (3) (4)

<sup>7</sup> Atilola, 'Right of Appeal Under the Employees Compensation Act, 2010' *NJLIR* (2010) (8) (1) (1)

<sup>8</sup> Benjamin O Alli, (n.1)

<sup>9</sup> Pierre Vincensini, 'Occupational Safety and Health' (2021) <<https://www.ioe-emp.org/policy-priorities/occupational-safety-and-health>> accessed 12 June 2024

<sup>10</sup> (2010) Cap A2 LFN 2004

## Conceptual Framework

OS&H refers to the advancement and preservation of the maximum level of physical, mental, and social welfare of employees in all profession.<sup>11</sup> It deals with all features of health and safety with prominence on prevention of risks in the workplace environment.<sup>12</sup> It is the services dealing with precautionary measures that has evolved in response to socio-economic, political, and technological advancements.<sup>13</sup> Work-related health involves numerous subjects, such as industrial medicine, nursing, psychology, hygiene, safety, etc.<sup>14</sup> The aim is to encourage and preserve the maximum level of physical, mental and social stability of workers, prevent exit due to health challenges caused by work environments; guard employees from risk ensuing from influences that are hostile to health in workplace; and maintaining the psychological proficiencies of workers in the workplace environment; and acclimatizing employment to the employees and each employee to his or her employment.<sup>15</sup>

## Theoretical Framework

Three critical principles were established during the development of English common law in the late Middle Ages and revival period that provided a legal framework for work related compensation, which continued into the early industrial revolution across Europe and America. They were so stringent that they became known as the "unholy trinity of defences". This paper adopted the unholy trinity of defences as the theoretical framework to examine the legal regime for compensation of work-related injury, disease, and death in Nigeria.

### i. Contributory Negligence

The doctrine of "contributory negligence" postulates that where the worker, in any way contributed to the injury he sustained, the employer was discharged from liability. Irrespective of how risky the equipment was, any worker who slipped and got injured was not eligible to any kind of recompense. This principle was established in the case of *Martin v the Wabash Railroad*,<sup>16</sup> where a freight conductor was working on a train when he fell from it. The United States (US') Court held that although the worker sustained injuries due to a loose handrail, he was not eligible for compensation because it was within his official duties to inspect faulty equipment in the train.

### ii. The "Fellow Servant" Rule

The "fellow servant" rule posits that employers were not responsible where a worker sustained injuries due to the act or carelessness of his fellow worker. This principle was established in the English case of *Priestly v Fowler*,<sup>17</sup> where butcher boy was injured. This was followed five years later in the US case of *Farnwell v The Boston and Worcester Railroad Company*.<sup>18</sup>

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<sup>11</sup> Muhammad Qasim, et al, 'Concept of Occupational Health and Safety and Evaluation of Awareness Level Among Employees' World Applied Sciences Journal (2014) (32) (5) (904 – 909)

<sup>12</sup> WHO, (n.5)

<sup>13</sup> JA Kopias, 'Multidisciplinary Model of Occupational Health Services. Medical and Non-medical Aspects of Occupational Health' International Journal of Medical Environmental Health, (2001) (14) (1) (23 – 28)

<sup>14</sup> WHO, 'Occupational Health' < <https://www.who.int/health-topics/occupational-health> > accessed 4 July 2024

<sup>15</sup> The definition was adopted by the Joint ILO/WHO Committee on Occupational Health at its First Session (1950) and revised at its 12th Session (Geneva, November 1995).

<sup>16</sup> 30 S.W.2d 735 (Mo. 1930)

<sup>17</sup> [1837] 150 ER 1030

<sup>18</sup> 45 Mass. 49 (1842)

### iii. The Assumption of Risk

Under the principle of "assumption of risk", employees were mindful of the risks of the job at the time of signing their contracts of employment. Thus, by consenting to work in that situation, they undertake any integral hazard attached to the job. Employers were required to provide the necessary safety measures in the industry. Assumption of risk was commonly formalized at the commencement of an employee's tenure; several businesses required agreements in which workers abdicates the rights to take legal action for injury, which became known as the "worker's right to die," or "death contracts."<sup>19</sup>

### Legal Framework

The United Nations Declaration of Human Rights (UNDHR)<sup>20</sup> provides for right to OH&S. It states thus: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work ...". The International Covenant on Civil and Political Rights (ICCPR)<sup>21</sup> forms a major legal framework influencing compensation for occupational injuries. The Treaty<sup>22</sup> contains a comprehensive outline of the various civil and political rights of individuals and expressly provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Treaty<sup>23</sup> also recognizes the inherent right to life and imposed an obligation on states to protect individuals from arbitrary deprivation of life. In relation to OH&S, State parties owe a duty to establish and enforce laws ensuring a safe working environment, thus preventing arbitrary loss of life due to workplace accidents or hazards. Thus, where an employee suffers work-place related injuries of any sort while carrying out his employment duties, he will be entitled to compensation.

