



# GUIDE TO GOING GLOBAL EMPLOYMENT

*Nigeria*



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## INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

### GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

### EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit [www.dlapiper.com](http://www.dlapiper.com) or contact:

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## NIGERIA



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

The legal system in Nigeria consists of a) Nigerian legislation; b) English law, which includes the common law, doctrine of equity and statutes of general application in force in England on January 1, 1900; c) Sharia law, applicable in some parts of the North, and customary law; and d) judicial precedent.

The official currency is the Nigerian Naira (NGN). The official language is English.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign entities not registered in Nigeria cannot carry on business or exercise the powers of a registered company. The powers of a registered company include the employment of staff.

Payroll deductions from employees' salary in Nigeria are:

- 8 percent of an employee's monthly salary as pension
- Personal income tax (pay-as-you-earn) and
- 2.5 percent of the monthly salary of an employee with a basic minimum salary of NGN3,000 per annum to the Federal Mortgage Bank of Nigeria.

### PRE-HIRE CHECKS

#### Required

Immigration compliance.

Medical examination for manual and clerical workers.

#### Permissible

Background checks for education, prior employment and basic personal information such as proof of identity and residential address, health checks and credit information are accepted in Nigeria. In practice, the prospective employee's consent is sought before such checks are carried out.

## IMMIGRATION

### Expatriate Quota

An Expatriate Quota must be obtained by the employer from the Ministry of Interior Affairs to employ expatriates for up to 12 months and above. The Expatriate Quota is waived for entities that operate within the Nigeria Free Trade Zones.

Operators within the oil and gas industry are required to obtain the prior approval of the Nigerian Content Development and Monitoring Board for the Expatriate Quota before obtaining the approval of the Ministry of Interior Affairs.

### Temporary Work Permit

A Temporary Work Visa allows an expatriate to enter into Nigeria to provide technical services for a short term – usually between 1 and 3 months. Subject to a Regularization visa: entry visa issued by the Nigeria Mission in the expatriate's country of residence or domicile in the last 6 months.

### Subject to Regularisation Visa

A Subject to Regularization Visa is an entry visa issued to expatriates or other foreign workers who wish to work and remain in Nigeria on a long-term basis. The visa is issued by the Nigeria Mission in the expatriate's country of origin or domicile in the last 6 months.

## CERPAC

A combination of an Expatriate's Resident Permit and Alien's Card (ie, Cerpac) comprises the resident permit (ie, green card) and the alien's movement card (ie, brown card). It is required for expatriates who are resident or working in Nigeria.

Cerpac provides a multiple re-entry visa facility to holders throughout the validity period.

Companies that have been granted the Expatriate Quota and utilize it for their expatriates are required to file monthly returns at the regulatory agencies for the duration of their use of the Expatriate Quota.

To be eligible for Cerpac the following conditions must be met:

1. The expatriate must have secured employment in Nigeria;
2. The expatriate must either have (a) travelled to Nigeria with a Subject to Regularization Visa or (b) been working in Nigeria and obtained (or applied for issuance of) Cerpac in the name of the previous employer, before seeking a new employment with the current employer.
3. The employer must have a valid Expatriate Quota.

There are no provisions under the Immigration Act for the conversion of any other form of visa including TWP, business or visiting visa, to Cerpac. As of September 2019, all foreign nationals who are above the age of 18 years and wish to remain in Nigeria for a period exceeding 90 days must also undertake biometric capturing or e-registration in their respective states of residence.

## HIRING OPTIONS

### Employee

Indefinite, fixed-term, full-time, part-time or casual.

### Independent contractor

Independent contractors may be engaged directly by the company or through another entity (eg, outsourcing or recruitment agency).

### Agency worker

Agency workers are usually recruited by agencies and seconded by agencies or recruitment companies to render services for a fixed period or as may be required. There is no limit prescribed by law. The contract between the agent and the company typically provides for the duration of the engagement. The agency workers remain the employees of the recruitment agency, and the companies they are seconded to have no payroll responsibilities or obligations towards them.

## EMPLOYMENT CONTRACTS & POLICIES

### Employment contracts

For manual and clerical workers, the employer is required to provide the employee with a written employment contract no later than 3 months after commencement of employment.

In practice, most employers issue the employment contract before commencement of the employment. For other employees, employment agreements are not legally required but in practice are commonly used.

### Probationary periods

Permissible. No statutory provision, but the common practice is between 3 and 6 months.

### Policies

There are no mandatory policy requirements. Policies are permissible and form part of the employment contract if referenced or expressly incorporated therein.

