EMPLOYMENT CONTRACTS AND MATERNITY LEAVE IN NIGERIA: SOME REFLECTIONS ON THE RIGHTS OF WOMEN

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EMPLOYMENT CONTRACTS AND MATERNITY LEAVE IN NIGERIA:
SOME REFLECTIONS ON THE RIGHTS OF WOMEN

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INTRODUCTION
The mothers' right to a period of rest in relation to child birth is a crucial means of protecting the health of the mother and her child. This has been one of the core issues of concern for the member states of the International Labour Organization (ILO) since its establishment in 1919,¹ by the Paris Peace Conference after the World War 1, an agency of the United Nations. The ILO is devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Its main objectives are to promote right at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work related issues. The ILO is a tripartite organization that draws up international labour standards, oversees implementation and ensures that they are respected in practice and standard.² Nigeria is a member of the ILO. She became a member of ILO on October 17, 1960.³ This article reflects on the protection accorded to women in employment contract in Nigeria with respect to maternity leave. Is there really a right to maternity leave? If there is, is that right adequate. The Nigerian Labour Act⁴ provided for the right to maternity leave but this article contends that the right is not enforceable and not implemented. In fact, the right to maternity leave in Nigeria is not adequate.

NATURE OF CONTRACT OF EMPLOYMENT.
The Labour Act⁵ requires that within three (3) months of the engagement of an employee, an employer must give to the employee a written contract of employment

⁴ Labour Act chapter L1, LFN 2004.
⁵ Labour Act chapter L1, LFN 2004,s.7.
which contract must specify among other things, a description of the parties to the contract of employment, the nature of the services or services to be rendered under the contract of employment, the tenure of the contract including its probation period, the remuneration which must be paid in the legal tender of the country where the contract is entered into, the hours of work, mandatory holiday with paid leave, rules with regard to periods of incapacity to work due to sickness or injury, maternity leave, the appropriate period of notice to be served before the contract can be terminated, possible grounds for dismissal of the employee without notice etc.

MATURETNY LEAVE

The word maternity has been defined⁷ as the state or condition of being a mother especially a biological one; in other words motherhood.

S.91 of the Labour Act⁷ defines a woman to mean any member of the female sex. Whatever her age or status at work. With respect to maternity protection right, working pregnant women enjoy some protection in relation to maternity leave, maintenance benefits and security of employment. Section 54 of the Labour Act⁸ provides that a woman employed in any public or private industrial or commercial undertaking or in any branch thereof shall:

a. Have the right to leave her work if she produces a medical certificate given by a registered medical practitioner stating that her confinement will probably take place within six weeks.

b. Not be permitted to work during the six weeks following her confinement.

c. Not be permitted to work in pursuance of paragraph (a) or (b) of this subsection and been continuously employed by her then employer for a period of six months or more immediately prior to her absence shall be paid not less than fifty percent of the wages she would have earned if she had not been absent.

d. In any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for that purpose. What this means under Nigerian Labour Act is that a pregnant woman is entitled to maternity leave of a least six (6) weeks before the delivery of her child and six(6) weeks after the delivery of the child. She is also entitled to 50% of the wage during her maternity leave. Where the woman, for medical reasons exceeds the period allowed, she must not be served with a dismissal notice if she produces a medical certificate from a registered medical practitioner informing the Employer of her medical condition. Also she is entitled under the law to half an hour twice-daily, to nurse and feed her infant.

Under the UK Law, it allows for a period of maternity leave, Ordinary Maternity Leave (OML) up of up to 26 weeks and Additional Maternity Leave (AML) of up to 26

⁸ Chapter L1. LFN. 2004.
⁹ Ibid.
weeks following immediately after OML. All employees are required to take two weeks compulsory maternity leave following birth and are entitled to take one year’s leave, made up of OML and AML, regardless of length of service.

During OML and AML, employees are entitled to receive all their normal contractual benefits, except salary. Employees may also be entitled to Statutory Maternity Pay (SMP) (90% of earnings for six weeks and then 33 weeks at a capped weekly rate) on return to their old job on the same terms and conditions. However, if the employee has taken any period of AML and there are some reasons (other than redundancy) why it is not reasonably practicable for the employer to permit her to return to the same job, the employer has more flexibility. In such cases, the employee is entitled to return to a different job which is both suitable for her and appropriate in the circumstances, the terms and conditions of which must not be less favorable than they would have been had she not been absent on maternity leave. United States, Sweden and some other jurisdictions equally allowed for this right of maternity leave.

The essence of maternity leave is to protect the health of the mother and her child and maternity protection enable women to successfully combine their reproductive role and prevent unequal treatment in employment due to the reproductive role. The right to cash benefits during absence for maternity is an essential part of maternity protection. The woman must be paid her salary and benefits so that she can maintain herself and her child in proper condition of benefit and with a suitable standard of living.