The International Covenant on Economic Social and Cultural Rights (ICESCR)<sup>24</sup> is a pivotal legal framework that significantly influences compensation for OS&H. The Treaty<sup>25</sup> focuses on the economic, social, and Cultural Rights of individuals, and highlights the right of everyone to enjoy a just and favourable conditions of work and further emphasizes the importance of safe and healthy working environments. The Treaty recognizes the right to satisfactory standard of living, including adequate food, clothing, and housing. This right is directly relevant to compensation for occupational injuries, as it implies that injured workers should receive support that enables them to maintain an adequate standard of living, encompassing medical care, rehabilitation, and financial assistance.<sup>26</sup> It also emphasizes the right to the maximum realistic standards of physical and psychological health.<sup>27</sup>

The ILO Convention<sup>28</sup> emphasizes the importance of ensuring a safe and healthy working environment. The Convention<sup>29</sup> also establishes principles for providing adequate compensation for workers who suffer from employment-related injuries. This includes ensuring access to medical care, rehabilitation, and financial assistance. The ILO's Declaration on Social Justice for a fair globalization also emphasizes the right of workers to fair wages, social protection, and safe working conditions. The ILO's mandate in the area of

<sup>19</sup> See *Barnes v N.H. Karting Association*, 509 A.2d 151 (N.H. 1986).

<sup>20</sup> Article 23 of 1948.

<sup>21</sup> Adopted by the UNGA in 1966.

<sup>22</sup> Article 7

<sup>23</sup> Article 6 (1)

<sup>24</sup> Adopted by the UNGA in 1966.

<sup>25</sup> Article 7

<sup>26</sup> Article 11

<sup>27</sup> Article 2

<sup>28</sup> No. 155 on Occupational Safety and Health

<sup>29</sup> No. 121 on Benefits in the Case of Employment Injury

OS&H dates from its very foundation in 1919, where it provides that: “And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work including the establishment of a maximum working day and week “... the protection of the worker against sickness, disease and injury arising out of his employment ...”<sup>30</sup>

This obligation was reinforced, where it states that “The Conference recognizes the solemn obligation of the ILO to further among the nations of the world programmes which will achieve ... (g) adequate protection for the life and health of workers in all occupations ...”<sup>31</sup> The ILO<sup>32</sup> recommended the establishment of OS&H services for the protection of workers against injuries, diseases and sicknesses arising from employment relationship. The Convention emphasizes the relevance of multi-disciplinary approach and multi-sectoral collaboration for achieving safe and healthy workplace environments.<sup>33</sup> The ILO adopted over 40 standards explicitly dealing with OH&S as well as more than 40 codes of practice while almost half of its instruments deal directly with OH&S issues. These declarations underscore the need for a comprehensive and fair system that addresses the economic and social well-being of injured workers.<sup>34</sup>

The Constitution of the Federal Republic of Nigeria (CFRN 1999) (as amended) is the barometer for the measurement of the validity of every other law.<sup>35</sup> It serves as a foundational legal framework influencing compensation for occupational injuries under the ECA. The CFRN 1999 (as amended)<sup>36</sup> mandates the Government to ensure that all workers have safe and healthy working conditions. This constitutional provision underscores the commitment to creating an enabling environment that minimizes the risk of workplace injuries, which is in consonance with the goals of the ECA. The CFRN 1999 (as amended)<sup>37</sup> also emphasizes the duty of the Government to ensure that appropriate and acceptable food, national minimum living wage, old-age care, sickness, and incapacitation benefits are provided for workers. This constitutional provision supports the notion that compensation for industrial injuries is not only a matter of legal obligation but also aligns with constitutional directives regarding the well-being of citizens.

The ECA<sup>38</sup> is applicable to all employers and employees in both the public and private sector in Nigeria. But it does not apply to members of the armed forces except those employed in civilian capacity. According to the Act,<sup>39</sup> “an employee, whether in a workplace, who sustains any injury or disability in the course of his employment, shall be compensated under the

<sup>30</sup> Preamble to the Constitution of the ILO.

<sup>31</sup> 23 (Declaration of Philadelphia, 1944, para. III).

<sup>32</sup> ILO Convention No. 161/1985 (1) and the 1996 WHO Global Strategy on Occupational Health for All.

<sup>33</sup> Bimbola Atilola, *Employees’ Compensation Act 2010: A Comparative Analysis*, Themes on the New Employees’ Compensation Act, (Hybrid Consult, 2013) 176

<sup>34</sup> C121, ‘Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)’ <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C121](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C121)> accessed 25 February 2024.

<sup>35</sup> *AGF v AG Abia State* 6 NWLR (pt 764) 542

<sup>36</sup> S. 17 (3) (d)

<sup>37</sup> S. 16 (2) (d)

<sup>38</sup> See (n. 8)

<sup>39</sup> S. 7 (1)

Act.” The first decisive point here is that the injury must be disabling. Where the injury does not disable the employee, the Act is not applicable. Thus, not all injuries affect the capacity of a workman to earn a living. A workman may suffer disfigurement but not be incapacitated. The injury may be permanent, so long as he can still work despite the injury, the Act cannot apply.<sup>40</sup> However, where there is serious and permanent disfigurement even if earning capacity is not reduced, compensation is still available under the Act.<sup>41</sup> The ECA<sup>42</sup> also states that where an employee sustains any injury outside the usual workplace, which would have entitled him to compensation under the Act, if the injury occurred in the workplace, he shall be paid compensation if: (a) the nature of the employment goes outside the normal workplace or (b) the nature of the work is such that the worker is expected to work both inside and outside the workplace; or (c) the employee is authorised and permitted by the employer to work outside usual workplace.<sup>43</sup>

