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MODERN DAY OUTSOURCING ENGAGEMENTS: THE NEED FOR A LEGAL INSTRUMENT TO ADDRESS THE PLIGHT OF CONTRACT WORKERS

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ABSTRACT

Job engagement is an old phenomenon. Its style and modality may have witnessed changes over the years in different societies to reflect the dynamism in work concept and the changed needs of the major players in the labour market. Once, the number of the latter was restricted to two namely the employer and the employee. Today, a tripartite arrangement has evolved to add to the previous arrangement with the inclusion of an outsourcing recruitment agent. Also, the goals of the parties seemed not to have remained static. Whilst the earliest employer's aim may have been centred solely on how to generate profit, today; his attention appeared drawn to the need to carve a niche in the world through his brand name. The contract worker who yesteryears worked mainly to assuage hunger, seemed attracted to other benefits such as growth in his area of speciality. The outlined style of work engagement as well as the diverse interests of the key players could be harnessed under a legal instrument. The objective of this paper is to bring to the fore the plight of part-time service providers which seemed neglected under outsourcing recruitment engagement. The paper adopted doctrinal research method in its analysis of the issues at stake and found that slave labour is depicted in contemporary outsourcing engagements. The paper recommends a review of the law on labour engagements to accommodate the changed perspective and to protect the interest of vulnerable workers.

Keywords: *Outsourcing engagements; Dynamism in work concept; Employers' goal; Employees' aspirations; Contract workers' plight.*

1. INTRODUCTION

Recruitment for jobs is traditionally rooted in mechanisms that appear different from contemporarily modalities.[1] The traditional mechanisms practised over the years before the global advancement in technology, recognised two major key players namely; the employer and the employee with the former reaching out to the latter mainly through print media adverts about job openings.[2] The employee on the other hand makes his response by writing an application and submitting his resume in line with the publication in the newspaper. The process may have been time-consuming, less effective and costly considering the period between the publication and the feedback, the money expended in the publication and the fact that selection will be made from only those who saw and responded to the publication which invariably may not have included the best for the job.[3] The herculean task of sourcing for the desired number and quality of persons from an increasingly competitive labour market at

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1 R Robins, 'How the Recruitment Process Has Evolved Over Time' (2023) <epoly.co.uk/blog/how> accessed 15 November 2024

2 ibid

3 ibid

reduced cost may have promoted the resort to other forms of traditional mechanisms in filling up job vacancies.

One of such mechanisms employed to either support or do away with the above (depending on the nature of vacancy to be filled) is the use of internal hiring system.[4] Recruitment in that sense involved the tested employees of an organisation who through their job description and offering have demonstrated that they could discharge the duties of a higher position in the organisation credibly well. But internal hiring also has its challenges even though it may be cost-effective. The system allowed positions to be filled up by only those available to employers who may not necessarily be the best for the job.[5] Again, the mode of selection for the upgrade may give room for rancour in the organisation which may negatively affect the system and its growth. A way out of the latter was to encourage an independent local employment office to do the selection and placement from what is given to it. The use of a local office did not cure the method of its deficiency namely, the limited pool from which a choice is made.

The quest for the engagement of persons with the proper requisite who will give better service delivery may have led to the use of temporary employment agencies to shortlist and find good potential for organisations.[6] The emergence of these outfits led to the introduction of third-party experts in the recruitment process.[7] The third party expert addressed in different styles as 'outsourcing agent', 'recruitment process outsourcing' 'independent outsourcing employer' is a consulting team which works with an organisation to understand her hiring needs and plans a solution based on the needs presented to it.[8] The outsourcing process seems to draw legal backing from the Labour Act which includes agents as employers of labour.[9] The process may be described as one in which an organisation outsources its recruitment process in part or entirety to a third-party expert or a service provider to act on its behalf in order to maximise the efficiency and cost of the hiring process.[10] The recruitment process outsourcing seems to have gone beyond mere recruitment to the management of staff that have been recruited for the purpose of maintaining efficiency in productivity. Thus, many outsourcing recruitment agencies have become in-house units of the parent organisation.

