From Layoffs to Role Shifts: How Nigerian Companies Can Restructure Legally

INTRODUCTION

Internal restructuring is a strategic process that companies employ to improve efficiency and address a variety of strategic, financial, or operational challenges. This process often involves difficult decisions around workforce adjustments, including redundancies (commonly referred to as layoffs), redeployment, role demotions, and pay reductions.

These adjustments can vary from minor departmental changes to sweeping organizational transformations. For example, BBC News reported that during the COVID-19 pandemic, major corporations like Lloyds Bank, Shell, Virgin Atlantic and the Premier Inn owner Whitbread made headlines by announcing significant layoffs.[1]

However, redundancy and other restructuring options are fraught with potential legal and reputational risks if not managed properly. This article provides critical guidance for navigating restructuring processes in compliance with legal and contractual obligations, while minimising litigation and public relations risks. It also explores legally sound alternatives to redundancy, equipping organisations with strategies to maintain operational continuity without compromising legal standards.

REDUNDANCY VS OTHER FORMS OF TERMINATION

Redundancy is a distinct form of employment termination, differing from others like termination by notice and dismissal (whether fair, unfair, or constructive). While termination by notice may be employer/employee-initiated by providing the other party with statutory[2] or contractual notice, redundancy and dismissal are employer-initiated. Redundancy is an involuntary and permanent loss of employment caused by excess manpower[3], restructuring, company acquisitions, business closures, operational requirements or technological advancement (e.g. automation of company's process reducing staffing needs).[4]

Redundancy process is regulated by employment contracts,[5] statutes such as the Labour Act Cap L1 LFN 2004, collective bargaining agreements (CBAs) and international labour best practices. Before finalising redundancy decisions, companies operating in Nigeria are statutorily required to:

1. inform the trade union or workers' representative of the affected employees of the reasons and extent of the anticipated redundancy;
2. adopt the principle of "last in, first out" subject to all factors of relative merit, including skill, ability and reliability; and
3. negotiate and make redundancy payments to discharged workers.[6]

1 Ben King "Covid: 1,700 employers planned redundancies in September". Accessed on 28 October 2024 via https://www.bbc.com/news/business-54620758

2 Section 11 of the Labour Act provides for the periods of notice to be between one day to a month.

3 Section 20(3) of the Labour Act Cap L1 LFN 2004.

4 Alexander O. Ejah & Ors v. Niger Mills Co. Ltd NICN/CA/97/2013, 27-02-2015.

5 This comprises of offer letters, contracts of employment, employee handbooks, company policies, etc.

6 Section 20(1) of the Labour Act.

These steps apply even in the absence of unionized workforce, in which case consultation and negotiation should occur directly with the affected employees. The above procedures align with international best practices, as articulated in Article 13 of the Termination of Employment Convention, 1982 (No. 158).[7] In addition to redundancy payments, affected employees are entitled to any outstanding salaries or benefits.[8] Also, companies must provide written notice of termination per Section 11 of the Labour Act specifying the reason (redundancy).

ALTERNATIVES TO REDUNDANCY: ROLE CHANGE, REDEPLOYMENT/TRANSFER, REDUCED HOURS, PAY CUTS.

Restructuring need not always lead to redundancy. Companies can explore alternatives such as role changes (e.g demotion), redeployment/transfer, reduced working hours, or pay cuts. Offering these alternatives can help retain staff and provide an opportunity for consultation, potentially prevent redundancy and avoid any appearance of targeted redundancy thereby mitigating litigation risks. Employers are encouraged by Article 13(1)(b) of the Termination of Employment Convention, 1982 (No. 158) to explore measures to avert terminations by offering alternative employment:

> *"1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall...*
>
> *(b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment."*

While employment contracts and CBAs can guide the implementation of these alternatives, in their absence, the Labour Act and best practices apply.

For instance, the Labour Act requires that employee consent and endorsement by an authorised labour officer be obtained for transfers to another employer.[9]

Nigerian case laws generally prohibit unilateral changes to employment terms. Employers cannot unilaterally alter employees' responsibilities or implement a pay cut, demotion or any of the other alternatives without consultation and agreement from the employee.[10] Failing to do so may give rise to claims of constructive dismissal.[11] For example, in **Lewis v. Motorworld Garages Ltd**,[12] the Court held that the demotion of the Claimant to an unfair position, reduction in his pay, persistent criticism over eight (8) months and threatened dismissal if his performance did not improve amounted to constructive dismissal. Similarly, in **Omole v. Mainstreet Bank Microfinance Bank Ltd (NICN/LA/341/2012),** the court found that a unilateral reduction in salary without the worker's consent was unacceptable and violated the spirit of both Section 5(1) of the Labour Act and ILO Convention No. 95 (Protection of Wages Convention, 1949).

