

# Exploring Unfair Labour Practices in a Workplace

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**Abstract :** *Unfair labour practices in a workplace are witnessed both in private and public sectors of every economy. The paper discussed unfair labour practices in a workplace. The methodology for this paper was based on qualitative content and documentary analysis of relevant literature on unfair labour practices in a workplace. This included desktop and internet sourced secondary data with the use of descriptive research design. The paper found out that unfair labour practices include but not limited to refusal of employees to form or Join Union by employers, delayed retirement, refusal to issue letter of employment by the employer to the employee upon employment, workplace bullying and harassment, employers evading employee's compensation, casualization of workers, poor labour wages and delay in payment of salaries and wages, and denial of or delay in employee promotion and advancement. The paper concluded that unfair labour practices are the acts and activities of both the employer and employee in a workplace but the majority is from an employer against the employee. The recommendations of the paper in handling unfair labour practice was according to International Labour Organisation (ILO), which included amendment of labour laws and bringing them up to the standard of global best practices on labour and industrial relations.*

**Keywords:** Fairness, Unfair Labour Practice, Workplace, Employer, Employee.

## 1.0 INTRODUCTION

Unfair labour practices are applicable both in public and private sectors of any country. The beginning of any employment relation is the embodiment of the terms and conditions of the relationship in a form communicable between the parties. Though a contract of employment may be entered into by implication, the Nigerian Labour Act requires that not less than three months after the beginning of a worker's period of employment, the employer shall give to the worker a written statement specifying the detailed terms and conditions of the employment. It may be expected, therefore, that parties are fairly aware of the terms upon which they contract. Such contracts ideally should be a protective mechanism, particularly for the employees. However, this is rather illusory as workers are hardly in a position to negotiate and accept the plenitude of terms which may attach to their situation (Abugu, 2009). The workplace can be an inspiring and fulfilling space, and bosses and managers can serve as influential mentors for employees who want to develop in their respective careers. However, there are also many instances of people in senior roles abusing their power, discriminating against and mistreating employees (Law For All, 2021).

Before an employee claims that they have been subjected to an unfair labour practice, it is essential to understand what an unfair labour practice is. Essentially, an unfair labour practice is any discriminatory or deceitful act or omission that occurs between an employer and an employee (Law For All, 2021). An employer must, therefore, remain neutral between competing unions. It is also an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labour organization (American Law and Legal Information, 2021). Unfair labour practice generally refers to inequitable actions by the employer that do not conform to both domestic and international best practices and labour standards (Mix & Blake v. NUFBTE, 2004). Under the current Nigerian jurisprudence on labour and employment, the National Industrial Court of Nigeria (NICN) has the power to expand the scope of unfair labour practices (254C1) (f) of the 1999 Constitution as amended.

The objectives of this paper are to discuss what is to be classified as unfair labour practice and discuss types of unfair labour practices and their health implication to human health.

## 2.0 CONCEPTUALISING FAIR AND UNFAIR LABOUR PRACTICE

The concept of fairness is of paramount importance in the definition of unfair labour practice. Fairness can be used as a synonym for equitable, reasonable, impartial, just, honest, balanced, according to the rules, right (Poolman, 1986). All these synonyms contain a high degree of ethical and moral notions and consequently so does the notion of fairness. As such, the notion of fairness is not only difficult to define but is also flexible (Cameron, Cheadle & Thompson, 1989). Different people from different cultures and backgrounds also might have different views as to exactly what constitutes fairness (Poolman, 1988). As Baxter points out, fairness is a concept that is ambiguous and difficult to ascertain. Consequently, its meaning must be deduced with reference to surrounding circumstances (*Administrative Law*, 1984).

Definition of 'unfair labour practice' is limited: Firstly, it is limited with reference to what an unfair labour practice entails and; secondly, it is limited in the scope of its application since not everyone can rely on the provision for protection. Unfair labour practice is any of various acts by an employer or labor organization that violate a right or protection under applicable labour laws. An unfair labour practice complaint is an allegation that a named party (an employer, an employers' organization, a trade union or an individual

acting on behalf of one of those organizations) has engaged in an activity that is prohibited under the provisions of labour law (New Found Land Labrador, 2014). An unfair labor practice is any action or statement by an employer that interferes with, restrains, or coerces employees in their exercise of the right to organize and conduct collective bargaining. Such interference, restraint, or coercion can arise through threats, promises, or offers to employees (American Law and Legal Information, 2021).

