



LAW AXIS 360°

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# COVID-19 AND JOB SECURITY: SUSTAINABLE STRATEGIES

**Highpoints of the May 2020 Law  
Axis 360° Tweet Chat**

**Tweet Chat, May Edition tagged "Tweet-a-Tete"**

On 1 May 2020, Law Axis 360° had her first Tweet Chat for the year 2020 on Twitter. The Tweet Chat featured very incisive and enlightening conversations. They have been carefully distilled and reproduced in this document in form of dialogues.

**Tweet Chat Dialogues**

**Law Axis 360°:** Good evening everyone joining us on this Twitter Conversation. Today we are set to discuss issues of job security after and during the Covid-19 pandemic.

We shall be looking at the issue from two perspective (sic).

The first perspective will be from a legal standpoint to be handled by Olukolade Ehinmosan @emperorkhayy to be joined later by our Partner Ayodeji Abdul @king\_hayo who will draw the curtain on the legal perspective.

The second perspective will be from a Human Resource (HR) angle which will be handled by a #HR expert, Emmanuel Faith @themmanuelfaith.

So we will be starting with Olukolade Ehinmosan @emperorkhayy;

After him, we will move to Emmanuel Faith @themmanuelfaith;

And Ayodeji Abdul @king\_hayo will be our last facilitator for this episode of the tweet chat.

Now, we will be starting with:

**Dialogue with Olukolade @emperorkhayy**

**Olukolade Ehinmosan** is an Associate at the Dispute Resolution arm of Africa-based law firm, S.P.A. Ajibade & Co, and a Founding Partner at Law Axis 360°. He is an astute dispute resolution expert, with specialties in transactions and deals, Sport law, Taxation and Labour and Trade disputes Law.

Olukolade is poised to expose sustainable strategies for job security from a legal perspective.

Ladies and gentlemen welcome with me **Olukolade** to the conversation.

**Law Axis 360°:** Now, @emperorkhayy, before we go into other things, can you please tell us **what a contract of employment means? And what differentiates contract of employment from other kinds of contract?**

**Olukolade Ehinmosan:** Hi everyone. Good evening. I'm extremely delighted to be here. I hope to be very brief but incisive. I hope you enjoy every bit of it.

Generally, a contract of Employment is like every other contract in law. It has every element of a valid contract in law - offer, acceptance and consideration (in its most basic sense).

Meanwhile, a Contract of Employment must be distinguished from a Contract FOR Employment.

Both are types of contracts under the Nigerian labour law. While a Contract OF Employment is one between an Employer and an Employee, a Contract FOR Employment (also known as Contract for Service) is between an Employer and an Independent Contractor.

There are a few minor differences between a Contract of Employment and other types of contracts. However, the context of this discourse makes it important to note that a Contract of Employment is like every other contract in law. Both parties are bound by respective obligations.

**Law Axis 360°:** @emperorkhayy, with the global Covid-19 pandemic, a number of measures has been put in place by firms and workplaces around the world. More measures will follow in days to come. ***What legal considerations must be made by an employer before taking these measures?***

**Olukolade Ehinmosan:** This is a very timely question. Thank you so much.

The law is clear that only the contents of a contract will be given life by a Court. A Court cannot rewrite contracts for the employer and employee (parties). Once parties enter into a COE, neither of the parties can claim superiority. There is also no inequality, by law.

As a key actor in the dispute resolution facet of legal practice, a sound internal dispute plan concerning all staffs is extremely important to an organization. This is nothing too serious. A competent legal practitioner is the real deal.

A sound investor or business man knows that his commercial losses already begin to count from the moment a dispute comes up within concerning his employee. Apart from the financial expenses involved, a shrewd investor would not likely consider investing in a company or business embroiled in labour dispute (quite understandably).

Have I emphasized having a Litigation Plan? Yes, I have.

Employers must also stick to the clear provisions of COE between them and employees. I must quickly note that the competent Court for trial of labour matters in Nigeria is the National Industrial Court (NIC). The NIC is empowered by law to apply the Nigerian labour enactments (laws) as well as international best practices in Labour and Trade Relations. This only means that employers must make adequate consultations and negotiations with employees before taking any action. Unilateral actions are to be completely avoided.

