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Analysis of Employment Realities in Nigeria in the Midst of Covid-19 Pandemic

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Ndum, Victor Etim* & Effiom Eyo Ekpo†

ABSTRACT

Throughout global efforts to tackle COVID-19, it's been clear that job losses put more people at risk, socially and economically. Welfare and job security to fully combat this health crisis are tools that need to reach everyone, everywhere, equally but this is farfetched in the Nigeria society. Today, there are hundreds, if not thousands of pathetic stories relating to retrenchment and loss of jobs. Before the emergence of COVID-19, Nigeria's unemployment rate was already really high at about 23.1% meanwhile underemployment was considered at 16%, according to a 2018 report by the National Bureau of Statistics (NBS). In the third quarter of 2019, Minister of Labour and Employment, Chris Ngige indicated that the federal government forecast an unemployment rate of 33.5% by 2020. Sequel to the above, it is pathetic to indicate that the outbreak of COVID-19 pandemic has resulted to the outnumbering of the anticipated percentage of unemployment and unpalatable employment realities in Nigeria made manifest in human resource development gap, working from home, salary reduction and deferment of bonuses, denial of promotion, unpaid leave, declaration of redundancy, termination.

INTRODUCTION

Nigeria remains the giant and most populous country in Africa. This is as a result of several indicators, including but not limited to its population size, natural and human resource endowment, role in international politics, etc. Before now, the employment situation in Nigeria could not be said to have been satisfactory owing amongst other factors to the fact that more than 70% of graduates churned out every year from the school system end up roaming the streets in search of paid jobs but to no avail. The outbreak of Covid-19 pandemic at a time the nation never imagined and so is unprepared, brings to bear, the unthinkable inevitability of deplorable economic condition-more so, the lopsidedness of the realities of the Nigerian employment situation.

It is no longer news that SARS-CoV-2, renamed COVID-19 by the World Health Organisation on February 11, 2020, has taken the world by storm, transcending borders and geographical landscapes, defying orthodox treatments and holding several economies, first-world and third-world alike, to ransom. Besides its dire health implications, the COVID-19 pandemic has created a major offset in the financial, economic, religious, social and political structures world-over as evinced by a near-collapse of the stock market, a staggering rate of retrenchment and unemployment, closure of transnational borders, restrictions on social and religious gatherings, a drastic fall in Foreign Direct Investment flows, among others (Afe, 2020). As the COVID-19 pandemic continues to devastate the global economy, employers in large and small businesses are faced with a dreadful conundrum on whether to let their staff go, cut their hours, or declare them redundant.

*  Ph. D, Institute of Public Policy and Administration, University of Calabar/NIGERIA, vikd4@yahoo.com

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It is however highly unlikely that most employers, in drafting their contracts of employment, would have contemplated the current circumstances; particularly the level of interruption and disruption to work as we know it, which has been occasioned by the Government's response to the COVID-19 pandemic. Indeed, employers and employees have had to be deal with this unprecedented situation by adopting new ways of meeting their obligations under their employment contracts.

In Nigeria, it is pathetic to indicate that employees are usually on the receiving end and therefore the most hit whenever there are employment uncertainties. According to Ndum (2014) employees are resources that should be effectively managed if organizations are to make progress. With the absence of good human resources, even the best designed organization that is guided by well-made plans, necessary equipment, etc cannot realize its performance potential.

The primary legislation on labour and employment matters in Nigeria is the Labour Act. The other relevant legislations are the Trade Union Act, the Trade Disputes Act, National Industrial Court Act and the National Industrial Court Rules, 2007. Nonetheless, the relationship between employers and employees are typically regulated by the contracts of employment which sets out the terms of such employment. It is trite that parties to a contract are bound by its terms and cannot vary the terms and conditions of the contract except with each other's consent. This principle extends to employer – employee relationship and to the extent that a contract of employment is a contract, the general principles relating to general contracts will apply unless the law provides for a departure from such general principles.

it is imperative to state that collective bargaining should be a driving force and catalyst in labour management, that is, government should endeavour to boost workers' confidence in implementing all agreement reached on labour issues. Trust and cordiality should be enhanced and enshrined in the relationship. This unfortunately is not practicable, given the very hostile industrial relations system in Nigeria (Ebong and Ndum, 2020).

Arising from the foregoing, this paper takes a cursory examination of the state of private and public employment in the contemporary Nigeria, occasioned by the Covid 19 pandemic.

Understanding the Pandemic

Pandemics are not alien to human existence. In the realm of infectious diseases, a pandemic is a worst-case scenario. When an epidemic spreads beyond a country's borders, the disease then officially becomes a pandemic. Owing to the trans-border, uncontained spread of COVID-19, the World Health Organisation declared it a pandemic.

The COVID-19 pandemic in Nigeria is part of the worldwide pandemic of coronavirus disease 2019 (COVID-19) caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The first confirmed case in Nigeria was announced on 27 February 2020, when an Italian citizen in Lagos tested positive for the virus. On 9 March 2020, a second case of the virus was reported in Ewekoro, Ogun State, a Nigerian citizen who had contact with the Italian citizen (Nigeria Centre for Disease Control, 2020).

