

Women, Their Rights, and Workplace Discrimination

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Abstract

Every human irrespective of their sex, race, language, social class, origin, discipline, and background deserves to be treated fairly and equally as every other member of the society. In a workplace situation, the rights and duties of all humans should be equal and the same at all times and in all situations. This paper, therefore, discusses the right of an employee in a workplace. It specifically discussed the right to be free from discrimination and harassment irrespective of the gender, right to the safe work environment, fair wages compensation amongst other rights that accrues to every employee in a workplace. The paper further discusses the duties of employees in a workplace which does not accrue to a particular gender. Duties of a worker, duty to care and skill and duty to obey orders were also discussed as essential component expected of a worker in a workplace. Discrimination in the workplace, a vital component of the research work against the female gender is also critically discussed. The paper concludes by discussing the right of a female employee to equal remuneration with their male counterpart, and the need to treat women equally and fairly in every human endeavor they might have found themselves.

Keywords: Rights, Duties, Discrimination, Workplace, Women, Employees, Employer

Introduction

Every employer has a duty of providing a secure working atmosphere, sufficient resources, information, training and supervision, an effective health and safety programme, and a process for identifying, assessing and controlling hazards. All these measures are expected to be put in place by all employees in order to ensure that appropriate laws are compiled with alongside with the workplace rules, dealings and methods that are developed and maintained in a workplace. On the other hand, employees have a duty towards it employer by ensuring that they don't place themselves at risk, not knowingly put other employees or workers in danger, they must follow strictly the safe working procedures, to use machinery and equipment (where necessary) safety, to not let drugs and alcohol affect their work, to give a detailed account of any danger they may notice in their workplace, and to apply any training instruction they may have received when the need arises. The duties of the employees, therefore, is to ensure that they perform their tasks well and adequately, ensuring that they don't take unnecessary risks and also to ensure that their behavior shows that they have respect for themselves and other workers. The employees should also speak up whenever they notice any form of hazard or risk no matter how little in their workplace. These duties by employers and employees are expected to cut across all race, nationality, sex, color, career and human endeavor.

The employee equality Acts 1998-2015 outline discrimination in a wide range of employment and employment-related aspect. The Acts covers recruitment, promotion, equal wage or salary, working conditions, training or experience, dismissal and all forms of harassment. This legislation defines discrimination as treating one person's in a less favourable way than another person based on Gender (man, woman or transsexual), civil state (married, separated, single, divorced, widowed), family status (sexual orientation, gay, lesbian, bisexual and heterosexual), religious, disability and race (skin colour, nationality, or ethnic origin.). Specifically, the employment equality legislative cover expectant (pregnant) women, victimisation, unlawful discrimination, disability and equal pay. The research work therefore comprehensively analyses women, their rights and workplace discrimination. It specifically explains the rights and duties of every worker, the various forms of discrimination in a workplace as well as the effects of discrimination in women.

RIGHTS AND DUTIES OF WORKERS

An employee in his place of work has certain rights which accrue to him based on the fact that he is in the employ of his master. Some of these rights are non-negotiable as they arise from the terms of contract employing the worker. In the same way, an employee has rights, he also owes his employer some obligations based on the servant-master relationship they both have. The rights and duties of an employee will be considered at this juncture.

RIGHTS OF WORKERS

All workers¹ have basic rights in the workplace which are not limited to, the right to privacy, fair compensation, and freedom from discrimination. A job applicant equally has certain rights even before being hired as an

¹ The terms Worker and Employee will be used interchangeably

employee. Those rights include the right to be free from discrimination based on age, gender, race, national origin, or religion during the hiring process. For instance, a prospective employer cannot ask a job applicant certain personal or family-related questions during the recruitment process. In most countries, employees have a right to privacy in the workplace. This right to privacy applies to the employee's personal possessions, including handbags or briefcases, storage lockers accessible only by the employee, and private email addressed specifically to the employee¹.

Right to be free from Discrimination and Harassment of all types

All employees, male or female, are entitled to the same measure of rights and opportunities that are made available by the employer or the terms guiding the contract of employment, devoid of discrimination or harassment. Equal rights and opportunities should be given to every employee to perform his assigned duties without discrimination on the ground of sex, disability, status, origin². This right has been attested to by section 42(1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which guarantees freedom from discrimination of all persons. The same Constitution provides for the social objectives and states that the State social order is founded on ideals of freedom, equality, and Justice³. This provision applies to all areas of human endeavor which not excluding labor relations.

Section 17(3)(a) of the same constitution forbids discrimination in the workplace, as it provides that the state shall direct its policy towards ensuring that all citizens without discrimination on any group whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. When an employee is treated somewhat differently from other employees on grounds not supported by a contractor that are indeed in conflict with the law such worker is said to have been discriminated against.

The International Labour Organization regards the elimination of discrimination in respect of employment and occupation as a fundamental principle which all member states are obliged to respect. With the fact that Nigeria has ratified the ILO Equal Remuneration Convention, 1951 and the Discrimination (Employment and Occupation) Convention, 1958, the state of protection against discrimination in Nigeria is still very weak as it has few anti-discrimination laws. Fewer still are litigations on them thereby rendering the jurisprudence on the subject non-existent or at best under-developed.

Discrimination in the workplace against employees with the physical challenge is also prohibited. Section 6 of the Nigerians with Disability Act, 1993 imposes a duty on the government to take measures to promote the employment of the disabled in the society. As such, a disabled person shall not by reason only that he is challenged be subjected to any disability or conditions by any employer. There is however what may be referred to as positive discrimination in favor of disabled persons as the Act⁴ requires all employers of labor to reserve for the disabled not less than 10% of the workforce.⁵

Right to a Safe Work Environment

It is an employer's duty to provide proper tools, maintain good plant and good premises in the interest of the safety of his employee(s). Where an employer has a foreknowledge of dangerous tools or plant in his workplace, he will be liable to his employees even if the tools were purchased from a reputable dealer. Thus, in *Taylor v Rover Co. Ltd.*,⁶ the plaintiff lost his eye when the top of a chisel. Four weeks earlier, a piece of the top of the same chisel had broken off and slightly injured another employee. The court held that the company was liable for a breach of their duty as it had had notice of the danger because of the previous accident. An employer, on the other hand, will be taken to have discharged his duty if he buys his equipment from reputable suppliers or where unknowingly the supplier deviates from his instructions on specifications⁷.

Apart from the provisions of safe tools, the employer must also ensure that the environment where his employees operate is safe, free from hazards⁸. An employer will not have discharged his duty to provide a safe system of work unless he gives his employees proper instructions and reasonable supervision. In *Western Nigeria Trading Co. Ltd v Busari Ajao*⁹, where Fatayi- Williams, J. (as he then was), held that an employer is

¹ *Nolan v Dental Manufacturing Co. Ltd.* [1958] 2 all E.R. 449

² Employees Rights 101 <http://employment.findlaw.com/employment-discrimination/employees-rights-101.html>. Retrieved on the 24th of June 2015

³ Stella Idehen, Equal Rights, Equal Opportunities: Progress for all, (2011)1 *J.J.P.L.*, Makaria United Ventures, Benin City. pp.281-298 at pp.281-282

⁴ Section 17(1)

⁵ Section 6(2)

⁶ Bamidele Aturu, Discrimination in the Workplace, Retrieved from <http://www.vanguardngr.com/2010/03/discrimination-in-the-workplace/> on the 1st of July, 2015.

