

# LIABILITY FOR WORKPLACE INDUCED STRESS UNDER NIGERIAN LAW\*\*

## *Abstract*

*This paper looks into the mental health of an average Nigerian employee by appraising the stress they are usually exposed to as a result of their work. It discusses the importance of creating a workplace that will foster the mental wellbeing of employees either through stress management or availability of avenues for redress or adequate compensation when mental impairment is caused by work. The paper adopts doctrinal method for the study which reveals that workplace induced stress is capable of affecting work profitability, productivity and output. The research also finds that where employers do not take care of the welfare of their employees, they can be liable under the law. It opines that an improvement in mental health resources especially at work will go a long way towards improving global economy and concludes that when employee centered programs are promoted, mental health is mainstreamed into health insurance policies, among other suggested recommendations, recurring negative issues of mental breakdown due to work induced stress will be laid to rest.*

**KEYWORDS:** Employee, Employer, Mental Health, Stress, Workplace

## **I. Introduction:**

It is often said that ‘Health is wealth,’ and ‘there is no health without mental health.’<sup>1</sup> To be healthy is to be sound or whole in body, mind, or soul.<sup>2</sup> Good health is considered to be an individual’s most basic and essential asset<sup>3</sup> The World Health Organization (WHO) defines health as a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.<sup>4</sup> On a related note, mental health is a state of wellbeing where an individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully and is able to contribute to his or her own community.<sup>5</sup> Where an employee is stressed at work, such person is not in control of his or her mental faculties and unable to think or act logically because there is a

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<sup>1</sup>\*\*Itunu KOLADE-FASEYI LLB (Okada), BL, LLM (Ibadan), College of Law, Achievers University, Owo, Nigeria. Email address: [itmowo@gmail.com](mailto:itmowo@gmail.com) or [itunukoladefaseyi@achievers.edu.ng](mailto:itunukoladefaseyi@achievers.edu.ng)

D, Satcher, ‘Release of the Mental Health Report’ <<http://www.surgeongeneral.gov/about/previous/satcher/speeches/mentalhealth.html>> accessed 15 March 2020

<sup>2</sup>B.A, Garner, (ed), *Black’s Law Dictionary* (9<sup>th</sup>edn, West Publishing Company, 2009) 787.

<sup>3</sup> E.O.C. Obidimma, and A.E. Obidimma, ‘A Right to Health: A Review of Existing Provisions under Nigerian Law in M.O. Izunwa, and D.R. Izunwa (eds), *Law and Ethics of Healthcare* (2016) (4) *Nnewi Diocesan Archival Series*, 187.

<sup>4</sup>World Health Organization, *Constitution of WHO: Principles* <<https://www.who.int/about/mission/en>> accessed 10 January 2020.

<sup>5</sup>S. Lal, and others, ‘Meanings of Well Being From the Perspectives of Youth Recently Diagnosed With Psychosis’ (2014) 23 (1) *Journal of Mental Health*, 25.

disorder in thought or mood so substantial that it impairs their judgment, behavior, perceptions of reality or ability to cope with the ordinary demands of life.

Mental Health issues know no geographical or sociological boundaries.<sup>6</sup> Cases of mental and behavioural disorders are no respecter of persons, age or race, they exist everywhere; in schools, religious or social gatherings, even at workplace(s).<sup>7</sup> These disorders can come in the form of depression, anxiety disorder, work lethargy, obsessive-compulsive disorder (OCD), mania, schizophrenia or other forms of psychosis disorders. Where these are not prevented or well managed at the workplace, the employers will bear the brunt of such mismanagement. It therefore behoves on such employers of labour to devote a significant amount of their resources to the welfare of their employees as failure to do this could lead to being liable under the relevant laws.

To properly discuss the issues under review, the paper is divided into six (6) parts. Part I introduces the paper while Part II discusses mental health situations in Nigeria. Workplace and the Law is the focus of chapter III. While Part IV discusses the impediments to workplace mental health in Nigeria, part V and VI are dedicated to recommendations and concluding remarks respectively.

## **II. Mental Health Situation in Nigeria**

Mental health is a formidable public health challenge with a 20% prevalence reported in Nigeria.<sup>8</sup> Because mental illnesses are increasingly recognized as a leading cause of disability worldwide, efforts are geared towards improving the mental health sector by providing institutional and legal framework. This situation is not peculiar to Nigeria alone as the World Health Organization (WHO)'s statistics show that an estimated 50% of African countries have mental health policies, while about 79.5% (compared with 91.8% in Europe) have mental health legislation. Of the countries with legislations, only about 30% of these laws were enacted after 1990, with so many

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<sup>6</sup>A. Westbrook, 'Mental Health Legislation and Involuntary Commitment in Nigeria: A Call for Reform' [2011] (10) (2) *Washington University Global Studies Law Review*, 397.

