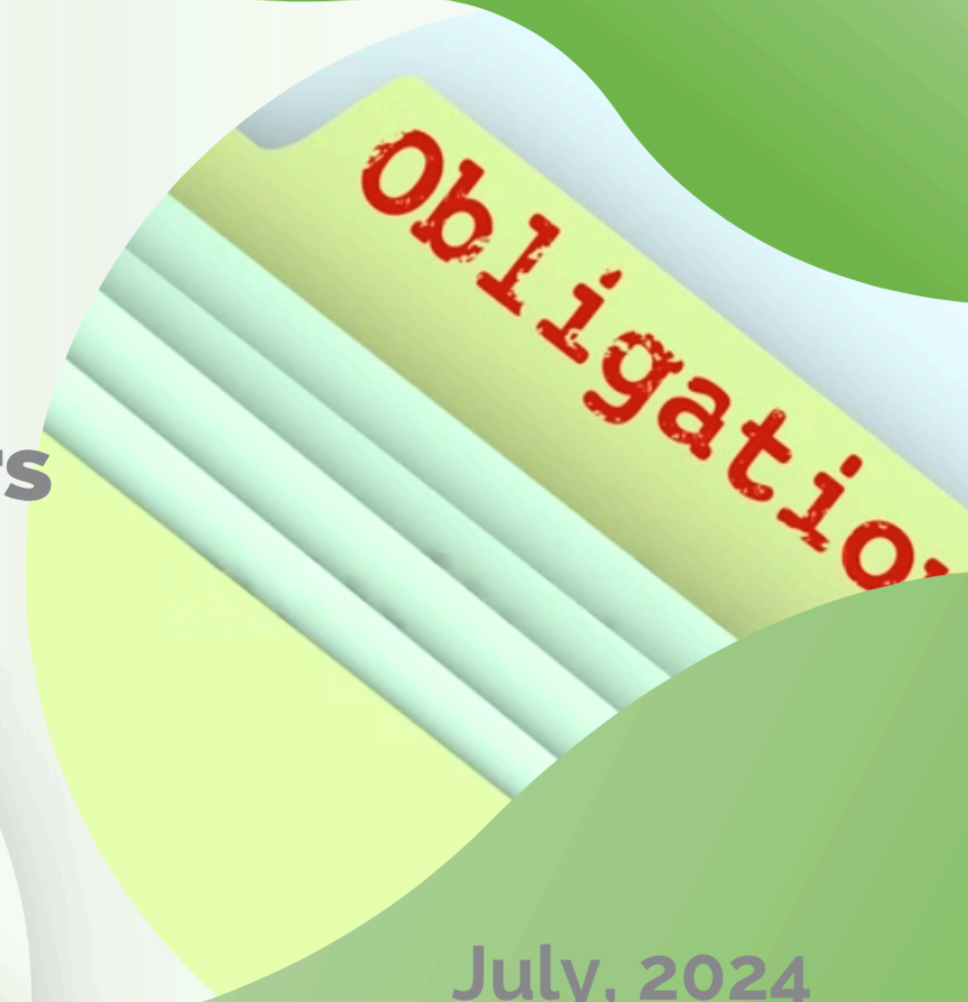
TLP ADVISORY

Statutory Compliance Obligations of Employers in Nigeria



Client Briefing Note

July, 2024

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Introduction

Both employers and employees in Nigeria should know the laws that govern their work relationships. Employees need to understand their rights and benefits. Employers must know what rules to follow to avoid fines for the company and sometimes, personal penalties for managers or directors.

This briefing note aims to provide a general overview of employer responsibilities in Nigeria.

Applicable Laws

The following are some of the laws governing employment obligations and employer-employee relationships in Nigeria:

1. The Business Facilitation Act, 2022
2. The Employee Compensation Act, 2010
3. The Industrial Training Fund (Amendment) Act, 2011
4. The National Housing Fund Act, 1992
5. The Pension Reform Act, 2014
6. The Personal Income Tax (Amendment) Act 2011
7. The Revised Guidelines of the Group Life Insurance Policy for Employees
8. National Health Insurance Authority Act, 2022.

What are your Obligations as an Employer in Nigeria?

If you're an employer of labour in Nigeria, the following is a detailed list of your obligations to your employees.

1. **The Industrial Training Fund**

   The Industrial Training Fund Act (the "Act") defines an employee as anyone, Nigerian or otherwise, employed in a full-time or part-time role in return for salary, wages, or other consideration. The definition of an employee also includes temporary workers engaged for at least 3 (three) months per year.

   The Act requires employers located outside a free trade zone and staffed by at least 5 (five) employees or with less than 5 (five) employees but with an annual turnover of ₦50,000,000 (fifty million Naira) or more to contribute 1% of the annual payroll of the preceding year to the Industrial Training Fund on or before 31 March of the following year. Employers who contribute to the Fund can access up to 50% of the amount contributed to the fund to pay for employee training.