The Labour Act<sup>44</sup> is a significant legislation in the realm of employment and industrial relations. Although the Act does not have a provision that expressly talks about compensation for industrial injuries, there are however exist two sections under the Act that prohibits forced labour and talks about labour health areas. The Act<sup>45</sup> provides that “any person who requires another person, or permits another person to be required, to perform forced labour contrary to the CFRN 1999 (as amended)<sup>46</sup> shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N1,000 or to imprisonment for a term not exceeding two years, or to both”. The Labour Act<sup>47</sup> also provides that where the Minister is contented that a manufacturing or agricultural enterprise is located in an area which, having regard to the prevailing medical and health situations and amenities, water provisions and communications is inaccessible, he may declare that area a labour health area and, during the period of employment of any worker in a labour health area, the employer shall provide such amenities and make such arrangements as may be specified by regulations made under section 67 of the Act, and shall otherwise comply with the requirements of any such regulations. By the above provisions, the Labour Act serves as a cornerstone in shaping the legal framework for the recognition of the rights and well-being of employees. The provisions pertaining to forced labour and labour health areas provides a veritable position in this aspect of law.<sup>48</sup>

The Factory Act<sup>49</sup> requires that every workplace in Nigeria particularly, the manufacturing firms should ensure the provisions of suitable safety and health measures in anticipation of any type of occupational dangers. The Act further provides that workers engaged or to be engaged to work on any risky machine or process must be adequately educated and trained on the dangers of such machine or process. The Act<sup>50</sup> also stipulates that every factory must be kept in clean and sanitary conditions with adequate drainage and sanitary conveniences.

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<sup>40</sup> Agomo, C., “Social Security Legislation in Nigeria: A Critical Appraisal” in *Issues in Nigerian Law*. Ed., Omotola, J. A., (Lagos; University of Lagos Press; 1991) pp. 171-181 Note that the worker still retains his common law rights as well as his right under the Factories Act 1987.

<sup>41</sup> S. 22 (8)

<sup>42</sup> S. 11

<sup>43</sup> Section 73 defines workplace as including any place where an employee performs work or needs to be or is required to be in the course of employment.

<sup>44</sup> Cap 347, LFN 2004

<sup>45</sup> S. 73

<sup>46</sup> S. 34 (1) ©

<sup>47</sup> S. 66

<sup>48</sup> Agomo, C. (n. 39).

<sup>49</sup> S. 47

<sup>50</sup> Cap F1 LFN 2004

Accumulation of dirt and refuse must be removed daily and workroom floors washed at least once a week or kept clean by other suitable method. The objective of the Act is to promote the safety of employees and other professionals exposed to occupational risks and imposes responsibilities and rights on the employers and workers.

### **Institutional Framework**

The United Nations (UN) plays a crucial role in shaping the institutional framework for compensation of industrial injuries. The UN, through its various bodies and conventions, has contributed significantly to the development of international norms and standards in OS&H. The UN's Sustainable Development Goals (SDGs)<sup>51</sup> emphasizes the need for safe and secure working environments.

The ILO, as a specialized agency of the UN has been instrumental in the formulation of Conventions and Recommendations related to the protection of workers from work-related injuries. The ILO Convention<sup>52</sup> provides a framework for establishing comprehensive and effective systems of compensation for workers who suffer occupational injuries. This convention outlines principles related to the provision of benefits, medical care, and rehabilitation services for injured workers. The ILO plays a crucial role in shaping the legal framework for compensation of work-related injuries by setting international labour standards and promoting social justice and decent working conditions. Its core mission revolves around promoting social justice and global recognition of human and labour rights. It also offers technical assistance and expertise to member states, aiding them in the establishment and improvement of their national OS&H systems. In addition, the ILO's campaigns and initiatives on decent work and OS&H have influenced the global discourse, fostering a commitment among member states to prioritize the well-being of workers.

The World Health Organisation (WHO) is another specialized agency of the UN saddled with responsibility for international public health. It was founded in 1948 with headquarters in Geneva, Switzerland. WHO is an affiliate of the UN Development Group that replaced the Health Organization, an agency of the League of Nations.<sup>53</sup> The World Health Assembly urges UN member countries to develop domestic guidelines and plans of action, and to provide institutional capacities on OS&H and to ensure coordination with other relevant national health programs relating to infectious and non-infectious diseases, prevention of injuries, mental and environmental health promotion, and development of health systems.<sup>54</sup> The International Organisation for Standardisation (ISO) is the world's major creator and producer of International Standards. ISO is a forum of the national standards institutions of 160 countries, with Headquarters in Geneva, Switzerland. ISO members are domestic standards organisations that cooperate in the growth and advancement of international standards for technology, scientific testing procedures, conditions of work, social matters, etc.<sup>55</sup>

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<sup>51</sup> Goal 8 on Decent Work and Economic Growth,

<sup>52</sup> No. 121 on Employment Injury Benefits

<sup>53</sup> WHO, 'Purpose and Achievements' <<https://www.jagranjosh.com/general-knowledge/world-health-organisation-who-purpose-and-achievements-1458292078-1>> accessed 23 May 2024

<sup>54</sup> Ibid.