<sup>7</sup> A 'workplace' includes any premises or place where a person performs work or needs to be or is required to be in the course of employment. See Section 73 Employees Compensation Act, 2010.

<sup>8</sup>*Mental Health Situation Analysis in Nigeria* (Mental Health Leadership and Advocacy Programme, College of Medicine University of Ibadan, 2012) 4.

<[https://www.mhlap.org/jdownloads/mhlap%25202012/mental\\_health\\_situation\\_analysis\\_in\\_nigeria.doc](https://www.mhlap.org/jdownloads/mhlap%25202012/mental_health_situation_analysis_in_nigeria.doc)> accessed 15 March 2020.

others dating back to the colonial era.<sup>9</sup> Unfortunately, Nigeria falls among these categories of countries with colonial and antiquated mental health legislation. In addition, this writer notes with respect that the position of a typical Nigerian employee who becomes depressed or mentally ill due to work stress is not adequately secured under the law as no mention of depression or work induced stress is alluded to in the nation's foremost mental health law<sup>10</sup> or labour law. Where provisions are made, they only fleetingly address mental stress and generally appear inadequate when compared with other occupational disabilities and injuries.<sup>11</sup> Because of these and other identifiable lapses, agitation for enactment of newer and progressive laws and a review of existing laws became a priority.

The existence of a contract of employment (whether express or implied) is a pointer to the fact that an employer owes an employee certain duties. These duties may be expressly stated in the contract of employment or implied by the parties. An employer has the implied duty of encouraging or supporting within reasonable limits, the psychological and physical health of the employee. Where he slacks in this duty, he may be branded as not being 'employee-friendly' and risk law suits filed against him. Though estimates of the true prevalence of mental health issues in the Nigerian workplace are not readily accessible, available reports suggest that between 10-20% of employees suffer from some form of common mental health problems which are mostly induced by the stress at their workplace.<sup>12</sup> These problems are caused by or manifested in the form of high workload, unreasonable bosses or supervisors, excessive targets, low remuneration, exploitative working conditions. There are occasions where the employee is laid off without compensation despite the fact that his predicament was caused or aggravated by workplace stress.

The contemporary challenge is the low priority given to mental health at workplaces in particular and in Nigeria as a whole. It is on record that the total sum allocated to health in the Nigerian 2021

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<sup>9</sup>A. Ogunlesi, and A. Ogunwale, 'Mental Health Legislation in Nigeria: Current Leanings and Future Yearnings' [2012] (9) (3) *International Psychiatry*, 63.

<sup>10</sup> The extant law regulating Mental Health issues in Nigeria is the 1958 *Lunacy Act*. The Act was originally enacted as a colonial legislation called *Lunacy Ordinance* of 1916.

<sup>11</sup> For example, only section 8 of Employees Compensation Act, 2010 make specific provision for mental stress.

<sup>12</sup>O. Atilola, and B. Atilola 'Compensation for Mental Stress under the New Employees' Compensation Act (2010): Implications for Human Resource Management' in B. Atilola, (ed), *Themes on the New Employees' Compensation Act* (Hybrid Consults, 2013) 201.

Budget of Economic Recovery and Resilience is less than 5% of the total budget size.<sup>13</sup> This is a far cry from the 15% target recommended by the Abuja Declaration.<sup>14</sup> The amount which will eventually get to the mental health sector can best be imagined,<sup>15</sup> especially in a country where such are not regarded as high priority needs. The resultant effect of this is that adequate attention is not given to the sector to keep it functional and impactful. Many sufferers do not speak out when the early tell tale signs of mental ill health or stress are noticed and many go without professional help but prefers to visit traditional and spiritual healers, seeking orthodox treatment only as a last resort when their condition might have deteriorated.<sup>16</sup> The situation is not any better in the corporate setting, where employees find themselves in a work environment where the employers are nonchalant about their mental wellbeing and/or do not actively champion mental wellbeing of employees. Such employee may be labeled in the workplace as being lazy, not proactive or lacking commitment to work.

Although mental health statistics are alarming and keep increasing by the day, in Nigeria, discourse on mental health is usually avoided like a plague. At workplace they are compounded by unhealthy work environment and stressors like unreasonable workload, unattainable targets are liable to push the numbers dangerously higher. Tackling work induced stress is therefore of utmost importance because of its consequence of increased productivity and improved retention.

