

BASELINE INSIGHTS | SEPTEMBER 2026

Employment Termination in Nigeria:

What Employers Need to Know

A practical guide to the contractual, statutory and procedural safeguards employers must observe when ending an employment relationship

INTRODUCTION

Termination of employment is a significant aspect of the employment relationship and an important area of labour law. An employment relationship may come to an end at the instance of either the employer or the employee. Where termination is initiated by the employer, there are important contractual, statutory and procedural considerations that must be observed. An employer's right to bring an employment relationship to an end is therefore not without limits, and a termination that is improperly done or carried out arbitrarily may expose the employer to significant legal and financial liabilities. Employers must understand not only when they can lawfully terminate an employee's employment, but also the procedures, requirements and potential consequences that may arise from doing so.

This article examines different forms of employment, their modes of termination, and instances of wrongful dismissal. It also provides key guidance to employers on how to effectively terminate an employment relationship with little or no liability for the employer.

FORMS OF EMPLOYMENT

Generally, employment can be categorised into two types: formal and informal. Formal employment is an employment relationship that is structured, documented and largely regulated by contractual terms or specific statutes. The employee typically works under a contract of employment, receives regular remuneration, and may be entitled to benefits such as annual leave, pension, or other statutory protections.

Conversely, informal employment refers to an employment relationship that is not formally structured or documented and typically exists outside, or with limited integration into, established employment systems. It may involve daily wages, no fixed tenure and limited benefits. Although the Nigerian Labour Act requires workers such as manual labourers and clerical workers to be given written particulars of terms of employment not later than three months after the beginning of the worker's period of employment, the reality on the ground is that some of these workers still do not get any formal contract in writing. Thus, employers must understand how to effectively terminate such employment relationships and the legal considerations that apply to each.

MODES OF TERMINATION OF EMPLOYMENT

Termination of Informal Employment

As stated earlier, informal employment may not have clearly spelt-out terms relating to termination. The law, however, offers some protection to workers even where the terms of their employment have not been formally documented. For example, section 11 of the Labour Act prescribes minimum periods of notice for termination based on the length of the worker's service: one day where the period of employment is less than three months; one week where it is three months to two years; two weeks where it is two to five years; and one month where it exceeds five years. A notice of one week or more must be in writing. The employer may also terminate the employment without requiring the worker to serve the notice by making the appropriate payment in lieu of notice. Where payment is made

in lieu of notice, the Act permits such payment to be based on basic wages alone, excluding allowances and overtime.

The Act also provides protection against termination on certain prohibited grounds. For example, a worker cannot be dismissed by reason of trade union membership or lawful trade union activities. In addition, where the termination is by way of redundancy, the employer is required to comply with the statutory requirements relating to notification of the workers' representative and the applicable selection principle, which is "Last In, First Out" (LIFO).

Accordingly, the absence of a formal written contract does not necessarily give an employer unrestricted freedom to terminate an informal employment relationship as they please. Employers must consider the applicable statutory requirements, the nature and duration of the employment relationship, and any express or implied terms governing the engagement before bringing it to an end. It is important to note, however, that the provisions of the Labour Act referred to above may not apply to every form of informal employment. They apply to persons who fall within the statutory definition of a "worker" under section 91 of the Act. This includes a person who has entered into a contract of employment with an employer for manual or clerical work, whether the contract is express or implied, and whether it is oral or in writing, subject to the exclusions contained in the Act.

Termination of Formal Employment

Typically, the employment contract guides the process and procedure for termination in this type of employment. The employer must ensure strict adherence to the requirements provided in the employment contract, and/or handbook (where applicable). The key issues that should be considered where the termination is at the instance of the employer are: (1) compliance with the notice period, (2) payment of termination benefits (where applicable); (3) payment of salary in lieu of notice, as appropriate; and (4) compliance with any other provision(s) relating to termination in the employment contract.

In the case of employments with statutory flavour, the employer must also ensure they act within the scope or requirements of the statutes, to avoid liabilities. Employment with statutory flavour is an employment relationship in which the terms and conditions of employment are governed or protected by statute or statutory regulations, rather than being determined solely by the ordinary contract between employer and employee. In Nigeria, this typically arises in public-sector employment or employment with certain statutory bodies, where the employee's appointment, discipline and termination are regulated by the enabling statute, regulations or conditions of service having statutory force.

OTHER KEY ISSUES TO NOTE

Another key issue an employer must note is that they can terminate an employment relationship with or without cause; that is, for a particular reason or for no reason at all. However, the legal requirements and risks differ significantly for each. Where an employer terminates without cause, they simply exercise the right to end the contract without attributing blame or giving a reason. This is a perfectly fine way to terminate the employment, provided all requirements such as notice periods and payments (where applicable) are complied with.

Where the termination is for cause, it means the employer is ending the contract due to gross misconduct, fundamental breach, or performance failure, or for such other grounds/infractions identified in the employment contract or at law. Because this form of termination could lead to immediate dismissal, a lot of care has to be taken when terminating for cause. Fair hearing for this type of termination is mandatory; failing to provide a fair hearing can completely invalidate the dismissal in court. A fair hearing in this context entails issuing the employee a formal query or notice of the misconduct, giving them an opportunity to defend themselves in writing, and facing a fair internal disciplinary panel before termination.

Also, it is important to note that an employer may, in certain circumstances, be liable for the termination of an employee's employment even where the employee appears to have resigned voluntarily. This can happen in cases of constructive dismissal. Where an employee terminates the employment as a result of the conduct of the employer or a fundamental breach of the employment relationship, e.g., substantial reduction in salary, or conduct

showing that the employer no longer intends to honour the employment relationship, the employee may have no choice but to resign. This resignation can be treated as a constructive dismissal, giving rise to liabilities for the employer.

POINTS FOR EMPLOYERS TO CONSIDER

Before terminating an employee, an employer should:

1. Review the employment contract to confirm the termination terms, notice period and any required procedures.
2. Choose the appropriate mode of termination based on the circumstances of the case.
3. Give the required notice or pay in lieu of notice, where applicable.
4. Follow the proper disciplinary procedure where the termination is based on misconduct. The employer should state the allegation clearly, give the employee an opportunity to respond and consider the response before making a decision.
5. Keep proper records of the termination, including relevant correspondence, disciplinary records and the reasons for the decision.
6. Settle all outstanding entitlements due to the employee, or where applicable, the estate of a deceased employee.
7. Keep track of fixed-term contracts and make it clear where the employer does not intend to renew the contract after it expires.
8. Be careful when changing an employee's terms or working conditions. If the changes force the employee to resign, the employer may face a claim for constructive dismissal.
9. Ensure that the termination complies with the employment contract and applicable law. Failure to do so may result in a claim for wrongful termination or dismissal.

CONCLUSION

Employers generally have the right to bring an employment relationship to an end, but that right must be exercised in accordance with the employment contract and applicable law. Failing to adhere strictly to the considerations stated above could make the termination or dismissal wrongful.

Also, although employers can generally terminate an employment relationship without giving a reason, recent developments in labour jurisprudence suggest a growing emphasis on international best practices and fairness in employment relationships. It is, therefore, advisable to seek proper legal counsel before any action is taken.

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