

WORKPLACE INJURY COMPENSATION IN NIGERIA AND THE CHANGES INTRODUCED BY THE EMPLOYEE COMPENSATION ACT, 2010.

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ABSTRACT

Under the Employee Compensation Act, 2010 applicable to Nigeria, all employers and employees are included in the compensation scheme although this does not extend to members of the armed forces, other than such members employed in a civilian capacity. Using the doctrinal research method, the paper examined and found out that the major feature of the ECA 2010 is that it establishes the Employees Compensation Fund into which employers shall make contributions and expanded the coverage and compensation provided by the scheme unlike the erstwhile workmen compensation Act of 2004. The Employee Compensation Act, 2010 has put in place an employee compensation scheme that consolidates workers' compensation through the establishment of the Employees Compensation Fund which is managed by the Management Board of the Nigeria Social Insurance Trust Fund in the interest of both Employers and employees in cases of fatalities resulting from or in the course of employment. This paper having found out that the diseases mentioned in the first schedule to the Act falls short of the international standard by leaving out 33 categories of internationally recognised diseases therefore recommended that these diseases should be included as compensable diseases. The law must also state categorically if all the conditions for qualification for compensation in the case of diseases as mentioned in section 9 of the Employee Compensation Act, 2010 should be interpreted conjunctively or disjunctively. The implementation of the provisions of the law should be applied more aggressively, while paying compensation benefits to injured workers timorously with minimal delays. The research applied the Doctrinal and comparative research theories.

KEYWORDS: Employer, Employee, Compensation, Employment.

1. Introduction.

The ILO has set out into a single, comprehensive and legally binding document provisions for the compensation of workplace injuries and other branches of social security¹.

The ILO in 1919 came up with several compensation schemes in the 1920s². Today, the ILO Conventions which focuses particularly on this area is the *Minimum Standards of Social Security Convention, 1952 (No 102)*, which sets out minimum standards for different kinds of social security including employment injury³ and complemented by the *Employment Injury Benefits Convention, 1964 (No 121)*. The Convention provides for the appropriate competent

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¹ Convention 102 of 1952, Social security (Minimum Standard)

² *ibid.*

³ ILO 2013, "Strengthening the Role of Employment Injury Schemes to Help Prevent Occupational Accidents and Diseases", *International Labour Organization, 2013.*

authority to define occupational accidents and diseases for which certain compensation benefits should be provided. These benefits include payment for medical care and rehabilitation services for workers, and income maintenance for injured workers and their dependants during periods of temporary or permanent disability or in case of death.

Nigeria in keying into the ILO standards came up with the first workmen's compensation legislation, the Workmen's Compensation Ordinance, 1942 which was traced to the Workmen's Compensation Act, 1925 operative in England. It later became known as the *Workmen's Compensation Act, Cap.222*, Laws of the Federation of Nigeria, 1958.⁴ It was followed by the Workmen's Compensation Decree No.17 of 1987, which was later codified as Cap.470, Laws of the Federation of Nigeria, 1990, the *Nigeria Social Insurance Trust Fund Act 1993* and the *Workmen's Compensation Decree No.17 of 1987*⁵ which was later recodified as the *Workmen's Compensation Act, Cap. W6, Laws of the Federation of Nigeria, 2004* which the current Act repealed. The most recent worker's compensation legislation is the Employee Compensation Act, 2010. All these legislations are in a bid to improve and cure the inadequacies experienced with the former Acts.

This article seeks to look at the Employee Compensation Scheme for workers as provided by the *Employee Compensation Act, 2010* and the new innovations aimed at improving the worker's plight in the case of employment injury, disability and diseases. The extant law now is the Employee's Compensation Act 2010. The 2010 Act provides greater coverage of compensation for victims than the old regime. Also, the procedure for making claims and implementation mechanism under the new law has been simplified such that victims or their relations can obtain compensation speedily without unnecessary bottlenecks.

The crux of the Act is the creation of "an open and fair system of guaranteed and adequate compensation for all employees or their dependants in the case of any death, injury disease or disability, arising out of the course of employment". The Act also seeks to provide an "Employees' Compensation Fund" (ECF) which will be managed in the interest of the employees and their employers. The ECA further makes provision for the rehabilitation of employees affected by work related disabilities including mental illness. Unlike the *Workmen's Compensation Act 2004*, the ECA applies to employers and employees in both the public and

⁴ Workmen's Compensation Act, Cap.222, Laws of the Federation of Nigeria, 1958.

⁵ *Nigeria Social Insurance Trust Fund Act 1993* and the *Workmen's Compensation Decree No.17 of 1987*.

private sectors. The Act however exempts members of the Armed Forces who are not employed in a civilian capacity.⁶

2. Improvements in the 2010 Act

The Act represents a major step in the right direction in respect of labour rights and protection in Nigeria. The major strengths of the Act can be seen in the following areas: -⁷

- a. Entitlement to compensation on “No-fault Principle”;
- b. Creation of collective liability. The Act creates employer’s collective liability, such that all employers, in both private and public sectors of the economy, collectively share responsibility for funding the cost of workers’ compensation insurance and paying compensation claims;⁸
- c. Establishment of a State Managed Compensation Fund;⁹
- d. Provision for monthly compensation payments to dependants for their lifetime;¹⁰
- e. Compensation in the event of accidents when employee commutes to or from work;¹¹
- f. Coverage of wider classes of employees;
- g. Enhanced Compensation package;
- h. Compensation for mental stress and
- i. Better conflict resolution channels.