### III. Workplace and The Law

Employment is a contractual relationship which arises out of an agreement in which one person offers his services or labour to another in return for payment. A contract of employment possesses the basic ingredients of any kind of contract and it is usually enforceable in court. However, a contract of employment may give rise to a number of relationships with different legal consequences. As a matter of fact, the common law implies certain duties and rights in the relation

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<sup>13</sup>See 2021 Budget of Economic Recovery and Resilience <[www.budgetoffice.gov.ng/index.php/2021-budget-of-economic-recovery-and-resilience](http://www.budgetoffice.gov.ng/index.php/2021-budget-of-economic-recovery-and-resilience)> accessed 25 April, 2021.

<sup>14</sup> African Union Countries met in 2001 at Abuja, Nigeria where they committed themselves to targeting at least 15% of their yearly national budget to the improvement of the health sector. See Article 26, Abuja Declaration <<https://au.int/sites/default/files/pages/32894-file-2001-abuja-declaration.pdf>> accessed 29 April, 2021.

<sup>15</sup>J. Abdulmalik, L. Kola, and O. Gureje 'Mental Health System Governance in Nigeria: Challenges, Opportunities and Strategies for Improvement' [2016] (3) *Global Mental Health*; 25 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5314752/>> accessed 10 January 2020.

<sup>16</sup>*Mental Health Situation Analysis in Nigeria*. (n 8).

of employer and employee. It is worthy of note that the Employees Compensation Act<sup>17</sup> uses the term ‘employee’ both in its title, definition section and body of the Act instead of the term ‘workman’ which was adopted in the title, and body of the repealed Workmen’s Compensation Act<sup>18</sup> while the Labour Act<sup>19</sup> defined an employer and a worker. An employer can therefore be described as a person who controls and directs a worker under an express or implied contract of employment and who pays the worker’s salary and wages while an employee is a worker who is hired to perform a job, who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.<sup>20</sup> An employee need not prove his employment by a written employment letter to maintain a claim against an employer<sup>21</sup> as contract of employment could be properly inferred from parties’ conduct.

One of the essential duties of the employer to the employee is the duty to take reasonable care for the safety of employees in the course of their employment. This duty traverses whether the employee is a casual or a full time worker and extends to safe conduct of work or safe workplace.<sup>22</sup> A workplace could be described as a place of employment, a location where work or assigned tasks are carried out. With the definition given in section 73 of the Employees Compensation Act,<sup>23</sup> it can be deduced that workplaces are not limited to ‘formal or physical’ offices but extends to ‘virtual’ offices or wherever work is performed in as much as that ‘work’ is connected to the employment. An employer who fails to take steps for the safety of his employee may be liable in damages to such employee who can prove to the satisfaction of the court that he has suffered injury as a result of the failure.<sup>24</sup>

At most workplaces, there is usually the tendency for employers to trade the physical and mental wellbeing of their employees for large balance-sheets. This is possible because of the weak and

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<sup>17</sup> Employees’ Compensation Act, 2010.(Act No 13A 1281).

<sup>18</sup> Cap W6, Laws of the Federation of Nigeria, 2004.

<sup>19</sup> Cap L1, Laws of the Federation of Nigeria, 2004.

<sup>20</sup> B.A. Garner, (n 2) 602.

<sup>21</sup> See *Habib v Coral International Limited* NIC/PHC/79/2013 retrieved from <[https://www.judgment.nicn.gov.ng/cont\\_dtl.php?contC=625](https://www.judgment.nicn.gov.ng/cont_dtl.php?contC=625)> accessed 20 July, 2020.

<sup>22</sup> *Iyere v Bendel Feed and Flour Mill Ltd* (2008) 12 CLRN 1.

<sup>23</sup> See (n. 17).

<sup>24</sup> E.E. Uvieghara, *Labour Law in Nigeria* (Malthouse Law Books, 2001) 108.

resource-constrained institutions of both labour administration and law enforcement.<sup>25</sup> As a matter of fact, some employees are engaged as casual staff, paid meager amount as wages and unreasonable turnout demanded from them. Work stressors like machine paced and repetitive work, poor working conditions, job overload or under load, sleep deprivation due to shift work<sup>26</sup> could cause depression and lead to mental stress or breakdown. The common problems experienced at workplace have been described in the Diagnostic and Statistical Manual of Mental Disorders IV-TR<sup>27</sup> to include depression, Bipolar affective Disorder, Anxiety disorders, and attention Deficit Hyperactivity Disorder.<sup>28</sup>In most cases, the employee is restless, nervous or irritable, may flout orders, fail to meet deadlines leading to workplace performance and career nose diving; where the employer or/and societal support is missing, he may be stigmatized, demoted or asked to resign his appointment.

