

# LABOUR & EMPLOYMENT LAW

*A Practitioner's Guide*

**WHO IS ENTITLED TO A  
DECEASED EMPLOYEE'S  
TERMINAL AND DEATH BENEFITS:  
NEXT OF KIN OR BENEFICIARIES?**

*Last Will and Testament*

Declaration

will and testament and that I hereby revoke, cancel and  
either jointly or severally. I declare that I am  
last will and testament expresses my

# WHO IS ENTITLED TO A DECEASED EMPLOYEE'S TERMINAL AND DEATH BENEFITS: NEXT OF KIN OR BENEFICIARIES?

By **Bimbo Atilola\***



**Bimbo Atilola**  
Lagos, Nigeria.

## 1.0 INTRODUCTION

The administration of a deceased employee's death and terminal benefits is a very delicate issue in human resources management. It is a task that comes with substantial legal risks. Disbursing a deceased employee's death and terminal benefits presents some challenges in an environment like ours. Many of these challenges are due to a combination of many factors including the prevalence of polygamy, intestacy, cultural practices and multiplicity of the Administration of Estate laws in Nigeria. There is also some confusion in the human resources circle as to the legal rights and and limitations of a person named by a deceased employee as a 'beneficiary' vis-a-vis a 'next of kin'. This work summarizes the law and practice of administration of deceased employees' death and terminal benefits with a special attention on the legal status of a beneficiary and a next of kin.

## 2.0 STATEMENT OF THE PROBLEM

When an employee dies, it is not uncommon for the Human Resources Department to witness cases of competing interests and claims to the deceased's death and terminal benefits. In a society like ours where our culture and sometimes religion permits polygamy, it is not uncommon to see different persons claiming to be the deceased employee's kept wives and children, relations, dependants and next of kins etc writing to the employer of the

deceased, and laying claims to the deceased employee's terminal benefits. These multiple claims often create a dilemma for the HR manager who wants to ensure that the deceased terminal benefits goes to the rightful beneficiaries.

### **3.0 COMPONENTS OF A DECEASED EMPLOYEE'S DEATH AND TERMINAL BENEFITS**

The death and terminal benefits of a deceased employee may comprise of the following:

**3.1** Gratuity, if any. Gratuity is not a compulsory benefit under the Nigerian law. Gratuity may only enure to a staff if his contract of employment, the company's policy or the Collective Bargaining Agreement (CBA) in force provides for it.

**3.2** Pension. Pension is a statutory benefit created by the Pension Reform Act 2004 (now 2014). Pension fund is not in the custody of the employer. This is administered by the Pension Fund Administrators (PFA) and regulated by the National Pension Commission (PENCOM) pursuant to the regime of the Pension Reform Act (2014).



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<sup>1</sup> Section 8(2) of the Pension Reform Act (2014)

<sup>2</sup> See Section 4(5) of the Pension Reform Act.

<sup>3</sup> See Section 9(1) (b) and 9(4) of the Employees Compensation Act.

When an employee dies while in service, the pension sum in the deceased's Retirement Savings Account (RSA) will be disbursed by the PFA for the benefit of the deceased's beneficiaries or dependants. The Pension Reform Act provides that the funds in the deceased's RSA should be paid to the deceased's personal representatives upon receipt of a valid Will admitted to probate or a Letter of Administration confirming the beneficiaries under the estate of the employee; or to any other person as may be directed by a Court of competent jurisdiction<sup>1</sup>. The PFA usually pays the pension sum to the deceased's estate account opened with a bank.

**3.3** Accrued/earned bonuses, profit sharing e.t.c. A deceased employee's terminal benefits may also include earned benefits, bonuses, e.t.c due to him/her as per the company's policy.

**3.4** Group Life Insurance claim. The Pension Reform Act (2014) provides that every employer must obtain a group life insurance for its staff<sup>2</sup>. Section 8(1) of the Pension Reform Act provides that the benefits due under the life insurance policy should be paid by the insurance company to the persons named as the beneficiaries under the policy. The beneficiaries of this policy are often stated in the proposal form submitted to the insurance company/underwriter. Many employers, however, access the claims directly and disburse it to the named beneficiaries.

**3.5** Claims from NSITF in the event of death arising in the course of employment. The Employees Compensation Act (2010) makes provisions for compensation in the event of death arising in the course of employment<sup>3</sup>. The Act creates an Employee Compensation Scheme which is administered by the Nigeria Social Insurance Trust Fund (NSITF). Section 17(1) of the Act provides that where death results from injury in the course of employment, compensation shall be paid to the dependants of the deceased. This provision contemplates that the payment will be made by the NSITF to the deceased's estate account. In practice, it's the deceased staff's employer who assists to process this claim.