The importance of recruitment outsourcing process cannot be undermined in today's fast-growing technological world where the provision of specialised needs is what make organisations thrive and a force to reckon with. With recruitment outsourcing process, bad hiring decisions are eliminated from the activities of organisations and replaced with talent acquisition strategies which gives organisations an edge over their competitors.[11] The gains of recruitment outsourcing process are also numerous and range from providing scalable and flexible solution to organisations which enables them to pay only for what they need and

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4 Traditional Methods of Recruitment Vs Modern Methods of Recruitment' <https://go-better.com> accessed 15 November 2024

5 ibid

6 L Shalimi, 'What is Recruitment Process Outsourcing' (2021) <betterplace.co.in/blc> accessed 20-November-2024

7 ibid

8 ibid

9 Section 91 Labour Act, Laws of the Federation of Nigeria, 1990

10 ibid

11 ibid

when they need it to ensuring that the workforce hired are those who meet organisation's needs not only by paper qualification but also through their service delivery.

The gains of recruitment outsourcing process appear to tilt more towards the direction of the employer than that of the employee. Whilst the subject of the process is the employee, his welfare, growth, and job satisfaction appear insignificant in the entire scheme which engages him for service delivery as a part-time employee of an organisation. The legislation from which the process may have derived its force seem silent over conditions of the other party, namely; the outsourced part-time employee in the arrangement. This paper discusses the latter position under five parts including the introduction which is Part I. Part II presents the notion of employment while Part III explores the concept of part-time employment and the use of outsourcing recruitment process for same. Part IV makes a comparative study of outsourcing engagements for part-time employment across jurisdictions. Part V highlights the plights of part-time employees in modern-day outsourcing engagements. Part VI contains the conclusion to the paper.

2. THE NOTION OF EMPLOYMENT

Employment entails among others, the provision of services and the payment of remuneration in lieu of the services were rendered as specified.[12] Every arrangement which depicts the above, involves two parties namely; an employer and an employee.[13] The latter is hired by the former for service delivery and he gets remunerated in form of wages, salary or through other valuable deeds either prior or after service has been delivered in line with the agreement entered into by both parties. So, there is a give and take situation reduced into a contract which terms are supposed to bind the actors.

The Labour Act captures the above in its definition of contract of employment as involving two people that is, an employer and an employee.[14] Section 91 of the Act further clarifies the status of each of the parties. According to the Act, an employer is that person who in a contract of employment engages another person to work for him or to do the same for someone else and it includes an agent, manager or factor of the first-mentioned person and the personal representation of a deceased employer.[15] The Act sees an employee as a worker who has entered into an oral, written or implied agreement with an employer to provide his services which could be of any nature but excludes among others the under-listed:

(i) any engagement not for the purpose of the employer's business;[16]
(ii) persons exercising administrative, executive, technical or professional functions as public officers;
(iii) persons categorised as the employer's family members;
(iv) representatives, agents, and commercial travellers whose work is done outside the permanent workplace of the employer's establishment.[17]

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12 A S Honsby (ed.), Oxford Advanced Learner's Dictionary (8th edn.; Oxford University Press, 2010) p. 480
13 C Nwagbara. *Determination of Contract of Employment and Remedies for Wrongful Dismissal* (Talt Publishers, 2000)
14 Labour Act (n. 9)
15 ibid
16 iIbid
17 ibid

An employee is also a worker engaged by another person to work for him on the condition that he will be subjected to the control and directions of that person who has engaged him and who spells out the manner in which work must be done.[18] The use of discretion by an employee may be disallowed in a contract of employment so that the services of the one who is hired is done in accordance with the dictates of the hirer who is also vicariously liable for the offences committed by the hired in the course of his duties.[19] Thus, the relationship between them remains that of the hirer (on top) and the hired (below).[20]

Employment could be on full-time or part-time basis.[21] Part-time employees seem to fall into two groups. The foremost group includes those whose services are delivered in like manner as full-time employees but from outside the organisational set-up. For example, they are under the control of their employer, obey his instructions and abide by the work etiquettes set for the nature of services they are engaged to deliver.[22] The other group who may be termed as independent employees seems to be engaged under a contract for services.[23] Their term of employment may specify only the nature of services required from them. The manner through which the spelt-out task is accomplished is solely theirs to figure out. Thus, an independent employee is free to use his initiatives to achieve results and will equally be held solely responsible for the wrongs (whether civil or criminal) committed in the course of his service delivery.[24]