<sup>55</sup> ISO, 'International Organisation for Standardization' <<https://www.techtarget.com/searchdatacenter/definition/ISO>> accessed 17 July 2024

The Nigerian Social Insurance Trust Fund (NSITF) Act<sup>56</sup> establishes social insurance fund and a Management Board of the Fund.<sup>57</sup> The Act<sup>58</sup> mandates the board to provide superannuation endowment, survivors' and death assistance, invalidity assistance and such other benefits as may be approved by the Board from time to time. The Act<sup>59</sup> also provides the functions of the Board to include: carrying out regular assessment of the workplace and to determine the rates of contributions by employers to the fund, payment of compensation or benefits to persons entitled to such compensation and any other payment required to be made from the fund; invest any money standing to the credit of the fund in accordance with the advice of the investment committee; co-operate with the National Council for OS&H for the prevention of work-related injuries and diseases and the advancement of safety and health working environment and other activities necessary for ensuring effective performance of its mandates.<sup>60</sup>

The National Industrial Court of Nigeria (NICN) Act<sup>61</sup> established the NICN with exclusive jurisdiction, inter-alia in civil matters relating to labour, including trade unions and industrial relations; environment and working conditions, safety, health, and workers welfare and matters related thereto. The NICN functions like the regular courts and cases before it is subject to the vicissitudes of adversarial litigation procedures.<sup>62</sup> In addition, the National Office for Occupational Safety and Health (National Office for OS&H) is under the Federal Ministry of Labour and Productivity. The repealed Workman Compensation Act<sup>63</sup> provides that the Minister on the recommendation of the Board of National Office for OH&S, may make regulations for giving full effect to the provisions of the Act. In addition, the Institute of Safety Professionals of Nigeria (IPSON) Act<sup>64</sup> established the IPSON as Nigeria's focal point for safety standards and regulations. The functions of the institute, include regulating the practice of safety management, setting related safety ethics, register individuals and establishments that wishes to practice safety activities and preserve the register of safety professionals in the country.

Trade Unions, as representatives of workers and Civil Society Organisations (CSOs), particularly those focused on labour rights and social justice actively engaged in advocacy for better working conditions, including OSH measures and contribute to the discourse surrounding workers' well-being. Trade unions negotiate with employers and the government to ensure that compensation for occupational injuries is fair and just. The provisions of the ECA may, in part, reflect the outcomes of such negotiations, demonstrating the influence of trade unions in shaping the compensation framework. On the other hand, CSOs often engage in research, advocacy, and public awareness campaigns to promote fair compensation for industrial injuries. In the context of the ECA, CSOs serve as vital stakeholders whose

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<sup>56</sup> No 73 of 1993.

<sup>57</sup> The Board members include Chairman, who is appointed by the President on the recommendation of the Minister of Labour, two nominees of the Nigerian Employers Consultative Association (NECA) and Trade Unions; a representative of the Federal Ministry of Labour and a representative of the Central Bank of Nigeria; three Executive Directors and the Managing Director appointed by the President on the recommendation of the Minister of Labour.

<sup>58</sup> S. 16

<sup>59</sup> S. 32

<sup>60</sup> See ss 5, 6, 7 (3) and 9 (1)

<sup>61</sup> Section 1 (1), Cap N155 LFN 2004

<sup>62</sup> Agwomo, C. (n.39)

<sup>63</sup> S. 62

<sup>64</sup> LFN 2014

engagement and influence contributes to the development and improvement of laws and policies related to occupational injuries and compensation. The alignment of the Nigerian legislation with international standards and best practices may, in part, be attributable to the pressure and influence exerted by these organizations.<sup>65</sup>

## **Causes of Occupational Injury and Disease**

### **i. Dangerous Workplace Environments**

One of the leading causes of occupational injury and disease in Nigeria is the presence of unsafe workplace environments. This includes hazardous conditions such as inadequate lighting, lack of safety barriers, slippery floors, and poorly maintained equipment. In many workplaces, especially in industries such as manufacturing, construction, and agriculture, workers are exposed to various occupational hazards that increase the risk of accidents and injuries. Failure to address unsafe work environments violates the employer's duty to provide a safe workplace under Nigerian extant labour law.<sup>66</sup>

### **ii. Inadequate Training and Education**

Inadequate training and education leaving workers ill-equipped in recognizing and mitigating workplace hazards contributes to occupational injuries. Many employees in Nigeria lack proper training on OS&H practices, emergency procedures, and the safe operation of machinery and equipment. Without adequate training, workers may engage in risky behaviours or fail to use personal protective equipment correctly, which in turn increases their vulnerability to accidents and injuries. Employers have a legal obligation to provide comprehensive training to employees under Nigerian Labour law.<sup>67</sup>

### **iii. Poor Enforcement of Safety Regulations**

Despite the presence of regulatory framework in promoting workplace safety, poor enforcement of safety regulations worsens the risk of occupational injuries and diseases in Nigeria. Insufficient oversight by regulatory agencies, corruption, and lax enforcement of penalties for non-compliance allow employers to flout safety standards with impunity. Additionally, informal, and small-scale enterprises often operate outside the purview of regulatory authorities, exposing workers to greater risks.<sup>68</sup> Strengthening regulatory enforcement mechanisms and holding non-compliant employers accountable are essential for reducing occupational injuries.

