

EVALUATION OF THE IMPLEMENTATION OF EMPLOYEES COMPENSATION AMENDMENT ACT 2011 OF NIGERIA

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Abstract

Since the passage into law of the Employees Compensation Act in 2011, countless cases of workplace accidents have occurred in Nigeria. Yet there seems to be no succour for the Nigerian worker as many state governments have either refused to register with or do not have the will power to implement the legislation in their respective states. Some in the private sector continue to call for the review of the funding pattern of compensation for workers. With this scenario, it becomes increasingly difficult to implement the Act in the country and this means that countless of workplace injuries will not be compensated or properly handled as stipulated by the law. This paper examined the implementation of the Compensation Act and like many other acts that have come before it, to determine the implementation level. This paper also set out to find the various challenges that may be militating against the effective implementation of the Act. In the survey, 427 workers from both the private and public sectors were selected. The study revealed that over 58% of the respondents are not aware of the existence of employees' compensation while 76 say they have no confidence in government ability to manage the Act. This paper therefore recommends that NSITF, the body saddled with the responsibility to manage the funds, should start to implement the Act immediately by updating their records and carry out public enlightenment campaigns to employees and employers in both the private and public services while paying compensation benefits to injured workers.

Keywords: Compensation; Injury; Employee; Employer; Act and Implementation

Introduction

In many parts of the world, once a Bill is assented to and it becomes a law, the effect is seen and sooner than later the implementation of such an Act is felt by all concerned. But the case in Nigeria seems to be somewhat different, as when bills are passed into laws, the effect is not easily visible unless such laws affect the political class or rich in the society (Abolo, 2013). Since the passage of the Employees' Compensation Amendment Act 2011 and the official commencement of the scheme in July 2011, the Nigerian Security Insurance Trust Fund (NSITF), the agency saddled with the responsibility to manage compensation fund in Nigeria seems to have gone into a state of inactivity. NSITF seems to have too many challenges facing it that the implementation of the Act becomes a herculean task. According to Aibieyi (2009), any policy that is formulated but not fully implemented is not only useless but is of no significant value to anyone. Hence, it becomes crucial to evaluate the implementation level of public policies to ascertain if they have yielded the desired results or effects on society. The success or failure of any policy is predicated on the effective implementation of the programmes of such a policy (Aibieyi, 2009). No matter how good a policy or scheme is intended, the implementation tells its success or failure. According to Anderson (1975), a policy is evaluated by the recorded success of its implementation. With the recorded success so far one wonders how NSITF will be able to effectively implement the scheme.

To evaluate the success of the 2011 Employees Compensation Act, there will be need to examine its implementation, challenges, prospects and the success recorded so far. The commencement of Employees' Compensation Amendment Act 2011 should bring joy to Nigeria's teeming workforce, as a relief from the bottleneck involved in getting compensation for injuries in the workplace. But in a country such as Nigeria with a record of comatose policies and unimplemented ideas, the enthusiasm the new law has generated seems not to be gathering the momentum it had in 2011 when it was signed. The euphoria seems also to have been short-lived, as issues relating the Act is no longer making the air waves and the average Nigeria worker is not seeing the Act being translated into action. Cases of injuries at the work place without proper compensation still abound.

This paper therefore examined the challenges of implementing Employees' Compensation Act 2011, which include: the inability of NSITF to reach the majority of Nigerian workers as many are not aware of the existence of NSITF; the non compliance of many employers of labour and state governments to key into the scheme; and workers' lack of confidence in the scheme. This paper will also examine the successes recorded so far by the Nigeria Social Insurance Trust Fund (NSIFT), the agency saddled with the responsibility to administer the fund such as the registration of some key organisations and some state governments. This paper will also proffer suggestions on possible ways of improving the implementation of the Employees' Compensation Amendment Act 2011 and the efforts of NSIFT to attract other levels of government such as the local government into the scheme.