⁷ (1966) 2 All E.R. 181; (1966) 1 W.L.R. 1491

⁸ *Davie v New Merton Board Mills Ltd.* [1959] A.C. 604; [1959] 2 W.L.R. 331

⁹ *Wilson v Clyde Coal Co. Ltd. v English* [1938] A.C. 57; [1937] 3 All E.R. 628

⁹ (1965) NMLR 178

under an obligation not only to provide safety devices but also to give strict instructions followed by reasonable supervision¹.

Right to Fair Wages for Work Performed

Remuneration can be termed to be the most important part of a contract of employment. It comprises of salaries, wages, and allowances or commissions, which form part of the terms of a contract. Wages are primarily agreed on by the employer and his employee. In a situation where there is no rate agreed, the rate is deemed to be what obtains in similar trade in the area.² In contracts, the Labour Act provides that Not later than three months after the beginning of a worker's period of employment with an employer, the employer must give to the worker a written statement specifying the rates of wages and method of calculation thereof and the manner and periodicity of payment of wages.³ Such a statement is expected to contain, aside the amount of wages payable, provisions for remuneration during sickness and holidays. It is an established law that sickness does not prima facie terminate a contract of employment. In *Morrison v Bell*⁴, the Court of Appeal laid down a general principle that “under a contract of service, irrespective of the question of the length of notice provided by that contract, wages continue, through sickness and incapacity from sickness to do the work contracted for, until the contract is terminated by notice from the employer”⁵. However, the Nigerian Labour Act restricts the applicability of the principle in *Morrison v Bell*⁶ as section 15 of the Act which provides for a right to wages, commissions or bonuses during “temporary illness,” not only requires the certificate of a registered medical officer but gives an employee, as of right, a paltry twelve working days’ wages in a calendar year. In essence, the whole matter of payment of wages will be governed by the terms of the contract between the employer and his employee, expressly or impliedly as both parties may by their own conduct have an established understanding that will also be enforceable by the court of law⁷.

Right to join the Trade Union

Workers’ organizations cannot exist if workers do not have the free will to join them, work for them or remain in them. The freedom to join an association of choice is a fundamental human right, a civil liberty provided by the 1999 Constitution of the Federal Republic of Nigeria (as amended)⁸ as well as in a number of Constitutions globally⁹. This freedom is founded on the International Declarations and Covenants which express the aspirations of all peoples¹⁰, making it be on the same pedestal with the freedom of speech, freedom of religion, and freedom from arbitrary arrest and seizure.¹¹

In Nigeria, as a general rule, every citizen between the ages of sixteen and twenty-one and over is eligible to join a trade union.¹² Section 12(2) of the Trade Unions Act criminalizes any act by anyone to stop an employee from joining a trade union through which only his interest can be fully actualized as joining a trade union is a major way an employee can protect his interest. Thus, in *Hotel and Personal Services Senior Staff Association v Owena Hotels Ltd.*¹³, the National Industrial Court held that where it is shown that the termination of an employee was on account of his legitimate trade union activities, the court has the power to set aside the same and order reinstatement of the affected employee.

It must, however, be noted that a person otherwise qualified to be a member by virtue of employment

¹ *Nolan v Dental Manufacturing Co. Ltd.* [1958] 2 all E.R. 449

² Akintunde Emiola, *Nigerian Labour Law*, fourth edition. Emiola (Publishers) Limited, Ogbomosho. 2008.p.99

³ Section 7(1)(f).

⁴ [1939] 2 K.B. 187; [1939] 1 All E.R. 745.

⁵ See further *Orman v Saville Sportswear Ltd* (1960) 3 All E.R., wherein it was held that where the written terms are silent to what is to happen in regard to the employee’s right to wages whilst he is absent due to illness, the employer remains liable to pay unless a contrary condition can be inferred. In contrast, see *O’Grady v Sapier (M) Ltd.*[1940] 2 K.B. 469; [1940] 3 All E.R. 527, where the Court of Appeal held that a commissionaire who had gone off sick many times without pay during the sick period must be taken to have agreed that he was not to receive payment during the sick period.

⁶ [1939] 2 K.B. 187; [1939] 1 All E.R. 745.

⁷ Akintunde Emiola, *Nigerian Labour Law*, fourth edition. Emiola (Publishers) Limited, Ogbomosho. 2008p.103

⁸ Section 40

⁹ These include the Preamble to the French Constitution of 1946 (which is incorporated in the present Constitution of 1958), Article 9 of the Basic Law of the German Federal Republic, Article 39 of the Italian Constitution, also the Constitution of Brazil. The Constitutions of Austria, Belgium, the Netherlands and Switzerland guarantee the general freedom to form occupational and professional associations without specifically referring to those operating in labour relations. See further, Adeniyi Olatunbosun, *op.cit.* pp.63-81, at p.63

¹⁰ Universal Declaration of Human Rights, 1948, Article 23(4); International Covenant on Civil and Political Rights 1966, Article 8; International Covenant on Civil and Political Rights 1966, Article 22; and European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11.

¹¹ Adeniyi Olatunbosun, Prohibition of Classified Public Workers from Trade Union Activities in Okpighe Othuke, Nze Ifeanyi and Omaghomi Anthony(eds), *The Legal Tempo Aspects of Law: Essays in Honour of Chief Obiyera Odunlade*. Zenith Publishers for Oyo State Corps Lawyers Association, Ibadan. 2001.pp.63-81, at p.63

¹² Section 12(1) Trade Unions Act, Cap. T 14, 2005, Laws of the Federation, 2004.

¹³ (2005) 3 NLLR (Pt.7) 163, 182-3.

cannot be forced or victimised to be a member of a trade union¹.

As an exception to the general rule of the right of an employee to join a trade union, youths under the age of sixteen², staff recognized as the projection of the management³ by the terms of their employment⁴ and a certain class of public officers are expressly excluded from membership of trade unions. This class of public officers includes members of the police force, prison and armed forces as well as those in the customs preventive services, employees of the Nigerian External Telecommunications Limited, and those in any other services to bear arms.⁵ There have been arguments against the prohibition by the Trade Union Act of some establishments' right to participate in Trade Union activities. One of such arguments is that since the right to join an association of one's choice is a well recognised right provided for by the constitution, reinforced by our domestic laws and guaranteed under International Conventions and Charters to which Nigeria has subscribed⁶, the categories of employees prohibited from trade union activities in Section 11(1) of the Act is considered too wide to justify the desirability of the mischief which the law intends to take precautions against in the day to day administration of government activities as this prohibition also runs against the International standards and therefore needs to be readjusted or pruned down in order for the optimum labour relations to be attained in Nigeria.⁷

Right to Indemnity

An employee's right to indemnity during the course of his duty is a right that has been duly recognized overtime. An employee who in obedience to a lawful order of his employer commits an injury to another person is entitled to be relieved of all liability for such injury by his employer.⁸

Right to Compensation

The right to compensation conferred by Employees' Compensation Act 2010, as by the earlier Workmen's Compensation Act 1987, is more or less automatic. The statute operates as an insurance principle in which compensation is not dependent in any way on the conduct or negligent act of the employer⁹. The right to compensation is based on an injury arising out of and in the course of employment, and the act giving rise to the accident occasioning the injury was not willful. The generous formulation of this statutory provision is to ensure that an employee who has been injured while performing his assigned duty is not left without assistance to face the economic and social aftermath of the incident¹⁰. The provisions on compensation provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependents for any death, injury, disease or disability arising out of or in the course of employment; provide rehabilitation to employees with work-related disabilities provided in the Employees Compensation Act; establishment and maintenance of a solvent fund managed in the interest of employees and employers; fair and adequate assessment for employers.¹¹

DUTIES OF A WORKER.