It means any labour practice or any change in labour practice in which an employee or class of employees may be unjustly affected, or any practice in which the business of any employer may be unjustly affected or disrupted. This means that unfair labour practices can be from and against the employer and employee in a workplace.

The Merriam Webster Dictionary explains the unfair labour practices to include interference, restraint, or coercion of employees in the exercise of their rights by an employer, domination of a labour organization by an employer, encouragement or discouragement of union membership by discrimination in hiring or conditions of employment by an employer, discrimination against an employee for filing charges of or testifying regarding an unfair labour practice by an employer, refusal of an employer to bargain with the collective bargaining agent, restraint or coercion of employers or employees by a labour organization; coercion of an employer by a labour organization to discriminate against an employee, refusal of a labour organization to bargain collectively with an employer, engaging in illegal strikes or boycotts by a labour organization, excessive or discriminatory initiation fees for a labour organization, coercion of an employer by a labour organization to pay for work not done, picketing by a labour organization to force an employer to recognize or employees to select another collective bargaining agent when there has already been an election.

In the United States of America, Section 8, 151 and 152 National Labour Relation Act 1935 defines unfair labour practices as certain action taken by employers or unions that violates the National Labour Relation Act. The Act also established the National Labour Relation Board to investigate and remedy unfair labour practice defined in the Act.

South African labour law clearly defines the term “Unfair labour practice” to mean any act or omission that arises between an employer and an employee. The Act went further to state what constitutes unfair labour practice in Section 186 (2) (a-d) to include;

- a. unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee
- b. unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
- c. a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and
- d. an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.

Unfair labour practices in most cases is a matter of what the labour legislation says from one country to another. Therefore, what becomes of unfair labour practice does not have a common global interpretation. However, there is no legislation in Nigeria that defines unfair labour practice, but, the Nigerian Labour Congress (NLC) has at various times moved against various acts which they stated to be unfair labour practices. Oluwaseun and Itunuoluwa (2019) observed that under Nigerian law, there is no statutory definition of the term unfair labour practice and there is no detailed legislation codifying the subject as obtained in other jurisdictions, except for the inferences that may be made from the Labour Act, which apply to low cadre employees such as unskilled and clerical employees.

### 3.0 TYPES OF UNFAIR LABOUR PRACTICES IN A WORKPLACE

As stated earlier in this paper there is no national legislation in Nigeria that takes care of unfair labour practices in a workplace. Therefore, what becomes of unfair labour practices in workplace in a matter of various judicial interpretations and views of legal and trade unions like Nigeria Labour Congress (NLC). However, from some empirical evidences, the paper has identified some of the acts and practices that fall within the interpretation of what is unfair labour practice in Nigeria.

Labour practices within the informal sector of Nigerian economy show evidence of violation of employees' right and non-implementation of labour regulations. Although the informal sector provides a safety net for skilled, semi-skilled or unskilled labour who could not find job in the formal sector of the labour market, however, informal sector in Nigeria has practices that are not in conformity with the International Labour Organization (ILO) best practices as ratified in its conventions. Notwithstanding that Nigeria is a signatory to these conventions, there is still a lot of deficits in the implementations of these conventions. One of such areas of concern relates to decent work deficit. Decent work is work with fair and equal treatment, decent remuneration, fair conditions of employment, safety and social protection, opportunities for training and development, and collective bargaining (Eger & Sengenberger, 2001).