Definition of Terms

Compensations are payments made to employees by employers, in accordance with statutory provisions, for injuries and disabilities or death that may occur in the course of their employment.

Employee An employee or a worker is a person working for either the public or private employer and earns remuneration for the work done. An employee is also a person who enters into work under a contract with an employer.

Implementation This is to carry out, to fulfil. To ensure an agreed document is executed or carried out.

Challenges of Implementation

Nigeria, as a nation, has never lacked in policies right from independence till date, instead it must be stated here that Nigeria as a country has records of enacting wonderful laws but the problem has been a case of lack of implementation. Take the first attempt to provide legislation to handle compensation in Nigeria in 1941, when the colonial authorities enacted the Workers Compensation Act No 51, of 1941. That Act failed because it made provision for the payment of compensation to a workman who sustained injuries at work or to the dependants if the injury resulted in death (Obi 1995).

Expanding on this view that policies always fail in Nigeria, Eroke & Oyedele (2013) said that as at 2013, which was two years into the commencement of employee compensation scheme, many state governments were yet to register with NSITF as required by the Act. According to Mallam Munir Abubakar (2015), the Managing Director of NSITF, they have been able to register 25,076 employers of labour as at January 2015. According to Mallam Munir Abubakar (2011), the major challenge they have is that of accessing the organisation that ought to register with NSITF. The employers of labour presently registered are a far cry from the number of organisations registered in Nigeria. This may reduce the level of compliance by stakeholders and drastically affect the employee who is at the receiving end of the table. Getting employers into the scheme has continued to be a challenge due to failures of similar schemes in the past. To achieve this fate, NSITF has taken a proactive step of engaging employers of labour in dialogue, while working closely with the Nigerian Employers Consultative Association to help organisations register. But this step seems too little an effort in tackling this problem.

An area of concern is the ambiguity of the Employees Compensation Amendment Act, (2011), which did not state when contributions are required to be remitted under the Act; the Act did not spell it out clearly whether it is monthly or 1st of January of every year. Humans being who we are, will likely look for excuses to evade the remittance for their employees, since the law did not specify when such should be remitted. This may also have affected the smooth management of the scheme as funds meant for it is not remitted.

Another area that NSITF is finding it difficult to implement the Act is in the area of compensation for mental stress resulting from the employment. This becomes

necessary to be examined because studies carried out by Ismaila and Usul (2013), Aliyu and Shebe (2013) and Jack-Ide, Makoro, Azibiri (2013), all show that mental illness as a result of job related issues are on the increase in Nigeria. According to Worugji, (2013), Section 8 of the Act makes compensation payable for mental stress arising from an acute reaction to a sudden and unexpected traumatic event or from mental or physical condition arising out of or in course of employment (Section 8(1) of the Act).

Compensation for mental stress includes mental stress caused by change of work, the working conditions or organisation of work in such a way as to unfairly exceed the work ability and capacity of the employee by his employer (Section 8(2) of the Act). This becomes a challenge as cases of mental illness are handled with topmost secrecy and this is because of the stigma associated with mental health (Ugiagbe and Okaka, 2014). This situation becomes most difficult, because Nigerians believe in the supernatural cause of mental illness (Aina, 2004). To avoid any disagreement that may arise in respect of any claims for mental stress arising in these circumstances, the Act empowers the Board to appoint a Medical Board of Enquiry to ascertain the mental conditions of the employee as the case may be (Section 8(3) of the Act). This type of publicity is what most Nigerians may be avoiding, hence those with mental illness may never benefit from the fund and the NSITF may not be able to assist those with mental illness.

The awareness level of the average Nigerian worker about the existence of the Employee Compensation Scheme is very low. Most workers are not aware of the scheme and their rights to access it. This may explain why some foreigners continue to abuse Nigerian workers in their own soil. For fear of intimidation, some employees are always afraid to report cases of injuries in the workplace. In a recent survey by these researchers the issues of non-awareness of this law was highlighted by a majority of the respondents.