In the event of non-compliance, defaulting employers are subjected to corporate and individual penalties. The defaulting employer is liable to pay a penalty equivalent to 5% of the amount unpaid for each month of default, or part of a month, and an additional penalty to pay the sum of ₦500,000 (five hundred thousand Naira) for the first breach and ₦1,000,000 (one million Naira) for each subsequent breach.

On an individual level, the Chief Executive Officer or other principal officer of the defaulting employer is liable to pay the sum of ₦50,000 (fifty thousand Naira) or be committed to a prison sentence of 2 (two) years for a first breach. For subsequent breaches, the principal officer of the defaulting employer is ineligible for fine payment and has to serve a two-year prison term.

Additionally, employers are also required to provide adequate training for their Nigerian staff and submit evidence of training to the Industrial Training Fund.

2. **National Housing Fund**

Following the signing into law of the Business Facilitation Act (BFA) 2022 in February 2023, the National Housing Fund Act 1992 was amended with particular reference to the regulation of contributions made to the NHF by private sector employers of labour in Nigeria.

The National Housing Fund (NHF) was established by the NHF Act of 1992 to mobilise funds to facilitate the provision of affordable houses for Nigerians. Under the NHF Act, every Nigerian in the public and private sectors earning an equivalent of the National Minimum Wage or above was formerly required to contribute 2.5% of their monthly basic salary to the NHF, which is managed and administered by the Federal Mortgage Bank of Nigeria.

The funds realised are then made available through the Federal Mortgage Bank of Nigeria to contributors at affordable interest rates to own houses. By the amendment of the NHF Act by Section 45 of the BFA, only employees earning the national minimum wage and above in the public sector and self-employed individuals are required to contribute 2.5% of their monthly income to the Fund. Consequently, private sector employees are now excluded from compulsory compliance with this obligation.

Following this amendment, employees in the private sector can either opt out of contributing to the NHF or continue to contribute, at their discretion. For the employees who choose to remain contributors to the NHF, their employers continue to deduct the prescribed rate at source and make remittances to the Federal Mortgage Bank of Nigeria (FMBN). For employees who are current contributors but choose to exercise their right to opt out, the employers are to inform such employees to process their refund as provided under the NHF Act.

3. Employees Compensation Fund

The Employees Compensation Act 2010 (the “ECA”) is administered by the Nigeria Social Insurance Trust Fund. The Fund aims to provide compensation to employees who suffer any injury, bodily harm, disability or even death through or in connection with their employment. The ECA saddles employers with the obligation to make monthly contributions equivalent to 1% of the total monthly payroll to the Employees Compensation Fund. This contribution is a statutory obligation of the employer and cannot be deducted from the compensation of the employee.

Failure to remit the contribution or late remittance attracts a 10% fine on the total amount due to be remitted.

4. Pension Contribution

In Nigeria, pension contributions by employers are governed by the Pension Reform Act of 2014. This Pension Reform Act mandates that employers must contribute a minimum of 10% of an employee's monthly emolument to their retirement savings account (RSA). In addition to the employer's contribution, employees are required to contribute a minimum of 8% of their monthly emolument. The combined total of these contributions ensures a steady accumulation of funds that employees can rely on upon retirement. The emolument includes basic salary, housing allowance, and transportation allowance, and these form the basis for calculating the pension contributions.

Employers are required to remit both their contributions and those of their employees (deducted by the employers), to a Pension Fund Administrator (PFA) within 7 (seven) days of the payment of salaries. Failure to comply with this requirement can result in penalties and a criminal conviction, as the National Pension Commission (PenCom), which oversees the administration of the pension scheme, has the authority to enforce compliance.

Employers who do not adhere to the contribution obligations may be liable to pay a fine of not less than ₦250,000 (Two Hundred and Fifty Thousand Naira) or a term of not less than 1 (one) year imprisonment, or both, upon conviction.

5. Group Life Insurance

The Pension Reform Act 2004 and the Guidelines for the Group Life Insurance Policy for employees require employers with 3 (three) or more employees, to maintain a group life insurance policy for each employee. The employer is required to take out the policy in favour of each employee at the value of at least 3x (three times) the annual gross remuneration of that employee. The insurance is paid out to the beneficiaries of an employee if the employee dies in active service.

If an employer completely ignores this obligation, they will be required to pay 300% of the gross remuneration for the group life insurance policy to the beneficiaries of an employee who died in active service, while partially compliant employers will be required to pay the difference between their statutory obligations and the amount contributed to the beneficiaries of the deceased employee.

Employers and any complicit personnel who contravene these obligations could face criminal penalties, including conviction for a fine of not less than ₦250,000 (Two Hundred and Fifty Thousand Naira) or a term of not less than 1 (one) year imprisonment or both.

Personal Income Tax

The Personal Income Tax (Amendment) Act 2011 requires employers to deduct the Pay As You Earn (“PAYE”) from each employee’s monthly earnings and to remit the deductions to the relevant state internal revenue board of the state that the employee is resident in, before the 10th day of the following month.