### 3.1 Refusal of Employees to Form or Join Union by Employers

This is the chief among unfair trade practices in Nigeria. It is the refusal of employees to form or join union. Often time employers in Nigeria refrain their employees from joining labour union. This has been the practice of some multinational companies (MNCs) operating in Nigeria. A good example among these companies is Mobile Telephone Network (MTN) Nigeria. This was made obvious by the chairman of Jigawa branch of NLC while addressing journalist on the union's picketing of MTN facilities in Nigeria stated that the action was sequel to anti-union posturing of the company by not allowing workers in its employment to belong to labour unions (Premium Times, 11th July, 2018).

### 3.2 Delayed Retirement

Retirement is an important transition in one's life that one leaves usual work environment and returns home, and such change may affect cognitive status of older adults (Grotz et al., 2016). Although cognitive decline is common in older adults, the rate of decline is highly variable (Park et al., 2003). Retirement signifies the detachment from primary activity in business, industry or active service as full time employee (Manion, 1976). It can also be conceptualized as a process that separates an individual from a job role (Atchley, 1980) or as termination of a pattern of life and a transition (Omoresemi, 1987). The causes of the detachment or separation may be due to old age, poor health, social pressure, apathy or according to terms of employment especially in a public sector.

An individual may retire at whatever age they please. However, a country's tax's laws and /or state old age pension rules usually mean that in a given country, a certain age is thought of as the standard retirement age. The standard retirement age varies from country to country but it is generally between 55 and 70 years. In some countries this age is different for males and females, although, this has recently been challenged in some countries (Okechuku & Ugwu, 2011).

Three major forms of retirement are identified in the literature, namely, Voluntary, Compulsory and Mandatory (Omoresemi, 1987).

In Nigeria public sector, the federal government sets the compulsory retirement age for workers. There are different retirement ages for various sector/industry in the Nigeria public sector (Olawale, 2018):

- i. Before now, the retirement ages for different categories of workers and professions in Nigeria civil service was sixty (60) years or thirty-five (35) years of service. The retirement age for the academic staffs and non-academic staffs of higher education institutions in Nigerian universities, colleges of educations and polytechnics below the level of a professor is sixty-five (65) years or thirty-five (35) years of service in the public sector. While the compulsory retirement age for academic staff in the professorial cadre is now 70 years. The retirement age for all non-academic staffs of higher education institutions in Nigeria is also sixty-five (65) years or thirty-five (35) years of service in the public sector.
- ii. The retirement age set for teachers in public primary and secondary schools has now moved from 60 to 65 years, and from 35 years to 40 years of service.
- iii. The age of retirement set for all judges both in the Supreme Court and in the lower courts in Nigeria is seventy (70) years irrespective of how long you have spent in the public service, that is, the number of years you have spent in service does NOT affect when you retire.
- iv. According to the Public Service Rules, the age of retirement for all judicial staff and professionals below the level of a judge is sixty-five (65) years or thirty-five (35) years in public service.
- v. The retirement age for officers of the Nigeria Armed Forces had been changed from fifty-two (52) years of age to sixty-two (62) years.
- vi. The age of retirement for medical and practitioners and consultants working in federal medical centers in Nigeria is sixty (65) years old or thirty-five (35) years in public service. This is also the same for all medical officers in federal medical centers.
- vii. The age of retirement for pilots in Nigeria is sixty-two (62) years.
- viii. The age of retirement for aviation workers who are not pilots is sixty (60) years old or thirty-five (35) years in public service.
- ix. The age of retirement for NNPC workers is sixty (60) years old or thirty-five (35) years in service.

- x. Section 18(8) of the new Police Act signed by the President stipulates the retirement age for a police officer to be 60 years of age or 35 years of public service, whichever is earlier. The law does not authorise the President to appoint anybody who has passed retirement age as IGP.
- xi. The age of retirement for the officers of the Nigeria Security and Civil Defence Corps is also sixty (60) years old or thirty-five (35) years of service.
- xii. The age of retirement for the officers of the Nigerian Prisons Service (NPS) is sixty (60) years old or thirty-five (35) years of service.
- xiii. According to the Fire Service Act, the age of retirement for officers in the Nigeria Fire Service is forty-five (45) years old or twenty-five (25) years in service.

