

# **LABOUR & EMPLOYMENT LAW**

*A Practitioner's Guide*

## **COMPENSATION FOR MENTAL STRESS UNDER THE EMPLOYEE'S COMPENSATION ACT: THE HR MANAGER'S GUIDE**





# COMPENSATION FOR MENTAL STRESS UNDER THE EMPLOYEE'S COMPENSATION ACT: THE HR MANAGER'S GUIDE

**BY BIMBO ATILOLA\***



**Bimbo Atilola**  
Lagos, Nigeria.

## 1.0 INTRODUCTION

The Employee's Compensation Act (ECA) was enacted by the National Assembly and signed into law by the President of Nigeria on the 17<sup>th</sup> December, 2010. The Act repealed the old Workmen Compensation Act. The ECA established an employee compensation scheme. The Act makes comprehensive provisions for compensation for death, injury, mental stress, occupational diseases and other hazards in the course of employment.

The Act is administered by the Nigeria Social Insurance Trust Fund (NSITF). The Act has been in operation for 12 years now and many Nigerian workers have been compensated under the scheme. The NSITF has compensated many injured

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\*Bimbo Atilola is the Managing Partner of Hybrid Solicitors. Send comments to [bimboatilola@hybridsolicitors.com](mailto:bimboatilola@hybridsolicitors.com). I thank Dr Olayinka Atilola for providing some insights in the course of writing this article.



workers and has equally kept hope alive for the dependants of many deceased employees. The commonest cases are those relating to death, injury, and occupational hazards in the course of employment. This work examines compensation for mental stress under the ECA, provides insights into what constitutes mental stress, the associated challenges, how to prevent it including a guide to making a successful claim for mental stress under the scheme.

## **2.0 MENTAL HEALTH AT THE WORKPLACE**

The International Labour Organisation defines mental health as a state of health and wellbeing in which workers realise their own abilities, work productively, and contribute to their community. Globally, the working people are under increasing pressure to meet the demands of modern working life, and with adverse implications for mental health.

Psychosocial hazards<sup>1</sup> and risks including increasing higher expectations as regards sales target and general performance of employees, and excessively long working hours are all contributing to a more stressful working environment<sup>2</sup>. The increasing dominance of non-standard work and precarious work arrangements are all contributing to a more stressful working environment.

The ILO has identified stress as a major psychosocial hazard confronting the working people globally. In Nigeria, economic



<sup>1</sup> Psychosocial hazards refer to workplace stressors. The ILO defines Psychosocial factors as "interactions between and among work environment, job content, organisational conditions and workers' capacities, needs, culture, personal extra job considerations that may, through perceptions and experience, influence health work performance and job satisfaction.



recession and the 2020 Covid-19 lockdown, among other factors have contributed to massive layoffs, poverty and social exclusion. This economic reality is a fertile ground for mental health disorders, but unfortunately, mental health awareness in Nigeria is still very low. Mental health disorders, particularly depression and anxiety are on the rise. There have also been cases of suicide and attempted suicide by employees, especially in Lagos State. Declining mental health among employees is not only a cost to the organisation but a threat to national growth and economic development.

### **3.0 COMPENSATION FOR MENTAL STRESS UNDER THE ECA**

Section 8(1) (a-b) of the Act provides that an employee shall be entitled to compensation for mental stress if it is due to an acute reaction to a traumatic event in the course of employment. Section 8(2) of the Act further provides for mental stress that may arise when working condition may be unreasonably strenuous or work schedule is such that exceeds the working ability of the employee. Section 8(3) further provides that for the purposes of ascertaining the veracity of claims for compensation, the NSITF Board may appoint a Medical Board of Inquiry consisting of relevant specialists to review the claim.

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<sup>2</sup> Workplace Stress: A Collective Challenge, ILO 2016, P.2.



### **3.1 WHAT IS MENTAL STRESS?**

Stress generally refers to how we react when we are under pressure. It may arise due to a combination of many factors, but one example is when an employee has lots of responsibilities or workload that he/she is struggling to manage or cope with. Mental stress has been defined to mean a “state of being, resulting from the tension experienced by the imbalance between what is demanded and what is offered to meet that demand”<sup>3</sup>.

### **3.2 MENTAL STRESS AND DISABILITY CLAIMS**

Mental stress can manifest at the workplace in different ways and one of the commonest is occupational burnout. Occupational burnout involves mental, emotional or physical exhaustion. This is common in highly demanding and stressful jobs. Burnouts do not occur all at once but it emerges after a prolonged exposure to work stress. The core features of occupational burnout is the gradual depletion over time of employee's motivation, drive and energy for the work which manifests primarily as emotional, physical and mental exhaustion. It is however important for HR managers to know that proof of burnout alone is not a sufficient ground for compensation under the ECA. It must be shown that the burnout has occasioned a disability.

