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Contract employment and The Guidelines on contract staffing/outsourcing

A fundamental review of Labour Laws in Nigeria was undertaken by the Minister of Labour and Productivity pursuant to Section 88(1)(e) of the Labour Act, CAP L1 Laws of the Federation of Nigeria (LFN) 2004 which empowers him to make regulations by “*prescribing anything which is to be prescribed under the Act and is not otherwise provided for*” and to further make regulations “*containing such procedural or ancillary provisions as he considers necessary or convenient to facilitate the operation of the Act*”.

Consequently the Honourable Minister of Labour and Productivity Chief Emeka Wogu issued Guidelines on Labour Administration Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector, dated 25th May 2011.

The Guidelines address 6 critical areas of concern viz:

1. Differences between Permanent and Fixed Contract Jobs.
2. Migration from Contract to Permanent Employment.
3. Unionisation.
4. Collective Bargaining.
5. Dispute Resolution.
6. Job Security and Capacity Building for Contract Staff.

The Guidelines lay down good industrial relations principles and set out additional basic terms and conditions of employment to be observed by stakeholders in the sector.

The Guidelines

Part I states that all regular jobs are to be occupied by permanent employees, whilst outsourcing should be limited to non-core business except for proven short-term projects.

Part II requires that opportunities for regular employment should first be offered to contract staff before they are advertised externally.

Part III on Unionisation, following the right as stipulated in Section 4 of the Trade Union (Amendment) Act 2005, and Section 40, Chapter IV Constitution of the Federal Republic of Nigeria 1999, Part III is reproduced verbatim and states as follows:

3.1 It is the right of every worker to be unionized and bargain collectively. No employee, whether, third party Contractor or Principal Company shall hinder overtly or covertly, the unionisation of workers.

3.2 All Contract Staff under Manpower/Labour Contract shall belong either to the National Union of Petroleum & Natural Gas Workers (NUPENG) or Petroleum & Natural Gas Senior Staff Association of Nigeria (PENGASSAN) as appropriate.

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3.3 *Principal Oil companies shall endeavour to facilitate Unionisation and Collective Bargaining by streamlining Labour contractors especially where there are large numbers of such Contractors.*

3.4 *For all Service Contracts, trade union membership shall be determined by the economic activities of the Contractor Company and in line with extant Labour Laws as contained in the Third Schedule part B of the Trade Unions Act.*

3.5 *Where a Service contractor is engaged in multiplicity of economic activities which makes it difficult to pin the contract down to a particular area in the Third Schedule of part B of the Trade unions Act, staff of such Contractor Company shall belong to the Trade Union where the contract in reference operates. This shall, however, be without prejudice to the rights of the (Contractor) employer to deploy any of his staff from one area of his Company's operations to the other.*

3.6 *Where a contractor supplies only personnel, it shall be deemed to be a Labour contract;*

3.7 *Where the Contractor supplies personnel with equipment, it shall be deemed to be a service contract.*

3.8 *All contract bid document shall indicate clearly whether a contract is a Service or Labour Contract.*

3.9 *The Union shall be free to seek formal confirmation from the contractor or the Principal Company on whether a contract is a service contract or labour contract.*

3.10 *Where in doubt the Union shall be free to request clarification from relevant Government agencies.*

3.11 *Where there are jurisdictional disputes, due process in line with Labour Laws shall be followed in determining the appropriate Trade Union.*

3.12 *In the event of a conflict/trade dispute between the Unions and employers, both parties shall follow due process as enunciated in the extant Labour Legislations.*

3.13 *All workers in the Free Trade Zones and Export Promotion Zones (FTZ/EPZ) shall not be denied the rights to freedom of association and collective bargaining. Unionisation in FTZ/EPZ shall therefore follow provisions of extant Labour legislations in view of the fact that the Act regulating industrial relations in the zone does not and cannot preclude Unionisation.*

Kindly note that for companies carrying out manpower and services contracts to the oil & gas sector, apart from registration with Department of Petroleum Resources, one of the requirements for issuance of a recruiter's licence by the Federal Ministry of Labour & Productivity is that such

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company must submit the names(s) of union(s) to which the workers would belong, and an undertaking stating that it would not prevent its workers from joining the said union(s).