The Employee’s Compensation Act, 2010, though a very laudable piece of legislation, however, comes with some challenges like every other legislation. These pitfalls would be x-rayed and recommendations made in the course of this thesis.

The, Employee’s Compensation Act improved on Workmen’s Compensation Act by extending its cover to all employers and employees in the private and public sectors of Nigeria and by expanding and strengthening its compensation regime. The Employee Compensation Act (ECA) enjoins all employers to contribute 1% of their payroll costs to the Nigeria Social Insurance Trust Fund¹², with a view to enhancing proper implementation of the funds realized. Employers are required to report any workplace accident, injury, occupational disease or death

⁶*Employee Compensation Act, Section 3.*

⁷ M. Dugeri, *The Employee Compensation Act 2010: Issues, Prospects and Challenges*, <mhtml!https://mikedugeri.wordpress.com/Documents%20%settings/>, Accessed on 4/22/20.

⁸ *Employee Compensation Act, Section 41(1).*

⁹ *Employee Compensation Act Sections.56 (2) and 57.*

¹⁰ *Employee Compensation Act, Sections.17 and 19.*

¹¹ *Employee Compensation Act Section 9 (1).*

¹² *Employee Compensation Act Section 33(1).*

to the nearest Nigeria Social Insurance Trust Fund office. This is required to enable Nigeria Social Insurance Trust Fund process compensation for such employee or his/her dependants, in case of death and to administer compensation to any injured, disabled or sick employee.

There is this general consensus that the above initiatives are significant steps in the right direction.

3. Challenges of the old legislation

In the implementation of the legislation, certain important issues and considerations have whittled down the efficacy of the Act thus creating doubt and concern on its usefulness. These limitations are stated below:

3.1 Lengthy court proceedings

In most cases, if the employer (or his insurance company) was not prepared to acknowledge liability lengthy court proceedings followed and many injured workers are forced to settle for less than they would have been awarded by the court because they could not afford to wait for the end of the proceedings coupled with the high cost of litigation.

3.2 Low quantum of compensation

Another important issue affecting the Act is that the benefits and quantum of compensation provided are rather too low. The Workmen Compensation Act provides for 42 months earnings of the deceased¹³ while the current Act provides lifetime entitlements to compensation.¹⁴

3.3 Scheme is not a “no-fault scheme”

Again, the scheme was not a no-fault scheme. Victims of accidents and injuries had to prove that an accident actually occurred devoid of negligent dispositions for them to benefit from the scheme. Also, employers were not obliged to pay compensation in certain instances. For example, where the injury happened outside the course of employment.

Despite the existence of the Workmen’s Compensation Act, so many employees who fell within the definition of workman in the Act were ignorant of the Act and their rights therein.

3.4 Limitation in the definition of a workman

It is noteworthy that by *Section 2(1)* of the Act, public servants of the Federation or State and those that work under the Nigeria Police Force are regarded as workmen and may take the

¹³Section 4(a) Workmen Compensation Act, 2004.

¹⁴ Section 17 and 19 of Employee Compensation Act, 2010.

benefit in the same way and to the same extent as if the employer is a private person. Whereas in the 2010 Employee Compensation Act, the definition of an Employee is wider to accommodate more compensable individuals¹⁵.

3.5 Unsatisfactory court proceedings

Functions of Court in Workman's Compensation Matters is provided in *Section 20 (1)* of the Act. It provides the High Court with responsibility to adjudicate on cases or dispute between employee and employer and enforcement of judgements resulting from injury sustained for purposes of implementing the provisions of the Act.¹⁶ The Chief Justice of Nigeria is by *Section 36* of the Act empowered to make rules or procedures to be adopted by the court but this has not been made possible because, by *Section 236* of the 1999 constitution of the Federal Republic of Nigeria 1999 as amended, the High Courts of the State have an unlimited jurisdiction to hear suits between parties in the event of any dispute. Recently with the Employee Compensation Act 2010, matters of this nature are now handled by the National Industrial courts. Together with the provisions on right of appeal provided under *Sections 55(1)* of the Employee compensation Act, 2010.

4. Solutions

The solutions to the erstwhile compensation scheme are seen in the provisions of the current legislation, the Employee Compensation Act 2010.

According to Atilola:

*The New Employees' Compensation Act, 2010 is a watershed in the history of employee compensation schemes in Nigeria in that it ushered in a new regime of compensation for workplace injuries or disabilities. The Act opened new frontiers in employees' compensation schemes and extended the scope of compensable injuries including the quantum of compensation for workplace injuries, diseases and related hazards.*¹⁷

The summary of the provisions of the new Act forms the objectives of the Act in *sections 1 (a-f) of the Employee Compensation Act, 2010*¹⁸. They are to:

- (a) Provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment;

¹⁵*ibid.*

¹⁶*Section 20 (1)* Workmen Compensation Act

¹⁷ B, Atilola, 'Right of Appeal Under the Employees Compensation Act, 2010' (2010) Vol. 8 No. 1 *NJLIR*, 1.

¹⁸ *Section 1(a-f)* Employee Compensation Act, 2010.

- (b) Provide rehabilitation to employees with work-related disabilities as provided in this Act;
- (c) Establish and maintain a solvent compensation fund managed in the interest of employees and employers;
- (d) Provide for fair and adequate assessments for employers;
- (e) Provide an appeal procedure that is simple, fair and accessible, with minimal delays; and
- (f) Combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.