### **iv. Inaccessibility to Safety Equipment**

Another significant cause of occupational injuries is the lack of access to appropriate safety equipment and resources. Many workplaces lack essential safety gear such as helmets, gloves, goggles, and protective clothing, leaving workers vulnerable to injuries. Moreover, outdated, or malfunctioning equipment further increases the risk of accidents, as employees may be forced to use faulty machinery due to budget constraints or lack of alternatives. Employers must prioritize the provision of adequate safety equipment and resources to protect workers from harm.<sup>69</sup>

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<sup>65</sup> Agomo, C. (n.39)

<sup>66</sup> Mathew Idowu Olatubi and Iyabo Victoria Olatubi 'Ensuring a Safe Working Environment in Nigeria: Reality or Myth' (2018) Retrieved <[https://www.researchgate.net/publication/325381991\\_Ensuring\\_a\\_Safe\\_Working\\_Environment\\_in\\_Nigeria\\_a\\_Reality\\_or\\_Myth](https://www.researchgate.net/publication/325381991_Ensuring_a_Safe_Working_Environment_in_Nigeria_a_Reality_or_Myth)> accessed 29 March 2024

<sup>67</sup> Uvieghara, E. E., *Labour Law in Nigeria* (Lagos: Malthouse Press Limited, 2001) pp. 200-202.

<sup>68</sup> Ibid.

<sup>69</sup> Idowu, A., *Occupational Health, and Safety Management in Nigeria* (Ibadan: University Press, 2013) pp. 112-115.

## v. Workplace Fatigue

Workforce fatigue due to overwork are prevalent issues in many industries and this contribute to industrial injuries in Nigeria. Long working hours, inadequate rest breaks, and demanding production targets can impair workers' concentration, and decision-making abilities, increasing the possibility of accidents. Fatigued workers are more prone to making errors and lapses in judgment, which can have serious consequences in high-risk environments.<sup>70</sup>

## Effects of Workplace Injury and Disease

### i. Legal Implications

OS&H triggers a range of legal consequences under the Nigerian Labour law. The ECA establishes the framework for providing compensation to employees who sustain injuries or suffer occupational diseases and mandates employers to provide compensation to injured employees or their dependents, covering medical expenses, disability benefits, and death benefits.<sup>71</sup> Failure to comply with the provisions of the ECA may result in legal liabilities for employers, including fines and penalties.

### ii. Economic Implications

OS&H imposes substantial economic costs on both employers and the broader society. For employers, workplace accidents may lead to increased expenses related to medical treatment, rehabilitation, and compensation payments to injured employees.<sup>72</sup> Occupational injuries can disrupt workflow, leading to decreased productivity and increased absenteeism. The economic burden of occupational injuries extends to healthcare expenditures, social welfare programs, and lost economic output. These costs underscore the importance of preventive measures and robust safety regulations to mitigate the economic fallout of workplace accidents.<sup>73</sup>

### iii. Social Implications

Occupational injuries have profound social implications. It can result in physical disabilities, psychological trauma, and social stigma for affected employees. The inability to work due to injuries may lead to loss of income, exacerbating poverty and social inequality. Occupational injuries can also strain familial relationships and social support networks, as injured workers may require assistance with daily activities and rehabilitation.<sup>74</sup>

## Compensable Injury

There are five major compensable injuries recognized under the ECA. These include:

### i. Occupational Diseases

Compensation and health care benefits is also available for occupational diseases resulting in death or disability. The ECA<sup>75</sup> contains a list of occupational diseases.<sup>76</sup> However, the disease

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<sup>70</sup> A. O. Ajayi, 'Workplace Fatigue and Safety in High-Risk Industries in Nigeria' [2017] 12(4) Journal of Occupational Health and Safety (2017) (12) (94) (45-52)

<sup>71</sup> S. 17.

<sup>72</sup> World Bank Group, 'Workplace Safety and Health: Key Considerations for Companies in Nigeria' (2018) <<https://www.worldbank.org/en/country/nigeria>> accessed 27 March 2024

<sup>73</sup> Adesina, O. 'The Economic Impact of Industrial Injuries in Nigeria: Implications for Occupational Safety Policies' (2021) (25) (4) (78 – 85)

<sup>74</sup> NLC, 'Addressing the Social Consequences of Workplace Injuries' (2022), <<https://www.nlcng.org/2022-may-day-address-of-the-nlc-and-tuc/>> accessed 29 March 2024

<sup>75</sup> First Schedule

must be shown to be in respect of the employment which the employer is employed, whether one or more employments. The ECA<sup>77</sup> also states that ‘any employee who becomes disabled from any simple disease or any disease that is difficult by any other disease, condition, or factor, shall be entitled to compensation for total or partial disability as shall be determined under the Act.’ The ECA<sup>78</sup> further states that ‘the employee must have been in the employment connected with exposure to an agent or agents leading to that ailment and he must have been first exposed to the agent causing the disease in the workplace’. The ECA<sup>79</sup> empowers the Board to apportion the compensation between any two or more classes or sub-classes of industry where the employee had been exposed according to the period and severity of exposure in each. However, there is a presumption that a diseased worker under 70 years at the time of death and who suffered from occupational disease of a type that impairs the capacity of the vital organs of non-traumatic origin died from the occupational disease.<sup>80</sup>

**ii. Disabling Injury in the Course of Employment**

Compensation is payable for disabling injuries<sup>81</sup> in the course of employment. According to the ECA,<sup>82</sup> such injury must prevent the employee from earning full salary at the workplace. The compensation is payable from the first working day after the day of injury, except that only a health care benefit shall be payable in respect of the day of injury. In this respect, the ECA improves on the WCA, which requires the injury to incapacitate the worker for at least three days. Therefore, an employee will be eligible, even where he suffers injury on the first day of work. Compensation also exists for permanent of total disability and permanent partial disability<sup>83</sup> as contained in the second schedule to the Act. Periodic payments also apply to permanent total and permanent partial disability.<sup>84</sup>