On 28 January, the Federal government of Nigeria assured citizens of the country of its readiness to strengthen surveillance at five international airports in the country to prevent the spread of coronavirus. The government announced the airports as Enugu, Lagos, Rivers, Kano and the FCT. The Nigeria Centre for Disease Control also announced same day that they had already set up coronavirus group and was ready to activate its incident system if any case emerged in Nigeria. On 31 January, following the developments of COVID-19 pandemic in mainland China and other countries worldwide, the federal government of Nigeria set up a Coronavirus Preparedness Group to mitigate the impact of the virus if it eventually spreads to the country. On the same day, the World Health Organization listed Nigeria among other 13 African countries identified as high-risk for the spread of the virus (Seyi, 2020).

The Employment Realities Orchestrated by the Emergence of Covid-19 Pandemic

It is a truism that the persistence of the Covid-19 has resulted to an untold economic restiveness with notable unimaginable consequences. The damaging scourge of Covid-19 on the economy is not only peculiar to Nigeria, but the world over. Carneiro, Portugal and Varejão (2014) indicated that the economic crisis in Portugal gave rise to job destruction due to the collapse of existing firms, increasing unemployment rate, increase in the incidence of minimum wage freeze, and also led to an increasing number of temporary workers. Cheong (2002) stipulated that there was increasing income inequality during the Korean economic crisis. Other consequences include: high mortality rates from homicide, pneumonia, and alcohol dependence during economic crisis (Khang, Lynch and Kaplan, 2005), and the collapse of many small and medium scale enterprises. Specifically, the effect of Covid-19 on economic activities in general and the employment situation in Nigeria can only be imagined, some of which are identified below.

Human Resource Development Gap

Human resource development relates to the provision of social services as well as opportunities to put human resources to work, both of which are intrinsically linked with the overarching objective of the development of a nation. This is where a sound human resource development policy or strategy at the national level is a necessity. The Covid-19 pandemic has exposed the nation's human resource development gap. According to Ndum and Okey (2013) the interplay between quality education, good governance and human resources development forms a continuum of activity and process that are progressive, continuous and unending.

Some Categories of Employees Now Work From Home

Evidence indicates that the first response by majority of the organizations in Nigeria, including government owned has been to direct their employees to work remotely, to protect their employees and clients from the spread of the pandemic. This directive however raises the question of whose responsibility it is to provide remote working tools to the employee? A typical example was a situation in which the government opted for online teaching and learning but did not consider whether teachers are well-equipped with the required tools and facilities to embrace that novel but herculean task. Therefore, if the Nigerian labour system is persuaded by what is obtainable in foreign climes on the issue of who bears the costs of expenses of working from home during the periods of lockdown, Nigerian employers may be required to reimburse employees who had to work from home during the COVID-19 pandemic for their reasonable and necessary home office expenses if they did not do that before now.

Salary Reduction and Deferment of Bonuses and Allowances

Resulting from the existing realities especially the inability to do business as we know it, one of the options available to employers is to vary the terms of their employees' contract such that there is a deferment or reduction of agreed salaries, bonuses and allowances. This approach should be a win-win situation for both parties as on one hand, employees would be able to retain their employments during the pandemic and on the other hand, the employers are able to manage their resources until things return to normal. In the event that this option is considered, an employer is required to notify/engage its employees and obtain prior consent as to when and how the changes would take effect, before implementing. Furthermore, to avoid any adverse claims on the acceptance of the reduction or deferment, the employer should ensure that the employees communicate their acceptance of the changes in writing. However, the current situation in Nigeria is not in consonance with the labour Act. There is blatant deferment and reduction of the salaries of workers in both private and government employments. Many workers today are being paid incomplete salaries, worse of all is that this is usually done without the consent of employees. The reason is that there is low production and therefore dwindling of the finances of the employer resulting from the Covid-19 pandemic.

Denial of Promotion

As a result of the scourge of the Covid-19 pandemic, government and private employers option available has largely been the deferment or outright denial of employees promotion. In most companies, bonus determination and application usually form part of the company's policies which are typically incorporated by reference in employment contracts; thereby, becoming binding. In such circumstance, the provision for bonuses and promotions vests a right in an employee and may be recoverable against the employer due to the expectation interest they create for the employee.

The doctrine of legitimate expectation is that where an employer by his actions or inactions, create a state of affairs that gives an employee an expectation interest which is legitimate and reasonable, then such employer is by law obligated to meet up with such expectation.

Although in cases were promotions are not contractual rights, as they are usually conditional upon the employee meeting certain organizational performance-based indexes, it is rational and often reasonable for employers of labour to accord the employees the privileges earned by hard work in their employments and organizations.

Many organizations, especially in the private sector have relegated employees promotion to the backdrop. Some claim that work and offices have shut down, nothing is functional and so it is irrational and unethical to embark on promotion of staff when in actual sense such staff do not merit or earn it. A deeper claim by most organizations is that staff promotion would lead to a concomitant rise and increase in wages, thereby adding more financial burden on the organization that is already suffering from the insufficient funding orchestrated by the pandemic. A practical instance is the fate of the university academics in Nigeria. Teaching staff in Nigerian public universities have been on strike, which coincided with the ongoing Covid-19 lockdown; within this period, no staff is expected to have their promotion implemented since it is considered that work has been put on hold.