The solutions proffered by the Act are as follows:

4.1 Consolidating private worker's Compensation through the implementation of the Provisions of the *ECA 2010*.

The Employee Compensation Act 2010 incorporated the private worker more specifically in its *Section 2* unlike the other workmen compensation schemes that existed before now. That section incorporates both the public and private employers and employees in the Federal Republic of Nigeria except the armed forces unless such person is employed in the civilian capacity.¹⁹ This section is however subject to *section 3 and 70* of the Act. The Employee Compensation Act 2010, through the employee compensation scheme has provided medical care, vocational rehabilitation and benefits to workers who are injured on the job or who develop occupational disease. The scheme has extended their approach to incorporate the notion of prevention by encouraging workplace improvements in occupational safety and health.²⁰

It would be recalled that former social security schemes fell short of providing a minimum standard of benefits, and strengthening compensation schemes, particularly towards the lives of workers who suffer occupational injuries and diseases. The rationale for these improvements emanates from requests by the ILO who have expressed the need for the establishments of such schemes to cushion the negative effects suffered by workers in the event of work-related mishaps. The ECA 2010 has gone a step further on improving workers compensation by the laudable provisions it contains.

¹⁹*Section 2(1)* Employees' Compensation Act 2010.

²⁰*Section 1(f)* Employees' Compensation Act 2010.

The 2010 Act makes provision for payment of compensation to employees who suffer occupational diseases or sustain injuries arising from accident at workplace or in the course of employment. However, members of the armed forces, except those employed in civilian capacity are excluded in terms of coverage.²¹ There are basically five grounds of compensation under the Act viz: mental stress, occupational disease, injury, hearing impairment and death.²² The Act uses some conditions and scales in order to measure the amount of compensation. These scales are scales of compensation for temporary partial disability, temporary total disability, permanent partial disability or disfigurement, permanent total disability, fatal cases and enemy war-like actions.²³ The Act also provides for vocational rehabilitation as a form of compensation in order to bring injured employees back to work by providing any medical treatment or other care that are necessary to alleviate or relieve the injured employee from the effect of the injury.²⁴

The 2010 Act establishes employee compensation fund where all monies shall be credited into the Fund. It shall be referred to as “the Fund”. It shall be used for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment. The Fund established is managed by the Nigeria Social Insurance Trust Fund Management Board called ‘the Board’. The Fund here consists of take-off grant from the Federal Government, contributions by employers pursuant to the Act, fees and assessments charged on employers, the proceeds of investments of the funds, gifts or grants from any national or international organisations, and other monies that may accrue to the Fund from any other source.²⁵

Employees are prohibited from contributing to the Fund as the Act imposes sanctions against employers who attempt to deduct assessments that are payable to the Fund from the remuneration of employees.²⁶ The Act prohibits waiver of the benefits or rights of employees or dependants to compensation through any agreement made between the employer and employee. Agreements that are made with the aim to waive the employees’ right to compensation are rendered *void* and unenforceable.²⁷ The Employees’ Compensation scheme (ECS) also recognizes new categories of workplace injuries such as mental stress resulting

²¹ See Sections 1 and 3 of Employees’ Compensation Act 2010.

²² Sections 7,8,9,10, 11 of Employees’ Compensation Act.

²³ Sections 17,18 21,22,24 and 25, of Employees’ Compensation Act.

²⁴ Sections 16 and 26(1)(8)(9) of Employees’ Compensation Act.

²⁵ Sections 31 & 56 of Employees’ Compensation Act.

²⁶ Section 14 (1) & (2) (a-b) & (3) (a-b) of Employees’ Compensation Act.

²⁷ Section 13 (1&2) ECA 2010.

from exceptional circumstances in the course of employment.²⁸ This is only if the mental stress is an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employees' employment or diagnosed by an accredited medical practitioner as a mental or physical condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employees' employment. Where the mental stress is caused as a result of the decision of the employer to change the work, the working conditions of work organisation in such a way as to unfairly exceed the work ability and capacity of the employee thereby leading to mental stress, such situation shall be liable to compensation to the degree as may be determined under any regulation made by the Board.²⁹ Payment of compensation under the Act does not affect the employees' retirement benefits payable under the Pension Reform Act.³⁰ The scheme has the effect of easing the burden on employers who will not be required to contribute further to the welfare of an injured employee in the event of an accident or injury, no matter the amount of liability involved. In every case of injury or disabling occupational disease to an employee or in case of death, the dependant shall inform the employer within fourteen days of occurrence or receipt of information of occurrence of the incident³¹ inform his employer. The employer is requested to inform the board within seven days of the occurrence of the injury.³² The application for compensation shall elapse after one year except where the board is satisfied that special circumstances exist.³³ Where special circumstances exist, an application for compensation may be made within three years of the occurrence of the accident or injury, or injury, or disease for which a claim is being made. Anybody that is dissatisfied with the decision of the Board on compensation may appeal to the Board for a review of such decision and it is only upon further dissatisfaction with the review that one can approach the National Industrial Court.³⁴

4.2 Provision of Adequate Compensation for Employees and Employers for Death, Injury, Disease or Disability.

There is enhanced Compensation package under the 2010 Compensation Act unlike what it was under the repealed Workmen Compensation Act which was grossly inadequate, absurd and ridiculously too low in the light of the present economic reality. Provision for monthly

²⁸Section 8.

²⁹Section 8(2).

³⁰ Section 28 of ECA2010 & pension reform Act No 2, 2014.

³¹ Section 4.

³²Section 5 Employee's Compensation Act.

³³Section 6 (1-3), Employee's Compensation Act.