The general welfare of an employee (physical and mental) should be of utmost importance to the employer because a healthy employee will no doubt be productive at the workplace. The Labour Act makes copious provisions for medical examination at the expense of the employer for every worker who enters into a contract,<sup>29</sup>hours of work<sup>30</sup> and rest intervals.<sup>31</sup> An employer is obliged to provide work suitable to the employee's capacity<sup>32</sup> and give room for breaks. This is important because continuous work without breaks or intervals of rest could lead to breakdown and where not properly handled, loss of productivity, compensation claims or remedies enforceable against the employer. An employee who has suffered workplace induced stress could either apply for compensation under the relevant laws or institute an action in court.

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<sup>25</sup> O. Atilola, 'Partaking in the Global Movement for Occupational Mental Health: What Challenges and Ways forward for Sub-Saharan Africa?'; 8<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3508808>> accessed 9 May, 2020.

<sup>26</sup> U.K. Singh, and J.M. Dewan, *Safety, Security and Risk Management* (APH Publishing Corporation, 2009) 177.

<sup>27</sup> American Psychiatric Association, *DSM-IV Sourcebook*, (2000).

<<https://www.dsm.psychiatryonline.org/doi/pdf/10.1176/appi.books.9780890420249.dsm-iv-tr>> accessed 3 May, 2020.

<sup>28</sup> J.A. Osifo, 'An Overview of Occupational Health: Challenges and Prospects for Nigeria' [2016] (5) (10) *International Journal of Humanities and Social Science Invention*, 64.

<sup>29</sup> Section 8(1) Labour Act Cap L1 LFN, 2004.

<sup>30</sup> Section 13 (1) *ibid.*

<sup>31</sup> Section 13 (4) *ibid.*

<sup>32</sup> Section 17 (1) *ibid.*

An employee can apply for compensation under the Employees' Compensation Act. (Hereinafter called 'The ECA' or 'The Act').<sup>33</sup> The Act is the principal enactment governing compensation for work related disabilities in Nigeria. It mandates employers to contribute 1% of the total monthly payroll into the Compensation Fund<sup>34</sup> and entitles employees to claim compensation for occupational disease, stress injuries sustained from accident at the workplace or during employment. The recognizable grounds of compensation under the Act are: disabling injury, mental stress, occupational disease, hearing impairment and death.<sup>35</sup> It is recognized under the law that mental stress could occur when an employer changes the work or working condition of the employee in such a way as to unfairly exceed the work ability and capacity of such employee.<sup>36</sup> Also under the Act, compensation is payable for mental stress which is as a result of a sudden and an unexpected traumatic event linked to the employment.<sup>37</sup> Mental stress is notoriously subjective in nature and capable of not being noticed by a casual observer, that is why medical diagnosis that stress complained of arose from the nature of employees' work is important. The condition can also be debilitating, and can affect the physical health of the employee where not well managed. It is therefore important that conditions of work are reasonable and humane as employers of labour under the law owe their employees the duty of care, the duty to protect their welfare, health and safety while at work.

Claims for compensation under the ECA are made to the Nigeria Social Insurance Trust Fund Management Board (The Board) and not against the employers directly which previously was the case under section 3(1) of the repealed Workmen's Compensation Act. The procedures and preconditions for accessing compensation are quick and easier than the rigours of litigation especially where they are followed to the latter. The Board may appoint team of medical specialists to ascertain the claim of mental stress and whether or not the employee is entitled to compensation for same.<sup>38</sup> For claims to succeed, the employee must not only follow laid down statutory

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<sup>33</sup> The 'ECA' was signed into law on 17<sup>th</sup> December 2010. As an enactment of the Nigerian National Assembly, it made provisions for compensations for any death, injury or disability arising out of or in the course of employment and in effect, it repealed the Workmen's Compensation Act Cap W 6 LFN, 2004.

<sup>34</sup> This statutorily mandated contribution is limited to the first two years of enactment of the Act as the Act empowers the board to subsequently assess and determine the applicable rates.

<sup>35</sup> See sections 7, 8, 9, and 10 Employees Compensation Act.

<sup>36</sup> Section 8(2) *ibid*.

<sup>37</sup> Section 8(1) a *ibid*.

<sup>38</sup> Section 8(3) *ibid*.

procedures for compensation claims,<sup>39</sup> but he must also be able to prove that the mental disability complained of was caused by burn out experienced at the workplace otherwise his claim for compensation will fail. The predetermined ‘statutory compensation’ offered by the Act is not without hassles. Apart from having a fixed formula for categories of workplace injuries, the actual damage or loss suffered by the employee may not be assessed.<sup>40</sup> The implication is that compensation is paid but it may not be proportionate to the injury suffered by the employee. By not making an assessment of the injury, the probability of compensation not adequately alleviating the unfortunate condition the employee finds himself is high.