Paid and Unpaid Leave

Whereas section 18 of the Labour Act provides for at least six (6) days of paid annual leave for every 12 months of employment, most employment contracts typically provide for more number of days which can be taken as annual leave by the employee in an organization. Due to the compulsory stay at home directed by Government to curb the spread of the pandemic, many organizations may consider bringing forward the scheduled leave days/period of employees such that the leave days become part of the period now being compulsorily spent at home. This may however not apply to businesses whose employees have been working remotely during the lockdown, as this is likely to be considered an unfair labour practice by the Courts.

Declaration of Redundancy

In Nigeria, redundancies are governed by the Labour Act, the decisions of the National Industrial Court of Nigeria (NICN), the contracts of the affected employees, organizational policies or employees' handbook, and the provisions of any collective bargaining agreement between an employer and the representatives of a trade union.

The Nigerian labour law acknowledges that an employer reserves the right to pay off any employee whether based on redundancy, idleness etc. or at the end of a project where the employee is engaged. The Labour Act defines redundancy as an "involuntary and permanent loss of employment caused by an excess of manpower". No specific rules apply to mass layoff or collective redundancy. Section 20 (1) of the Labour Act provides that in the event of redundancy, employers shall apply the procedure as follows:

- a. informing the trade union or representatives of the employees of the reason for and extent of the anticipated redundancy
- b. applying the principle of 'last in, first out' in determining the employees to be affected by the process, subject to all factors of relative merit, including skill, ability, and reliability; and
- c. negotiating redundancy payments of the affected employees.

Though the definition of excess manpower is not provided in the Labour Act, the courts have considered the acquisition of a company, restructuring, reduction of production line, shortage of raw materials, economic and technological reasons as valid grounds for declaring redundancy.

The pandemic has skyrocketed the rate of redundancy declared by employers. In view of the foregoing, it is recommended that employers be transparent about the redundancy process and inform employees of the intention to declare a redundancy as well as negotiate a disengagement package where necessary.

Termination

In light of current realities and considering the effect of the pandemic on business activities, several employers especially in the private sector have, as a last resort, relied on the principle of frustration or contractual force majeure to terminate employments.

Generally, frustration is upheld as a basis for termination where it is established to the satisfaction of the court that due to a subsequent change in circumstances, the contract has become impossible to perform. Such change in circumstance may include subsequent legal changes, outbreak of war, epidemic, pandemic, cancellation by an unexpected event.

The consequence of the occurrence of a frustrating event which makes parties unable to perform their contract such as lockdown directives by governments to flatten the curve of the COVID-19 pandemic is that the contract is terminated immediately and the parties discharged.

Force majeure provisions, on the other hand, are provisions contained in the employment contract which allows the parties to determine in their contract, such occurrences which may be termed as being beyond their control and described as force majeure events. This is distinct from the principle of frustration in that for force majeure provisions to hold, such events must have been agreed by the parties and their occurrence must be such that they affect the performance of parties' respective obligations under the contract. These events typically include wars, floods, or pandemics such as COVID-19. However, for an employer to rely on a force majeure clause, such clause must specifically mention pandemics, or acts of government which are beyond the reasonable control of the parties.

The above notwithstanding, it is not enough to have merely described the events which may be regarded as a force majeure event in the contract, an employer who seeks to rely on it, has the duty to prove that the pandemic and the resultant government lockdown has prevented it from being able to physically or legally fulfil its contractual obligations to the employee. However, an employer will not be heard to say that such occurrence has merely created a difficulty to perform, higher cost of performance, or less profits to the business. The employer must be able to prove that.

The Nigerian workers have experienced mass retrenchment and termination of jobs by employers. This has rendered majority of the citizens frustrated, depressed and financially incapacitated. Many families today are living in untold hardship.

Conclusion and Recommendations

The Nigerian workforce and the economy at large has gone through and is still undergoing unpredictable and scourging effects of COVID-19 pandemic. There have been unusual and challenging realities bedeviling the state of employment in Nigeria. Instead of palliatives to cushion the impact of the pandemic, workers are greeted with unfriendly situations like working from home, redundancy, denial of bonuses, salary reduction, distorted promotion and even the issuance of sack letters.

In a way of recommendation, it is instructive to heed the position of Ndum and Onukwugha (2013) advocating counseling services for the Nigerian worker to include career-development programs to foster awareness of career alternatives, programs in human relations skills, and training in actual job skills, as well as the acquisition and dissemination of related information that could ensure self-reliance and entrepreneurship. It would be practical for employers to engage their employees before arriving at a decision as this would afford the employer the opportunity to communicate its present predicament to its employees. It is also advisable for the employer to comply with the provisions of the

contract of employment for the execution of whatever decision they elect. This may include notice/pay requirement, severance packages, terminal benefits, or consultation with union representatives and compliance with international best practices.

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