

(Text of Paper Presented by O. Bola-Sadipe at

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## **STATUTORY OBLIGATIONS TO STAFF**

Staff are human beings and issues relating to people encompass social, economic, and political elements which continually exert pressure on such people.

The Nigerian Constitution and other relevant laws and regulations evolved a dynamic set of rules governing employer-employee relations.

The obligations imposed by these laws on Employers constitute the subject matter of this paper.

This paper attempts to examine

- The relationship between a staff and the organization
- The mutual obligations between Employer and Employee and ultimately, the Statutory Obligations to Staff

In order to properly appreciate the import of the paper, it is necessary to firstly examine the following:

### **1. Who is a staff**

A staff may be an employee or an independent contractor

An **employee** is one who is under a contract of employment which entails **offer** (of work) being **accepted** for a **consideration** (of wages)

An **independent contractor** is one who is under a contract to provide a specified service not in the capacity of an employee but as an outsider

### **2. The relationship between a staff and his employer**

This is predicated on the conditions for existence of contract of employment which are:

- a) The employer to provide the work
- b) The obligation on the employee to carry out the work personally
- c) The obligation on employer to pay wages

d) Mutual Trust & Confidence - basically entails respect for each other

### **3. The duties of a staff to his employer**

- a) Performance of given assignments with due diligence and care following due process as laid down by the employer ó Quality service delivery
- b) Acting with the limit of authority allowed by employer ó so as not to bring avoidable liability on employer
- c) Show complete loyalty to employer
- d) Keeping secret of employer
- e) Not engaging in other private practice
- f) Timeliness

### **4. The duties of employer to staff**

- a) Health and Safety ó Provision of safe work environment free from preventable health hazards
- b) Payment of salaries and other benefits as agreed per contract of employment. Includes benefits payable upon cessation of contracts such as compensation/gratuities
- c) Compliance with relevant statutory provisions relating to staff and employment

**The Statutory Obligations of the organization to its staff** flows from these mutual obligations and may be classified under following 3 areas:

#### **(a) When an employee is engaged**

The obligations will depend on whether the new staff is an employee or an independent contractor.

If the staff is an employee, you have the following obligations:

#### **(i) Pay as you earn (PAYE):**

- a) Obtain tax file reference and certificate of income and tax paid up to date of cessation of previous employment
- b) If this is the first employment, then register him/er for PAYE by giving him relevant return forms for filing with the Internal Revenue

**(ii) Pension and gratuity:**

- a) Obtain Pension file reference and his current pension administrator and determine revised contribution based on new pay
- b) If this is the first employment, then register him/her for pension under Nigerian Pensions Act
- c) Ascertain if he is eligible for gratuity or other scheme which is based on pay and/length of service

**(iii) Fringe benefits:**

- a) Determine the pre-paid health scheme/plan to which he would be eligible
- b) Determine if any other fringe benefits which will be provided to the employee.
- c) If entering into a salary sacrifice arrangement with the employee, ensure the arrangement is agreed by both parties and preferably documented
- d) Evaluate the tax implications of the fringe benefits on the organisation

**(b) During employment**

During a worker's employment, you have the following obligations:

**(i) Payment of Salaries:**

- a) Ensure salaries including benefits are paid in accordance with the agreed contract
- b) Ensure that payslip stating details of pay and deductions are issued

**(ii) Pay as you earn (PAYE):**

- a) Obtain tax file reference and certificate of income and tax paid up to date of cessation of previous employment
- b) If this is the first employment, then register him/er for PAYE by giving him relevant return forms for filing with the Internal Revenue
- c) Deduct appropriate PAYE upon ensuring that maximum relief entitlements are claimed by employee
- d) Remit PAYE deductions to Revenue

**(iii) Pension and gratuity:**

- a) Obtain Pension file reference and his current pension administrator and determine revised contribution based on new pay
- b) If this is the first employment, then register him/her for pension under Nigerian Pensions Act
- c) Ascertain if he is eligible for gratuity or other scheme which is based on pay and/length of service
- d) Remit pension deductions to PFA

**(iv) Fringe benefits:**

- a) Determine the pre-paid health scheme/plan to which he would be eligible
- b) Determine if any other fringe benefits which will be provided to the employee.
- c) If entering into a salary sacrifice arrangement with the employee, ensure the arrangement is agreed by both parties and preferably documented.
- d) Evaluate the tax implications of the fringe benefits on the organisation

**(v) Health and Safety:**

- a) Ensure that employee is registered under one of the pre-paid health plans of the National Health Insurance Scheme
- b) Ensure that work environment is safe as appropriate to the nature of work and free from preventable health hazards
- c) Ensure compliance with the new Employees Compensation Act 2010 which requires employers to contribute a minimum contribution of 1% of total payroll to the Employees Compensation Fund

**(vi) Training and gratuity:**

- a) Ensure compliance with ITF requires contribution of 1% of Payroll
- b) Expose staff to appropriate training programmes to enhance skills and development
- c) If this is the first employment, then register him/her for pension under Nigerian Pensions Act

**(c) Upon cessation of employment**

When a worker leaves, your obligations depend on whether the worker is an employee or an independent contractor.

When the employee ceases employment, you have the following obligations:

**(i) Pay as you earn (PAYE):**

- a) Make any final PAYE withholding payments on employee's behalf
- b) Include details of final payments in PAYE returns
- c) Keep the necessary PAYE records

**(ii) Compensation and Gratuity:**

- a) Calculate and pay any compensation for loss of employment or other employment termination payments and gratuity (if applicable).
- b) Ensure that those elements that are tax exempt are treated as such
- c) Keep the necessary records.

**(iii) Other benefits tax :**

- a) Include other taxable fringe benefits (including pension entitlements) in employee's final payment summary.
- b) Keep the necessary records.

**Independent contractor**

For an **independent contractor** who is under a contract to provide a specified service not in the capacity of an employee but as an outsider, the obligations of the employer is governed essentially by the contract and custom of trade applicable.

However in addition to these, the employer has the obligation to deduct With-holding tax from any payments made to such independent contractor and to remit same to the Revenue in the name of the independent contractor.