Full-time employment admits the employee into the internal working system of an organisation/establishment so that he becomes part of the system and could be counted among its assets or liabilities at a given time during its life span for as long as the employee's work status is recognised.[25] A full-time employee is accorded certain rights which the organization/establishment that has engaged his services is obligated to fulfil. In *Collier v Sunday Referee Publishing Co. Ltd.*,[26] the Court held that it is the right of the servant to be provided with the prescribed job in the terms of his engagement and where less or none is provided, the servant cannot be chastised in any way or do otherwise provided he is remunerated regularly.[27] The Court held further that the under-listed circumstances may serve as exceptions to the rule:

(i) where the employee's remuneration is based on commission then the hirer is under an obligation to provide regular work;

(ii) where the employee is under a contract of apprenticeship such that the needed skill and knowledge as well as experience is dependent on regular contact with the job, then the employer must provide that;[28]

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18 Nwagbara (n. 13)
19 *Lister v Ramford Ice & Cold Storage Co. Ltd* (1957) AC 555
20 ibid
21 ibid
22 N B Owolabi; M A Badmus, *Nigerian Business and Co-operative Law* (3rd edn., General Studies Department Lagos State Polytechnic, 2009) p. 257
23 ibid
24 ibid
25 ibid
26 (1940) 2KB 647.650
27 ibid per Asquith J
28 Owolabi and Badmus (n. 22)

(iii) where the terms of contract stipulate mandatory provision of work, the employer is duty-bound to do so.[29]

An employee is also entitled to his wages and a safe work premises which includes the provision of safe equipment for his use.[30] He enjoys this right whether on part-time or full- time basis. Judicial approval was given to the above in *Strabag Construction (Nigeria) Ltd v. Okpan Ogareke* [31] and in *Western Nigeria Trading Co. Ltd v. Busari Ojo*.[32] In the first case, an employee who fell from a crane provided by the hirer while performing his duty sought legal redress to his plight. The Court held that the employer is not only bound to ensure that the workplace for his employees is safe but must also maintain the equipment put into use by his employees so that their safety can be guaranteed.[33] In the latter case, an employee who has plastic googles on while on duty suffered visual impairment from a splinter of steel which flew into his eyes. The Court's position on the equipment made available by the employer is worthy of note. It held that the plastic goggle was not enough to exonerate the employer from the discharge of its duty of care. The employer must carry out the added responsibility of ensuring that the goggles are used as specified by conducting reasonable supervision.[34]

The employee is equally obligated to his employer whose rights as the hirer must not be tampered upon.[35] It is the duty of an employee to obey lawful and reasonable orders, apply his skills in the exercise of his duties, be cautious and diligent while carrying out his task and above all be faithful, loyal and honest to his employee. The decision in *Maja v Stocco* [36] shows that a singular act of disloyalty may result to the loss of an employee's job. In that case, the physician employed by the plaintiff took an undue advantage of his position by secretly directing the patients who came to his employer's hospital for treatment to his own clinic where he treated and collected money from them without remitting the same to his employer.[37] He was dismissed and he went to Court. The Court held the dismissal to be proper adding that as an employee, he was duty-bound to disclose to his employer whatever he discovers in the course of his duty which he reasonably believes may have negative impact on his master's business.[38]

Full-time employment seems to be the commonest sought-after work engagement. It appears acceptable to both employers of labour and the employees whose services are needed are often accorded the rights recognised by law. The basic element which characterises full time engagement namely, the exercise of control by the employer over his employee may be the main attraction to employers of labour for that type of work arrangement.[39] No hirer would relinquish the power to control the hired for core service delivery aimed at achieving organizational goals to a system that delimits such power and puts the vision of the