The duties of a worker are usually spelled out in the terms of the contract as they form the express terms of the contract. As there are express terms of duties expected of an employee in the contract, there are also duties that are implied either by law or by trade practice. The court, at times, will also imply that a term is incorporated in a contract of employment when public policy so demands.¹² The duties of an employee will be discussed under the following headings.

Duty of Fidelity

An employee is under an obligation to serve his employer with good faith and fidelity¹³. Any conduct of an employee that is injurious to the business of the employer would justify disciplinary measures. During the

¹ Section 12(4) Trade Union Act; *Agbai & Ors. v Okagbue* (1991) 7 NWLR (Pt. 204)391

² Section 19(1) Trade Union Act

³ Section 3(3) Trade Union Act

⁴ Section 3(4) Trade Union Act

⁵ Section 11(2) Trade Union Act. The minister of Labour and Productivity is empowered to specify other establishment, from time to time, whose staff may not belong to trade unions. The Act, however, allows such workers to take part in the setting up of Joint Consultative Committees in the establishment concerned.

⁶ *Ogugu v The State* (1994) 9 NWLR Pt. 366.p.47 at 49

⁷ Adeniyi Olatunbosun, Prohibition of Classified Public Workers from Trade Union Activities in Okpighe Othuke, Nze Ifeanyi and Omaghomi Anthony(eds), *The Legal Tempo Aspects of Law: Essays in Honour of Chief Obiyera Odunlade*. Zenith Publishers for Oyo State Corps Lawyers Association, Ibadan. 2001.pp. 63-81 at p.77

⁸ Section 20 of the Labour Act.

⁹ *Thomson v Sinclair* [1917] A.C. 127,145

¹⁰ ¹⁰ Akintunde Emiola, *Nigerian Labour Law*, fourth edition. Emiola (Publishers) Limited, Ogbomoso. 2008p.302

¹¹ Section 1 Employees' Compensation Act; section 3 exempts any member of the armed forces of the Federal Republic of Nigeria other than a person employed in a civilian capacity.

¹² Akintunde Emiola, *Nigerian Labour Law*, fourth edition. Emiola (Publishers) Limited, Ogbomoso. 2008 p.79

¹³ Egerton Uvieghara, *Labour Law in Nigeria*, Malthouse Press Ltd. Lagos, 2001.p.38

continuance of his employment, the employee must act in the interest of his employer.¹ In *Sinclair v Neighbour*², an employee engaged as a manager of a pool betting shop, took some money from the till to place a bet elsewhere without the knowledge and consent of his master. It was held that the conduct was incompatible with his employment. The employee must also take care that his interest does not clash with that of his employer. As in *Maja v Stocco*³, where a medical doctor, who in breach of his contract, secretly engaged in private practice, was held by the Supreme Court to have been justifiably dismissed summarily, on the ground that it was a breach of his duty of fidelity to have entered into “transactions whereby his personal interests conflict with his duty as a servant...”

Work done during the spare-time of an employee will normally not in the absence of a contractual prohibition, express or implied, be in breach of faithful service. Although an employee is free to use his spare time as he wishes, he must however not do things that will interfere with his duties to his employer. Thus, in the case of *Hivac v Park Royal Scientific Instruments Ltd.*⁴, some highly skilled employees who worked in their spare time for a rival company of the employer were held to be in breach of faithful service on the ground that if they continued to work for the rival company, they could put at the disposal of the defendants any confidential information, which, in the course of their work for the plaintiff, they had obtained. An employee must not in any situation make or accept secret profits or bribe or use his position to obtain a reward.⁵ An employer can, in an action for money had and received, obtain such profit or bribe from the employee.⁶

In the contract of employment, there is implied, of every employee a term that he will not disclose the trade secrets and confidential information of his employer.⁷ In *Bents Brewery v Hogan*⁸, Lynskey J put it “it is quite clear that an employee is under an obligation to his employers not to disclose confidential information obtained by him in the course of and as a result of his employment”. This duty continues even after the employment has ceased⁹. The duty of fidelity and good faith extends to inventions and discoveries made by a worker during his employ if such discovery or invention is either connected to or arose out of the duties he was employed to do.¹⁰ The courts have used this doctrine to restrain a worker from withholding any invention he made to the disadvantage of his employer¹¹. The Patent and Designs Act permits a discoverer or his assignee to apply for the patent for this invention.¹² However, the common law holds, purely on a moral and equitable ground, that the employer is entitled to the benefits of such a discovery made during the subsistence of the contract of employment wherever it would be the duty of good faith for the employee-inventors to keep the benefits to himself. Section 2(4) of the Act gives the court the power to apportion the benefits of such an invention between the employer and his employee where, although the inventor is an employee, “his contract...does not require him to exercise any inventive activity” but the discovery was made possible by the use of the “data or means that his employment has put at his disposal”.¹³ There may, in instances of exceptional importance, an apportionment of benefits of discovery to the employee.¹⁴ In both cases, the inventor is entitled to a fair remuneration taking into account his salary.¹⁵ The common law, however, excludes apportionment where there is no uncertainty as to whether the employer or worker ought to be the one entitled. In *British Syphon Co. Ltd. v Homewood*¹⁶, the plaintiffs’ business included the manufacturing of Soda Water siphons. The defendant was the chief technician of the plaintiffs. It was his contractual obligation to advise the plaintiffs on all matters relating to their business. The defendant invented an improved form of soda water siphon and applied for letters patent. The plaintiffs successfully sought an order that the defendant should assign the patent to them.

Duty to Obey Orders

The principal duty of an employee which is to carry out his duties in obedience to the reasonable and lawful order of his employer is often implied by the common law in a contract of employment. Derogation from this duty by an employee, usually, attracts the penalty of summary dismissal.¹⁷ In *Teliat Sule v Nigerian Cotton*

¹ *Wessex Dairies Ltd. v Smith* [1935] 2KB 80,84

² [1967] 2 QB 279

³ [1968] N.M.L.R. 372

⁴ [1946] 1 CH.169, 173.

⁵ *Boston Deep Fishing & Ice Company v Ansell* [1888] 39 Ch. D 339

⁶ *Reading v Attorney General* [1951] AC 507

⁷ *Alperton Rubber v Manning* [1917] 85 LJ Ch377

⁸ [1945] 2All ER 570,576

⁹ Egerton Uvieghara, *Labour Law in Nigeria*, Malthouse Press Ltd. Lagos, 2001. p.40

¹⁰ Nwazuoke Anthony Nnaemeka, *Introduction to Nigerian Labour Law*, The Department of Public Law and Jurisprudence, Faculty of Law, Olabisi Onabanjo University, Ago-Iwoye. 2001. p. 37

¹¹ This doctrine is now in a statutory form in Nigerian Patents and Designs Act, 1970, Cap. P2, Laws of the Federation, 2004.

