

COVID-19 and Labour Law: Nigeria

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Abstract

Despite the recondite nature of covid-19, Nigeria government relied on the provisions of the Quarantine Act 1926 to prevent and contain its spread. In line with the Act, emergency regulations were issued along with other emergency measures. Some of these measures are impacting workers and working conditions negatively. So far, government's efforts at mitigating the impact on workers have been concerned with workers in the public and organized private sectors; leaving out vulnerable workers in the informal economy.

Keywords: Covid-19; Labour Law; Remote Work; Layoffs; Informal Workers; Healthcare Workers.

1. General Framework

Nigeria confirmed its first Covid-19 case (an Italian) on 27 February 2020¹. Thereafter, there has been a steady increase in the number of persons testing positive to Covid-19. Toward the protection of public health, the President relied on sections 2, 3, and 4 of the Quarantine Act of 1926² as statutory backing to issue Covid-19 Emergency Regulations³. Pursuant to section 2 of the Act, the Regulations declared Covid-19 a dangerous disease and empower the government to restrict movement within, into or out of Nigeria. The Regulations gave wide powers to restrict or prohibit the gathering of persons, the conduct of business, and other activities.

Noting that majority of the confirmed Covid-19 cases were recorded in Lagos State, Ogun State and the Federal Capital Territory (FCT), the President on 29 March 2020 relying on section 3 of Quarantine Act declared these three places infected areas and ordered a lockdown for an initial period of 14 days; extendable subject to prevailing circumstances⁴.

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¹ Ruth Maclean and Abdi Latif Dahir, 'Nigeria Responds to First Coronavirus Case in Sub-Saharan Africa', *The New York Times*, (28 February 2020) www.nytimes.com/2020/02/28/world/africa/nigeria-coronavirus.html accessed 24 April 2020

² (the Quarantine Act) Cap Q2 Laws of the Federation of Nigeria 2004 (LFN)

³ 2020 March 29, 2020

⁴ Has been extended for another 14 days

Pursuant to section 8 of the Quarantine Act, similar measures were taken by the State governments within their jurisdictions though with slight variations⁵. The measures range from partial lockdown to full lockdown. People were ordered to stay at home, travels within and outside the states restricted to expressly permitted movements, ban on gathering of more than 20 people imposed and maintenance of social distance in permitted gatherings prescribed, schools were closed down and a dusk to dawn curfew imposed by most states within their jurisdictions⁶. Open markets in most of the states have been temporarily shut down or relocated⁷. In compliance with government's directive businesses and offices premises except those expressly allowed to continue their activities have been closed.

On the surface, these measures appear to violate the guaranteed constitutional rights to freedom of religion, peaceful assembly and association, and freedom of movement⁸. However, the Constitution contains a proviso which validates laws limiting the enjoyment of these rights in the interest of public safety or public health and to protect the rights of other persons⁹.

2. Impact of COVID-19 Measures on Workers

Sequel to government directives, employers whose businesses could be conducted remotely asked their workers to work from home¹⁰. On the other hand, employers whose businesses could not be effectively conducted remotely were compelled to shut down temporarily and their workers directed to stay home with either full pay or reduced salaries¹¹ or placed on temporary layoffs without pay¹². Other extreme measures include termination of employment. Incidentally, the bulk of Nigerian workers comprising of casual workers, the self-employed, and employees in the informal sectors whose job cannot conduct remotely are the worst hit¹³; particularly those whose daily earnings constitute their only source of sustenance.

Being in the front line of the fight against covid-19, Healthcare workers are allowed to move freely. Sadly, the healthcare sector before the advent of covid-19 was in a state of doldrums, lacking basic infrastructure and equipment including personal protective

⁵ See Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020

⁶ Yinka Adeniran, 'Makinde imposes curfew as Oyo records new COVID-19 cases' *The Nation* (28 March 2020), <https://thenationonline.net/makinde-imposes-curfew-as-oyo-records-new-covid-19-cases/> accessed 26 April 2020

⁷ Justin Tyopiusu, 'COVID-19: Taraba closes markets, bans public gathering' *Punch* (1 April 2020) <<https://punchng.com/covid-19-taraba-closes-markets-bans-public-gathering/>> accessed 26 April 2020

⁸ Ss. 38, 40 and 41, Constitution of the Federal Republic of Nigeria 1999, Cap C23, LFN

⁹ Ibid s 45.

¹⁰ Nigerian Stock Exchange "Coronavirus (Covid-19) Our Response" <www.nse.com.ng/mediacenter/news_and_events/Pages/covid-19-our-response.aspx> 20 April 2020

¹¹ Kelvin Osa Okunbor, "Arik Air cuts workers' salaries by 80 percent", *The Nation* (25 April 2020) <<https://thenationonline.net/arik-air-cuts-workers-salaries-by-80-percent/>> accessed 26 April 2020

¹² Nicholas Ibekwe, "COVID-19: Arik cuts salaries by 80%, places 90% of staff on leave without pay" *Premium times* (Nigeria, April 24, 2020) <www.premiumtimesng.com/business/business-news/389578-covid-19-arik-cuts-salaries-by-80-places-90-of-staff-on-leave-without-pay.html> accessed 26 April 2020

¹³ ILO Monitor, *COVID-19 and the world of work*, Updated estimates and analysis (2ed 7 April 2020) <www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf> accessed 27 April 2020

equipment (PPE) for the healthcare workers. Grappling with covid-19 pandemic under these circumstances pose serious challenges for healthcare workers; many have tested positive to covid-19¹⁴.