**iii. Mental Stress**

The ECA<sup>85</sup> provides for the payment of compensation for work related mental stress that did not result from injury on condition that such stress is in response to an unexpected disturbing incident in the course of employment. The cause and extent of the mental stress is to be determined by an accredited medical expert appointed by the Board.<sup>86</sup> The provision will serve a great purpose under the law with the increasing growth of service industries as against manufacturing ones in modern times. This means that work that causes mental stress which is not premised on an identifiable traumatic event but rather resulting from a continuous process will be covered by the Act.<sup>87</sup>

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<sup>76</sup> S. 9 (c).

<sup>77</sup> S. 9 (3)

<sup>78</sup> S. 9 (4)

<sup>79</sup> S. 9 (5)

<sup>80</sup> S. 9 (6)

<sup>81</sup> The ECA did not define disabling injury. However, s. 17 (4) gives an idea of disability as where at the date of death a spouse is not disabled, but is suffering from a disability that results in substantial impairment of work ability and earning capacity...

<sup>82</sup> S. 7 (1) and (2).

<sup>83</sup> S. 73

<sup>84</sup> See Ss. 21 and 22.

<sup>85</sup> S. 8 (1) and (2).

<sup>86</sup> S. 8 (3).

<sup>87</sup> S. 8 (b).

**iv. Hearing Impairment**

According to the ECA,<sup>88</sup> hearing impairment of non-traumatic nature which arises in the course of employment is compensable. Where the impairment results in total deafness, but without loss of incomes, the compensation shall be calculated based on the guidelines provided by the Board in consultation with the National Council for OS&H with regards to the varieties of loss, the quantum of disability, the methods, or rate of recurrence to be used to measure hearing impairment and any other matter related thereto. If loss or drop in earnings is due to the hearing impairment, then the employee will be compensated for full or fractional disability under the Act.<sup>89</sup>

**v. Disfigurement**

By the provisions of the ECA,<sup>90</sup> a serious and permanent disfigurement which the Board considers can impair the employee's earning capacity entitles him to lump sum payment even if the earning before the injury is not diminished. So, disfigurement, for example scarred face, may impair earning capacity but even if actual earning before the date of the injury is not diminished, it would still be compensable. The nature of disfigurement as an injury supports this provision, as it may not necessarily result in the type of disabilities listed in the second schedule to the Act.

**Types of Compensation Benefits**

The various forms of compensation provided under the ECA encompasses the followings:

**i. Financial Supports**

Financial supports, which may be periodic<sup>91</sup> or lump sum,<sup>92</sup> are available for different categories of disability. The ECA<sup>93</sup> provides that "the Board may make a regular allowance for the sustenance of an injured employee where, at the direction of the Board, the employee is receiving treatment at a place other than his place of residence". However, the power to make this grant covers an injured employee who receives compensation regardless of the date he first became entitled to receive the compensation.

**ii. Health Care and Related Support**

Under the ECA,<sup>94</sup> healthcare and disability support by the Board is accessible to employees. This includes provision by the Board of any medical, surgical, hospital, nursing or other care or treatment, transport, medicines, crutches, and apparatus including artificial limb that it may consider reasonably necessary at the time of the injury or thereafter during the disability, to cure and or relieve from the effects of the injury or alleviate those effects. The Board may also authorize health care including immediate conveyance and transport to a hospital or accredited medical practitioners for initial treatment.<sup>95</sup>

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<sup>88</sup> S. 10

<sup>89</sup> Under the second schedule, loss of hearing of one ear is 10% disability and total loss of hearing is 100% disability. But where loss of hearing does not affect earnings then section 10(2) applies provided compensation in 10(2) shall not be less than what 10(3) provides.

<sup>90</sup> S. 22 (8)

<sup>91</sup> S. 17.

<sup>92</sup> Ss. 22 (8), 22 (1) and 25(1).

<sup>93</sup> S. 26 (2)

<sup>94</sup> S. 26 (1)

<sup>95</sup> S. 26 (4).

### **iii. Vocational Rehabilitation and Counseling**

The ECA<sup>96</sup> provides for vocational rehabilitation where it states that the Board, in getting an injured employee back to work or in helping to reduce or eliminate a ensuing incapacity, may take any measure, and make the expenditure from the fund that it considers convenient. The ECA<sup>97</sup> also provides for counseling services to dependents of an injured employee.

### **Procedure for Compensation Claims**

Before an employee or dependent can receive compensation, he must take the following steps:

#### **i. Notice of Injury**

The ECA<sup>98</sup> requires the employee to provide the employer with detail information in respect of the injury sustained, which shall include the employee's name, the time and place of the injury, the nature and cause of the injury or disease, if known. In case of series of employment, the information is given to the last employer in which the injuries occurred. The employer may request the employee to furnish the details of the injury or disease on a prescribed form by the Board. Failure to provide the information will bar the claim.<sup>99</sup>

#### **ii. Duration**

The notice by the employee or his representative must be given within 14 days of the incident or receipt of the information of the incident. Where the claim is for occupational disease,<sup>100</sup> it is compensable if the application is filed within a year or on the Board's discretion, within three years if there are justifiable reasons for failing to apply earlier.