The Act did not stop an aggrieved employee from pursuing civil action against a negligent employer who has breached his duty of care. However, if he decides to institute the action in court, he may no longer be able to lay claim to compensation under the Act.<sup>41</sup> Where an aggrieved employee decides to institute civil action against the employer in court for workplace disability, the proper court to do so is the National Industrial Court.<sup>42</sup> By virtue of section 254C of the 1999 Constitution (as amended), the National Industrial Court of Nigeria has and exercises jurisdiction in matters arising from workplace, matters relating to Employees Compensation Act, Labour Act, or any other Act relating to labour or employment. In *Amina Hassan v Airtel Networks Limited and anor*,<sup>43</sup> the court ruled that where a claimant does not intend to pursue compensation under the Act (The ECA) especially where the action is based on negligence and the injury occurred during the course of work, such claimant can institute the action against the tortfeasors without coming under the Employee Compensation Act.

At the court, the claimant/employee is expected to plead facts and lead evidence in support of his claim. The onus is on him to prove that the defendant/employer owes him the duty of care by ensuring he is not exposed to danger or injury while at work and that he has suffered as a result of

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<sup>39</sup>See Part II ECA. See also Peter, D., ‘An Appraisal of Employees’ Compensation Under Nigerian Law’ (Unpublished LLM Thesis, Ahmadu Bello University, Zaria, 2014); 55 <<http://www.kubanni.abu.edu.ng/jspui/bitstream/123456789/5612/1/AN%2520EMPLOYEES%25E2%2580%2599%2520COMPENSATION%2520UNDER%2520NIGERIAN%2520LAW.pdf>> accessed 19 July 2020.

<sup>40</sup> S. Erugo., *Introduction to Nigerian Labour Law* (2<sup>nd</sup> ed. Princeton and Associates Publishing Co. Ltd, 2019) 238.

<sup>41</sup> See generally section 12 ECA.

<sup>42</sup> See section 1 National Industrial Court Act which establishes the court with the mandate of handling employment-related disputes.

<sup>43</sup>Suit No: NICN/LA/471/2012 <<http://www.judgment.nicn.gov.ng/pdf.php>> accessed 19 July, 2020.



that breach of duty. In other words, he must be able to connect the negligent act of the defendant to the injury suffered. Where the court finds merit in his case, damages are awarded. Additionally, the claimant must also be able to mitigate the injury suffered and not aggravate his precarious situation. In the case of *Henry Ihebereme v. Hartland Nigeria Limited*,<sup>44</sup> claimant's demand of two hundred and fifty million naira as 'compensation for the permanent loss of the use of his hand, for pain and suffering and for loss of enjoyment of life' was not successful as the court held that he deliberately refused to proceed for further medical treatment which could have ameliorated his condition. Therefore even where negligence is established against an employer, it is important that the employee do not worsen his misfortune. By virtue of that, he is debarred from claiming compensation or damages which is due to his neglect to take proactive steps. The duty of a reasonable man acting reasonably is placed on the claimant/employee and an effective discharge of that duty determines the success or failure of his claim.

Although the ECA appears to be a fair alternative to the common law action in damages, its benefits are not accessible to employers who are not registered under it. This is because compensation is drawn from the Employee Compensation Fund established under section 56 of the Act. While writing on compensation for mental stress vis a vis the 2010 Nigerian Employees' Compensation Act, Atilola and Atilola<sup>45</sup> expressed the view that since work-related mental disorders are less likely to lead to death compared to work place physical accidents and diseases, it may be difficult to sustain a disability claim on mental disorders under the ECA. To be successful, the employee has to show to the court's satisfaction that the disability experienced was facilitated by occupational burnout. This could turn out to be a herculean task especially where there are no recognizable parameters or frameworks for determining same. A sufferer may find it difficult to link the disability with the stress occasioned by work because his mental disability may not be obvious like physical ailment, he may look normal and healthy to a casual observer. This perhaps explains why since the establishment of the Board, no mental disability claim has been brought to it or pending before it.<sup>46</sup>

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<sup>44</sup> Unreported Suit No NICN/ABJ/172/2018. <https://nicnadr.gov.ng/judgement/details.php?id=4292&party=Mr.%20Henry%20Ihebereme-VS-Hartland%20Nigeria%20Limited> accessed 25 May, 2021.

<sup>45</sup> O. Atilola, and B. Atilola, ( n 12) 208.

<sup>46</sup> Investigations by the writer at the Ibadan Office of the Board on 18<sup>th</sup> May, 2021 reveal nil compensation claim for mental stress since the commencement of the Act.