¹² Sections 2(1)(3), 14(1),(2)(3).

¹³ Section 2(4)(9),14(4)(a)

¹⁴Section 2(4)(9)14(4)(a).

¹⁵ Section 2(4)(b). An inventor is only given a fair remuneration and not a right to the patent of the invention

¹⁶ [1956] 1 W.L.R. 1190; 2 All E.R. 897

¹⁷ Nwazuoke Anthony Nnaemeka, *Introduction to Nigerian Labour Law*, The Department of Public Law and Jurisprudence, Faculty of Law,

*Board*¹, it was observed by Obaseki, JSC, that “both common law and statute law brook no disobedience of lawful orders from a servant, high or low, big or small,” and that “disobedience ranks as one of the worst forms of misconduct in any establishment”. This principle was established in 1945, in *Turner v Mason*², where a domestic servant who had paid a visit to her ill mother contrary to her master’s instructions was held to have been rightfully dismissed in repercussion.

The order which an employee is contractually bound to obey must be lawful and reasonable. Thus in *Nwankwo v Ajaegbo*³, a master had ordered his driver to beat up a teacher who the master feared might discipline his son who had run off from the general cleaning which the teacher instructed all the pupils to do. The driver pleaded obedience to his employer’s orders. The court rejected his plea because the driver knew or ought to have known that assault was a crime and he should have refused to obey such order. The plaintiff was, therefore, entitled to hold the defendant vicariously liable and could sue either the master or the driver as they were joint tortfeasors.

It is neither lawful to instruct a high-ranking employee to do some menial job which is not within his job description⁴, nor, reasonable to instruct an employee, of whatever status, to remain in an area, though within his contractual service area, where life or health is prone to danger⁵.

In order for a single act of disobedience to justify a summary dismissal, it must be willful, must be of exceptional gravity. Thus in *Law v London Chronicle Ltd.*⁶, the plaintiff, a lady advertisement representative of the company, was present when there was a misunderstanding between the managing director and her immediate boss, the advertisement manager. As a result of the disagreement the advertisement manager stormed out of the room and the plaintiff, contrary to the direction of the managing director, followed her immediate boss in the walk-out. The lady was dismissed summarily and that gave rise to this action. The court held while accepting the principle laid down in *Turner v Mason*⁷, that under the existing social conditions dismissal for a single act of disobedience can only be justified “if it is of nature which goes to show that the servant is repudiating the contract or one of its essential conditions”. It must, however, be noted that there are no fixed rules of law that define the degree of misconduct which would justify a dismissal, but it has to be grave and of weighty character, as to undermine the confidence which should normally exist between a servant and his master⁸.

Duty of Care and Skill

The liability of a servant to a penalty for misconduct raises another question of his implied duty to take reasonable care and exercise a high level of skill in the performance of his contractual duties. The terms ‘Care’ and ‘Skill’ are sometimes rolled up, however, both are different and distinct. An employee may be quite skilled and yet be negligent in the exercise of his skill.⁹ Such an employee would not be in breach of the duty of skill, but he would be in breach of that care¹⁰.

As to whether a single act of negligence could amount to incompetence, in *Aguname v Nigerian Tobacco Co. Ltd.*¹¹, the court took the view that an isolated act of careless driving does not justify the driver being regarded as incompetent, although the nonpossession of a driving license or a breach of the elementary rules of driving might be a strong indication of incompetence.

The requirement of maximum skill expected of an employee is based on the doctrine of warranty. This doctrine assumes that when an employee applied and took a job of a particular kind, he held himself out as being capable of practicing that calling or profession. As stated by Dickson J., “there is on his part an implied warranty that he is reasonably competent for the work which he is employed to undertake and if he proves to be incompetent, the employer is not bound to continue him in his service for the term for which he is engaged.”¹² A master who appoints an employee knowing his skill and experience is not entitled to expect or require from such servant a higher measure of skill or knowledge¹³.

In a situation where a third party is injured by an employee’s incompetence, the employer would be held

Olabisi Onabanjo University, Ago-Iwoye. 2001. p. 31

¹ (1985) 2NWLR (Pt.5) 17; (1985) ANLR 291; (1985) 6 S.C. 62

² [1845] 14M. & W. 112; 2 Dow & L. 898

³ (1978) 1 IM. SLR 202.

⁴ *Price v Mouat* [1862] CB (NS) 508

⁵ *Bouzouru v Ottoman Bank* (1980) A.C. 271

⁶ [1959] 2 All E.R. 514

⁷ [1959] 2 All E.R. 285, 288

⁸ *George Nicol v E.C.N.* (1965) L.L.R. 161; *Lasisi Yusuf v Union Bank of Nigeria Ltd.* (1996) 6NWLR (Pt. 457) 632, 648

⁹ *U.B.A. Ltd. v Ngozi Achoru* (1990) 6NWLR (Pt. 156) 254, 277, Per Karibi-Whyte, JSC, “negligence is the failure to take reasonable care where there is a duty and it is attributable to the person whose failure to take sure reasonable care has resulted in damage to another”.

¹⁰ Akintunde Emiola, *Nigerian Labour Law*, fourth edition. Emiola (Publishers) Limited, Ogbomosho. 2008. Pp.89-90

¹¹ (1979) 2F.N.R. 144

¹² *Nunnik v Costain-Blansevoort Dredging Ltd.* (1960) L.L.R. 90, 93.

¹³ *Olaturunji Omotayo v. A.Y. Ojikutu* (1961) 1 ALL N.L.R. 901, 905

vicariously liable¹. A single act of negligence that will justify a dismissal will need to be considered with reference to the degree of care needed in the kind of employment and the magnitude of the loss incurred. Thus in *E.R. Usen v Bank of West African Ltd.*², it was held that the defendants were entitled to dismiss the plaintiff, a bank clerk, for a single act of negligence leading to a loss of money by the bank. A negligent act by the employee will entitle his employer to an indemnity³ due to the fact that negligence in itself is a breach of the worker's implied duty of care. Thus, in *Lister v Romford Ice & Cold Storage Co. Ltd.*⁴, where a son, the defendant's employee, drove his vehicle in such a way that as to injure his own father, the House of Lords held that the company was entitled to claim a hundred percent indemnity from the employee for the damages paid to the father in respect of the accident.

In a situation where an employer categorically prohibits his employee from taking an action, such prohibition will affect the liability of the employer to the extent that he has limited the servant's scope of employment⁵. In cases where an employer's conduct is contributory to the act resulting in injury or loss to a third party, both the employer and his employee are joint tortfeasors and are jointly and severally liable for the servant's own negligence⁶. As in *Jones v Manchester Corporation*⁷ where a hospital board left a young and inexperienced doctor in charge of the administration of anaesthesia which resulted in the death of a patient, the English Court of Appeal held that the board could not claim indemnity but contribution as they were partly to be blamed for leaving an inexperienced doctor unsupervised.

DISCRIMINATION IN THE WORKPLACE

CEDAW⁸ defines the term "discrimination against women" to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field⁹.