In Nigeria's private sector, retirement age is different from the retirement age in the public sector. Different companies or organizations in the private sector have their different individual retirement policies. Some companies or organizations can keep an employee till after seventy (70) years of age while others might not. Most times, this is usually dependent on how valuable the employee is. However, government expects that companies and organizations in the private sector to adhere to the retirement age of sixty (60) years or thirty-five (35) years in service. But most companies/ organizations do not and also, when people retire from a company or organization in the private sector, they do not receive pension (Olawale, 2018).

On the health implication of delayed or late retirement as an unfair labour practice, recent survey by the Hudson Employment Index showed that 15% of workers reported that their firms encouraged older workers to retire, and 26% of workers in government occupations reported that retirement is actively promoted. Whether early retirement is individually or socially optimal depends on how retirement affects subsequent health status, among other things. While numerous studies have examined the effects of changes in health on retirement behaviour, research on how retirement impacts health status has been sparse (Dave et al., 2008).

Prior studies have noticed that the delayed retirement policy can influence the labour supply of labour market and the sustainability of pension system. However, rare research focuses on the health status among late retirees. This study thus tries to fill in the research gap by exploring the impact of late retirement on physical health status and cognitive status among older workers (Li et al., 2021). The trajectory of retirement age and mental health disorder also displays that older adults who exit the labor market earlier than their counterparts experience poorer mental health, and the continual engagement in employment among older adults is suggested in order to lower down relevant risks (Butterworth et al., 2006). The period of retirement transition is critical for the health of older adults. There have been some studies showing that the sudden change of working status from full-load work to detachment from work may have negative impact on the health of older adults, such as depressive symptoms, physical inactivity, reduced opportunities of communication or social contact with others, and the inability to reach personal need fulfillment for identity (Brougham & Walsh, 2009).

**3.2 Refusal to Issue Letter of Employment by the Employer to the Employee Upon Employment.** Another form of unlawful labour practice is refusal/neglect of employer to give employee appointment letter or letter of contract upon appointment. This form of unfair labour practice is specific to the legal profession in Nigeria though sometimes it can also be found in other sectors and professions. In Nigeria, many law firms employ lawyers without giving them employment letter or any document stating the terms of their engagement. To make the matter worse, newly employed lawyers in law firms are not aware of their salary until they are paid after working for a month. The salary most time is less than the national minimum wage and the worker can be disengaged without prior notice. It may be argued that the reason for law firms' neglect or refusal to give employees contract of employment is to protect the firms from litigation by employee for unfair labour practice of the firm (Oluwaseun & Itunuoluwa, 2019). According to Section 7 of the Nigeria Labour Act, ordinarily a worker is to be given a contract of employment within three months of appointment.

### **3.4 Workplace Bullying and Harassment**

Globally, there is no single uniform definition of what is meant by bullying or harassment at work. In spite of the lack of a uniform definition, most definitions used by researchers and practitioners share some common features. For example, Einarsen, Hoel, Zapf and Cooper (2011), defined bullying at work to mean harassing, offending, socially excluding someone or negatively affecting someone's work tasks. In order for the label bullying to be applied to a particular activity, interaction or process, the bullying behaviour has to occur repeatedly and regularly and over a period of time. Bullying is an escalating process in the course of which the person confronted end up in an inferior position and becomes the target of systematic negative social acts.

Leymann (1990) defined mobbing as hostile and unethical communication which is directed in a systematic way by one or a number of persons, mainly towards one individual. These actions often take place (almost every day) over a long period (at least for six

months) and because of this frequency and duration, result in considerable psychic, psychosomatic and social misery. Such hostile and unethical activities repeated frequently over long periods of time can change the climate of the workplace and stigmatize the exposed individual.

Bullying involves negative acts that occur repeatedly, regularly (systematically) and over a period of time, and the person targeted has difficulties in defending him/herself. In some definitions, the aim of harming the target or intentionality of the behavior is included. According to research from other countries, hospital employees in England are also bullied. Quine (2001) found that 44% of all nurses and 35% of other healthcare staff had experienced one or more kinds of bullying over a 12-month period. 50% of all nurses had also witnessed bullying by others. A total of 26.6% were bullied on Austrian hospitals (Niedl, 1996).

