

Empowering Workplaces: Legal Perspective on the Nigerian Mental Health Act 2021 and It's Implications for Employers

Introduction

The Mental Health Act 2023 (the “Act”) marks a significant milestone in Nigeria’s mental health policy landscape. Previously, Nigerian employment laws did not specifically address the needs of employees experiencing mental health conditions. Notably, the Nigerian Labour Act,¹ which serves as the primary statute for employment relations, and the Employee Compensation Act 2010 both lacked specific provisions regarding mental health.. This absence highlighted a gap in the legal framework’s support for individuals managing mental health challenges within the workplace.

Under the administration of President Muhammadu Buhari, Nigeria enacted its first Mental Health Bill - now known as the National Mental Health Act, 2021 (“The Act”)- which was signed into law on January 5, 2023. This legislation replaces the Lunacy Act of 1958 , a statute indicative of an era with limited understanding of mental health, and prevalent stigmatization of affected individuals. The Act represents a meaningful advancement in establishing a comprehensive legal framework to promote mental health, prevent mental health discrimination, and improve access to necessary mental health services within Nigeria. It aims to protect the rights and well-being of individuals and employees living with mental illness while addressing and remedying the shortcomings of the previous law.²

Mental health has historically been neglected in Nigeria's public health sector. According to a 2020 survey by the Africa Polling Institute (API) and EpiAFRIC, awareness of mental health issues is still low among Nigerians.³ The Act represents a significant, progressive move intended to address gaps in the outdated Lunacy Act Of 1958, particularly regarding workplace mental health protections., It aims to ensure that all employees are treated fairly and with dignity, regardless of their mental health status.

Mental health was once narrowly defined as lunacy by the Lunacy Law of 1958, which described a ‘lunatic’ as an idiot or anyone with an unsound mind. In contrast, the National Mental Health Act 2021 offers a broader, less stigmatizing definition, recognising mental health conditions as impairments, activity limitations and participatory restrictions arising from diagnosable mental disorders. These can include significant changes in thinking, emotion or behaviour causing distress or interaction problems, and include intellectual, psychosocial, or cognitive disabilities.⁴

The introduction of this Act marks a vital advancement in safeguarding individuals with mental health conditions and ensuring access to appropriate mental healthcare services.

1. Cap L1, Laws of the Federation 2004.

2. CAP 524, Law of Nigeria 1964

3. African Polling Institute, “Mental Health in Nigeria Survey- Press Release” <https://africapolling.org/2020/01/13/mental-health-in-nigeria-survey-report-2020/> accessed July 12, 2024.

4. Section 57 of the National Mental Health Act 2021



Key Provisions of the Act include:

- The establishment of a Department of Mental Health Services in the Federal Ministry of Health as well as a dedicated Mental Health Fund.
- Formation of a Mental Health Assessment Committee focused on safeguarding individuals with mental health conditions.
- Setting up facilities specifically for mental health services..
- Specification of the conditions under which restraint or seclusion may be applied to individuals with mental health conditions.
- Assurance of rights to quality treatment, legal representation, and medical confidentiality.
- The Act provides comprehensive human rights protections for individuals with mental health conditions. It explicitly prohibits discrimination on the basis of mental health status in areas such as housing, employment, healthcare, and social services.

Subsequent sections of this article will examine the Act's impact on the protection of employees.



Employment Relations and The Act

In Nigeria, the conventional employment system is characterised by the use of formal employment contracts that clearly outline the responsibilities of both employers and employees, as well as the terms and conditions of their engagement. In the first quarter of 2023, Nigeria's employment rate stood at 76.7%, with projections indicating an

increase to 82.02% in 2024.⁵ This data demonstrates that a significant proportion of the adult population in Nigeria is gainfully employed. However, factors such as job security concerns, excessive workloads, discrimination and inequality have been identified as contributors to mental health disorders among employees.⁶

With the introduction of the Act, the requirements for employment contracts have been expanded, obligating employers to incorporate comprehensive provisions addressing the needs of employees living with mental health conditions.



The Act specifically provides for employment rights of persons with mental health conditions and employers' obligations towards employees with mental health conditions.

- **Right to Equal Access and Prohibition of Discrimination:**

By virtue of sections 12 and 13 of the Act specifically provides that:

“Without prejudice to the provisions of this Act, persons in need of mental and substance abuse services, irrespective of the cause, nature, or degree of past or present mental health conditions, shall have the same fundamental rights as a fellow citizen and not be subjected to any form of discrimination”.⁷

This provision contributes to a more inclusive and supportive society by establishing legal protections against discrimination for individuals with mental health conditions, fostering positive changes in societal perspectives, and underscoring the significance of comprehensive mental health services.

Section 13(1) of the Act states, “A person with a mental health condition shall enjoy equal access to work and employment opportunities and shall have the right to receive remuneration for any work done, similar to that payable to a person without mental health condition”.

These provisions guarantee that individuals with mental health conditions have the same job opportunities as everyone else. This means no one can be turned down for a

5. Statista, “Socioeconomic Indicators- Nigeria” < <https://www.statista.com/outlook/co/socioeconomic-indicators/nigeria#demography> > accessed July 12, 2024.