Discrimination in the workplace generally occurs when an employee is intentionally treated differently because of his or her race, color, religion, national origin, disability, gender, sexual orientation or age by the employer or co-employees during the phases of hiring, discipline, performance appraisal or termination of appointment¹⁰.

The paucity of female employees in leadership positions is very glaring at both the international and national levels. When compared to their proportion in the labor force. Arguments proffered to explain this trend range from lack of interest on women's part to incompetence. This pattern of employment can be ascribed to the type of education given to women and it is also a reflection of the facilities made available for their education by the government that has always been male-dominated especially when it comes to decision-making¹¹.

One of the most formidable problems female employees have in Nigeria is their acceptability in their chosen professions due to the gender stereotype which brands some jobs as male jobs. Any female in such jobs is seen as one trying to close rank with or wanting to be equal to men. This results in some of the duties which they should undertake been taken away from them under the assumption that women are the weaker sex¹².

Another challenge faced by female employees is the stereotyped perception of their employers as regards their ability, stability on and commitment to their jobs. Due to family responsibilities which married women shoulder, it is widely held by most employers that they lack commitment and are less productive when compared with their male counterparts. Female employees are perceived to absent themselves from official work often due to domestic duties, marriage, and childbirth. Due to these, most employers are reluctant to employ, train or promote women. Nevertheless, the extent to which this view about female employees can be true remains contestable because some married women are known to have occupied and are still occupying and thriving in

¹ *Banmeke v Union Bank of Nigeria Ltd* (1982) 3 F.N.R. 151., and *Imarsel Chemical Co. Ltd. v National Bank of Nigeria Ltd* (1974) 4 E.C.S.L.R. 355.

² (1965) 1 All N.L.R., 244.

³ An indemnity is the claim for a total loss and can succeed only where the servant is solely to blame. See further Akintunde Emiola, *Nigerian Labour Law*, fourth edition. Emiola (Publishers) Limited, Ogbomoso. 2008. p. 92

⁴ [1957]A.C. 555; [1957] 1 All E.R.125; this decision was followed by *Vandyke v Fender* (1970) 2 All E.R. 355, C.A.

⁵ *Jarmakani Transport Ltd. v Abeke* (1963) 1 All N.L.R. 180.

⁶ Akintunde Emiola, *Nigerian Labour Law*, fourth edition. Emiola (Publishers) Limited, Ogbomoso. 2008 p. 93

⁷ [1952] 2All E.R. 125

⁸ Convention on the Elimination of All Forms of Discrimination Against Women

⁹ Article 1, Convention on the Elimination of All Forms of Discrimination against Women adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981

¹⁰ Oluwakemi, Owoyemi and Olasumbo, Olusanya, Gender: A Precursor for Discriminating Against Women in Paid Employment in Nigeria, *American Journal of Business and Management*. Vol.3 No. 1, 2014. Pp. 10-14 Retrieved from <http://www.worldscholar.org> on the 23rd of May, 2015.

¹¹ Ifeanyi P. Onyeonoru, Ifeanyi P. Onyeonoru, *Industrial Sociology An African Perspective*, Samlad. Ibadan. 2001.p88.

¹² Ngozi M. Nwakeze, *Gender and Labour Force Participation in Nigeria: Issues and Prospects* http://academicexcellencesociety.com/gender%C2%AD_and_labour_force_participation_in_nigeria_issues_and_prospects.html Retrieved on the 10th of July 2015.

positions of great importance in the corporate world.

In some instances, female employees are subject to some sort of discrimination in wage and tax policies. Usually, married working women pay more taxes than their married male colleagues. The reason being that there is some part of the male's income which is tax-free because of the assumption that men are the breadwinners and take care of their wives' and children's needs. This practice, however, glosses over the fact that there are some women breadwinners who also take care of their husbands. This applies to other benefits. For example, while medical facilities cover a male worker, his spouse and children in the case of a female worker it covers only herself and her children, excluding her spouse. Anecdotal evidence has shown, in recent time, that women, no matter their marital status, contribute substantially to family income and support their husbands and or parents thereby contributing to the economic strength of the family¹.

Also, at the workplace, some female employees are times made to take tasks which serve men's interest and thus reinforcing the gender role which starts from the home. In essence, since the female employee has to depend on her boss who pays her, her roles are those given to her by her male boss and not necessarily the ones for which she is qualified and or has interest on. After the completion of the task assigned, they have to get approval from their male supervisor or boss. The male domination of the female which is observed in the workplace is a mirror image of what obtains in the home.

To a great extent the challenges that a female employee experience at work depends on the type of supervisor or boss she has and also how ambitious she is. Some supervisors are known to give some female employees preferential treatment while they assign to other women difficult tasks to perform. In assigning tasks, time, these women who are seen as being friendly with their boss are favored while those who have a less friendly disposition are discriminated against. Female employees who are ambitious but with fewer credentials to match their ambition have to play along with their boss or forget about their desire to move up the ladder. This is where the importance of self-development as an employee comes to play. A female employee who has over the years developed herself should be given a fair chance to advance in her chosen field of employment.²

It is not without doubts that few female employees may sometimes exhibit poor work attitude and low aspiration to develop themselves for advancement. Such employees hide under the excuses of sexual gratification as a means of getting promoted to escape being blamed for their lack of advancement in their workplace. Once this notion is internalized, female employees begin to undervalue and underutilize their capability. They become complacent and exhibit nonchalant attitudes towards their jobs and some may take up gossiping as their stock in trade or part-time business. This leads to such women losing the necessary competence and credibility needed for their advancement. The male counterpart critics often capitalize on this to discredit hard working and serious-minded female colleagues.

Female employees who have high ambition and are prepared to work hard are also criticized by male rivals or bosses, sometimes making their duties unnecessarily difficult to perform. They also peddle malicious rumors and propaganda about such hardworking and determined female employees. It is not unusual to hear such comments as "*if you cannot stand the heat, you get out of the kitchen*"³. This mantra illustrates the means by which male employers and employees alike can seek to use sexuality as a means of enhancing or sustaining their power and status within organizations.

The challenges faced by female employees working in Nigeria could be to a great extent due to the stereotypes in the workplace dominated by men and to a lesser extent attributed to the attitudes of the female employees themselves. These problems could arise, as earlier noted, due to an inadequate level of education particularly as regards expertise and training in science and technology, role incompatibility especially of reproductive and productive roles, male dominance and sexuality at workplace, limited access to appropriate technology, problems inherent in the women themselves⁴.

Women have been subjects of discrimination globally since the Industrial Revolution. This trend is now been changed in industrialized countries and this has brought a challenge to developing countries to take similar

¹ Ngozi M. Nwakeze, *Gender and Labour Force Participation in Nigeria: Issues and Prospects* http://academicexcellencesociety.com/gender%C2%AD_and_labour_force_participation_in_nigeria_issues_and_prospects.html Retrieved on the 10th of July 2015.

² Ngozi M. Nwakeze, *Gender and Labour Force Participation in Nigeria: Issues and Prospects* http://academicexcellencesociety.com/gender%C2%AD_and_labour_force_participation_in_nigeria_issues_and_prospects.html Retrieved on the 10th of July 2015.