On the health consequences of workplace bullying, Hallberg and Strandmark (2006), observed that adult bullying is perceived by its victims as a severe psychological trauma or a traumatic life event. The core category contained five additional categories: 1) feeling guilt, shame and diminishing self-esteem; 2) developing symptoms and reactions; 3) getting limited space for action; 4) working through the course of events; and 5) trying to obtain redress. Bullying includes the spreading of rumours and repeated insults aimed at changing the image of the bullied person negatively, resulting in feelings of guilt, shame and diminishing self-esteem in the exposed person. Physical and psychosomatic symptoms gradually emerged (developing symptoms and reactions) and medical treatment and sick listing often follow. The longer the bullying continues, the more limited it becomes the possibility to change the situation (getting limited space for action), such as changing the workplace.

### **3.5 Employers Evading Employee's Compensation**

With regards to the Employee's Compensation Act (ECA) of 2010 and the Nigeria Social Insurance Trust Fund (NSITF) establishment seeks to put in place a transparent and fair system of guaranteed and adequate compensation for employees or their dependents in the event of death, injury, disease or disability arising out of, or in the course of employment. Currently, the effective implementation of the scheme is being threatened by the refusal of some state governments and private sector employers to comply with the ECA. As of 2012, only 804 private sector employers have registered with the NSITF, one year after the take-off of the scheme. Of greater concern is the fact that large number that registered with the scheme is not complying fully with the provisions of the ECA. Also some state governments are yet to key into the scheme. Further investigation revealed that over 60% of employers in the construction and manufacturing sector, where the highest level of workplace accidents occur, are not complying with the ECA in terms of remitting their contributions to the fund. Rather, employers are limiting the definition of "total payroll" to the basic salary, housing allowance and transport allowance, and have also set certain conditions which the NSITF must meet for them to key into the scheme (Employee's Compensation Act, 2010).

### **3.6 Casualization of Workers**

A form of unfair labour practice which is gradually becoming popular in Nigeria is casualization of workers. The International Labour Organization ILO (2007) defined casuals as workers who have an explicit or implicit contract of employment which is not expected to continue for more than a short period, whose duration is to be determined by national circumstances. This ambiguous definition has led to varying definitions of casual and contract workers and their rights in different legal implications. Casualization is referred to in Europe and the United States as Non Standard Work Arrangements (NSWAs). Casualization involves a process whereby more and more of the workforce are employed in casual jobs.

Many organizations and companies in Nigeria now employ contract or casual staff instead of a regular full-fledged employee. This mode of employment makes it difficult for workers to have collective bargaining agreement as the term of their employment/service is as contained in their respective contracts which most times varies. The elopement of contract workers' severance benefit is another issue (Vanguard Newspaper, 8<sup>th</sup> June, 2018). Casualization is the corporate trend of hiring and keeping workers on temporary employment rather than permanent employment, even for years, as a cost reduction measure. Casualization, in Nigerian context describes work arrangements that are characterized by bad work conditions like job insecurity, low wages, and lack of employment benefits that accrue to regular employees as well as the right to organize and collectively bargain. In addition, workers in this form of work arrangement can be dismissed at any time without notice and are not entitled to redundancy pay. It is an unprotected form of employment because it does not enjoy the statutory protection available to permanent employees (Bayo, 2019).

### **3.7 Poor Minimum Wages**

Evidence on the causal effect of income on health has been mixed. Although early analysis suggested additional income improves health (Ettner, 1996), recent studies suggest a more complex relationship. For instance, studies that examined the large expansions of the Earned Income Tax Credit (EITC) in the 1990s have found they improved self-rated and mental health of women with children (Boyd-Swan et al., 2016; Garthwaite & Evans, 2014), although they also led to higher rates of obesity (Schmeiser, 2009). New research indicates that an increase in minimum wages can have important health benefits—a finding that is relevant to public debates about both health and economic policy.