Withholding of information by organizations can be a source of challenge to NSITF, as most organizations are not willing to report cases of accidents and injuries that occur within their premises. Most organisations in Nigeria are more interested in the reputation of their corporate status than staff welfare. This can be deduced from the comment of Abolo (2005), who said that as soon as an accident occurs in case of transport lines in Nigeria, the first step taken by the management of the companies is to hide their identities, either by covering their names or immediately removing the vehicles involved in the accidents from the scene. With this type of culture, it becomes increasingly difficult, if not impossible, to assist affected workers.

The issue of confidence is another problem as the funds are placed in the hands of the Board of the NSITF. This does not inspire much confidence in the new scheme having become irrelevant with the enactment of the Pension Reform Act and with the establishment of the National Pension Commission (PENCOM). With lack of confidence, it becomes difficult to implement as stakeholders will not have complete trust on the scheme (Adeyemi, 2012).

A staff of NSITF who pledged anonymity explained that most employees do not have confidence in the scheme. According to him, “there is always apathy from the

workers themselves". This has become a major setback for the implementation of Employee Compensation Act 2011. This singular fact has brought citizens' mindset against policies, hence scepticism, pessimism, and apathy. The average Nigerian has grown through the years not to believe anything about government policies, programmes and action plan. This situation might make many employees, who this Act has been designed and enacted for to become so wary, and avoid being registered for the programme. This may go a long way to determine the success of Employee Compensation Act 2011.

Future Prospects and Challenges of the Act

A future challenge NSITF may have to contend with is the amendment to the Act establishing the organization. The amendment to the Act now empowers NSITF to provide social security to the aged and unemployed individuals in Nigeria. This may guarantee that all Nigerians will have access to a nationally defined set of essential healthcare services including maternal healthcare. This will ensure that all children enjoy income security at a nationally defined minimum level through family/child benefits in cash or in kind aimed at facilitating access to nutrition, education and care. One major challenge with the amendment is the ability of NSITF to identify Nigerians to benefit from the security. This section of the Act becomes a plus for the scheme to succeed, as it can use it to appeal to the conscience of Nigerians who love children.

There is no cogent reason why NSITF should not realize those targets if it rises to the occasion. To begin with, it has at its disposal the largest working population in Africa. That asset is also a challenge, as NSITF may find it a real challenge in reaching workers especially in a country where records are nothing to write home about. The big problem here is having at its disposal the statistics of employers and employees in Nigeria. Some organizations have the culture of hiding their identity and profile for the sake of evading taxes and industrial laws.

All the challenges, no matter how huge they may be, can be matched with the equally robust estimated revenue profile. The real task before the Fund, therefore, is, being armed with the enabling statutes. The best way to fast-track the implementation of this Act is to engage in a massive, effective sensitization drive aimed at enlisting the co-operation of workers and employers alike.

We are convinced that the new Act, which is in line with the International Labour Organization's (ILO) recommendations and global best practice, will enhance the productivity of Nigerian workers as a result of the motivation they would derive from many of its provisions. It is evident that for many years, issues relating to the welfare of the Nigerian workers have never been taken seriously. In effect, these individuals who sacrifice daily for the economic development of our dear country Nigeria are left to the whims and caprices of their capitalist employers, who are more interested in their profits and in most cases, treat their employees' welfare with levity (Okaka, 2005). Of most concern is the several foreign companies operating in the country. They are also known to be notorious for their unfair labour practices (Okaka 2005). They often subject their workers to inhuman conditions without let or hindrance. This is why this new law is welcome, given that it will safeguard the rights, well-being

and morale of the workforce not only in the interest of the workers themselves but also that of the investors/employers and the economy. The law would also go a long way in creating harmonious industrial relationships between labour groups and organizations. In the end, Nigeria would be seen as a nation that cares for the well-being of its citizens.