³ Collinson D.L & Collinson M., "Sexuality in the Workplace: The Domination of Men's Sexuality" in Hearn, Jeff et al (eds.), *The Sexuality of Organization*, Sage Publications Ltd, London. 1989. See further, Ngozi M. Nwakeze, *Gender and Labour Force Participation in Nigeria: Issues and Prospects* http://academicexcellencesociety.com/gender%C2%AD_and_labour_force_participation_in_nigeria_issues_and_prospects.html Retrieved on the 10th of July 2015.

⁴ Ngozi M. Nwakeze, *Gender and Labour Force Participation in Nigeria: Issues and Prospects* http://academicexcellencesociety.com/gender%C2%AD_and_labour_force_participation_in_nigeria_issues_and_prospects.html Retrieved on the 10th of July 2015.

measures to combat discrimination in all its forms¹. In Nigeria, the labor laws forbid discrimination in a number of work-related areas, ranging from the point of recruiting, hiring, job evaluations, promotion policies, training, compensation to disciplinary action. Also, treating a person differently from others violates Equal Employment Opportunity (EEO) laws advocated by most countries². This unfair treatment is also against the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)³ as well as Article 18(3) of the African Charter on Human and People Right. Discrimination, as regards employment matters, is equally prohibited at the domestic level by sections 17 and 42 of the Nigerian constitution⁴.

The United States of America made the first move to introduce anti-discrimination legislation when it passed a Civil Rights Act in 1964 which prohibited all forms of discriminatory practices in the workplace. The women's bureau office of the country which is responsible for matters that pertain to women's welfare guarantees suitable training for a sufficient number of women to restore the balance once an occupation is considered to be stereotyped. In addition, the Department of Labour has taken various steps to increase the number of women skilled blue-collar jobs from which they are conventionally excluded. For instance, regulations came into effect for the purpose of granting equal opportunity to women in the construction industry.

When it comes to career development, Female employees have to put up with discriminatory factors in their career development. Although the environment of the organization affects the working capacity of both male and female employees female employees are more affected by organizational environment. Due to gender schemas and stereotypic behavior of the people, the female employees are discriminated in various areas of the private and public sectors. The additional discriminatory factor in job attainment and career development of the female employees is that they are considered to have fewer leadership abilities when compared to their male counterparts as there is the prevalent perception that if the women tried to exercise their leadership qualities then they have to work hard as compared to their male counterparts. Other factors that affect the career development of female employees are their domestic responsibilities, rigidity in career structures and discrimination in job attainment⁶.

Female employees time also have to contend with job segregation and assorted titles due to gender discrimination. Male and female employees are segregated on the basis of job titles in labor force settings. Socially, the female employees are most preferred to occupy the positions in a narrow range of jobs that may not be related to some managerial position and in so many instances the skills of female employees in most of the managerial jobs are not at all represented. Usually, the female employees are given low-level managerial jobs that have low turnover rate when they are given the opportunity to manage. Gender discrimination does not exclude the perceived differences between the abilities of the men and women for any particular managerial job. Organizations themselves cause differences in employment and reward practices between male and female employees. Despite this work distribution, career opportunities, workforce participation, recruitment process and occupational luxuries are the major areas in which the female employees are discriminated against most especially in the private sector organizations⁷.

Another major area of discrimination is in the area of wages among the various employees in the labor market as male employees are occasionally paid higher when compared to women. This is the obvious experience in various private organizations that undergo the gender segregation in the wage distribution. This is however different in the public sector, where there is a regulated salary scale for civil servants. This difference in wage payment in the private sector becomes the major factor for some females employees to shift towards the public sector jobs⁸.

¹ Benedicta Daudu, Gender Discrimination in Employment: An Appraisal in *NJLIR* Vol.1 No.2 (2007) Law Labour Review, Hybrid Consult.p.43

² Oluwakemi, Owoyemi and Olasumbo, Olusanya, Gender: A Precursor for Discriminating Against Women in Paid Employment in Nigeria, *American Journal of Business and Management*. Vol.3 No. 1, 2014. Pp. 10-14 Retrieved from <http://www.worldscholar.org> on the 23rd of May, 2015.

³ Article 11

⁴ 1999 Constitution of the Federal Republic of Nigeria (as amended). See further 'Jade Mohammed, Gender Concerns in Employment Relations: Law and Practice in 'Jade Mohammed and Adeniyi Olatunbosun(eds), *New Trends in Business and Industrial Law and Practice, a book in honour of Professor Akintude Emiola*, Esteem Books and Publishers, Ibadan. 2007.p.26.

⁵ Benedicta Daudu, Gender Discrimination in Employment: An Appraisal in *NJLIR* Vol.1 No.2 (2007) Law Labour Review, Hybrid Consult.p.53.

⁶ Tehmina Sattar, Mehwish Imtiaz and Mohammad Qasim, Gender Biased Discriminatory Factors Affecting the 'Carrier' Progression of Female Employees in Private Organizations of Multan City (Pakistan) in *Journal of Economics and Sustainable Development* Vol.4, No.3, 2013.pp.273-294 at p.283. See further www.iiste.org. Retrieved on the 20th of July, 2015.

⁷ Tehmina Sattar, Mehwish Imtiaz and Mohammad Qasim, Gender Biased Discriminatory Factors Affecting the 'Carrier' Progression of Female Employees in Private Organizations of Multan City (Pakistan) in *Journal of Economics and Sustainable Development* Vol.4, No.3, 2013.pp.273-294 at p.283. See further www.iiste.org. Retrieved on the 20th of July, 2015.

⁸ Tehmina Sattar, Mehwish Imtiaz and Mohammad Qasim, Gender Biased Discriminatory Factors Affecting the 'Carrier' Progression of Female Employees in Private Organizations of Multan City (Pakistan) in *Journal of Economics and Sustainable Development* Vol.4, No.3, 2013.pp.273-294 at p.283. See further www.iiste.org. Retrieved on the 20th of July, 2015.

FORMS OF DISCRIMINATION

Discrimination in the workplace can come in the forms of Direct Gender Discrimination and Indirect Gender Discrimination as discussed below:

Direct Gender discrimination

This comes to play when employees are undoubtedly treated differently at work and it includes acts like the difference in salary based on gender. For instance, when men and women are doing the same job, but get promoted at different times¹. The act of discrimination must have been committed with a discriminatory motive and motive can be inferred from conduct. For instance, an employer who on a series of occasions employs men only from a pool of applicants of both genders. The act must be directed against an individual and the gender of the victim must be shown to be the reason for such act of discrimination. An employer must treat every job applicant on his or her merit and not stereotype members of the female gender as not been capable of performing the duties his services entail. This, unfortunately, is what obtains in law firms were so many principals of law offices would rather employ male lawyers than female as they regard female lawyers not to have the ability to face the rigors the work entails which is a fallacy, a false generalization. Each employee should be given a chance to prove that he or she is worth his/her salt. However, in a situation where an employer's business involves heavy manual labor, he is not required to provide less physically demanding work for his employees so that women will have greater opportunities to work for him. For instance, if he operates his business using earth moving machines which if a woman is employed to operate will surely hamper her health due to her physiological framework.²

Indirect Gender discrimination

This occurs when certain labor laws favor a gender over the other, thereby people of certain sex cannot qualify under those laws. There is indirect discrimination in a situation where a requirement or condition is applied with which a considerably smaller proportion of members of a particular gender, when compared to the other gender, can comply, and an instance such requirement or condition is not justifiable irrespective of sex and the person to whom it is applied thereby suffers a detriment³. The disparity in the payment of remuneration based on employees gender, which makes female employees be at the receiving end of such an act of unequal pay is an example.