### Third-party approval

No requirement to file employment contracts or policies with, or get approval from, any third party. However, collective agreements are to be registered with the Ministry of Labour.

## LANGUAGE REQUIREMENTS

No statutory language requirement in Nigeria, but the official language is English.

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

Manual and clerical workers. Other employees are not subject to the minimum employment rights prescribed by law, but such employment rights are generally stated in the employee's contract of employment.

### Working hours

Normal hours of work are fixed either by mutual agreement, by collective bargaining within the organization or by an industrial wages board. There is no statutory limit on working time. The usual industry practice is that an employee works for 40 hours in a week.

### Overtime

Overtime must be paid for, but the rate to be paid is not specified by law.

### Wages

An employer is required to pay wages to an employee at the end of the period during which the contract exists or as may be agreed upon. However, every employer is legally mandated to pay a wage not less than the National Minimum Wage of NGN30,000 per month. The National Minimum Wage was reviewed upwards in 2020 by the federal government following negotiation with organized labour.

### Vacation

A manual or clerical worker is entitled to a minimum of 6 working days' leave after 12 months' continuous service. In practice, employees are usually granted between 2 and 6 weeks' vacation for every 12-month period.

### Sick leave & pay

An employee is eligible to be paid wages up to 12 days in a calendar year during absence from work caused by illness certified by a registered medical practitioner. The period of eligibility for sick leave is contractual and therefore subject to the provisions of the applicable agreement governing the employment relationship.

### Maternity/parental leave & pay

Under the Labour Act, a pregnant female employee is entitled to maternity leave for 6 weeks before delivery and 6 weeks after delivery and shall be paid not less than 50 percent of her salary if she has worked continuously for a period of 6 months or more. Although this statutory protection mainly covers workers under the Labour Act, it is a standard practice in Nigeria for all categories of employees to enjoy 12 weeks maternity leave. Many female employees opt to commence their maternity leave a week or two before their due date.

The Labour Act only provides for maternity leave, any other parental leave (such as paternity leave) is not statutorily guaranteed and may be subject to the agreed terms of employment.

## Paternity/parental leave & pay

In 2021, paternity leave of up to 14 days was approved by the federal government of Nigeria for male employees in the federal public civil service. This is not standard practice in the private sector; however, parties are at liberty to mutually agree on terms for same, including pay requirements. It is becoming common for male employees in the private sector to be granted some days or weeks as paternity leave.

## Other leave/time off work

Employees may also be entitled to leave for other purposes, such as compassionate, relief, examination/study, bereavement, casual, etc. Some employers are known to include compulsory leave, without pay, which is applied during extraordinary circumstances, as part of their standard terms of employment.

## DISCRIMINATION & HARASSMENT

The Nigerian Constitution prohibits discrimination on grounds of gender, religion, age, political affinity, ethnic/tribal group and membership of a trade union and other lawful associations.

## WHISTLEBLOWING

There are no statutory whistleblowing provisions that apply to all employers. However, several notable whistleblowing policies, mechanisms and guidelines have been implemented by government parastatals and institutions across different sectors. The key collective principles include confidentiality, anonymity, good faith, restitution, etc. Many employers in the private sector have also established internal whistleblowing policies with similar objectives.

## BENEFITS & PENSIONS

Employees are entitled to the following benefits under the Nigerian law: life insurance, employer's contributions (minimum 10 percent of monthly salary) to the employee's retirement saving account, medical care under the National Health Insurance Scheme paid for by the employer, contribution to National Social Insurance Trust Fund for social security payments for occupational injury or disease – the employer is required to pay a monthly contribution of 1 percent of the monthly payroll of all employees.

### Pension and Life Insurance

The Pension Reform Act prescribes a contributory pension scheme for organizations with 15 or more employees. An employer must deduct a minimum of 8 percent of an employee's monthly salary and an additional minimum of 10 percent is contributed by the employer towards the employee's pension.

The Pension Reform Act also mandates every employer to maintain at its own cost a group life insurance policy in favor of its employees, for a minimum of 3 times the annual total salary of the employee. Where the employer



fails to maintain a group life insurance policy, the employer shall make arrangements to effect payment of any claims arising from the death of any staff in his or her employment.

## National Health Insurance Scheme

The National Health Insurance Scheme Act and Guidelines provide that employers with 10 or more employees are required to provide healthcare at their cost for their employees, the employees' spouse and up to 4 children below the age of 18 years, under the medical scheme run by the company with a Health Maintenance Organization. The employer shall deduct from the employee's wages the amount payable by the employee and remit all employer and employee contributions directly to the designated health maintenance organization.