Marshall<sup>47</sup> reiterated the need to adequately compensate an employee who came about a disability or mental impairment<sup>48</sup> as a result of work induced stress. To be successful, such employee must show that the breach of duty has materially contributed to the psychiatric injury or illness complained of; it is not just enough to show that the work on its own has caused the mental illness, same must be linked to the breach of employers duty.<sup>49</sup> Where parties foresee and agree that a breach of their agreement could lead to psychological or mental pain, the court would hold it as such.<sup>50</sup> In determining whether or not the employee is entitled to such compensation in many jurisdictions, it is important to ask the following questions: is the employee disabled? Is he being treated less favourably as a result of that disability? Are there reasonable adjustments necessary to accommodate him? If the first two questions are answered in the affirmative, and the necessary statutory requirements are followed, then claim for compensation will likely succeed.

The claim for liability under the tort of negligence can only work when the injured employee approaches the court for redress and not before The Board. The reason is that success in negligence matters depends on the blameworthy nature of the employer while claims before The Board is predicated and payable on a 'no-fault-basis' particularly when it is triggered by work or arising out of employment. Employees are entitled to be compensated for mental stress not resulting from injuries for which they are otherwise entitled to compensation. However, they cannot waive or agree to waive compensations due to them. Such agreements are null, void and of no effect.<sup>51</sup> It is important to state that procedures<sup>52</sup> for applying for the compensation (which includes notification of injury, formal report to The Board, application in the prescribed form etc) and the stipulated time frames must be adhered to in its entirety. Where The Board finds merit in the application for compensation, it is paid from the Compensation Fund and not by the employer. Where merit is not found in the claim, the employee has an opportunity to appeal the decision of The Board in the first instance. If not still satisfied, he can further appeal to the National Industrial Court of Nigeria.

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<sup>47</sup> D. Marshall, *Compensation for Stress at Work* (Jordan Publishing Limited, 2009) 25.

<sup>48</sup> The issue of whether or not an individual is suffering from a mental impairment is a matter for qualified and informed medical opinion; a general practitioner's letter will suffice though not with vague and loose terms. See *Morgan v Staffordshire University* (2002) IRLR 190.

<sup>49</sup> See *Hatton v Sutherland* (2002) PIQQ 21.

<sup>50</sup> See *Cox v. Phillips Industries Limited* (1976)3 All E.R., 161 where the court found that relegation of duties resulted in the plaintiff being 'depressed, anxious, frustrated and ill' and accordingly awarded damages against the defendants because both parties had contemplated that the breach of their contract would cause mental distress.

<sup>51</sup> See section 13 (1) ECA.

<sup>52</sup> See sections 4, 5 and 6 *ibid*.

While some employees suffering from workplace induced stress can continue to work and their capability to carry out assigned tasks as well as productivity remain unaffected, many others may not be able to cope which may result in frequent, intermittent and unscheduled absences, or presenteeism on the part of the employee, and invariably, unfair dismissal or termination of appointment by the employer. No doubt, the connection between an employee's productivity and wellbeing cannot be over emphasized. That is why it is important to have programmes designed to help a typical employee wade through workplace stress. One of such is the Employee Assistance Programme (EAP).<sup>53</sup> With EAPs, the promotion of healthier individuals at workplaces who are productive, result oriented and with minimal compensation claims can be attained.<sup>54</sup>

In other jurisdictions of the world, a typical employee is protected against workplace hazards and work related stress that could lead to mental breakdown. For example, the Health and Safety at Work Act 1974 of the United Kingdom enjoins employers to ensure as far as is reasonably practicable, the health,<sup>55</sup> safety and welfare of their employees. In discharging this responsibility, it is essential that a work-stress risk assessment be regularly carried out and acted upon<sup>56</sup> in the workplace. It is imperative the employees are encouraged to share their concerns when going through stress or the employers inquire where such information are not forthcoming. The British Columbia Human Rights Tribunal found in *Mackenzie v Jace Holding*<sup>57</sup> that an employer who should have reasonably understood that an employee's depression was affecting her work performance should not have terminated her employment despite not actually knowing for certain that she was suffering from a disability. By not asking questions that would have elicited information showing that the employee's condition was deteriorating, the employer violated the duty to inquire whether an employee's improper behavior was due to mental disability requiring an

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<sup>53</sup>S.O. Akintola, and O.O. Egbokhare, 'The Need to Regulate Employee Assistance Programmes Practices in Nigeria' [2017] (5) (1) *Akungba Law Journal*, 280.

<sup>54</sup> Although a search conducted on the EAP website shows that its emergence into Nigeria is of recent origin, it is sad to still note that in Nigeria, 99% of organizations do not have EAP advisors or units. See *History of EPA in Nigeria* <<https://www.eapanigeria.org/history-of-eapa-nigeria>> and M. Nwaogu, cited in B. Komolafe, 'Expert Advocates Employee Assistance Programme to Boost Productivity' *Vanguard Newspaper (Lagos, 11 August, 2017)* <[www.vanguardngr.com/2017/08/expert-advocates-employee-assistance-programme-boost-productivity-2/amp/](http://www.vanguardngr.com/2017/08/expert-advocates-employee-assistance-programme-boost-productivity-2/)> All accessed 18 May 2020.