6. WHO, “Mental Health at work” 28 September 2022 < https://www.who.int/news-room/fact-sheets/detail/mental-health-at-work/?gad_source=1&gclid=CjwKCAjwqMO0BhA8EiwAFTLgIH1Jhjqai8nKWSJE59bLlahhUTFdLrE8fFF0Fx6uwiYUD46n6j9-shoC1BoQAvD_BwE > accessed July 12, 2024.

7. Section 12(1).

job because of their mental health status, supporting a more inclusive work environment. Additionally, it promises equal pay for equal work to those with mental health conditions. By providing fair access and equal compensation, these measures help individuals with mental health conditions achieve financial independence and greater social inclusion.

- **Right to Employment and Protection from Withdrawal of Benefits**

Section 13 of the National Mental Health Act stipulates that individuals with mental health conditions are entitled to equal access to employment opportunities. Furthermore, they have the right to receive remuneration equivalent to that provided to individuals without mental health conditions for comparable work performed.

Individuals with mental health conditions are entitled to equal access to employment opportunities and should receive remuneration comparable to that of individuals without mental health conditions performing similar roles. This provision is intended to prevent workplace discrimination and to ensure equitable compensation, thereby fostering inclusion and equity for persons experiencing mental health challenges.

- **Protection from Dismissal:**

An employer shall not terminate the employment of a worker or otherwise deprive him of any benefit to which he is entitled merely on grounds of present or past mental health condition or while the worker is receiving treatment for the mental health condition.⁸

This provision is designed to safeguard individuals experiencing mental health challenges from potential unfair dismissal. Nevertheless, the Act presents a significant omission by not addressing the interests of employers who may be impacted by reduced productivity from employees with mental incapacitation, which could constitute a breach of their employment contracts.

It is pertinent to note that the Labour Act, which serves as the primary employment law in Nigeria, does not specifically address the termination of employment contracts for employees with mental health conditions. Similarly, while the Employee Compensation Act 2010 covers for workplace injuries, it does not mention compensation upon termination for employees experiencing mental health issues.

⁸ Section 13(2).



Employer's Obligations under the Act

- **Provision of Medical Support:**

Pursuant to the provisions of section 13(3) of the Act, when an employer has reasonable grounds to believe that an employee is experiencing a mental health condition significantly impacting their work performance, the employer is required to assist the employee in obtaining medical advice or treatment”.⁹

Accordingly, employers should act judiciously when considering the unilateral termination of employees with mental health conditions. This requirement is an important aspect of the Act, as it establishes potential liability for employers who do not adhere to these obligations.¹⁰

The Act requires employers to provide assistance and support to any employee whose mental health condition substantially affects their work performance. This requirement highlights the significance of addressing mental health issues in the workplace and encourages employers to take proactive measures when supporting employees facing such challenges.

- **Protection of Personal Information of Employees with Mental Health Conditions**

To further support individuals facing mental health challenges,, section 21 of the National Mental Health Act ensures the confidentiality of personal information for anyone with such conditions. Specifically, it states: “all information concerning a person with mental health condition, including information relating to his or her health status, treatment and stay in a health facility is confidential as provided for in the National Health Act”.

Employers are required to maintain the confidentiality of any employee who is experiencing mental health conditions. While there is no specific penalty outlined for breaching this requirement, the Act includes a general penalty for non-compliance. Anyone who denies the rights of people with mental health conditions under the Act may face a minimum fine of N200,000 (Two Hundred Thousand Naira) or imprisonment for at least six months. This penalty can also apply to employers who violate these provisions.

9. Section 13(3).

10. Section 51



Conclusion

The Act represents an advancement in public health and labour relations by addressing mental health concerns in the workplace. It establishes protections for employees with mental health conditions and implements measures to reduce the prevalence, stigmatisation and discrimination associated with such challenges within the work environment.

The Act establishes a strong foundation and represents significant progress in both public health as well as labour and employment relations. It plays a crucial role in protecting the rights of employees with mental health conditions and in fostering an inclusive workplace environment. Despite having policies in place, concerns remain about how effectively the Act will be enforced and monitored. Furthermore, it does not fully address potential challenges that employers may encounter, such as managing persistent underperformance or addressing risks to workplace safety, even when they have met all obligations under the Act. Additional measures should also be considered to support employers who face undue hardship in complying, thereby achieving a balance between employee protection and workplace safety..

Nevertheless, this development puts Nigeria on equal footing with other developed nations that have already adopted similar frameworks.

This is nice. Also consider recommendations around where an Employer has complied with all his duties under the Act to protect such employee but the employee still under delivers or the lives and safety of other employees are at risk. Again, consider where the employer suffers unjustifiable hardship while trying to comply with the provisions of the Act.

Contributor



Amarachi Eze-Njoku
Associate

KEY CONTACT

For further information , kindly reach the contact below:



Taiwo Adeshina

Partner & Head, Corporate
Commercial Department

taiwo.adeshina@jee.africa

Telephone

+234 (02) 014626841/3,
+234-(02) 012806989

Email

jee@jee.africa

Victoria Island

RCO Court,
3-5 Sinari Daranijo Street,
Victoria Island, Lagos, Nigeria.

Abuja

42, Moses Majekodunmi
Crescent.
Utako, FCT, Abuja

Ikeja

1st floor, ereke house, Plot 15,
CIPM Avenue
CBD Alausa Ikeja
Lagos Nigeria

Accra

Yaoundé

Harare