³⁴Section 55 (1-4) Employee's Compensation Act.

compensation payments to dependants for their lifetime is now embedded in the new Act. The Act provides for monthly compensation payments to dependants of the deceased employee for 'their lifetime'.³⁵ Though there are some qualifications as in the case of children who are to receive compensation until they are 21 or until they complete undergraduate studies,³⁶ whichever comes first. Lifetime entitlement to compensation is a major positive development over the repealed Act which made provision for only 42 months earnings of the deceased.³⁷

A good example is where death results from injury, the dependents shall be entitled to the deceased 42 months earnings. But where in respect of the same accident, compensation has been paid under the provisions of *sections 5, 7 or 9* of the Act (relating to compensation for permanent total incapacity and temporary incapacity), there shall be deducted from the sum payable as compensation for death).³⁸ In cases of permanent total incapacity, compensation payable is 54 months earning.³⁹ Similarly, penalty for contravention of the provisions of the repealed Act is too paltry to deter anyone.⁴⁰ This is laughable and absurd. The Act is obsolete and *devoid* of contemporary relevance. A good compensation scheme must be equitable.

The new Act makes provision for enhanced compensation. Examples of enhanced compensation under the new Act are as follows:

- (a) For fatal accident leading to death, a widow/widower who depend wholly on their spouse with 2 or more children gets 90% of the deceased employee's remuneration on monthly basis.
- (b) A widow/widower with a child gets 85% monthly.
- (c) A 50-year-old or above spouse without a child or an invalid spouse receives 60% monthly.
- (d) Spouse, not being invalid and having no dependent children, but under the age of 50 years receives not less than 30%.⁴¹

The foregoing provisions are laudable and comparable with what is obtainable in other advanced jurisdictions. For instance, in Michigan, wage loss benefit is 80% of an employee's after-tax salary. In Alabama, compensation for permanent or temporary total disability is 66

³⁵Section 17 and 19, Employee's Compensation Act.

³⁶ Section 17 (1) (c). Employee's Compensation Act.

³⁷See section 4 (a), Workmen's Compensation Act.

³⁸See *Repealed Workmen Compensation Act*, s. 4.

³⁹ *Ibid*, Section 5.

⁴⁰ *Ibid*, section 14(2) (c).

⁴¹See generally, part IV of the Act.

2/3% of the wage; and in Arizona, it is 66 2/3%, in New York, it is 66 2/3% and 60% in Massachusetts and 80% in Iowa.⁴²

(e) Compensation for mental stress is provided for in *section 8* of the Act. This is a completely laudable and novel provision. *Section 8* of the Act, which provides thus: *sub-section (8)(1)* Subject to *sub-section (2)* of this section, provides that an employee shall be entitled to compensation for mental stress not resulting from an injury for which the employee is otherwise entitled to compensation, only if the mental stress is as a result of employment.⁴³

Sub-section (2) of this section⁴⁴ provides that an employee shall be entitled to compensation for mental stress not resulting from an injury for which the employee is otherwise entitled to compensation, only if the mental stress is –

(a) an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employee's employment; or

(b) diagnosed by an accredited medical practitioner as a mental or physical condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employee's employment.

(2) Where the mental stress is caused as a result of the decision of the employer to change the work, the working condition of work organisation in such a way as to unfairly exceed the work ability and capacity of the employee thereby leading to mental stress, such situation shall be liable to compensation to the degree as may be determined under any regulation made by the Board.

(3) For the purposes of ascertaining the conditions under *sub-sections (1) and (2)* of this section, the Board may appoint a Medical Board of Inquiry consisting of relevant specialists to review the situation to determine whether or not the employee is entitled to compensation for mental stress.⁴⁵

This provision is novel to the compensation regime in Nigeria since it did not exist in the previous legislation regulating compensation at workplace. However, the Act did not expressly define what constitutes mental stress; it only gives a rather descriptive and sweeping statement which showcases the extent of mental stress that is worth compensating for, in the section. One therefore ponders about how claims for compensation for mental stress can be enforced in

⁴² M. Dugeri, The Employee's Compensation Act, 2010: Issues, Prospects and Challenges Article, <<https://www.researchgate.net/publication/338402180>> (2013) SSRN Electronic Journal, accessed on 12/4/23.

⁴³ See generally, Part IV of the Act. and See A. A. Adeogun, 'Thirty Years of Workmen's Compensation Act in Nigeria' (1971) 5 *Nig. L.J.* 57, cited by G. G. Otuturu, *Legal Aspects of Employment in Nigeria*, (Pearl Publishers, Port Harcourt, Nigeria, 2006), 134.

⁴⁴ See *section 8 (1) of the Act*

⁴⁵ See *section 8(1) (a-b) & 8 (2&3)*.

practical situation since the Act did not clearly define what constitutes mental stress. The Act however leaves the determination of what amounts to mental stress to the whims and caprices of the Board. This procedure is legislatively reviewable.

There are also Compensation in the event of accidents when employee commutes to or from work. The Act recognizes that compensation is payable in the event of accidents which cause injuries or death when the employee commutes to or from work.⁴⁶ In other words, there is a recognition that the course of employment or the time when work begins and ends is not limited to the time or place where the workman is to carry out his specific work.⁴⁷ This reform is in accordance with the ILO recommendations of 1964 which is to the effect that the phrase “course of employment” should be interpreted to include trips between workplace and the employee’s permanent or temporary residence, staff canteen and the place where the employee ordinarily receives his salaries. In other advanced jurisdictions, these recommendations have been long adopted and upheld by their courts.