<sup>55</sup> The word 'health' here includes not only physical but mental health.

<sup>56</sup> *Health and Safety Executive Stress Risk Assessment*. <[www.hse.gov.uk/stress/risk-assessmnt.html](http://www.hse.gov.uk/stress/risk-assessmnt.html)> accessed 22 July, 2020.

<sup>57</sup> (No 4) 2012 BCHRT 376.

accommodation or not. When inquiries are made, proactive steps can be taken in accommodating the disability, to help the employee overcome effects of such stress and avoid compensation claims when cases deteriorates.

In accommodating a mental disability at workplace, planning and undertaking workplace adjustment in the form of rehabilitation is important.<sup>58</sup> One of the practices usually utilized is the 'return to work option' which entails work adaptations and adjustments in a gradual and flexible manner without impeding recovery or aggravating mental illness.<sup>59</sup> Where this is not properly done and the mental breakdown re-occurs, stress claim could lie against the employer. In *Withan v Hastings and Rother NHS Trust*,<sup>60</sup> a stress claim was brought by a nurse against her former employer. In 1995, she previously suffered an episode of post- natal depression, was off work for eight months and agreed to return to work in March 1996. The defendant promised the return to work would be gradual and there would be a lot of support. However, this did not happen and her mental health deteriorated. She was successful in her claim as the defendant failed to manage her return to work having been on notice of her condition.<sup>61</sup>

The need for Nigerian workplaces to recognize mental health as a realistic and legitimate concern cannot be over emphasized. Employees spend a huge percentage of their time at work every day than elsewhere. A display of total commitment to the implementation of policies and practices that will ensure a supportive framework for employees as well as the promotion of mental health programs not limited to workplaces alone should be advocated.<sup>62</sup> When all stakeholders are actively involved in mental health literacy, only then can the menace be stamped out from the work environment or the incidences reduced to barest minimal.

#### **IV. Impediments to Workplace Mental Health in Nigeria**

The under listed are some of the obstacles or impediments of workplace mental health:

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<sup>58</sup> Managing Sickness Absence and Return to Work: An Employers' and Managers' Guide (Health and Safety Executive 2004) <<https://www.hse.gov.uk/pUbns/priced/hsg249.pdf>> accessed 23 July, 2020.

<sup>59</sup> V. Hughes, and *et al*, *Tolley's Guide to Employee Rehabilitation* (LexisNexis, 2004) 82.

<sup>60</sup> Unreported QR 4<sup>th</sup> October 2001 (Rex Tedd QC).

<sup>61</sup> See *McLaughlin v Charles Hurst* NI IT 83/15 see also *Cross v Hayland Enterprise* (2001) 1RLR 336.

<sup>62</sup> A. Oyewunmi., *et al* 'Mental Health and the Nigerian Workplace: Fallacies, Facts, and the way forward' [2015] (7) (7) *International Journal of Psychology and Counseling*, 190.

- a) **Low Priority by government:** It appears over the years, government pay lip service to mental health issues without the adequate legal and institutional framework put in place. While the Lunacy Act is extremely archaic for modern times, the Labour Act do not make specific reference to work induced stress, how to cope with same or remedies available for parties caught in the quagmire and the Employee Compensation Act though of contemporary relevance is limited in its scope. In addition to this, there is no specific budgetary allocation<sup>63</sup> for mental health services except what is given to the psychiatric hospitals as running (personnel) or capital costs.<sup>64</sup> The resultant effect of this is that the sector suffers neglect and the adequate attention to keep it functional and impactful is lacking.
- b) **Financial barriers:** The high cost of treatment more often than not limit access to mental health services which invariably leads to no treatment at all, inconsistent or inadequate treatment. Apart from this, because psychological distress are neither subsidized by government nor covered by Health Insurance Schemes in Nigeria<sup>65</sup> and symptoms not obvious, the mentally stressed employee is left with no better option than to foot his bills all alone. Whenever his diagnosis require regular therapy or intensive treatment programs are prescribed for him which are way beyond his financial capabilities, his chances to good mental health and recovery could be crippled by funds.
- c) **Societal Perception:** It is unfortunate to note that the society has not developed a greater acceptance of mental stress as an illness of the body just like any physical illness. Employees who indicate being stressed may be stigmatized, labeled or even laid off. For the categories whose symptoms are subtle and difficult to detect, clinical anxiety might be dismissed as ‘worrying too much,’ and depression or work stress termed laziness or fatigue. The employee may not also seek timely help because he too does not feel anything is wrong.
- d) **Poor working conditions:** The conditions under which an average Nigerian is expected to work is pathetic, capable of inducing stress and triggering mental breakdown. Where their coping

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<sup>63</sup>The public spending on health as recommended by the World Health Organization is \$34 but most countries spend as low as \$2 funds which may eventually end up in private hands. See *Mental Health Situation Analysis in Nigeria* (n 8) 8.