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<sup>4</sup> See *Joseph v Fajemilehin & Anor* (2012) LPERLR 9849 (CA)

## 4.0 NEXT OF KIN vs BENEFICIARIES

A next of kin is often mistaken for a beneficiary by many. The rights and powers of a deceased employee's next of kin is limited in law. Who is a next of kin? Is a next of kin the automatic beneficiary of a deceased employee's terminal benefits? The answer is NO. A next of kin is not the same as a beneficiary, even though a person may be named as the next of kin and beneficiary concurrently, for instance, the employee's spouse. A next of kin is the person to be contacted in the event of an emergency, for instance, a road accident. A next of kin is customarily an adult while a minor can be a beneficiary. A next of kin may, however, be entitled to apply for a Letter of Administration where the employee dies intestate<sup>4</sup>.

The Administration of Estate Laws of most States in Nigeria provide for the order of inheritance, in the event of intestacy, and a next of kin is not among those enumerated as beneficiaries. There is nothing special about being a next-of-kin as regards to a deceased employee's terminal benefits. A next-of-kin is simply the first point of contact if anything happens to an employee. He is the person empowered to make decisions for an employee in times of an emergency or where the employee is unconscious or otherwise unable to make decisions for himself. At best, what a next-of-kin can do after the demise of an employee is to ensure that necessary steps are taken towards obtaining a Letter of Administration. It is therefore very wrong for an employer to pay a deceased employee's terminal benefits to a next of kin, except he/she is concurrently named by the employee as his next of kin as well as the beneficiary.

Most employers of labour request employees to supply the HR department with the records of their next of kin, and beneficiaries. These records are often kept in the individual employee's file. When an employee dies, it is not unusual for his/her employer to pay his/her terminal benefits to persons named by the deceased employee as his/her beneficiaries in his/her record.

This practice is widespread and it is safe except there is a Will written by the deceased staff which has conflicting provisions relating to his/her terminal benefits or where there are disputes relating to the benefits. A Beneficiary Form completed by an employee while in the service of the employer is a clear expression of the will or desire of the deceased staff in relation to the disbursement of his/her terminal benefits when he/she dies. There are, however, concerns whether it is safer to have such terminal benefits paid to the deceased employee's estate account upon the production of a valid Letter of Administration especially where the employee dies intestate (without a Will). Where there are competing claims on the benefits by other persons or where there is the likelihood of it, it is safer to pay the terminal benefits to the deceased employee's estate account.

## **5.0 THE ROLES OF THE HR MANAGER**

It is important for the HR department to design a Beneficiary Form to be completed by the employee, and request them to update it at least on annual basis. A separate Form (or a separate column in the Form) should be created for the details of Beneficiaries and Next of Kin(s) respectively. The Human Resources department needs to educate employees on the difference between beneficiaries and a next of kin. It is also good to educate employees on the need to make a Will. By making a Will, an employee states clearly in his/her Will who gets what including the workplace benefits due to him/her in the event of death.

### **5.1 AVOID SENTIMENTS**

Human Resources managers should always seek legal advice on issues relating to the administration and disbursement of deceased employees benefits, especially when in doubt. Any error or mistake in the disbursement of a deceased employee's terminal benefits exposes the company to legal risks. Human Resources managers should also follow the dictates of the law at all times and avoid sentiments.

## 6.0 IMPORTANCE OF DUE DILIGENCE

The importance of legal due diligence in the administration of deceased employees' terminal benefits cannot be overemphasized. Every employer of labour must exercise considerable care in the disbursement of a deceased employee's benefits. The Human Resources team must verify all the representations made by persons laying claim to the benefits of a deceased employee.



All the documents submitted by such persons, especially copies of identity card, Letters of Administration, and probate documents must be duly verified by the company. The Human Resources, and legal departments must take steps to verify the authenticity of all the documents submitted to it in furtherance of an application for the payment of a deceased employee's benefits. These steps include visiting the probate registry where the documents purportedly emanated from.

## 7.0 . CONCLUSION

The administration of deceased employees' terminal benefits is often under the purview of the Human Resources department. This requires a good knowledge of the relevant laws and best practice as any mistake may expose the organisation to avoidable litigation. When in doubt, the Human Resources department should always seek legal advice.

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