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JCS Client Services

COVID-19 Newsletter from JCS Client Services



COVID-19 & EMPLOYMENT ISSUES IN NIGERIA

It is no longer news that Covid-19 has affected things as they were globally. The spread of this virus has been a cause for concern and has attracted fear and panic as most are unsure of how to effectively survive and react in this period. One of the sectors majorly affected by this pandemic is the Labour sector covering the employer-employee relationship.

As with most major cities and countries around the world, the Federal Republic of Nigeria also invoked the lockdown mechanism by restricting movement in Lagos, Ogun and Abuja effective on 30 March 2020, and additional 2 weeks has also been imposed. Similar restrictions were imposed in other states of the country by their respective governors. This effort was put in place to curb the spread of the virus in view of our population and limited infrastructure to combat this should there be an outbreak.

The effect of this is that most companies have had to shut down their businesses and resort to working remotely. The hotel, airline, travel tourism, services, restaurants, real estate, consultancy, nail and beauty salons, are some of the companies or businesses that have been majorly impacted by this lockdown and pandemic. Both employees and employers of labour have questions unanswered on how to handle this novel issue, seeing that their businesses, as they know it, have temporarily come to a halt.

SOME OF THESE QUESTIONS AND ISSUES ARE ADDRESSED BELOW:

Can an employment be terminated by an employer based on the force majeure or doctrine of frustration?

It is important to note that the employer-employee relationship is largely governed by a contract of employment. This contract of employment stipulates the terms of the employment. Thus, the principle of contract will apply in this relationship.

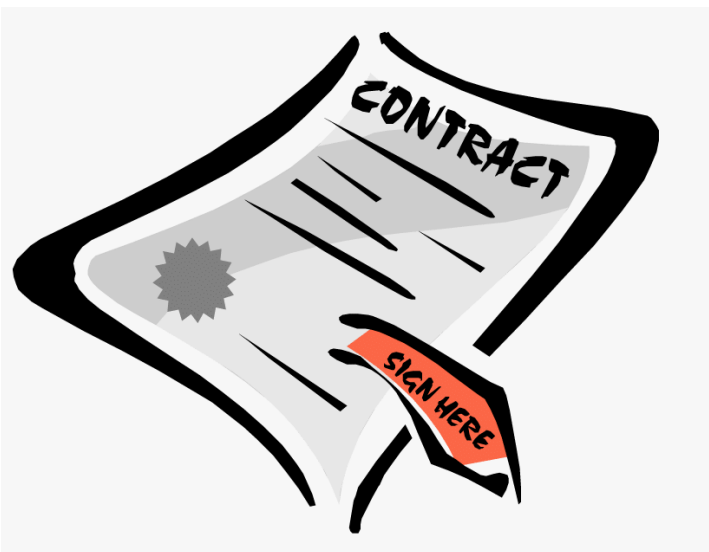
The principle of force majeure or what is commonly referred to as 'act of God' is a contractual clause that occur out the control of the parties, and alter the parties' obligations and/or liabilities under a contract when an extraordinary event or circumstance beyond their control prevents one or all of them from fulfilling those obligations. Depending on its drafting, it may excuse the affected party from performing the contract in whole or in part; it may entitle the party to terminate the contract, or to suspend or claim an extension of time. There must be an express provision of this in the contract of employment.

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The doctrine of frustration is the common law remedy where Force Majeure is not expressly stated and also occurs when an unforeseen and unexpected event prevent the performance of a contractual obligation, with neither party being at fault for having caused the event that led to the frustration of the contract. Therefore, can an employer terminate an employment basing his reason on COVID-19 as the cause of the force majeure? One party cannot unilaterally alter the terms of a contract without negotiation with the other party, and he must show proof that he has exhausted all reasonable means avoiding the non-performance of the terms of the contract. Thus, working remotely is one of the ways of engaging an employee in these times.

Compulsory Annual Leave

The issue of annual leave is another term of a contract of employment, which requires negotiation at a time like this between the parties. An employer can mandate an employee to proceed on part of his annual leave during this time in order to reduce the leave period after the COVID-19. This will depend on the company policy and written agreement between the parties.



Where I have not been provided work tools will I be required to deliver on my work?

In a contract of employment, it is the responsibility of the employer to provide and make available the tools of work to the employee. Where these are not made available, the employer cannot demand the fulfilment of the terms of the contract from the employee. Where this has not been made available however prior to the lockdown, the employer can request in writing where possible for the employee to acquire these tools personally and reimburse subsequently.

POST COVID-19

Health, Safety & Environment policies are to be put in place

The employer owes a duty of care to each employee, to use all reasonable measures to keep them out of harm's way in the office environment. Therefore, after COVID-19, companies are advised to ensure that safety policies are implemented, monitored and observed in order to address this COVID-19.



The office environment must be devoid of air pollution, unhealthy enclosure and anything that may occasion any health hazard to the employee. The employer must provide and ensure the usage of facial mask, proper hygiene through mandatory handwashing and use of hand sanitizers. Where this duty of care is breached and an employee is infected due to the company's negligence, the employee has a right to institute an action in the court of competent jurisdiction to contend this issue.

Confidentiality and Data Privacy requirements

Employers of labour are also encouraged to have in place a Confidentiality and Data privacy policy in line with the NITDA Act 2007. This is required to protect client's data while the employee work both remotely and upon resumption. Company's information must only be limited to designated members of staff as assigned in the organization. The Data privacy requirement also extend to employees' COVID-19 positive status known to the employer.

CONCLUSION

We have carefully outlined some of the common labour issues and our recommendation on cases that may arise as a result of the impact of Covid-19 on the economy and the business environment as it relates to employment. Our advice is for companies to seek ways of ensuring continuity in business by continuously engaging its staff and entering into a mutual agreement

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