3. Cushioning Measures

There have been a series of interventions coming from different government quarters. In response to the dilapidated state of the healthcare sector, the Federal Government through the CBN on 16 March 2020 amongst other economic stimulus made available a 100billion Naira (N100b) facility for the benefit of pharmaceutical companies, hospitals and healthcare practitioners who intend to build or expand their drug manufacturing plants or health facilities to first-class centres¹⁵.

Similarly, on 22 April 2020, after meeting with the representatives of the Nigeria Medical Association, the Joint Health Sector Unions and the National Association of Nigerian Nurses and Midwives, commencing from March 2020, the Federal government approved three months special covid-19 allowances for healthcare workers; payment of 50 % of net salary as hazard allowance and 40% increase on the consolidated salary for all health care workers in federal government employment¹⁶. Further, health workers directly involved in the treatment of covid-19 patients are to receive additional risk allowances of 20% of their salaries, while non-core health workers will get 10% of their salaries¹⁷. Government also approved a tax exemption for health care workers during the period of the emergency. And generally, Federal government employees (including healthcare workers), will henceforth be insured against job hazards¹⁸. Similar packages have also been extended to some State health workers by their respective State government¹⁹.

While workers in the public sectors have continued to enjoy full monthly salaries, the position of their counterparts in the private sector is not too palatable, as employers are finding it increasingly difficult to offset wage-bills. Towards the protection of jobs, the House of Representatives on 24 March 2020 passed the Emergency Economic Stimulus Bill, 2020 (the Bill)²⁰. The Bill amongst others provides incentives for registered corporate employers

¹⁴ Chukwuma Muanya, Bridget Chiedu-Onochie and Nkechi Onyedika-Ugoeze 'Panic as 40 Health workers test positive for coronavirus' *The Guardian* (24 April 2020) <https://guardian.ng/news/panic-as-40-health-workers-test-positive-for-coronavirus/> accessed 19 April 2020

¹⁵ CBN 'CBN Policy Measures in Response to Covid-19 Outbreak and Spillovers' <<https://www.cbn.gov.ng/Out/2020/FPRD/CBN%20POLICY%20MEASURES%20IN%20RESPONSE%20TO%20COVID-19%20OUTBREAK%20AND%20SPILLOVERS.pdf>> accessed 26 April 2020

¹⁶ Temitope Obayendo, "FG Approves COVID-19 Allowances for Health Workers", *Pharmanews* (22 April 2020) < www.pharmanewsonline.com/fg-approves-covid-19-allowances-for-health-workers/ > accessed 23 April 2020.

¹⁷ Ibid

¹⁸ Abulu Osemuaghu , 'FG approves special Covid-19 allowances for Health workers' *AIT* <https://ait.live/fg-approves-special-covid-19-allowances-for-health-workers/> accessed 24 April 2020

¹⁹ Lagos State Government increased health workers hazard allowance by 400 %. See Covid-19: Sanwo-Olu Increases Hazard Allowance Of Health Officers <https://lagosstate.gov.ng/blog/2020/04/22/covid-19-sanwo-olu-increases-hazard-allowance-of-health-officers/> accessed 27 April 2020

²⁰ <https://www.nassnig.org/news/item/1472> accessed 23 April

to retain their staff strength as of 1 March 2020 until 31 December 2020. Compliance entitles a company to a 50% income tax rebate on the total amount due or paid as Pay-As-You-Earn Tax behalf of its worker under the Personal Income Tax Act²¹. The benefit inures even where any of the workers die of natural causes, voluntarily disengage or where termination is due to a breach by the worker. The rebate period may be extended for as long as covid-19 remains a pandemic. The Bill will become law after its ratification by the House of Senate and assented to by the President.

4. Gaps

Except as mentioned earlier, so far, there has been no involvement of the social partners²². No visible measures in place for protection of most vulnerable workers -casual workers, the self-employed, and employees in the informal economy. There is also no comprehensive social welfare scheme in the country. And in the event of a wrongful termination of employment, remedy can only be sought under the pre-existing labour law framework which has been adjudged deficient juxtaposed against the proclivity of modern employment relationship²³.

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²¹ Cap P8, LFN 2004

²² ILO: *COVID-19 and the world of work; Country policy responses*

<https://www.ilo.org/global/topics/coronavirus/country-responses/lang--en/index.htm#NG>

²³ KPMG 'The Labour Act for Review' < <https://home.kpmg/ng/en/home/insights/2019/11/the-labour-act-for-review-.html>> accessed 27 April 2020