As such a labour contractor cannot prevent its workers from unionising as it then stands the risk of losing its license, neither can the principal company so prevent; however there seems to be a paucity of enforcement methods/punitive measures for the latter.

The current position of the law (see Section 3.2 of the Guidelines) is that ALL workers in the Oil & Gas sector MUST be unionised; there would however seem to be a conflict with earlier cited statutory provisions which are to the effect that membership of a trade union is voluntary and not compulsory, see Section 4 of the Trade Union (Amendment) Act 2005.

Note however that membership of a trade union is dependent on the industry in which the company is engaged; see affiliate unions listed in The Third Schedule of the Trade Unions Act and *Sea Trucks (Nigeria) Limited v. Pyne (1999) 6 N.W.L.R (Pt 607) 514* where the Court of Appeal held that a worker in a sea transportation company could not properly belong to Nigeria Union of Petroleum and Natural Gas Workers as Sea Trucks Limited was a shipping company and not an oil & gas company, hence the proper union was Nigerian Union of Seamen and Water Transport Workers.

Part IV states that collective bargaining shall be between the union and the labour contractor or Contractors' Forum, not with the Principal Company.

The Principal Company is empowered to deduct from the contract fees any sums (wages/agreed entitlements) owed the contract staff by the labour contractor. All parties are enjoined to respect and uphold collectively bargained agreements. The contract is also required to make collective bargaining compulsory between contractors and employees.

Part V states that provisions in Trade Disputes Act shall be complied with, and industrial action should not be embarked upon without exhausting all channels, also festering of grievances is not to be encouraged. Internal machinery for resolution must be fully utilised before reporting the dispute to FML&P, however the Ministry can intervene and apprehend a trade dispute when necessary. Pronouncements of statutory dispute resolution bodies shall be respected by all parties.

Part VI states that subject to satisfactory performance, roll-over of contract staff and retention of a labour contractor should be encouraged. Contractors' compliance with labour laws and International Labor Organization core standards in the relationship with its employees should also be monitored by the principal oil company and relevant government agencies.

Every contractor shall have a recruiter's license and it shall be an offence for a principal oil company to deal with a contractor who does not possess a license.

Non-compliance with extant labour legislations/national laws shall be sufficient grounds for termination by the principal oil company.

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Note however that there is no provision in the Guidelines as to domestic staff, currently only 2 countries (Uruguay and Philippines) have ratified International Labor Organization (ILO) Convention 189, or the Convention on Decent Work for Domestic Workers.

Practicality

Typically staff of oil & gas companies do not unionise prior to the striking of first oil or commencement of production.

The crux is that significant apprehension about the effect of unionization on its operations is anticipated by the company (principal and labour contractor).

Equally worrisome is that the Union's Charter of Demands when submitted, would contain several requests which the company may not be a position to gratify presently, but immediate implementation is demanded!

Some demands which are difficult to rationalise may also be made; in one particular instance a trade union had asked for a removal of the card entry access system which had been installed in the office premises on the pretext that Nigerian Labour Law forbade such!

It goes without saying that this is standard operating procedure in most companies, and virtually every operator in the oil & gas sector has such a system in place to prevent unauthorized access.

Also unusual was their demand that the attendance recorded via the card access entry system should not be used to compute the payroll; in any event this does not differ in substance from an actual physical attendance register; furthermore it has the additional advantage that it assists to ensure that staff (exact) physical location can be easily ascertained, especially in the event of an emergency.

Disputes are inevitable in any relationship which takes place over a considerable period of time; however emphasis should be on promptly resolving such disputes with the minimum disruption to the relationship and operations.

The operative word is dispute management not dispute resolution, because there may never be an end to disputes in a principal company/labour contractor (employer)/employee relationship.

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