<sup>64</sup> Editorial, ‘Improving Mental Healthcare delivery in Nigeria’ *The Guardian* (Lagos, 30 December 2015) <<https://www.guardian.ng/features/improving-mental-healthcare-delivery-in-nigeria/amp>> accessed 6 June 2020.

<sup>65</sup>A. I. Abdulfatai, ‘NHIS: Health Insurance Still Elusive For Many Nigerians’ *Punch Newspaper* (Lagos, 22 December, 2017) <<https://www.punchng.com/nhis-health-insurance-still-elusive-for-many-nigerians/amp>> accessed 23 July, 2020.

skills fail them, they become overwhelmed by the intensity of the stress or develop somatic symptoms. Bearing this in mind, a lot of employees tend to hide or cover up their emotional problems or bottle up pent up work stress.<sup>66</sup>

## V. RECOMMENDATIONS

Matshidiso Moeti, the WHO Regional Director for Africa while speaking at the 2017 World Mental Health Day with the theme ‘Mental Health in the Workplace’ said “workplace stress and poor mental health is well established but mental health is often neglected as a key aspect of employee health.”<sup>67</sup> This statement shows that mental disability at the workplace is a serious employment issue that needs immediate action. While recognizing this fact, the following recommendations are put forward to ensure that Nigerians live healthy and happy in the workplace and the larger society.

### (1) Law Review:

The existing legislation governing labour and mental health in Nigeria should be reviewed to bring it into conformity with present changing realities and address the issues of stigmatization or labeling especially at workplace. In doing this, it is proposed that some of the policy recommendations for the National Policy for Mental Health Service Delivery (like encouragement of social rehabilitation, partnership with traditional health sector, human resource etc) be infused into the new mental health law. In addition, the Employees Compensation Act (ECA) omits to draw up the scale of compensation for mental stress, leaving it to Rules to be made by The Board. With respect, this is not good enough. The wide discretionary powers given to The Board in section 33 (2) of the Employees Compensation Act could lead to arbitrary assessment. Furthermore, a review of section 8(1) (a)(b) of the ECA is necessary to compensate mental stress even where such stress is as a result of an injury that can be compensated.

### (2) Promotion of Employee- Centered Programmes:

To avoid or prevent mental breakdown, it is recommended that employers should promote programmes geared towards assisting the employees weather the storm of

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<sup>66</sup> Non disclosure of stress or depression as a reason for sick leave amongst employees is predominantly due to stigmatization, finance, work security issues etc. See M.P. Stander, *et al*, ‘Depression in the South African Workplace’ [2016] (22) (1) *South African Journal of Psychiatry*,1.

<sup>67</sup>Editorial. ‘WHO Calls for More Attention on Mental Illness’. *The Nigerian Experience* (Abuja, 10 October 2017) <<https://www.thenigerianexpression.com/2017/10/10/who-calls-for-more-attention-on-mental-illness/>> accessed 17 May 2020.

workplace stress and ensure open channels of communication between staff and management wherein issues can be discussed without fear of being reprimanded. It is also advocated that apart from prevention, early detection and acceptance of prompt psychiatric care should be encouraged as against the fire brigade approach of dismissal most of them adopt. This would go a long way in improving the quality of life of such employees and preventing temporary stress or disorders from becoming permanent disabilities and incurring loss.

**(3) Public Enlightenment and Re-Orientation:**

It is important to make members of the public aware that mental stress is not a death sentence or plague that could be ‘prayed or wished away’ but a medical condition not different from physical illness. When society develop a greater acceptance of mental stress as an illness of the body requiring treatment, then the culture of silence or labeling at workplace will greatly reduce. This acceptance could be achieved through identification of workplace stressors, workforce stress management, medical records confidentiality among others.

**VI. CONCLUDING REMARKS**

The necessity to adopt a more nuanced approach to workplace mental health is predicated upon the notion that virtually every person suffer from one form of mental distress or the other (with varying degrees) mostly induced by workplace stress. Employees suffering mental disability as a result of unfavourable work environment now have the freedom of choosing the legal forum through which compensations can be claimed. It therefore behoves on employers of labour to strive in ensuring liabilities are reduced and employee-friendly programs are floated in favourable work places.