#### **iii. Report**

It is duty of the employer to report to the Board or the nearest office of the National Council for OS&H in the State, within seven days the employee sustained the injury, and it must be shown to be one arising out of employment. The report is to be made in a prescribed form and can be made by mailing copies addressed to the Board at its prescribed address.

#### **iv. Application for Compensation**

The application for compensation of occupational injury shall be made on a prescribed form issued by the Board and signed by the employee or the dependents in case of death. Unless the application is made within a year after the date of death occurred, injury, or disease sustained, the employee shall not be entitled to compensation. However, where special circumstances exist to the satisfaction of the Board, which does not warrant the filing of the application within a year, it may pay compensation if the application is filed within three years.<sup>101</sup>

#### **v. Appeal**

A person dissatisfied with the decision of the Board can appeal to the Board for a review in writing within 180 days or the right of appeal will be lost.<sup>102</sup> The appeal is to be disposed

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<sup>96</sup> S. 16

<sup>97</sup> S. 16 (2)

<sup>98</sup> S. 4 (2).

<sup>99</sup> S. 12 (4) (a) - (c)

<sup>100</sup> A disease which is contracted in the course of employment – S. 73.

<sup>101</sup> S. 6 (1) and (2).

<sup>102</sup> Section 55 (1) and (2).

within 180 days and appeal lies from there to the NICN.<sup>103</sup> By virtue of CFRN 1999 (as amended),<sup>104</sup> an appeal lies from the decision of the NICN, as of right, to the Court of Appeal on questions of fundamental Rights as contained in the CFRN 1999 (as amended),<sup>105</sup> so long as it relates to matters within the jurisdiction of the NICN.

### **Challenges of Enforcement of Compensation**

Despite the lofty objectives of the ECA for protecting employees and ensuring that they are compensated for all work-related injuries or diseases and death, there still exist some challenges that impede the enforcement of these rights by the said employees. Some of the challenges are as follows.

#### **i. Regulatory Challenges**

The rise of non-traditional employment arrangement in defining employer-employee relationships and determining liability in the event of work-related incidents<sup>106</sup> presents a new challenge to OH&S due to inadequate regulations. In addition, the complex nature of the labour market, such as contract work, subcontracting, freelancing, and gig employment is another set of challenges in determining and ensuring fair compensation in the event of occupational injury. This evolving feature of employment requires constant reworking of the legal framework to cater for emerging trends and protect the rights of all workers.<sup>107</sup> The scope of compensation for OS&H, therefore needs to advance to address the dynamic nature of working environment.

#### **ii. Poor Enforcement Mechanism**

The establishment of the State-Managed Compensation Funds<sup>108</sup> constitutes one of the most important positive innovations brought about by the ECA. The Board assumes the role of the regulator, administrator, manager, and investor of the funds contributed by the employees. However, the increasing loss of public confidence in State-Managed Schemes poses a serious challenge to the compensation regime. The ability of NSITF which has the responsibility for collecting and managing contributions and payments of benefits under the Act has been questioned. History has shown that the NSITF has grossly failed with regards to employees' pension that was entrusted to its custody, due to high profile corruption.<sup>109</sup> In addition, undue delays in the payment of compensation and settlement of disputes on the extent of liability for work-related injuries are issues that requires reflection. Besides inadequate compensation, the administrative bottlenecks and complex nature of the compensation processes hinders timely payment of benefits to the affected employees.<sup>110</sup>

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<sup>103</sup> Section 55 (4).

<sup>104</sup> S. 5 (2), (Third Alteration) Act No 3

<sup>105</sup> Cap 4 LFN 2007

<sup>106</sup> Ajibola Olaosebikan, 'Employee Compensation Act 2010: Legal Considerations and Realities' <<https://trustedadvisorslaw.com/employee-compensation-act-2010-legal-considerations-and-realities-the-trusted-advisors/>> accessed 15 June 2024

<sup>107</sup> Okonkwo Obi Peter, (n. 26) (169)

<sup>108</sup> See S. 32 of the Employees' Compensation Act,

<sup>109</sup> Oyesola Animashaun, Compensation for Death, Injury and Disease under the Employees' Compensation Act 2010, Themes on the New Employees' Compensation Act (Ed Bimbola Atilola Hybrid Consult 2013) 127

<sup>110</sup> Ajibola Olaosebikan, (n. 101).

**iii. Informal Sector Exclusion**

The powers of enforcement of the ECA regarding compensation targeted the formal sectors only, whereby the informal sectors have equally greater percentage of employees that need to be protected. For instance, there is no specified process on how to recover contributions and assess the employers of domestic servants.<sup>111</sup> More so, the so-called employees in Nigeria are not aware of the existence of the ECA and consequently, oblivious of their entitlements for compensation therein. This is not to say that occupational injuries and diseases do not occur in Nigeria like in other jurisdictions, but because employees in Nigeria often enforce their rights against their employers as the last option. Employees are of the opinion that they cannot succeed on claims for compensation against an employer.<sup>112</sup>

**iv. Globalisation**

The global economy and its business atmosphere, and the world of work have recently been motivated by human ecology and social changes, globalisation, as well as speedy growth and introduction of novel, classy and hitherto unfamiliar technologies, particularly in the framework of the so-called fourth industrial revolution. These changes pose several challenges in relations to preserving and refining OH&S management performance, as old methods to OH&S management in new working surroundings may no longer be effective.<sup>113</sup>

**v. Inadequate Compensation**

The compensation provided for under the ECA is grossly inadequate considering the rise in fuel prices and the devaluation of naira, and its attendant consequences on food items and other related products, apart from undue delay in the payment of compensation due to administrative bottlenecks. Related to the above, the penalty of a fine not exceeding N1,000 or to imprisonment for a term not exceeding two years, or to both on conviction for the offence of forced labour contrary to the CFRN 1999 (as amended) as provided by section 73 of the Labour Act is inadequate. The penalty is not deterrent enough to discourage the commission of such offence since the offender can get away with it on payment of a paltry sum.