A major strength of the 2011 Employees Compensation Act (2011) is the aspect that states that compensation should be paid to an employee for life, if injured or deceased, or to the dependents of the deceased notwithstanding that the employer might have made contributions in respect of that worker for only one year. This is one aspect of the Act NSITF should capitalize on to sell its products to Nigerian employees and employers, as this part of the Act is very humane. This aspect of the Act equally recognizes that some Nigerian employers might not take the scheme serious hence the protection of the worker. Cases have been heard of workers not getting their benefits when they die. The Employees Compensation Act (2011) makes adequate provision for the families of the deceased. These provisions will give some respite in the face of the harsh economic condition we find ourselves in Nigeria.

NSITF can also take advantage of the part of the Act that makes it mandatory for injuries to be investigated to ensure that the injuries were not as a result of negligence of the employee, and if it is proven, the worker may not be paid compensation. The Employees Compensation Amendment Act (2011) states that compensation will be paid irrespective of the circumstances that led to the injury. This aspect does not give room to Insurance firms to avoid payments based on some excuses which at times are technical. With this Act the cause of injuries are not relevant and cannot prevent payment, what a relief for workers. It is a real victory for the working class.

The beauty of this new Compensation Act can be seen from its ability to pay for injuries that occur outside the normal work place subject to certain conditions prescribed under the Act. Compensation is in lieu of any right of action, statutory or otherwise founded on breach of duty, of care or any other cause of action.

Another area of concern to stakeholders is the unavailability of database of employed persons, and organizations with persons in its employment in Nigeria. The working population, according to World Bank Report, (2008) is 48,620,125. That statistics indicates that there could be more by the end of 2016. The big question is how do you reach this large number of persons with the new Employee Compensation Act 2011? This is a cause of concern for stakeholders. How does the Act cover all employees, as the supervising agency does not have data of all organizations qualified for the scheme so as not to leave out any that may qualify to participate in this laudable initiative.

In his own submission Oshin, the National Chairman, Nigeria Insurance Association claimed that the NSITF has been unable to effectively manage funds from workers resulting in non-payment of NSITF benefits to retirees. This situation has resulted in complaints and loss of confidence in the entire process. He also pointed out that this could be a deficiency in the new Act and revert Nigerians back to the pre 1964 era.

Methodology

For the purpose of this study, a total of four hundred and twenty seven employees (427) and employers of labour were selected using the random probability sampling technique in a onetime survey. The technique determines the chances or likelihood of drawing each member of the selected public or private establishments in the research sample. The Ninety-four (94) employers of labour and three hundred and thirty-three (333) employees selected for the survey were drawn from Benin City and its environs. This study also relied on secondary sources of data collection. These include data from books, journals and online libraries. The materials were helpful in generating the required literature and research findings of other researchers on employees’ compensation scheme in Nigeria.

Results

The respondents were asked if they were aware of the existence of Employees’ Compensation Act 2011. The responses of the respondents are presented below in Table 1.

Table 1: Percentage Distribution of Respondents’ Responses on if they are Aware of the Existence of Employees’ Compensation Act 2010

S/N	Variables	Frequency	Percentage
1	Yes	163	38.17
2	No	251	58.78
3	Not Sure	13	03.05
	Total	427	100.00

Source: Researchers Survey 2015

Table 1 above indicates that only 38.17% of the respondents are aware of the existence of the enabling law to offer compensation for injuries incurred in the work or other related places while a majority of the respondents, 59%, are not aware of the existence of a legislation that offers compensation to the Nigerian worker. A total of 3% of the respondents were not sure of the existence of the Act.

The data presented in the table is a serious cause of concern for NSITF and the country as majority of Nigerian workers (59%) claim not being aware of the existence of Employees Compensation Act 2011. If they are not aware of its existence how can they access the scheme?

This situation of workers calls for serious work on the part of NSITF as they need to first create an awareness of the body and then gradually build the confidence of Nigerian workers. The data confirm the worries of these researchers who strongly feel that such a situation can hinder the implementation of the Act.