In the English case of *St. Helen’s Colliery v Hewitson*,⁴⁸ the court stated *inter alia* that an employee is still deemed to be within the course of employment where he stops his work for a moment and sit down on his employer’s premises to eat food to enable him continue his work. Also in *Robinson v. Simmons Co.*,⁴⁹ the employee was travelling from Louisiana to Wisconsin on a sales trip. Instead of flying directly to Wisconsin, however, he flew into Chicago. The employee was shot and killed while in Chicago. He was scheduled to be in Wisconsin for a sales meeting the morning after he was killed. His reason for going to Chicago was never established, but he did have family, friends and a residence in the area. When his body was found, he was wearing business attire, and he had work materials in his car. The employer argued that Robinson’s death was not compensable because had no business reason to stop in Chicago and, therefore, that any stop in Chicago was a personal deviation. The court noted, however, that, due to the nature of the occupation, general rules regarding travel do not necessarily apply to travelling sales persons. Absent compelling evidence of a purely personal deviation, an injury that occurs while an employee is on a sales trip occurs in the course of employment.

⁴⁶ Section 7 (2).

⁴⁷ Section 7(2) (a-c) EA 2010.

⁴⁸ (1924) AC 59.

⁴⁹ 99-1319 (La. App. 4th Cir. 3/22/00), 762 So2d 112,

In *Hebert v CIGNA*,⁵⁰ the trial court determined that the claimant was in the course and scope of his employment with Murphy's Welding at the time of the accident on the owner's cattle farm. The appeals court affirmed, reasoning that because the claimant was given special instructions to perform this task, and based on the rationale that "the employee has no practical choice but perform the assigned task." Hebert was within the course and scope of his employment at Murphy's Welding even though roping calves has nothing to do with welding fabrication. The court further recognized that Hebert was performing "a task required by him in his regular employment at Murphy's."

This novel provision in the Act appears to have statutorily overruled previous decisions of our courts such as the case of *Smith v Elder Dempster Lines Ltd*,⁵¹ where it was held that even where a workman travels in a vehicle provided by the employer, he is not in the course of his employment until he commences actual work. The Supreme Court held in this case that he was not entitled to compensation as same did not occur within the cause of his employment.

This case was decided under the regime of the repealed Workmen Compensation Act. However, unlike the ECA, which requires prior notification of employee's secondary residence, *section 5 (c) (i)* of ILO Recommendation No. 121, concerning Benefits in the case of Employment Injury provides that accidents sustained while the employee is on the direct way between the place of work and the employee's principal or secondary residence, should be treated as industrial accidents; the recommendation does not include the requirement of prior notification of secondary residence to the employer.⁵²

There is also Compensation for Occupational Diseases. *Section 9(1)* of the Act provides that compensation and health care benefits shall be paid under the Act to an injured employee or his beneficiary where:

- a. the employee has suffered occupational disease;
- b. the occupational disease suffered has either caused the death of the employee or disabled the employee from earning full remuneration at workplace;
- c. the disease is shown to be due to the nature of any employment the employee must have been engaged; and
- d. the disease is listed in the first schedule to the Act.

⁵⁰ 637 So. 2d 1221 (La. App. 3 Cir. 5/25/94).

⁵¹(1994) 17 NLR 1.

⁵²(1990) SCNLR 1.

By *section 73* of the National Industrial Court Act, 2010, occupational disease means a disease arising out of or in the course of exposure to risk factors at work. It is opined that such occupational disease could either come on gradually or suddenly.⁵³ It is further submitted that the risk factor may be apparent or latent, depending of the circumstances surrounding each case. The Act did not make it clear whether the statutory provision requires conjunctive or disjunctive interpretation.⁵⁴ In other words, should the conditions stated in *section 9* be present conjunctively or disjunctively? From the punctuation (semi-colon) used in the provisions of *section 9*, one can say that a conjunctive approach is intended. In other words, where any of the conditions stipulated is missing, an aggrieved employee loses his right to compensation for workplace occupational disease. However, a careful examination of *section 9* of the 2010 Act would reveal that the word “or” is used between *section 9 (1) (c)* and *section 9(1)(d)* which talks about occupational diseases listed in the First Schedule to the Act. What this means is that while the conditions in *section 9(1)(a)- (c)* must be cumulatively present to engender a right of action, *section 9 (1)(d)* on the other hand is independent and exclusive of *section 9 (1)(a)-(c)*. Hence, once it is established by an employee that his disease is one of those listed in the First Schedule to the Act, he would not be required to prove the other conditions as to disability of earning full remuneration, death or disease being due to the nature of employment, before he can validly claim under this head. However, the First Schedule to the Act containing list of occupational diseases falls short of the international standards⁵⁵ in that it leaves about thirty-three (33) categories of internationally recognised occupational diseases such as health conditions relating to mental and behavioural disorders.⁵⁶ The implication of the above is that in the event of a dispute for compensation on grounds of occupational disease not listed in the First Schedule to the Act, or not satisfying the provision of *section 9 (1)(a)-(c)* as an alternative, the court will find against the employee. Thus, in the case of *Adetona v Edet*,⁵⁷ the court held that there was no reasonable cause of action disclosed by the claimant in his statement to satisfy the provisions of *subsection 26 (b)* of the Workmen’s Compensation Act. The inference from the above is that no cause of action can arise for compensation for any occupational disease not recognised by the Employees Compensation Act, 2010. To ascertain the particular

⁵³ M.I. Anushiem, P. E. ‘Oamen, Nigerian Employees’ Compensation Act 2010: Issues Arising, *African Journal of Constitution and Administrative Law*, (2017).

⁵⁴ M. Dugeri, ‘The Employees’ Compensation, Act 2010; Issues, Prospects and Challenges’ <<http://mikedugeri.wordpress.com>>, accessed 2/10/23.