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<sup>3</sup> Chemiss, C. 1980, Staff Burnout, Beverley Hills: Sage cited In Bimbo Atilola (eds). Themes on the New Employees Compensation Act (2013) Hybrid Consult P. 207.



Common mental health disorders associated with burnouts include depression and anxiety disorders<sup>4</sup>. It is the disability associated with any of these disorders that can be a ground for compensation under the ECA. Mental health disorders can affect productivity, and in extreme cases, employability which in turn adversely impacts on the employee's income. These realities may result to 'permanent or partial disability or loss of income' as contemplated in the Employee's Compensation Act, and for which compensation may be sought under the ECA. These disorders, particularly depression, are highly debilitating, profoundly disabling and with attendant adverse impacts for productivity and employability. Many employees have had to proceed on early retirement on account of these disabilities<sup>5</sup>.

### **3.3 ACTION PLAN FOR MANAGERS**

**3.3.1** Mental health disorders at workplace is real and it manifests in various ways. Common signs of mental stress among employees include sudden increase in sick days or absenteeism, moodswing, anger or outbursts, anxiety, irritability, nervousness, memory loss and deliberate isolation<sup>6</sup>. Spotting symptoms of mental stress and disorders and giving advice on how to seek help from relevant professionals is an important part of managing employees.

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<sup>4</sup> Olayinka Atilola & Bimbo Atilola, "Compensation for Mental Stress under the New Employees Compensation Act: Implication for Human Resource Management" in Bimbo Atilola (eds) Themes on the New Employees' Compensation Act(2013) Hybrid Consult. P. 208.

<sup>5</sup> See Karpansalo M, Kauhanan J, Lakka TA et al. Depression and Early Retirement: Prospective Population based study in Middle aged men, Journal of Epidemical Community Health 2005; 59; 70m-74.



It is also important that HR managers organise occasional health trainings and periodic counselling for employees. Relevant professionals should be invited to talk to employees on how to manage stress, common symptoms of mental stress and how to seek help.

**3.3.2** The Employee's Compensation Act has provisions for compensation for mental stress which occasions disability or loss of income. Where work related mental stress leads to disability or loss of income, the HR managers should help such employees to seek compensation from the NSITF under the scheme. The claims process should be diligently followed up. HR managers should also ensure that their organisations are registered with NSITF pursuant to the ECA and make prompt remittances to NSITF as mandated by the Act.

However, beyond compensation, HR managers need to appreciate that prevention and prompt management of mental health problems before they lead to disabilities is in best interest of the employees and the organisations as well<sup>7</sup>. Unmanaged or poorly managed mental stress at the workplace does not only affect the mental health and wellbeing of the employees, it also has adverse implications for employers of labour as well. Mental stress lowers employees' morale and productivity, leads to high employee attrition rate and increased absenteeism.

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<sup>6</sup> <https://www.silvercloudhealth.com>, <https://www.helpguide.org/stress>, <https://www.betterhealth.vic.org>, <https://www.citation.co.uk>

<sup>7</sup> Olayinka Atilola & Bimbo Atilola, op. cit P.212.



**3.3.3** The HR department has a duty to help organisations provide a work environment that promotes the physical and mental wellbeing of their employees. HR managers should guide corporate organisations to develop and implement policies that promote mental health of the employees. Policies that seek to balance the work with employee's personal and family life should be implemented. These include provision of childcare facilities, fair working hours, registration with recreation clubs, shift work arrangements and guaranteed annual leave with pay. Corporate organisations may also consider Employee Assistance Programme (EAP) in the prevention and management of mental health problems at the workplace.

**3.3.4** In a society like ours where mental health disorders is still shrouded in myths and cultural beliefs, the need for employees' awareness on mental health cannot be overemphasised. Line managers may also be trained on how to recognise common symptoms of mental health disorders among employees so as to help them seek help from the relevant mental health professionals. Similarly, where employees make disclosure of mental health disorders, such information must be kept confidential as unauthorised disclosures may expose the company to legal liabilities<sup>8</sup>.

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## 4.0 CONCLUSION

The Employee's Compensation Act makes provisions for death, injury and mental stress in the course of employment. Human resources managers should however note that the protection of mental health at work is better achieved through preventive strategies.