PARTICULAR SITUATIONS OF DISCRIMINATION

In the workplace, there are some acts that are done that may not be in favor of female employees that can be termed discriminatory especially when it is related to their gender. Such instances may include:

Occupational Segregation

Occupational segregation has to do with the classification and stereotyping of certain occupations by gender. For instance, women are considered to belong to certain types of jobs.

Its patterns manifest in the fact that female managers tend to be concentrated in certain sectors. For instance, most female managers in the UK are found in retail distribution, followed by hotel and catering services, banking and finance, medicine and health in a descending order. Occupational Segregation has led to the concept of "glass ceiling" and "glass wall". The former refers to blockades against female employees in upward occupational mobility, while the latter denotes barriers segregating women into specific sectors of the economy⁴. The ratio participation of female to males employees in key technology-driven sectors like crude oil and extractives, industry, manufacture of machines and equipment, manufacture of chemicals and allied products reflect a gender differential in favor of male employees. There seems to be an increasing feminization of the health sector, the trade sector, and the financial sector. There is a high proportion of women in Justice, health and social services and education and youth development. It has also been noted that it is only in ministries that women will be found in a large number of cadres of higher administrative and professional cadres⁵.

Historically, occupational segregation of men and women has been attributed to two realities. The functional realities in the workplace which involves long hours of work, taxing work environment heavy work and the role differentiation between male and female genders which imposed on men the responsibility to work in mines, in transportation and construction in order to provide for their families while women worked at home, gave birth and raised children. These realities have changed significantly over the past few decades. As regards functional reality, a small proportion of the labor force is now engaged in work involving long hours of work in

¹ Oluwakemi, Owoyemi and Olusumbo, Olusanya, Gender: A Precursor for Discriminating Against Women in Paid Employment in Nigeria, *American Journal of Business and Management*. Vol.3 No. 1, 2014. Pp. 10-14 at p. 10. Retrieved from <http://www.worldscholar.org> on the 23rd of May, 2015

² The Sex Discrimination Act 1975 and The Race Relations Bill 1976, UK.

³ The Sex Discrimination Act 1975, UK

⁴ Ifeanyi P. Onyeonuru, *Industrial Sociology An African Perspective*, Samed. Ibadan. 2001.pp.86-87.

⁵ Bola Akanji, *Women's work in a Developing World: Implications for the Trade Union Movement*, a proceedings of the 12th Annual Kolagbodi Memorial Lecture, Kolagbodi Memorial Foundation in Collaboration with Friedrich Ebert Stiftung. Lagos. 2008. pp. 20-21.

the mines, construction, transportation and manufacturing processes. Most of the jobs termed traditionally male jobs are now been ventured into by women with equal and in some situation perhaps greater efficiency and effectiveness. The barrier to women working wherever they wish is no longer related to functional reality, it will now be rather in customs, legal and institutional regulations and practices, and in the perceived threat that women of superior intellect present to men of average abilities occupying positions of responsibility.

The increasing rate of participation by women in occupations they were excluded from in the past is the first phase of desegregation. However, it is the recognition and acceptance of substitutability between men and women will not occur until women are given adequate chance to demonstrate the range of activities in their chosen occupations.

The hidden and significant factors that dictate discriminatory choices are found on both the sides of supply and demand. On the side of supply, females are expected to enter occupations generally recognized as appropriate for women and on the demand side, employers are to assign duties deemed appropriate for women. The general social acceptance of discriminatory choices and practices tends to legitimise discrimination over time¹. A good instance is the provision of the Labour Act prohibiting women from doing certain works such as working in mines, night jobs with some exceptions. The fact that there are exceptions to this provision shows that the draftsmen of the Act know that women are capable of doing them. Women should not be prohibited from doing certain jobs, rather protective equipment and safe working place and plant should be provided for them. They can, however, be exempted when they are in pregnancy as the work the duties they can perform at that point in time will be limited.

Sexual Harassment

Sexual harassment became recognized as a form of sex discrimination under the 1975 United Kingdom Act with it first coming before the court in 1983.

Sadly, Sexual harassment and refusal by the woman to whom it is directed to cooperate or accede to such unwanted and illicit sexual advances could lead to the termination of employment of the woman by the disappointed or frustrated boss. A woman subjected to such harassment at work could also become depressed, unstable and have her confidence eroded.²

Protection against sexual harassment is accorded to many countries under the constitution, labor law, penal codes and/ or specific legislation. Sexual harassment which is a potential threat both to employees and to the enterprise calls into question their individual integrity and their well-being. It is also seen as contrary to the objectives of the employer since it weakens the basis upon which industrial relations are built, and might have a negative effect on productivity. The role of trade unions and employers in creating a healthy and friendly environment for the dignity of female employees cannot be underscored³.

There are two types of sexual harassment. The first is "quid pro quo." In its most basic form, the "quid pro quo" type of sexual harassment involves an employer asking an employee or a job applicant for a sexual favor in return for employment or some job benefit.

The second category involves a "hostile work environment." In contrast to "quid pro quo," this type of claim which is more difficult to define occurs more frequently. Many people may not even realize that they have been a victim of this type of harassment, or even that they may have been a harasser. Characteristically, a hostile work environment involves a supervisor, co-worker or customer making unwelcome sexual comments or remarks, or suggestively in an unwelcome manner touching or acting in a sexually inappropriate way toward an employee⁴.

In Nigeria, it is a common practice to find sexual attraction forming the basis for employment of women in some sector of the economy and not competence or merit. This may be found in occupations as cashiers, receptionists, marketers, and etcetera. Some advertisements targeted at women in the print media usually lay undue emphasis on physical appearance as a requirement for placement in some positions. For instance, a married woman cannot be enlisted in the police force while a female police officer who desires to marry must first apply in writing for permission to marry and giving the name, address, and occupation of her spouse to be⁵.

In the USA, sexual harassment lawsuit is one of the biggest issues facing employers. The Civil Rights Act of 1991 provides that employees who believe they were victims of job discrimination due to race, religion, sex or disability are entitled to a trial by jury. While companies with fewer than 15 employees in the country are generally exempt from federal discrimination laws, most states have their own laws prohibiting discrimination,

¹ Stephen G. Peitchins, *Women at work: Discrimination and Response*, McClelland & Stewart Inc., The Canadian Publishers, Toronto Ontario. 1989, pp.21-22.

² Oladosu Ogunniyi, *Nigerian Labour and Employment Law in Perspective*, 2nd Edition. Folio Publishers Limited, Lagos State p.501

³ International Labour Organization, *ABC of Women Workers' Rights and Gender Equality*, International Labour Office, Geneva. 2000. p.92-93.