⁵⁵ Workmen’s Compensation (Occupational Diseases) Convention (Revised) No. 42 of 1934.

⁵⁶ *Ibid.*

⁵⁷ (2003) 2 NWLR (Pt. 889) 133.

occupational disease, the Board may appoint a Medical Board of Inquiry, consisting of relevant specialists to determine the entitlement of the employee.⁵⁸

4.3 Provision of Rehabilitation to Employers with Work Related disabilities

Vocational rehabilitation is a form of compensation provided under the Act.⁵⁹ *Section 16* of the Act says: (1) The Board may, in getting an injured employee back to work or in assisting to lessen or remove a resulting disability, take any measure and make the expenditures from the fund that it considers necessary or expedient, regardless of the date on which the employee first became entitled to compensation. Also, *Section 16 (2)* of the Act provides that the board may, where it considers it necessary, provide counselling services to dependents. It is clear that the measure the Board will take to lessen or remove any resulting disability is medical in nature. The Board may provide for the injured employee any medical, surgical, hospital and other care or treatment, transport, medicines, crutches and apparatus including artificial members that it may consider reasonably necessary at the time of the injury and thereafter during the disability, to care and relieve from the effects of the injury or alleviate those effects.⁶⁰

In this instance, the Board can make rules and regulations with respect to furnishing health care to injured employee entitled to it and for the payment of the bills.⁶¹ Where there is a case of emergency, or for other justifiable cause, a physician or accredited medical practitioner other than the one provided by the Board is called to diagnose an injured employee and if the Board finds there was a justifiable cause and that the charge for the service is reasonable, the cost of the services shall be paid by the Board.⁶² The Board may authorize employer to provide health care and at the expense of the Board and daily allowance for the subsistence of the injured employee may be provided by the Board if it sees that where the injured employee is receiving treatment is not the place the employee resides but for the treatment.⁶³

The fees or remuneration for health care provided under *section 26* of the Act shall not be more than the fees that will be proper and reasonably charged if the employee were paying.⁶⁴ The Board shall permit health care to be administered by the physician or medical practitioner who

⁵⁸*ibid.*

⁵⁹*Section 16 of Employees' Compensation Act.*

⁶⁰*Section 26(1)(8)(9) Ibid.*

⁶¹ *ibid.*

⁶² *Section 26(2)(4) ibid.*

⁶³ *Section 26(2)(4) ibid.*

⁶⁴ *Section 26(6).*

may be employed by the injured employee but this does not affect the powers of the Board to supervise and provide health care in a way where it considers expedient.⁶⁵

It is very important that the Act should remove every discretion on the part of the Board as to whether or not to pay compensation in certain cases as discussed above, if a valid ground for compensation is established. Also, it is necessary that the Act should specifically provide for definite scales of compensation in all cases covered by the Act. It is only then that affected employees can be sure of their remedies in the event of any disadvantage or injury suffered out of or in the course of employment.

4.4 Provision of fair and adequate assessments for contributors

The Employee Compensation Act provides for fair and adequate assessment for Employers.⁶⁶ Part VI, which consists of *sections 33 to 55*, makes provisions for employers' assessment and contributions. The contribution made by every employer into the Fund is based on the following two main factors:

1. Minimum monthly contribution of 1% of the total monthly payroll for the assessment year⁶⁷
2. Varied assessment rates based on categorization of risk factors of each class or sub-class of industry, sector or workplace.⁶⁸

It is an offence under the Act for any employer who; a) defaults in paying any contributions or assessments due to the Board, or b) defaults in providing security required by the Board for the payment of an assessment, or c) contravenes any decisions of the Board.⁶⁹

In order to enforce its powers against any employer, the Act empowers an officer of the Board to enter any workplace, at any time, with or without warrant or notice, to require the production of any document, license, record, report; remove any such documents; inspect the workplace; make inquiries of any person who is or was in the workplace, and so on.⁷⁰ However, quite surprisingly, *Section 54(g) of the Act* provides that 'the report arising out of any enquiry, inspection or examination shall be the property of the Board and shall be held in confidence'.

4.5 Establishment of a solvent Fund Managed in the interest of both employers and employees

The Act establishes a State managed Compensation Fund under which the State manages the

⁶⁵ *Section 26(7)*.

⁶⁶ *Section 33 subsections (1)* of Employees' Compensation Act.

⁶⁷ *Section 33 subsections (1)*.

⁶⁸ *Section 33 subsection (2)*.

⁶⁹ *Section 47, Ibid.*

⁷⁰ *Section 59 ECA.*

employers' funded contributions,⁷¹ unlike the repealed Act under which employers were required to individually insure employees with insurance companies of their choice.⁷²

The establishment of the State managed Compensation Fund⁷³ constitutes one of the most important positive innovations brought about in the new Act. From the recent experiences of the collapse of privately owned banks, which are being sustained with public wealth, the Compensation Fund is considered safer under a State-controlled institution than private institutions. The pooling together of contributions by the Federal Government and all the arms of government, including employers of labour in the private sector into the Fund, to be managed and invested by the NSITF Management Board thus appears to be an assurance that there will be in place a solvent Compensation Fund, and that the worker or his dependants, as the case may be, will surely be compensated for whatever hazards that may be experienced in the course of employment. The contributions by every employer represent the sum insured in favour of all the employees on the payroll on a yearly basis.