**Law Axis 360°:** Thank you for this remarkable answer. @emperorkhayy the next question is this:

***With Covid-19 in full swing, what are the possibilities of an employer being liable for the tort of negligence with respect to safety and security measures in the workplace?***

**Olukolade Ehinmosan:** Thank you so much for this question too.

Before and during the period when movement restriction orders were made, especially in Lagos, Ogun and Oyo States, many businesses and organizations sprang into safety and security measures. Observably however, some others did not.

These firms neither took safety measures nor declared total closure of their workplaces. Remarkably, some of these firms were "dragged" or called out on the streets of Twitter. A question necessarily arises here:

***For employees affected by the failure or refusal of their employees to take necessary safety and security measures, what is the possibility of filing a claim in court for tort of negligence against such employer?***

A friend of mine professionally drives for an undisclosed firm. Despite the security and health situations, the employer would refuse to make necessary repairs on his vehicle and send him to various places without any protective item. The car broke down at Anthony. He was severely wounded by some "gentlemen".

This is a scenario. It could also be that instead of being apprehended by robbers, this driver contracted the dreaded Covid-19. Can a claim against the employer issue?

By law, this possibility is determined on a case-by-case basis. Where you can prove that you contracted the virus or got attacked due to exposure caused by lack of safety measures by your employer, a claim may be successful.

**Law Axis 360°:** Thanks @emperorkhayy for the answer

***Now, can you analyse the effects of Covid-19 on triangular contracts and outsourcing scenarios?***

**Olukolade Ehinmosan:** Thank you so much for this concern @LawAxis360. Outsourced Staffs are very indispensable components of the labour law and trade relations sector of the economy. Certainly, the law guides how employers should act.

But first off, let's play with the basics!

What is Triangular Employment?

When you hear "outsourcing of staffs", this is what they are talking about. Don't let any triangle or shape confuse you, please.

Here, a "User Enterprise" (a firm in need of services outside its main workforce or staff) enters into an agreement called "Outsourcing Agreement" with another called a "Service Provider" who would have initially hired some people as its staff or employees. As a result, the said employees or staffs (hired by the Service Provider) provide their services to the User Enterprise as "Outsourced Staffs" rather than main employees.

The Outsourced Staffs are therefore, direct employees of the Service Provider (not the User Enterprise). The User Enterprise pays the Service Provider directly for the supply of the service (staffs). The Service Provider in turn takes responsibility for the payment of salaries of the Outsourced Staffs.

Like every contract, the terms of Outsourcing Agreements are legally binding. Sadly, due to Covid-19, the services of outsourced Staffs may either be barely required or completely not needed by the User Enterprise.

Meanwhile, it is important to note that there are certain situations where both a User Enterprise and a Service Provider may be held jointly and severally liable for a wrong done to the outsourced Staffs. There are a few judicial authorities that give life to this position. It is therefore advised that Employers on both sides of the triangular employment coin (the User Enterprise and the Service Provider) exercise caution in taking actions pertaining to outsourcing arrangements.

It may become necessary for the User Enterprise and Service Provider to cooperate in taking important decisions. This will limit exposure to liability, especially when done with the guidance of a competent lawyer. This is also an inseparable aspect of the Litigation Plan.

At this point, I have come to the end of my discussion on Triangular Employment (Outsourcing Scenarios).

Again, thank you @LawAxis360 for exposing these concerns.

**Law Axis 360°:** Thanks a lot @emperorkhayy for this well explained answer! To see all the answers from @emperorkhayy check his profile. That will be all from @emperorkhayy

**Now we will move on to the HR perspective to be handled by @themmanuelfaith**

**Dialogue with Emmanuel Faith @themmanuelfaith**

**Law Axis 360°:** Emmanuel Faith is a Human resource and capacity building enthusiast with core competencies across recruitment and selection, talent acquisition and other HR functions. An Associate of the Chartered Institute of Personnel management, he has diverse yet fascinating interest that cuts across HR, Tax and Energy.