Under the Labour Act, employers are required to inform employees of any changes to the terms of employment within one month of such modifications and ensure employees have reasonable access to the updated term.[13] However, an employer can fulfil this obligation by referencing a pre-existing document, such as an employee handbook or company policy, in the employment contract, provided the document is noted as subject to updates. Changes must be entered into the document or otherwise recorded within one month of the modification and the document made reasonably accessible to employees.[14] It is thus advised in view of the foregoing that when exploring alternatives to redundancy, companies should consult employees and obtain consent before implementing any changes to employment terms.

7 Article 13 of the Termination of Employment Convention, 1982 (No. 158) requires employers to notify and consult with employees'/their trade union regarding inevitable redundancy.

8 Section 11(7) of the Labour Act provides that all wages payable in money shall be paid on or before the expiry of any period of termination notice.

9 Section 10(1) of the Labour Act.

10 Section 7(2) of the Labour Act prohibits unilateral changes to the terms of employment contracts.

11 Ubanyionwu, C., & Osisioma, C. (2019). Doctrine of constructive dismissal in labour/employment law in Nigeria: A review of the decision in Modilim v United Bank for Africa PLC. Accessed via https://core.ac.uk/download/478445431.pdf

In Ukoji v. Standard Alliance Life Assurance Co. Ltd, Unreported Suit No. NICN/LA/48/2012, delivered on 26 March 2012, the National Industrial Court held thus:

> *In an alternative sense, constructive dismissal or constructive discharge is a situation where an employer creates such working conditions (or so changes the terms of employment) that the affected employee has little or no choice but to resign. Thus, where an employer makes life extremely difficult for the employee, to attempt to have the employee resign, rather than outright firing of the employee, the employer is trying to create a constructive discharge.*

In Modilim v. United Bank for Africa Plc (Suit No. NICN/LA/353/2012), the Court held thus: "...because the resignation is not truly voluntary, it is, in effect a termination..."

Also, in the English case, Western Excavating (ECC) Ltd v. Sharp (1978) 1 All ER 713, the English Court of Appeal held that constructive dismissal means no more than the common law right of an employee to repudiate his contract of service where the conduct of his employer is such that the employer is guilty of a breach going to the root of the contract of employment where he has evinced an intention no longer to be bound by the contract. In such a situation, the employee is entitled to regard himself as being dismissed and walk out of his employment.

12 (1985) IRLR p.465

13 Section 7(2) of the Labour Act.

14 Section 7(3) and (4) of the Labour Act.

RECOMMENDATIONS FOR COMPANIES CONSIDERING REDUNDANCY OR ALTERNATIVE MEASURES

When considering restructuring, companies should first explore alternatives to redundancy. It is essential to avoid actions that could be perceived as acting in bad faith or designed to compel an employee to resign, which could lead to claims of constructive dismissal. If redundancy is unavoidable, companies must strictly adhere to the legal requirements outlined in Section 20(1) of the Labour Act. Consulting a legal expert during the restructuring process can help mitigate legal and reputational risks.

How multinational companies can ensure restructuring plans comply with varying employment laws across jurisdictions

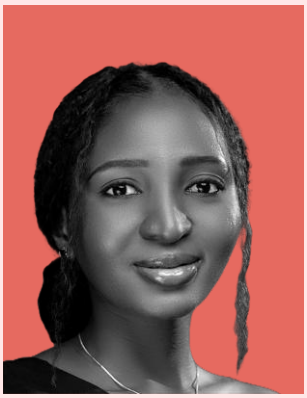
Multinational companies can ensure compliance by:

- Developing and periodically updating restructuring policies that address both global and local legal requirements.
- Consulting with stakeholders such as trade unions, employee representatives, and local labour ministries during the drafting process.
- Reviewing employment contracts globally based on local legal requirements and clearly specifying notice periods, severance pay, and other restructuring obligations. These should take into consideration probationary employments also.
- Working with local counsel in each jurisdiction during the restructuring process to navigate unique regulatory requirements.
- Maintaining detailed records and conducting regular audits of restructuring process to ensure adherence to policies and legal obligations.
- Equipping the management and HR teams with knowledge of employment laws across jurisdictions and the company's contractual obligations to effectively and lawfully manage restructuring.

Are employers legally required to provide training or upskilling opportunities for affected employees transitioning into new roles, including in cases of demotion due to restructuring?

In Nigeria, there is no explicit legal requirement for employers to provide training or upskilling opportunities during restructuring. However, the Labour Act requires employers to provide work suitable for their employee's capacity.[15] This could be interpreted as a basis for offering training and upskilling opportunities when employees transition into new roles as a result of restructuring. If employment contracts, company policies, or CBAs mandate training or upskilling in the event of restructuring impacts, employers must comply with the obligations. Employers are generally expected to act in good faith, ensuring employees are adequately prepared to meet performance expectations in their new roles.

15 Section 17 of the Labour Act.



Bunmi Akinsanya
Senior Associate