This Fund shall house all money, fund or contributions by employers for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment.⁷⁴ This Fund as constituted is managed by the Nigeria Social Insurance Trust Fund Management Board established under the Nigeria Social Insurance Trust Fund Act 2004 CAP N88 LFN. For the effective security and viability of the Fund, the Act establishes the "Independent Investment Committee" which consists of representative of the Central Bank of Nigeria, Nigeria Investment Promotion Commission, National Pension Commission, three (3) representative of the most represented employer's organization,³ representatives of the most represented employee's organization and a representative of the Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA).⁷⁵

The Act mandates every employer to make minimum monthly contribution of 1.0% of the total monthly payroll into the Fund. It is worthy of note here that the remittances made by

⁷¹ Sections. 56 (2) and 57.

⁷² M. Dugeri, The Employee's Compensation Act, 2010: Issues, Prospects and Challenges, <<https://www.researchgate.net>>, accessed on 1st May 2023.

⁷³ H.A. Okorie, A critical Review of the Employee Compensation Act Nigeria, <<https://www.academia.edu/>>, accessed on 1st May 2023.

⁷⁴Section 56 of Employees' Compensation Act.

⁷⁵Section 62 of Employees' Compensation Act.

employers are pulled together. When it is properly and carefully invested it ensures that compensations are paid timeously.

4.6 Enforcement of Occupational Safety and Health standards

Contemporary frameworks for occupational health and safety (OSH) emphasize equal attention to the physical, mental and social aspects of the workers' health.⁷⁶

The ILO Constitution sets forth the principle that workers must be protected from sickness, disease and injury arising from their employment. ILO standards on occupational safety and health provide essential tools for governments, employers and workers to establish such practices and provide for maximum safety at work.⁷⁷

No wonder *Section 1(f)* of the Employee Compensation Act, 2010 provides as one of its objectives is to combine efforts and resources with relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.⁷⁸

4.7 Right of Appeal

The appeal Procedure was introduced under the Employees' Compensation Act, 2010. The Nigerian Social Insurance Trust Fund Management Board is established under *section 2(2)* of the 2010 Act with the responsibility of implementing the provisions of the Act and the Employees Compensation Fund established under *section 56* of the Act. The officers of the Board are also given the powers to enforce the provisions of the Act.⁷⁹ The enforcement regime empowers such officers to enter into any workplace, demand for the production of documents, examine or inspect such document and remove such documents where the occasion warrants, make copies or extracts from the documents, or make enquiries of any person in the workplace. In the process of enforcing the Act, an officer of the Board may take any decision in accordance with the provisions of the Act⁸⁰ which may affect the rights of a citizen. In order to provide redress for a citizen that may be aggrieved in the process of enforcing the Act by an officer of the Board, the Act provides that: A person aggrieved by any decision of the Board may appeal to the Board for a review of such decision.⁸¹

⁷⁶ M. Dugeri, 'The Employee's Compensation Act, 2010: Issues, Prospects and Challenges', June 2013, <<https://www.researchgate.net>>, Accessed on 1st May, 2023.

⁷⁷ *ibid.*

⁷⁸ *Section 1(f) Of the Employee Compensation Act, 2010.*

⁷⁹ *Section 54.*

⁸⁰ M.I. Anushiem, P.E. Oamen, Nigerian Employees' Compensation Act 2010: Issues arising, [2017] *African Journal of Constitutional and Administrative Law* <https://www.academia.edu/80568172/Nigerian_Employees_Compensation>, accessed 20th March, 2023..

⁸¹ *Section 55 (1) ECA 2010.*

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An appeal under *subsection (1) of section 55* above shall be made in writing to the Board within 180 days of the date of the decision, otherwise the aggrieved person shall lose his or her right to appeal the decision.⁸² Furthermore, the appeal shall be disposed of in the manner to be determined by the Board within a period of 180 days.⁸³ An appeal shall lie from any decision of the Board under *subsection (1) of section 55* to the National Industrial Court. Appealing to the Board over its decisions that affects a citizen may well mean that the Board is a party and at the same time a judge in his own case. This is because, the officer of the Board who takes a decision for the Board and which said decision affects a citizen is acting in the capacity of his being a member of the Board and another officer who will sit over the appeal is also acting in the capacity of the Board. In other words, the Board is a party and at the same time a judge in his own case.

In the case of *Adebesin v The State*,⁸⁴ the Nigerian Supreme Court held that one cannot be a Judge in one's case. This will no doubt lead to partiality or likelihood of bias in the determination of the appeal by the Board. This provision has its negative sides and could be seen as being one of the flaws in the new Act. It is recommended that the removal of the initial right of appeal under *section 55(2)* of the Act and replacement of same with a requirement of *pre-action* notice to be served on the Board maybe right in the circumstance. The new Act has provided a better conflict resolution channel. Before the enactment of the Act, compensation claims and Appeals were handled by regular courts with no special expertise on labour and compensation matters. The regular court system is often cumbersome, protracted and frustrating. The very nature of industrial injury, disease and death call for a prompt and effective dispute resolution machinery. An injured worker need immediate treatment and rehabilitation and cannot afford to run a marathon legal race from Magistrate's Court to Supreme Court.

The new Act provides for a functional, simple, fair and accessible appeal procedure.⁸⁵ Appeal against the decision of the Board lies to the National Industrial Court of Nigeria (NICN).⁸⁶ The NICN, which is a specialized court, is conferred with exclusive jurisdiction on all matters

⁸² *Section 55 (2) ECA 2010.*

⁸³ *S 55 (3) ECA 2010.*

⁸⁴ *LPELR, – 22694 (SC), (2014). See also Onigbede v Balogun (2002) FWLR (Pt. 99) 1062; L.P.D.C v Fawehinmi (1985) 2 NWLR (Pt. 310).*

⁸⁵ *Section (1) Employee Compensation Act 2010.*

⁸⁶ *Section 55(4) Employee Compensation Act 2010.*

connected and incidental to labour law, trade disputes and industrial relations.⁸⁷ This is the practice in other advanced jurisdictions. In New south Wales and New Zealand, for instance, compensation claims are entertained by the Accident Compensation Commission.⁸⁸ The procedure is simple, informal and *devoid* of legalism. Employers also stand to benefit from quick adjudication which is cost effective.