He would be espousing on positioning yourself strategically for post-Covid times.

@themmanuelfaith we are happy to have you here.

**Emmanuel Faith:** Thank you @LawAxis360. I am happy to be here.

**Law Axis 360°:** *@themmanuelfaith Due to the Covid-19 pandemic, can you tell us few Human resources issues to be expected?*

**Emmanuel Faith:** Thank you. As we have seen in the media space in the last 24 hours, the issues of compensations and benefits as well as retrenchment is the latest trend and how employers respond to this unique time is a subject of interest.

Would Salaries be reduced? Will staff be sacked or given a furlough? What does the Labour Act say or advice in times like this and would employers act within the provision of the Labour Act?

While it is obvious, that businesses have/will suffer from loss in revenue, how they balance their operating cost to keep up with salaries would demonstrate the flexibility in leadership.

**Law Axis 360°:** *@themmanuelfaith flowing from the previous question, can you address the issues of supervision and accountability of employees at this time?*

**Emmanuel Faith:** Yes sure. Productivity has always been an intriguing topic, and measurable methods like having specific targets and deliverables, continuous team meetings and regular video meetings are deliberate methods of keeping your staff accountable.

This is not say there won't be redundancy, and as provided in Section 20(2) of the Labor act, an employer has the power to renegotiate a COE if there is redundancy. However, employers are not to leverage on this to lay off staff haphazardly.

**Law Axis 360°:** *Can HR officials issue out queries for latecomers during this time of curfew in Lagos, FCT and Ogun States? Will it be a good/fair act?*

**Emmanuel Faith:** This is a really dicey question. As we say in HR, there is the "Human" in the HR. I think it would be unfair and unjust to issue such query in these unique times, a good measure that might be explored is flexi-work, i.e. 8-5, might be 9-6 or 10-7 as both parties agree.

**Law Axis 360°:** @themmanuelfaith thanks for your replies so far.

**@emperorkhayy has dealt with the issues of Covid-19 and triangular employment and outsourcing from a legal perspective. Will there be issues from an HR perspective?**

**Emmanuel Faith:** Sadly, yes there would be and I have to be honest. In situations like these, contract workers are the first to get hit. This is not to say they would/should be exploited. However, the International Labour Organization (ILO) 1982 (No. 166) Recommendations which examine uniqueness of contract terminations might be explored.

As a contract staff or Fixed-Term employee, this would be a great time to demonstrate the fact that you are an additional asset to the organisation, bring in your extra efforts to work and add value as much as possible.

**Law Axis 360°:** *@themmanuelfaith As an HR expert, what are your recommendations for employees at this time in order to secure their jobs?*

**Emmanuel Faith:** First is to skill up, these are uncertain times; and as sad as it may sound, employees are at the receiving end, ability to multitask and take up extra work/tasks would be traits that stand you out.

Secondly, be innovative. I saw this picture about a reputable hotel doing home deliveries and I felt whoever brought that idea would likely not be sacked. What innovative ideas would you bring to the table to help your business stay afloat?

Third, study trends. In the midst of the inevitable, studying trends, gaining insights about them and knowing how they swing for or against you are things that would stand an employee out.

Lastly for now, be Human. No one foresaw or expected this and your ability to show empathy and volunteer to support as it is within your means would write your names in the good books of your employer.

**Law Axis 360°:** Thanks for the recommendations @themmanuelfaith

***Finally, @themmanuelfaith can you tell us ways in positioning strategically for Post-covid times as an employee/employer?***

**Emmanuel Faith:** Business terrains are changing, the 4Ps - People, Place, Product and Price is being altered and technology is being leveraged tremendously. There would be restructuring, from real estates to supply chain. Finding where businesses fit-in and adjusting would be a great advantage for employers.

Follow trends. Position your business to meet post-Covid needs. (What did people miss and what would people crave for after this is over?) Keep your best talents. You don't want to risk incurring recruiting costs after all this is over.