In explaining the provision of the law with regard to maternity leave in Nigeria, Mrs. Agomo, a professor of law at university of Lagos said that the law in essence takes back with one hand what it has given with the other. “Section 54 of the Labour Act makes provision for maternity leave and maternity pay and also for medical expenses” the law provides that every expectant mother is entitled to maternity leave. According to her the Labour Act does not cater adequately for the care of a woman during pregnancy and the care of the child especially in the first few years of birth.

A PRACTICAL VIEW OF A CASE IN NIGERIA

Rose Adu is a mother of two and expecting a third child. She teaches at a private school in Lagos state. Her day begins at four in the morning when she wakes up to get the kids ready for school. Rose always has to prepare lunch for her children and often dinner too. The school where she teaches is over an hour and a half's bus ride away. Due to traffic jams, the trip can take up to four hours one way. She leaves home at 6am and returns in the evening at 8. Because of her household chores, however, she may not get to bed before midnight. This kind of demanding routine is typical of Nigerian woman's lives.

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As an expecting mother, Rose is entitled to three months maternity leave according to the Intentional Labour Organization (ILO). But even though Nigeria is an ILO member she never had a break longer than six weeks in her previous pregnancies she may have to work until the baby is born before getting Maternity leave this time.13

Questionnaires prepared and dispatched to many women in various organization show that about 75% of women under employment were not given three (3) months statutory maternity leave, some were called back to work after 2 months, to resume or lose their job. Even others that were allowed 3 months were done without pay, mostly in private establishments.

Protecting the maternity role of women workers has been a core issue of the International Labour Organization (ILO) since its establishment in 1919. The first convention on Maternity Protection (convention No. 183) was adopted that year. The essence of maternity protection is to reconcile woman’s reproduction role with the demands of earning money. A former chairperson of the Trade Union’s Joint Women Commission buttresses at the occasion of the International Women Day, that ILO guarantees pregnant and nursing mothers employment security during pregnancy, maternity leave and a period protection after returning to work. The women are entitled to return to their old Job or to an equivalent one with the same pay. None the less, many Nigerian employers do not obey these rules. According to her also, some government agencies do not grant paid maternity leave to unmarried pregnant women. She equally adds that the advent of contract labour has eroded the right to maternity leave. Many companies do not grant leave, so pregnant workers are forced to quit their jobs and re-apply after giving birth without any assurance of returning to the old job. Ibrahim reports that some employers, like the Nigeria Aviation handling company (NAHCO) had fired female employees simply because they became pregnant in their first two years of employment.14

Recently in the 98th International Conference held in Geneva, for government of all member countries including Nigeria, ILO passed a law that women are now entitled to 16 weeks maternity leave with full pay. Before now, women in government or private sector employment were entitled to 12 weeks maternity leave with full pay irrespective of their status and number of babies delivered, ILO equally advised that member countries consult with their private employers and work organization in order to respond positively to global job crisis. Nigeria is yet to ratify convention 183 Maternity Protection Convention 2000.15

Section 12 (1)16 of the constitution did not help matters where it provided that until International Laws are domesticated in Nigeria, Nigeria is not bound. Going by the strict sense of laws guiding member states, even though Nigeria has not, is yet to ratify or

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domesticate such laws in the country, member states are bound by the provisions of ILO.

REMEDIES FOR BREACH OF STATUTORY RIGHT TO MATERNITY LEAVE.

It is a general principle of common law that an employee who has been wrongly denied the 3 months maternity leave without pay may only bring an action for damages under section 58 of the Labour Act. In Nigeria it is doubtful if the claimant employee could still remain in his place of work after taken her employer to court.17

CONCLUSION

The Nigeria Labour Act was passed into law in 1971. This law, in the 21st century, is restrictive and outdated. Equally correct must be the observation that this law like others of its era has remained unable to promote the much required protection to women on maternity basis. Employers not adhering to the statutory rights provided in the Labour Act and penalty to this breach not adequate. Women are seen running back to work slightly after birth because of lack of security of employment. The Nigerian legislative will therefore do well to amend the provisions of this law to meet the fundamental development requirements of the Nigeria economy and also meet up with the globe on issues like parental leave and adoption leave, which is legal in Britain.18

RECOMMENDATIONS

It has been seen that the Labour Act has some short comings especially in the issue of maternity protection. In view of this, it is recommended that the Labour Act be amended to meet the fundamental development requirements of the Nigerian economy and with global changes in employment matters including those enshrined by the United Nations. With the commencement of the Pension Reforms Act 2004, it is recommended that the written contracts of employment should enumerate those benefits and liabilities between the employer and employee in the employment contract.

Also recommend that there should be a detailed staff book in every organization. Sufficient penalties for breach of the provision of the Labour Act, especially section 58 and section 91 should be amended to give meaning to an employee since under the Labour Act, employer and employee are jointly used.

It is also advised that Nigeria ratifies and domesticates Convention 183 (Maternity Protection Convention 2000) which recommends a minimum of 16 weeks Maternity Leave with full pay. But, although Nigeria is yet to ratify or domesticate Convention 183, Nigeria is bound by the laws of ILO, as a member state.

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18 Gaymer, op. cit., note 6, p. 495- 496.