⁴ Discrimination and Sexual Harassment Policies, <http://www.entrepreneur.com/article/80140>. Retrieved on the 10th of July, 2015

⁵ Regulations 122 & 123 of the Nigerian Police Force. This is contrary to Article 11(1)(a) of CEDAW.

which, in addition to protecting a wider range of categories of employees, include smaller businesses within their scope and procedural and evidentiary standards more favorable to claimants. Apart from the tendency of some juries to award plaintiffs disproportionately high monetary damages, litigation in this area of the law can be extremely costly, even if you prevail. The average legal fee for defense in a sexual harassment suit, regardless of the verdict, has been estimated to be about \$75,000¹. This kind of punitive payment should be able to deter others from getting themselves involved in any sexual harassment mess.

Sexual Victimization

Victimization is a situation whereby a person subjects or threatens to subject another person to a detrimental treatment which can include humiliation and disparaging comments about the person because such other person has made a complaint or been involved in a complaint of discrimination or harassment. Victimization also covers unfavorable treatment based on the belief that a person intends to make or be involved in making a complaint of discrimination or harassment against the perpetrator of such act. Victimization can include physical, visual, verbal and non-verbal behavior. An Instance of victimization includes behavior such as humiliating a staff member in a meeting because they gave evidence in support of a colleague's complaint of sexual harassment. In essence, Sexual Victimization is an after effect of Sexual Harassment.

A person may be found liable for sexual victimization even though the original allegation of sexual harassment is not proven. For example, even if an original complaint of sexual harassment is not substantiated, it may constitute victimization for a manager to give a staff member a poor performance review because that staff member had made a complaint against the manager².

Victimization also covers unfair treatment of a person because of their association with someone who has made a complaint. Students and staff may raise concerns about victimization in the same way as they would for discrimination or harassment. A female employee can be sexually victimized by her employer or superior in the workplace if she refuses to succumb to such person's sexual advances. She could be denied promotion as at when due, could be transferred to an unfavourable work environment probably detrimental to her well-being³, could be assigned duties that seem cumbersome, she could face criticisms on a job considered not well done, disparaging comments could be made about her, she could face strong antagonism on whatever move she decides to take. Sexual victimization could be overwhelming for a female employee who is at the receiving end of such unfair and inhumane treatment. If she is unable to stand the heat of such treatment, she either succumbs to the sexual harassment of the perpetrator of such an hideous act or further go-ahead to report such persons to the appropriate quarters where she thinks she can get a cover against such unsettling acts or all the same quit such the job when she deduces that there is no protection or justice for her insight. This last option which is referred to as constructive dismissal is what most female employees subscribe to thereby encouraging perpetrators of such acts to move on to other female employee victims since they always having the feeling that they can get away without retribution from such attitudes. Female employees in Nigeria seem to be regular victims of sexual victimization in the workplace. Labour wage paying providers should have policies against sexual victimization put in place and duly enforced to protect both their female and male employees because any employee of either gender can be a victim of sexual victimization.

EFFECTS OF DISCRIMINATION ON WOMEN

Discrimination in the workplace is not only harmful to the professional growth of an employee but also limits the growth of a business organization. It can reflect negatively on the organization's performance, especially when those that can contribute to the development of the organization have been discriminated against and are not given the opportunity to work for the organization. It can also compromise the quality of workforce by creating an unhealthy work environment that is not conducive to employees' performance. Discrimination can result in poor retention of female and male employees at work. Another effect it has is that it leads to the negative public image of the country, government, and the employers⁴.

Women can do amazing things if they are given the chance to prove themselves, but in a situation where they are being harassed sexually and victimised if they refuse to succumb, they will not be able to explore their potential. Such organizations as a whole will suffer. In some instances, it is possible that there are no proper channels for these women to report these cases, due to the kind of corrupt system been operated. These women will live with the victimization and instead of fighting and defending their honor, they become cowards.

¹ Discrimination and Sexual Harassment Policies, <http://www.entrepreneur.com/article/80140>. Retrieved on the 10th of July, 2015

² Monash University, *Discrimination, Harassment and Victimization*, <http://www.adm.monash.edu.au/workplace-policy/staff-wellbeing/discriminationharassment/discrimination-harassment-vilification.html> Retrieved on the 14th of July, 2015.

³ For instance, such a female employee could be transferred to a dust prone work environment notwithstanding the fact that her employer or superior had foreknowledge that she is asthmatic or allergic to dust.

⁴ Oluwakemi, Owoyemi and Olasumbo, Olusanya, Gender: A Precursor for Discriminating Against Women in Paid Employment in Nigeria, *American Journal of Business and Management*. Vol.3 No. 1, 2014. Pp. 10-14 Retrieved from <http://www.worldscholar.org> on the 23rd of May, 2015.

Workplace harassment has become one of the most sensitive areas of effective workplace management.

Some developing countries, which does not exclude Nigeria, are far behind other countries in that there are limited efforts to investigate the cases of workplace harassment. It is always denied to be almost unseen and the managers are almost reluctant or unconscious about it.

Under occupational health and safety laws around the world, workplace harassment and workplace bullying are identified as being core psychosocial hazards. Psychologists have stated depression and work stress are often some of the by-products of sexual harassment and any female employee sexually harassed needs counseling which is considered compulsory. It is sickening and highly unfair that a female employee gets a job which she has a passion for, but instead of enjoying it, she gets harassed. The long-term effect of this is that sexual harassment leads to depression, which leads to low productivity.

CONCLUSION

Although women form a substantial proportion of the world population, forming about 40% of the Nigeria population, been about 80.2 million out of over 162 million citizens of the country¹, yet they are far from enjoying equal rights with their male counterpart as women have been subjects of discrimination throughout the world since the industrial revolution. In almost all societies and areas of activity, women are subject to inequalities in law and in fact.² Despite all the initiatives targeted at eradicating the discrimination of women in paid employment, evidence still shows that the theoretical commitments and acknowledgment of women's crucial roles remain violated and perniciously undermined. The pronged governance process in Nigeria has created a fecund ground for gender inequality. Being the most populous nation in Africa, Nigeria has witnessed a lot of contradictions and inconsistencies, erroneous practices brought about by the application of Nigeria's three legal systems, namely, Islamic/Sharia law, Customary law and Common law, in its six geopolitical zones. Unfortunately, these inconsistencies have led to negative affectivity of women, thereby marginalizing women's participation in economic activities.³

In the interest of fairness and safeguarding the place of a female employee in the workplace, the individual employee should enjoy individual right attached to the work regardless of being a man, a woman or married or not. The law recognizes the duties and role of women in every organization and therefore expect the organisation to treat all their employees irrespective of their gender equally.⁴

¹ A Gender in Nigeria report, *Improving the Lives of Girls and women in Nigeria*, British Council Nigeria 2012.p.14

² Benedicta Daudu, Gender Discrimination in Employment: An Appraisal in *NJLIR* Vol.1 No.2 (2007)Law Labour Review, Hybrid Consult.pp.43-55

³ Idyorough, A.E. *Gender: concepts and issues in Nigeria*, Aboki Publishers.Makurdi.2005.p.49

⁴ Jade Mohammed, Gender Concerns in Employment Relations: Law and Practice in 'Jade Mohammed and Adeniyi Olatunbosun (eds),*New Trends in Business and Industrial Law and Practice, a book in honour of Professor Akintude Emiola*, Esteem Books and Publishers, Ibadan. 2007.p.28