Sustained income losses—associated with either the mass layoffs during the early 1980s or the more recent expansion of global trade with China—increased mortality rates (Autor et al., Forthcoming; Pierce & Schott, 2018; Sullivan & Von Wachter, 2009). On the other hand, temporary downturns generally reduce mortality, though they increase mortality associated with some external causes such as suicide (Ruhm, 2012, 2015). Among adults nearing retirement, large reductions in social security earnings lowered mortality rates (Snyder & Evans, 2006), while having no net effect on obesity (Cawley et al., 2010).

### 3.8 Denial of, or Delay in Employee Promotion and Advancement

Promotion and advancement in a workplace are very important and serve as incentives for reward of hard work and the need for employees to continue on the path of giving the best to an organisation. The issue of fairness with regard to promotion should be based on an objective test (Crawshaw, 2006). It is what any reasonable person can see and should be able to take a stand on whether it is fair or not. By evaluating the decision, process, procedure and all ancillary issues related to the decision, one should be able to see whether the decision taken is fair or not. Advancement and promotions in the workplace are very sensitive and emotional issues. An organisation's policy and procedures usually stipulate how promotions should be conducted and various roles to be played by those who have the responsibility to commence and finalise promotional processes. Consequently, if promotion is perceived by an applicant as unfair, it might trigger agitation, which in turn may lead to quest for redress before the relevant adjudicating authority (Odeku, 2013).

A study by Truxillo et al. (2004) dealt extensively with the question of when fairness should matter in selection procedures. They also examined the usefulness of the organizational justice approach to applicant reactions and organisational outcomes. These are necessary in view of the fact that whoever is selected will impact the person's career and also advance the key business of the organisation in terms of performance and efficiency.

In the workplace, it is not surprising to hear employees complain of fairness or unfairness of activities going on whether with regard to workload, disciplinary issues, promotional and so on, working conditions, salary, discrimination, company's policy, promotions and demotions and so on (Harris et al., 2008). Even though an employer has the right to either promote or not, whatever decision is taken, it must be procedurally and substantively fair otherwise the process will be nullified and declared invalid (Odeku, 2013).

### 4.0 CONCLUSION AND RECOMMENDATIONS

An unfair labour practice means any unfair act or omission that arises between an employer and an employee. The unfair conduct of the employer relating to the promotion, demotion or training of an employee or relating to the provision of benefits to an employee. It also includes the unfair suspension of an employee or any other disciplinary action short of dismissal in respect of an employee. The failure or refusal of an employer to reinstate or re-employ a former employee in terms of any agreement. Dugeri (2018) defined unfair labour practices as the practices that do not conform with best practice in labour circles as may be stipulated by domestic and international legislations and practices. In other words, unfair labour practices are practices, which are contrary to laid down labour standards.

There have been practices by employers over decades that actually deny employees some basic rights at various levels of labour and industrial relations. On the other side of the coin, because of the freedom of association given to the employee to form and join trade union to collectively chart their course, the employees exploit the employer by engaging in certain acts that are unfair to the employer and maybe unfair to their fellow employee (Oluwaseun & Itunuoluwa, 2019).

In Nigeria, Section 12 of the Trade Unions Act 2005 (as amended) makes membership of a trade union by an employee voluntary. This implies that employees are expected to join a trade union of their choice voluntarily without coercion either by the unions or their employers. The Act also prohibits coercion of employees by the unions and mandates them to convince employees to join the unions through persuasion. The International Labour Organisation (ILO) is chiefly concerned with promoting opportunities for decent and productive work under the conditions of freedom, equity, security and dignity. The ILO does this through Conventions and Recommendations that constitute a major source of international labour law for member countries.

The recommendations of this paper relied heavily on the ILO recommendations, which include the need to amend our labour laws and bring them up to the standard of global best practices on labour and industrial relations; expanding the capacity of the National Industrial Court (NIC) of countries; sustained public awareness; and better enforcement of labour standards.

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See Section 254C(1) (f) of the Nigerian 1999 Constitution which empowers the court with jurisdiction over unfair labour practices and international labour standards.

See Section 8, 151 and 152 American National Labour Relation Act 1935.

See Section 186(2) South African Labour Relation Act 66 of 1995.

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