For employees, I guess I covered that in the previous thread. Add extra value; Make extra impact, be human, and pray because there might be a trough before a boom. Only the extra skilled and positioned and favoured would stand tall.

**Law Axis 360°:** Thanks @themmanuelfaith for honoring our invitation.

You have deftly dealt with all the issues. I believe participants would have learnt a lot.

To ask @themmanuelfaith any question, simply reply the tweets from which your question arises. He will gladly attend to them.

### **Law Axis 360°: Now to the final aspect of the Tweet Chat**

#### **Dialogue with Ayodeji Abdul @king\_hayo**

Ayodeji Abdul @king\_hayo will be rounding off the conversation with the second aspect of the legal perspective to job security.

Ayodeji (@king\_hayo) is an associate at the law firm of Perchstone & Graeys (P&G) and a Partner at Law Axis 360°. He is an active member of the firm's (P&G) Employment Law practice group. Ayodeji has advised on employment law and labour-related matters involving A-list clients.

Due to his keen interest in Sports Law, he is also a member of the firm's sports law practice group and has been involved in a lot of publications in the practice group.

@king\_hayo welcome to the conversation.

**Ayodeji Abdul:** Thank you very much for having me. It is indeed a privilege to be here.

**Law Axis 360°:** @emperorkhayy in his conversation dealt greatly with contract of employment.

**But we must answer this:**

***Can employers unilaterally modify the employment contract and impose new conditions that were not stipulated in the existing employment contracts and staff handbooks?***

**Ayodeji Abdul:** Thank you for this very apposite question. The proper answer to this question has generated a lot of controversy amongst labour and employment law experts right from the outbreak of the pandemic.

Notwithstanding, I'll make an attempt to answer the question in the appropriate manner.

As stated earlier by my colleague @emperorkhayy, Contracts of employment (COE) are binding agreements. Thus, generally, a COE cannot be varied without the consent of both parties.

Employers that make changes to employees' contracts without their agreement will, in most instances, be held to be in breach of the contract of employment.

The general rule is however not cast in stone. One of the exceptions to the general rule is a situation where the employer has written flexibility into the COE.

For a better understanding, a Flexibility clause is one that gives an employer the liberty to vary certain conditions of employment without recourse to the employee.

An example that readily comes to mind is a "mobility clause" which gives an employer the liberty to move employees' place of work in line with the demands of the employer's business.

Hence, where a flexibility clause is written into the contract, the employer can unilaterally vary the terms and conditions of employment.

It is important to state that where the employer seeks to exercise such powers of flexibility, it must be in accordance with mutual trust and confidence, and must comply with international best practices.

Another instance where an employer is permitted to vary the terms of an employment contract is where the employee has given implied consent to the varied term of employment.

This is, however, a very dangerous exception to rely on by employers as the courts would most times, especially where the employee signifies initial signs of protest, hold that such variation is a clear breach of contract.

Finally, I would like to state that the Nigerian labour law jurisprudence is now flagged with what the NIC refers to as participatory democracy/social dialogue.

Thus, where there would be changes in the terms of a COE or staff handbook, such change must adequately reflect the interplay of rights and economic perspectives, otherwise, it may be considered as unfair labour practice and thus, unenforceable.

Thank you!

***Law Axis 360°: @king\_hayo is it possible to discipline an erring employee who is working remotely? Can such an erring employee's contract of employment be terminated?***

**Ayodeji Abdul:** Due to the novel nature of remote work in our world of work, it is expected that if staff are poorly managed, they will most likely not fulfill their obligations; especially where supervision is extremely minimal.

To curb this, employers may need to put in place certain measures to ensure that employees perform their obligations diligently.

It is not then out of place to discipline an erring employee where he acts contrary to standard work policies. The sanctions can range from receiving queries to handing down a suspension in accordance with the staff handbook that binds such employee.

However, in meting out sanctions on an erring employee, the law requires that the employee must be afforded a fair hearing and that the disciplinary procedure and incidental sanctions are in accordance with the existing terms of the employment contract/Staff Handbook.

