Knowledge

Olaniwun Ajayi LP

OALP Client Update

Employer and Employee Relations

11 February 2011

The Employees' Compensation Act 2011 –

Introduction

The Employees' Compensation Act 2011 ("ECA") was signed into law on 21 January 2011 by President Goodluck Ebele Jonathan and repeals the Workmen's Compensation Act, Cap W6, LFN, 2004 ("WCA"). It is applicable to both public and private sector employers and employees, although it excludes members of the armed forces, other than such members employed in a civilian capacity.

The Act is applicable to both public and private sector employers and employees.

Commentators have lauded the birth of the ECA for its commendable efforts to improve health and safety at work and the compensation entitled to employees and their dependents, in the event of the death of or injury to the employee. The ECA has however also attracted criticism from other quarters.

A major feature of the ECA is that it establishes the Employees' Compensation Fund ("The Fund") into which employers shall make contributions as prescribed. The Fund will be managed in the interest of employees and employers, by the Management Board ("The Board") of the Nigeria Social Insurance Trust Fund ("NSITF"), established under the Nigerian Social Insurance Trust Fund Act, 2004.

Other major features of the ECA include:

- Expansion of the definition of employees covered by the ECA.
- Expansion of the heads of injuries for which compensation can be claimed.
- Extension of the time limit within which compensation claims should be made.
- Delineation of the compensation payable to employees or their dependants in the event of any death, injury, disease or disability arising out of or in the course of employment.

The Employees' Compensation Act has drawn criticism, notably from stakeholders in Nigeria's Insurance Industry who believe that the Employees' Compensation Scheme proposed under the Act would *"overburden a public institution (NSITF) with responsibilities that are being effectively managed by players in the private sector"* (prior to this Act the provision of Workmen's Compensation Insurance cover to private sector employers had been handled mainly by private insurance companies).

Despite the criticisms, the ECA constitutes a marked departure from and considerable improvement on the old WCA. This newsletter further examines the ways in which the ECA departs from the old WCA and the impact of the provisions of the new Act on employees and employers alike.

A workman is defined under the WCA as a person "who has entered into a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise…" An ambiguous definition that is highly susceptible to dispute.

The Workmen's Compensation Act- Where it went wrong.

The WCA was considered inadequate, out-dated, and faulty in several respects, notably because:

- It restricted the category of employees who could claim compensation under the Act to "workmen". This definition was considered too narrow as it covered only *employees engaged in manual labour or clerical work or otherwise* and had been repeatedly interpreted to exclude professionals; and
- It limited compensable injuries to injuries that had been the result of accidents at the work place, leaving other injuries non-compensable.

Furthermore, the "Heads of Compensation" under the WCA were limited to:

a. Compensation in fatal cases;
b. Compensation in the case of permanent total incapacity;
c. Compensation in the case of permanent partial incapacity;
d. Compensation in the case of temporary incapacity.

The Employees' Compensation Act-A departure from the past

In contrast to the WCA, the ECA is far more comprehensive and makes remarkable strides in improving employees' compensation.

Definition of an Employee

'Employee' is defined under the ECA as persons employed on a continuous, part time, temporary, apprenticeship or casual basis; domestic servants, not being family members of the employer; persons employed in the federal, state, local governments as well as any of the government agencies; and persons employed in the formal and informal sectors of the economy. Undoubtedly, the definition under the ECA is wider and clearer than obtained under the WCA, leaving less room for dispute.

The definition of an "employee" under the new Act is clearer and wider. It includes both professionals and employees engaged in manual labour or clerical work and is less susceptible to dispute.

Basis of Employers' liability

Under the ECA, an employer's liability is premised on any disabling injury arising out of or in the course of employment **whether or not the employee got injured in the workplace**. By contrast, the employer's liability under the repealed WCA was based on personal injury by accident arising out of and in the course of the employment. Such accident or injury **must have occurred in the workplace**.

Heads of Compensation

In addition to compensation for death or injury, compensation under the Act may also be awarded for mental stress, occupational disease, hearing impairment, and injuries occurring outside the normal workplace.

Compensation can now be claimed for mental stress, occupational disease, hearing impairment etc.

Compensation Awards

In terms of the actual compensation awards, injured employees or dependants (where death has occurred) are more adequately taken care of under the Act. For example, where death results from the injury of an employee and the deceased leaves

.

Similarly, where injury to an employee results in permanent total disability or permanent partial disability or disfigurement, the Board shall pay monthly to the employee, (i) compensation that is a periodic payment equal to 90% of the remuneration of the employee in the case of ***permanent total disability*** and (ii) compensation that is a periodic payment equal to 90% of an estimate of the loss of remuneration resulting from the ***permanent partial disability.***

Compensation for both permanent and temporary disabilities is payable to an employee falling below the age of 55 years at the time of injury until such employee attains the age of 55 years or until the date such employee retires, such retirement date being determinable by the Board. Where an employee is above the age of 55 years at the date of the injury, compensation is payable to him until the expiration of 2 years after the date of injury or such retirement date as may be determined by the Board.

Time limits

Under the Act, applications for compensation are now required **to be made** within a period of **1 year <u>after</u>** the employee (or his dependants in the case of death) have **notified** the employers of the death, injury or disability arising from an occupational accident or disease **within 14 days of the occurrence <u>and</u>** the employer has, **within 7 days of receiving** the employee's notice, made a **report** to the Board of the occurrence of the occupational accident or disease. In contrast, under the WCA, applications for compensation were required to be made within 6 months after notice has been given of the occurrence of the accident, injury or death.

Impact on Employers

We have stated the consequences of the ECA on employees above, but what will it mean for employers? Some of the key obligations on employers are set out below.

Contribution to the Fund

Employers must make a minimum monthly contribution of 1.0 % (the current rate, which can be reviewed by the Board) of

Employers to contribute 1.0 % of their total monthly payroll into the Fund.

Olaniwun Ajayi LP

Every employer is also required to provide to the Board, complete and accurate particulars of the employer's payrolls. Such particulars are required to be kept at all times at a place in Nigeria, the location and address of which must be notified to the Board.

Further, employers are required to provide, in a manner to be determined by the Board, a statement–

a. of the total amount of all earnings paid to its employees in the preceding year;
b. estimating the earnings that will be paid to its employees in the current year or any part of it as directed by the Board;
c. of the nature of the work activities; and
d. of any additional information as the Board may require.

Sanctions

Failure of an employer to perform its obligations under the ECA shall be an offence, resulting in a fine of ₦20,000 (for the 1st case of non-compliance) or ₦100,000 (for each subsequent case of non-compliance) or imprisonment for a term not exceeding 1 year, or both a fine and imprisonment.

Where the employer is a body corporate, every director, manager, secretary or other officer of the company or a partner or officer of a firm and such person(s) purporting to act in such a capacity shall be liable, unless such person(s) can prove that the omission took place without his knowledge, consent or neglect and reasonable steps were taken to prevent the commission of the offence.

CONCLUSION

11 February 2011

For further information please contact:

Olaolu Akerele
Counsel
07039831721

Folabi Rokosu
Counsel
08034106231

Anuoluwapo Balogun
Associate
08028320395

Olaniwun Ajayi LP
The Adunola,
Plot L2,
Banana Island,
Ikoyi, Lagos.
+234 1 270 2551