5. Conclusion

The Act has been commended by some authors⁸⁹ as being a radical departure from the legal regime of the repealed Act that was in existence and regulating workplace compensation in Nigeria before 2010. The provision of the 2010 Act, when compared with the repealed Workmen's Compensation Act, show a drastic and radical move from the old regime and as it is an attempt to conform with international labour standards on workmen's compensation. However, there are some challenges also posed by the Employee Compensation Act, 2010. These challenges are seen in the areas of removal of the initial right of appeal under *section 55(2)* of the Act and replacement of same with a requirement of *pre-action* to be served on the Board. Expansion of the list of occupational diseases in the First Schedule to the Act to be in conformity with the list of occupational disease in the International Labour Standards as contained in the Workmen's Compensation (Occupational Diseases) Convention.⁹⁰ Also the Statutory definition of mental stress, agent and other undefined terms in the 2010 Act needs to be set straight.

Currently, the effective implementation of the scheme is being threatened by the refusal of some state governments and private sector employers to comply with the ECA. The current Managing Director, Barr. Mrs Maureen Allagoa recently in an interview with vanguard Newspaper lamented that states, Local Government Areas, Ministries Departments and Agencies as their greatest challenge.⁹¹

In 2021, the former NSITF Managing Director, Dr Michael Akabuogu said that about 180,000 employees have registered in the scheme leaving about an estimated number of three

⁸⁷ See Section 254 (c) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.

⁸⁸ M. Dugeri, 'The Employee's Compensation Act, 2010: Issues, Prospects and Challenges', (2013) SSRN *Electronic Journal*, <<https://www.researchgate.com>>, Accessed on 20/3/23.

⁸⁹ C.K., Agomuo, *Nigerian Employment and Labour Relations Law and Practice*, (Lagos: Concept Publications, 2011) 246-247

⁹⁰ *ibid.*

⁹¹ Vanguard News, States, LGAS, MDAS Our greatest challenge-NSITF MD, <<https://www.vanguardngr.com>>, Accessed on 13/9/23.

million companies unregistered. He further, lamented that the mandate of the NSITF has not yet been achieved due to the limitations imposed by the law creating it. In the last twelve years, only 142,510 employers both in the private and public sectors have registered with the NSITF.

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The research also discussed some challenges posed by the new Act, that is, some flaws under the Act. The role of the Board in the scheme and the enormous discretionary powers it wielded has been discussed Like the excessive discretionary powers given to the Board; the State-managed Scheme and limitation of action by an injured employee or dependent of a deceased employee among other challenges. For these flaws to some extent militate against the success of the scheme almost thirteen (13) years now after its emergence.

The theoretical foundation of the ECA is distributive justice and loss distribution since it entitles the employee to compensation even if his employer has defaulted in paying his contributions to the fund. It is an exclusive closed system of compensation with a wide range of benefits to workers or the dependents where such worker suffers employment injuries or death respectively.

With this enactment, Nigeria has joined the League of Nations which has imbibed the current culture of social solidarity. Finally, the ECA has tried to correct some of the defects of the WCA, which it repealed especially as regards the definition of commuting accidents which come within the scope of employment Injuries.

In conclusion it can be said that a new dawn has arrived in the regulation of compensation rights for employment injuries in Nigeria.

6. Recommendations

Further to the foregoing relative strengths and weaknesses of the Employee's Compensation Act 2010, and the laudable provisions of the Australian and Zimbabwean jurisdictions as researched, it is the stand of this paper having found out the need to strengthen workers' Compensation under the Act. Certain diseases like emotional pain and suffering, Covid -19 and other evolving occupational diseases must be adequately included as part of the Nigerian Legal System. To achieve this the following are recommended:

⁹² G. Nwafor, *The Guardian*, Business News, <<https://www.guardian.ng>>, Accessed on 13/9/23.

1. Expansion of the list of occupational diseases in the First Schedule to the Act are to be in conformity with the list of occupational disease in the International Labour Standards as contained in the Workmen's Compensation (Occupational Diseases) Convention. 30
2. Statutory definition of mental stress, agent and other undefined terms in the 2010 Act should be resolved.
3. Removal of the initial right of appeal under *section 55(2)* of the Act and replacement of same with a requirement of pre-action notice to be served on the Board.
4. As a matter of urgency, the Nigeria Social Insurance Trust Fund (NSITF) should embark on update of its records of existing organizations.
5. The management of Nigeria Social Insurance Trust Fund (NSITF) should liaise with the Corporate Affairs Commission (CAC), State Boards of Inland Revenue, Federal Ministry of Labour and Productivity, Federal Inland Revenue Services to get a comprehensive data of registered companies in the country.
6. NSITF must put measures in place that can encourage the local governments to key into the scheme.
7. NSITF must endeavor to embark on enlightenment campaign to sensitize the Nigerian workers of their rights and how they could benefit from the provisions of the Employees Compensation Act 2011.
8. Scheme delivery changes are recommended to meet the needs of the Nigerian workers and respond to affordability and sustainability of the current realities on ground.
9. The scope and meaning of the term worker should be reviewed to ensure a wider coverage of workers.