**Way Forward for Workplace Safety**

**i. Technological Advancement**

The fast growth of technology coupled with emerging presence of dangerous and environmentally hostile work settings has underscored the necessity for establishing a safe, health-mindful environment and promote an integrated culture of safety in the workplace. In this context, both employee, manager, or business owner have a collective responsibility to form a safe workplace that would yield long-term advantages to all stakeholders.<sup>114</sup>

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<sup>111</sup> Ibid.

<sup>112</sup> Chika Onuegbu, 'Employees' Compensation Act 2010: The Role of Trade Unions' Themes on the New Employees' Compensation Act (Ed. Bimbola Atilola Hybrid Consult 2013) 193

<sup>113</sup> Daniel Podgorski, 'New Opportunities and Challenges in Occupational Safety and Health Management' (1<sup>st</sup> Edn Routledge, Taylor and Francis Group, 2023) available at <<https://www.routledge.com/New-Opportunities-and-Challenges-in-Occupational-Safety-and-Health-Management/Podgorski/p/book/9780367505325>> accessed 29 July 2024

<sup>114</sup> Exceed College, 'Safe Workplaces, Sustainable Futures: The Vital Role of Occupational Health and Safety' <<https://exceedcollege.com/blog/role-of-occupational-health-and-safety-at-workplace/>> accessed 29 July 2024.

## **ii. High Demand for Health Professionals**

There is high demand for health and safety professionals in the job market since the outbreak of COVID 19. Several reasons are attributable to this, including investments in major infrastructure, resources, and energy projects. There is also a high demand across industries for a tougher response by stakeholders to be proactive in managing risks, rather than reactive responses coupled with growing need to address emotional safety challenges in the workplace.<sup>115</sup> OH&S professionals work in a variety of settings, such as offices, factories, and mines, and their works often involve considerable fieldwork and travel. Overall employment of OH&S professionals is projected to grow as fast as the average for all occupations. OH&S Professionals would be required in variety of businesses to ensure that employers observe both current and emerging regulations.<sup>116</sup>

## **iii. Training and Awareness**

Health and Safety must be managed with some level of proficiency and values as other core business activities due to the high cost of failure. OH&S is a roadmap for managing health and safety risks, outlining responsibilities, and setting objectives. It is important to set safety targets like accidents free, maximum working hours without accident, safety education, training and awareness programs for the workers and the public.<sup>117</sup>

## **Conclusion and Recommendations**

The promulgation of the ECA is a welcomed development in that it brought some solace to the employees who are unfortunate victims of workplace accidents, diseases, and death. Indeed, it is a great improvement over the repealed WCA. However, OS&H has significant implications that affect employers and employees, which encompasses legal, economic, social, and health dimensions, and are governed by various statutes, regulations, and case law. Understanding the causes of occupational injuries is essential for formulation of effective policies that would promote workplace safety and mitigate the risk of accidents in Nigeria. By addressing underlying factors such as unsafe work environments, inadequate training, poor enforcement of safety regulations, lack of safety equipment, and workforce fatigue, employers and regulatory authorities can create safer and healthier workplaces for all employees. Similarly, the complex nature of the labour market, including issues like contract work, outsourcing, freelancing, and gig employment, poses challenges in defining and ensuring fair compensation. Addressing the social consequences of OS&H necessitates a comprehensive approach that encompasses rehabilitation services, vocational training, and social integration programmes.

It is therefore recommended that the OS&H regulations should address emerging issues that would take the society forward by expanding the scope of rights of employees. A case is therefore made for further reform of the ECA based on the identified challenges. Legislation requiring employees to assess and manage risks and provides the best practice on how to manage health and safety in the workplace is not only necessary but compelling.

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<sup>115</sup> The Safe Step, 'Workplace Health, Safety, Environment & Wellbeing Job Market Report' <<https://www.thesafestep.com.au/workplace-health-safety-environment-wellbeing-job-market-report>> accessed 29 July 2024

<sup>116</sup> Barton Community College, 'Safety & Health Job Outlook' <<https://hmesi.bartonccc.edu/safety-health/job-outlook>> accessed 29 July 2024

<sup>117</sup> Ibid.

The paper also recommends that the ECA be amended to the issue of inadequate compensation considering the rise in fuel prices and its attendant consequences of food items and other related products. The issue of undue delay in the payment of compensation because administrative bottlenecks should be addressed.

In addition, the penalty of a fine not above N1,000 or to imprisonment for a term not above two years, or to both on conviction for the offence of forced labour contrary to the CFRN 1999 (as amended) as provided by section 73 of the Labour Act is inadequate. It is further recommended that the Labour Act be amended to provide for a stiffer penalty in the event of contravention of constitution, particularly regarding forced labour.