## DATA PRIVACY

The National Information Technology Development Agency published the Nigeria Data Protection Regulation, 2019 (NDPR) which safeguards the rights of natural persons to data privacy. In February 2022, the Federal Government of Nigeria approved the establishment of the Data Protection Bureau as the new data protection authority in Nigeria. The primary objectives of the bureau include consolidating the gains of the NDPR and facilitating the development of a new data protection legislation for the country.

The NDPR and the International Labour Organization Guidelines on the Protection of Workers' Personal Data contain key provisions and best practice requirements that organizations must comply with in processing employees' personal data. The scope of Personal Data as defined under the NDPR also includes the personal data of employees. Thus, the employees of an organization have data subject rights which must be respected and processed according to the relevant laws in Nigeria. The NDPR provides standards and principles which employers must comply with in processing all personal data in their custody, including employees' data.

## RULES IN TRANSACTIONS/BUSINESS TRANSFERS

No legislation on transaction/business transfers except if provided in the employment contract. Where the contract of employment does not provide for a transfer of undertaking, consent of the employees is required for the transfer of the employment. Termination and rehiring is an alternative.

The Labour Act prescribes that where an employer seeks to transfer any employee to another employer further to a transfer of business, the transfer shall be subject to the consent of the employee and the endorsement of the transfer upon the contract by an authorized labour officer. The Labour Act is silent on when employee consent must be secured. However, it is best practice to secure consent before or at the time the transaction agreement is signed in order to avoid potential issues. This process is only applicable to the class of workers that are covered by the Labour Act, i.e., manual labour or clerical workers.

For other categories of employees not covered by the Labour Act, employers are not required to notify or inform employees prior to entering into transactions for the transfer of a business. The transfer of employees, and any consequential notifications, will therefore depend on the terms of the employment contract.

## EMPLOYEE REPRESENTATION

Nigeria has various trade unions, which are prevalent across all sectors of the economy. The Constitution of the Federal Republic of Nigeria and the Trade Union Act provide that membership of a trade union by employees shall be voluntary. Where an employee elects to join a trade union, the employee shall not be restricted, victimized or otherwise discriminated against by the employer.

An employer is also required to deduct dues from the wages of all employees who are registered trade union members and remit such deductions to the registered office of the applicable trade union.

It is a fundamental right to form or belong to a trade union of one's choice. The trade unions representing the employees sometimes negotiate conditions of employment for their members with the employers or the trade bodies representing the employers. The outcome of the negotiation is usually contained in a collective bargaining agreement (CBA). The provisions of the CBA are generally unenforceable by individual employees unless incorporated in the employment contract or policies.

There are no other forms of employee representation.

## TERMINATION

### Grounds

Usually, the employment contract provides for termination of employment, and, where the contract of employment makes explicit provision for termination, said termination of the employment must be done in accordance with the prescribed procedure. The statutory obligation which applies only to manual and clerical workers is that required notice is given for termination of employment. Some decisions of the National Industrial Court (NIC) state that employers are required to state valid reasons for the termination in the notice of termination. Failure to do so may amount to wrongful termination and give rise to a cause of action for breach of contract. This must be affirmed by the Supreme Court – the highest court – to be widely judicially recognized.

### Employees subject to termination laws

All employees.

### Restricted or prohibited terminations

Termination of employment is prohibited during maternity leave. In addition, employees in the oil and gas industry (particularly persons employed by the holder of an oil prospecting license, oil mining lease, or any other license or a permit issued under the Petroleum Act) cannot be terminated without the consent of the Department of Petroleum Resources (DPR), now the Nigerian Upstream Petroleum Regulatory Commission (NUPRC).

### Third-party approval for termination/termination documents

No third-party approval for termination or termination documents, except in the oil and gas industry, where the consent of the NUPRC is required.

### Mass layoff rules

An employer may terminate an employment on the basis of a mass layoff/redundancy. However, there are prescribed rules that must be complied with. The redundancy must be within the meaning of the Labour Act, which defines redundancy as an involuntary and permanent loss of employment caused by an excess of manpower.

In the event of redundancy, the employer is required to inform the trade union, if any, of the reason and the extent of the anticipated redundancy. The principle of "last in, first out" shall be adopted in the discharge of the particular category of workers affected, subject to factors such as skill, ability and reliability. Employers are also expected to use their best efforts to negotiate redundancy payments.