The respondents were further asked if they agree that workers have confidence in the scheme been operated by NSITF. The response of the respondents is presented in Table 2 below.

Table 2: **Percentage Distribution of Respondents' Responses on if they Agree that Workers Have Confidence in the Compensation Scheme Operated by NSITF**

S/N	Variables	Frequency	Percentage
1	Strongly Disagree	281	65.81%
2	Disagree	43	10.07
3	Undecided	28	6.56%
4	Agree	53	12.41%
5	Strongly Agree	22	5.15%
	Total	427	100.

Source: Researchers Survey 2015

The data in table 2 show that 66% of the respondents in the group strongly disagree with the notion that workers have confidence in the compensation scheme being operated by NSITF. The same view was also held by 10% of the respondents as they disagree that workers have confidence in the scheme. 7% of those surveyed were undecided on the issue, while the position of 18% of the group is that workers have confidence in the compensation regime.

The data presented in Table 2 are disturbing as majority of the survey population, do not have confidence in the compensation regime of NSITF. This is disturbing because those who the scheme is designed for do not have confidence in the Compensation Act or its implementation. The scheme will find it a huge task, that of winning the confidence of Nigerian workers.

The issue of foreign companies on sharp practices in the country and known for notoriety for their unfair labour practices (Okaka 2005) is a problem. These companies often subject their workers to inhuman conditions without let or hindrance. The Employees Compensation Act 2011 (ECA) is a welcome development. It will assist to protect and safeguard the rights, well-being and morale of the workforce. It will eventually turn out to be of interest to the workers themselves, the investors/employers and the economy. The law would also go a long way in breaching the gap in industrial relationships between labour groups and organizations. The employment injury benefits otherwise known as invalidity benefits and survivor benefits conform to two of the nine branches of the International Labour Organization (ILO) Convention number 102 which are recommended for members.

Summary and Conclusion

The passage and signing into law of the Employees Compensation Act 2011, for the first time in the history of Nigeria, has given the employees a sense of belonging, as they now have a law in their interest and favour. This Act was designed to provide remedy to the problems and inability of workers to get compensations even when they were injured at the work place. The expressions by employees indicate that the Employees Compensation Act 2011 is a welcome development and a timely intervention for the Nigerian workers. The Act is laudable but the problem will be the

implementation because of the various problems militating against its operation.

One of such problems is the ability of Nigerian Social Insurance Trust Fund (NSITF) to be able to reach all nooks and crannies of the country to register organizations that have up to fifteen staff in their employ for the scheme, This is a big challenge because the NSITF will require skilled manpower, finance and all the logistics to attain this feat. Nigeria has over 48,000,000 persons as the working population (NBS Report, 2009).

The Act has so much to give to the Nigerian workers. Imagine compensation being paid for injuries that occur outside the workplace, this can motivate works to give their best thereby increasing productivity. Employers are not allowed to deduct (directly or indirectly) from the employees remuneration. In addition to payment of compensation, the Board is mandated to offer vocational, rehabilitation and counselling services to an injured employee with a view to getting such employee back to work or lessening or removing the resulting disability.

The data from the survey indicated major problems the Nigeria Social Insurance Trust Fund may be facing; that of acceptance, a majority of the respondents do not have confidence in the scheme. With as much as 66% of the respondents saying that they do not have confidence in the scheme may be a real challenge for the implementation of the scheme. The survey also clearly brought to the fore that majority of Nigerian workers are not aware of the existence of this laudable Act. NSIFT must as a matter of urgency change its modus operandi so as to reach out to workers and employers of labour to key into the scheme.

Recommendations

- As a matter of urgency the Nigeria Social Insurance Trust Fund (NSIFT) should embark on update of its records of existing organizations.
- The management of Nigeria Social Insurance Trust Fund (NSIFT) 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.
- NSIFT must put measures in place that can encourage the local governments to key into the scheme.
- NSIFT must endeavour 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.

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