The amount to be deducted and remitted as PAYE by employers is calculated based on the income of the employee after the deduction of other statutory deductions and the consolidated allowance. Where an employer fails to deduct or remit the amount due as PAYE for each employee, such employer will be liable to pay the total amount due with a penalty of 10% per annum on the total amount and an additional interest at the prevailing commercial rate to the relevant state internal revenue board.

We have included a schedule detailing the applicable rates for PAYE at the end of this briefing note.

6. **National Health Insurance Scheme**

The National Health Insurance Authority Act (NHIA Act) 2022 mandates universal health coverage in Nigeria, requiring all residents to obtain health insurance. Under this law, employers with at least 5 (five) employees must register themselves and their employees with the Social Health Scheme Funds and contribute to the scheme atrates determined by state health insurance councils. Alternatively, employers may choose to register with a private health insurance scheme.

Failure by an employer to contribute to either a state or private health insurance scheme or to deduct contributions from employees' wages is considered an offence under Nigerian financial laws. Such offences may lead to prosecution, conviction, and fines. For first-time offenders, the fine is at least ₦1,000,000 (one million Naira), and principal officers may face imprisonment for up to 2 (two) years or both. Subsequent offences carry a higher fine of at least ₦2,000,000 (two million Naira), imprisonment for up to 5 (five) years, or both.

6 Key Takeaways

1. Employers are responsible for deducting Pay As You Earn (PAYE) from each employee's monthly earnings and remitting these deductions to the relevant state Internal Revenue Board before the 10th day of the following month.
2. Additionally, employers are required to contribute 10% of an employee's compensation to their Retirement Savings Account, while also deducting 8% from the employee's compensation to be added to the same account.
3. If your workforce includes at least 3 (three) employees, you must provide a group life insurance policy covering each employee at a value of at least 3x (three times) their annual gross remuneration.
4. If your staff count reaches 5 (five) or more, you must register your business and employees with a health insurance scheme. An employer must make a monthly contribution of 1% of its monthly payroll to the Employees' Compensation Fund.
5. If you employ 25 (twenty-five) employees or more, you must contribute 1% of the previous year's annual payroll to the Industrial Training Fund by March 31 of the following year.
6. Furthermore, depending on your employees' preferences, you may also need to contribute 2.5% of their monthly basic salary to the National Housing Fund.

Conclusion

To get started with fulfilling your statutory obligations as an employer in Nigeria, we recommend that you liaise with your professional advisers on any outstanding obligations you might have and how to fulfil them. You can also reach out to us via team@tlpadvisory.com for further guidance or to address any questions or concerns you may have.

***Disclaimer**: This Client Briefing Note is for informational purposes only and should not be construed as professional advice. Please contact your professional advisors for advice on your specific situation.*

Schedule 1
PAYE Deduction Rates

The information provided below should not be construed as professional advice. Please contact your accountant or tax adviser for advice.

PAYE can be calculated by summing up the salary and allowances to get the gross income. This includes basic pay, housing, transport, leave, utilities, furniture, meals, and other allowances.

The next step is determining the consolidated relief allowance. This is calculated by the higher of ₦200,000 or 1% of gross income plus 20% of gross income less pension.

The next step is to calculate the taxable income. Employers can calculate this by subtracting all relevant deductions (consolidated relief allowance, pension, NHF etc.) from the gross income. The total value after subtraction is the taxable income.

With the taxable income, employers can check the tax rates applicable to the employee's salary. The government uses a graduated taxing system, meaning those who earn more pay more taxes. The current PAYE tax rates for employees in Nigeria are as follows:

Annual Taxable Income	Rates	Tax Payable per Annum
First ₦300,000	7%	₦24,000
Next ₦300,000	11%	₦ 33,000
Next ₦500,000	15%	₦ 75,000
Next ₦500,000	19&	₦95,000
Next ₦1,600,000	21%	₦336,000
Above ₦3,200,000	24%	Multiply only the excess amount over ₦3.2 million by 24%. For instance, the annual taxable income of ₦ 4 million is ₦ 192,000, equivalent to 24% of the ₦ 800,00 (excess amount over ₦ 3.2 million).

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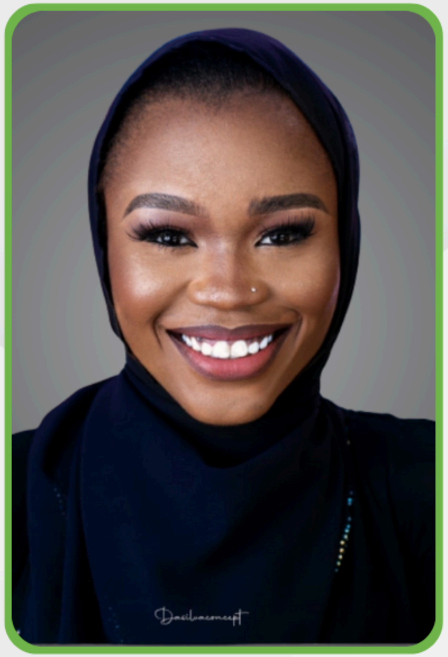

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