Where the employee falls within the scope of the Labour Act, the following steps must be taken in a redundancy:

1. The principle of "last in, first out" must be adopted in the termination of employees by redundancy, subject to all factors of relative merit, including skill, ability and reliability
2. The employer is required to negotiate redundancy payment with the affected workers and
3. Where the employee is a member of a trade union, the employer must notify the applicable trade union of the reasons for the redundancy.

Please note that this process applies to only manual and clerical workers. For other categories of employees, the steps outlined above are used as a guide but are not mandatory.

For other categories of employees not covered under the Labour Act, the terms of the individual employment contracts and policies of the employer will determine the applicable procedure and payment on redundancy.

With regard to the oil and gas industry in Nigeria, the guidelines for release of staff which was issued by the Director of the Department of Petroleum under the Petroleum (Drilling and Production) (Amendment) Regulations, 1988 provide that the holder of an oil mining lease, license or permit issued under the Petroleum Act 1969 or regulations made thereunder or any person registered to provide any services in relation thereto shall not remove any worker from their employment except in accordance with guidelines that may be specified from time to time by the Minister. Furthermore, the prior consent of the NUPRC. is required for the release of any worker employed by the holder of an oil mining lease, license or permit under the Petroleum Act.

In the oil and gas sector, an employer is also required to obtain the approval of the Minister of Petroleum Resources, through the NUPRC, prior to declaring any employee redundant.

## Notice

No statutory requirement. In practice, the notice period is typically 30 days' reciprocal notice for non- senior employees, and at least 30 days' reciprocal notice for senior employees, as set forth in the employee's employment agreement. Where allegations of misconduct giving rise to immediate dismissal have been made against an employee, the employer is not required to give notice. However, the employer must provide an avenue for the employee to be heard, usually through a disciplinary hearing, and afforded opportunities for representation prior to any decision being made on the dismissal.

## Statutory right to pay in lieu of notice or garden leave

Where the employment contract provides for pay in lieu of notice, either party terminating the contract may decide to pay in lieu of notice. Garden leave is not provided for under the Nigerian Law and is not a common practice in Nigeria, but some employment contracts provide for the same.

## Severance

For manual and clerical workers (who are covered by the Labour Act), redundancy pay is mandatory. The law does not stipulate the amount to be paid as redundancy pay; the law only provides that the employer should use its best endeavors to negotiate redundancy payments. For employees not covered by the Labour Act, severance pay is usually subject to the provisions of the employment contract, policies of the employer or collective agreement.

## POST-TERMINATION RESTRAINTS

### Non-competes

A post-termination non-compete is only enforceable if it is reasonable with reference to the interest of the parties concerned and of the public. A non-compete that puts restraints on competition is illegal. In deciding the question of reasonableness, the courts consider the nature of the trade or occupation, the geographical area over which the restraint is imposed and the length of time for which it is to continue.

### Customer non-solicits

A post-termination customer non-solicit is only enforceable if it is reasonable with reference to the interest of the parties concerned and of the public. In deciding the question of reasonableness, the courts consider the nature of the trade or occupation, geographical area over which the restraint is imposed and the length of time for which it is to continue.

### Employee non-solicits

A post-termination employee non-solicit is only enforceable if it is reasonable with reference to the interest of the parties concerned and of the public. In deciding the question of reasonableness, the courts consider the nature of the trade or occupation, geographical area over which the restraint is imposed and the length of time for which it is to continue.

## WAIVERS

Settlement contracts agreed upon and executed by the employer and employee are legally enforceable in the courts. Such agreements are common for senior- and executive-level positions but are less common with regard to junior or mid-level employees.

## REMEDIES

### Discrimination

Discrimination is prohibited by law in respect of gender, religion, age, political affinity and ethnic/tribal group. There is no cap on the damages; it depends on the claim of the plaintiff.

Employees may institute a discrimination action in court. Typically, an award of general damages will be made if the claim is successful.

## Unfair dismissal

This usually occurs where the employee feels that the dismissal was not in accordance with the provisions of the contract of employment. This is subject to the claim made by the claimant and judgment awarded by the court. There is no stipulated cap.

## Constructive dismissal

Constructive dismissal occurs when an employer breaches a fundamental term of an employment contract, makes a unilateral change to the employment contract without notice to or consent of the employee or creates a hostile environment, which causes the employee to resign. Once one of the elements outlined above is successfully established, the claimant may be entitled to damages and compensation for loss of employment.

## Failure to inform & consult

The courts have held that failure to notify the trade union does not invalidate the redundancy. The right conferred on trade unions is merely a right to be informed, and no sanction is provided for failure by employers to do so.

## CRIMINAL SANCTIONS

Criminal sanctions are not applicable.

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