AN OVERVIEW OF EMPLOYEE’S COMPENSATION ACT (ECA) 2010

1. **Introduction**: The Employee’s Compensation Bill 2010 was signed into Law on 17th day of December 2010 by the President of the Federal Republic of Nigeria. The Employee’s Compensation Act 2010 (“The Act”) -which repeals the Workmen’s Compensation Act Cap W6 Laws of the Federation of Nigeria, 2004 -is designed for an open and fair system of guaranteed and adequate comprehensive provisions for payment of compensation to employees who suffer from occupational diseases or sustain injuries arising from accident at workplace or in the course of employment.

2. **Scope and Application**
   
   2.1 The Act is applicable to all employers and employees in the public and private sectors in the Federal Republic of Nigeria [Section 2 (1)]. It however excludes any member of the armed forces of the Federal Republic of Nigeria [Section 2 (3)].
   
   2.2 The Nigeria Social Insurance Trust Fund Management Board (“The Board”) shall have the power to implement the Act and Employee’ Compensation Fund (“the Fund”) established under Section 56 of the Act.
   
   2.3 There shall be credited into the “Fund” all moneys, funds or contributions by employers for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment [Section 56 (1)].
   
   2.4 The Nigeria Social Insurance Trust Fund (NSTIF) which has the power to implement the Act is a parastatal/ agency in the Federal Ministry of Labour and Productivity.

3. **Employers’ Contribution to the Fund**: Every employer shall, within the first 2 years of the commencement of the Act, make a minimum monthly contribution of 1.0 per cent (1%) of its total monthly payroll [Section 33 (1)]. The “Board” shall also from time to time by regulations prescribe the categorization of the risk factors of each class or sub-class of industry, sector or work place to which an employer belongs and the amount of contributions to be made into the “Fund” [Section 33 (2)].

4. **Assessment**: The Board shall assess employers in the first instance based upon estimates of their payroll for the year or as determined by the board [Section 34 (2)]. The Board may also by order establish a minimum assessment [Section 34 (3)]. The payment of any assessment shall be due on the 1st January in the year for which it relates. The Board may also approve the payment of the contribution in installments Section 35(2).

5. **Compensation for Death, Injury or Disease**: The Act provides for various forms of compensation such as:
   
   (I) Compensation for Injuries occurring in the normal workplace –Section 7
   (II) Compensation for Mental Stress - Section 8
   (III) Compensation for Occupational Disease – Section 9
   (IV) Compensation for Hearing Impairment - Section 10
   (V) Compensation for Injuries occurring outside the normal workplace – Section 11

   In addition to series of compensation stated above, the Board provides for any injured employee any medical, surgical, hospital, nursing and other care or treatment, transport, medicines, crutches and apparatus, including artificial members [Section 26 (1)].

6. **Scale of Compensation**: The scale of compensation is actuarially determined. And it is scaled in relation to partial disability, permanent total disability, permanent partial disability or disfigurement and death. The scale of compensation in fatal cases such as death is as much as 90 per cent of the total monthly remuneration of the deceased is paid to his dependants.
6.1 **Compensation cannot be waived:** It is to be noted no employee shall agree to waive or forego any benefit or right to compensation to which the employee or the dependants are or may become entitled under the Act and any agreement in whatever form between the employer and employee to that effect is void and unenforceable [Section 13 (1, 2)].

7. **Employee’s Notification of Injury:** To qualify for payment in every case of an injury of disabling occupational disease to an employee in a workplace within the scope of the Act, the employee or his dependant (in the case of employee’s death) is required to inform the employer by providing necessary information to the appropriate representative of his employer within 14 days of occurrence of the event or receipt of the occurrence [Section 4 (1)]. The employee is also required to file an application for compensation in the prescribed form by the Board within one year after the date of occurrence of the event. No compensation will be paid if the application is not filed within one year after the death, injury or disability, except where the board is satisfied that there existed special circumstances which precluded the filing of an application within one year after the event occurred. In that situation, the Board may pay the compensation provided by the Act if application is filed within 3 years after that date [Section 6 (2, 3)].

8. **Penalties for Non-Compliance:** Specific penalties for non-compliance under the Act include:

8.1 No employer is allowed to deduct either directly or indirectly any payments made to the Board from the remuneration payable to its employees. Contravention of this provision by an employer attracts, upon conviction, a fine of not less than N100,000.00 (N1,000,000.00 in the case of a corporate employer) or to imprisonment for a term not exceeding one year or both. In addition to the penalty mentioned above, the employer shall make a repayment of any amount deducted from the relevant employee [Section 14 (1, 2 & 3)]

8.2 The penalty for an unpaid assessment and security not provided for against an assessment when required by the Board is 10% of the unpaid assessment or the value of the security required, the payment of which may be enforced in the same manner as the payment of an assessment [Section 46].

8.3 If an employer fails to make the required payroll information available to the Board or the information contained therein is untrue or inaccurate, the employer may be liable to pay the provisional assessment levied by the Board and a fine, calculated as a percentage of the assessment by the Board. The employer (if an individual) will also be penalized for contravention in the sum of N100,000.00 while for a body corporate is N1,000,000.00 or to imprisonment for a term not exceeding one year or both. Besides, each director, manager or officer of the body corporate shall be deemed to have committed the offence and shall be liable on conviction to imprisonment for a term not exceeding one year or a fine of N100,000.00 or both such imprisonment and fine [Section 39 (4)].

8.4 Any person who contravenes any provision of this Act for which no specific penalty is provided, commits an offence and shall be liable on conviction to a fine of N20,000.00 for the first case of non-compliance or imprisonment for a term not exceeding one year or N100,000.00 for every subsequent case of non-compliance or both such imprisonment and fine. Where an offence under this Act is committed by a body corporate, every (a) director, manager, secretary or other officers of the body corporate; (b) partner or officer of the firm; or (c) person who was purporting to act in such capacity mentioned in (a) and (b) above shall be deemed to have committed the offence unless he proves that the act or omission constituting the offence took place without his knowledge, consent, connivance or neglects or he took reasonable steps to prevent the commission of the offence [Section 71 (1)].