Notwithstanding the foregoing, it is important for employers, while exercising such disciplinary powers, to take cognizance of the limitations of employees during the lockdown. For instance lack of power supply, which may hinder quick turnaround time for the employee.

Also, where the employer has not provided work tools for an employee and the employee fails to perform his basic obligations, the employer would be held to have contributed to the alleged misconduct.

Finally, termination is always a last resort in any employment relationship. If the staff handbook provides that the punishment for any offense is termination, the procedure for terminating the employment must be followed by the employer.

Most times, it is in cases of gross misconduct that the handbook provides for termination as the sanction to be landed on the indicted employee.

Thank you!

**Law Axis 360°: Thanks for your replies so far @king\_hayo. Now, *can an employee's annual leave period be substituted with the lockdown period imposed by the Government?***

**Ayodeji Abdul:** Well, I think my answer on Variation of Contracts of Employment earlier, would answer this; as annual leave is also a condition of employment. Notwithstanding, I will buttress on the points earlier highlighted.

As a term/condition of employment, an employer cannot unilaterally supplant the lockdown period with the annual leave of employees. However, such substitution can be properly and transparently negotiated between the parties. It all boils down to 'social dialogue' at the end of the day.

Thank you!

**Law Axis 360°: @king\_hayo *What is the propriety of layoff or declaration of redundancy during this pandemic period? Is there any procedure to be followed while laying off staff or declaring workers redundant?***

**Ayodeji Abdul:** It is important to stress at the inception that Lay-off is totally different from termination. Lay-off is a lesser form of termination and it is usually resorted to in circumstances where the employer cannot meet up with its economic responsibilities or realities. Laid-off employees are usually entitled to certain benefits.

Redundancy, according to Section 20(3) of the Labour Act is an involuntary and permanent loss of employment caused by an excess of manpower. In other words, redundancy is usually as a result of excess manpower.

Some of the options available to employers during this pandemic period are to either lay off their staff or declare them redundant.

Where an employer considers the option of declaring an employee redundant, such employer must follow the due process as stipulated under Section 20 of the Labour Act.

In the same vein, proper recourse must be had to the provisions of the employment contract or Staff Handbook on redundancy (if such exists).

Also, redundancy must be done fairly, otherwise, it may be challenged as unfair dismissal, and the employer may face claims for failure to properly consult (which can give rise to hefty liabilities in damages to employees that were declared redundant).

As to lay off, the proper procedure to be followed is usually stated in the relevant documents governing the employment relationship (i.e. COE, staff handbooks, etc.). Where such procedure is not followed, an employer may be held liable for breach of contract in such instance.

Thank you!

**Law Axis 360°: *Finally @king\_hayo, would severance package suffice during layoff?***

**Ayodeji Abdul:** Well, this question is indeed a subjective one. In my own opinion, severance packages, especially at perilous times like these, will never suffice; given the economic realities of the "COVID-19 World".

The ILO has predicted scarcity of jobs post COVID-19. Thus, where an employee loses his job and gets certain benefits now, which to my mind would not even last for long, the question is what happens later when the world is back to normal?

The laid-off staff would have no other choice than to go seeking a job again; under more stringent circumstances. So, to my mind, severance package, no matter how cosmetic it may look, will never ever suffice, owing to our current economic downturn.

Before I go, I would like to anchor and berth my submission on the golden words of Nick De Marco, a veteran sports lawyer and a Queen's Counsel in the UK. According to him, "*The only certainty in these most uncertain times is that Covid-19 is likely to generate a plethora of future legal disputes which will shape our legal landscape...*"

For the umpteenth time, I say THANK YOU for having me here!

**Law Axis 360°: Thanks so much @king\_hayo.**

**We have come to the end of the discussions tonight. Thanks to all our participants.**

**A very big thank you to our facilitators for an insightful session:**

Olukolade Ehinmosan @emperorkhayy;

Emmanuel Faith @themmanuelfaith; and

Ayodeji @king\_hayo.

Till we come your way next episode, stay safe!

**COMPILED BY:**

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