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29 ibid
30 Owolabi and Badmus (n. 22)
31 (1991) 4NWLR (Pt. 170) 733
32 (1965) NMLR 178
33 *Strabag Construction (Nigeria) Ltd v. Okpan Ogareke* supra (n. 31)
34 *Western Nigeria Trading Co. Ltd v. Busari Ojo* supra (n. 32)
35 Owolabi and Badmus (n. 22)
36 (1968) NMLR 372
37 ibid
38 ibid
39 Owolabi and Badmus (n. 22)

organisation in jeopardy. Similarly, employees would prefer full-time engagement to part-time arrangement because the former ensures job security and offers job protection to some extent under the doctrine of vicariously liability.[40] Thus, whether the job is strictly private (engagements for domestic servants or one for apprenticeship), private business (organisations or businesses owned privately) or public (government-owned establishments) in nature; the preference for both the employer and employee is for a full-time engagement.

Employment on full-time basis is wide and encompassing accommodating both regularly employed internal staff and staff employed as contract workers. Both groups may be employed in the same organisation under different capacities and remunerated differently but with the objective of meeting their organisational goal. The future prospects for the contract worker appear not defined in organisations even where majority of them seems to belong to the younger generation who possess specialised skills useful to the growth of the organisation. Yet, they are stagnated in the work system they find themselves. The situation seems worse with the introduction of unregulated outsource arrangement where agents are engaged to source for part-time staff for organisations. The work arrangement for these workers leaves nothing to be admired for the now or perhaps in the future.

3. THE CONCEPT OF PART-TIME EMPLOYMENT

The engagement of persons for service delivery on contract basis appears to have started during the pre-medieval era.[41] Persons who were so engaged worked for short period as apprentices to artisans and in the farm mainly for the planting and harvesting of crops under the supervision of their employer or other persons employed on full-time basis.[42] They were strictly part-time workers whose terms of engagement and nature of work spelt out the same both expressly and impliedly. They were seen at that time as hands needed to quicken the accomplishment of specific tasks and were laid off at the completion of the task which was mainly unskilled in nature. No educational qualification was compulsory for their recruitment although some had experience gained from repeatedly working on same task season after season. They were neither remunerated as full-time workers nor given other benefits such as pension, gratuity, medical care, insurance facilities or paid annual, sick and maternity leave.[43] It was immaterial to the employer that same persons were engaged each season, for a considerable number of years for the job hired out or that those persons were efficient in the job; he simply maintained the same remuneration or gave out what pleased him and was not obligated under any legal instrument to retain the workers on permanent basis or give assurance through any other means that the jobs were secured for them.

The demand for unskilled services on a temporal basis took a leap from the traditional seasonal request to a regular need with the industrial revolution of the 18th and 19th centuries.[44] Factories which kept increasing in number at that time needed the services of such workers to keep up with the large demand for their goods as well as maintain an

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40 ibid

41 K Kelvin, 'Evolution of Contract Staffing: From Ancient Times to the Modern Labour Market' <https://academic.oup.com> accessed 2 August 2024

42 ibid

43 ibid

44 ibid

equilibrium in the cost of production.[45] Although the contract workers employed directly by companies had a feel of a different work environment and could in certain circumstances do the work of a sick full time employee who had a permanent work status, they remained marginalised in terms of remuneration and welfare. However, contract employment took a different look at this period with legal pronouncements on work conditions and prospects for persons so employed.[46] For example, in Nigeria, there is a guideline for contract workers in the oil and gas sector which allowed their part-time employees to form unions while in Ghana the Labour Law specifies for six months renewal of contract workers' services and the regularization of such appointment for persons who have worked for more than five years for an organization.[47] The intendment of the law which seems to recognise and accord dignity to contract workers may be one of the remarkable achievements of the phase.

3.1 Modern-Day Contract Engagements

The early 20th century began to witness another major change in contract employment which has remained till date. The era saw a shift from the direct recruitment system of contract workers by their employers to the engagement of the services of a third party to carry out the recruitment task.[48] The change from the simple traditional system to one which incorporated tools that will address the business circumstances of the time seems to be the motivating factor for the tripartite arrangement in the recruitment of contract workers.[49] Perhaps, the need for technical and technological knowledge to keep up with modern global advancement which permanent staff of organisations lacked may have popularised the new arrangement.[50]

The agencies served as intermediaries between the company in need of services ranging from cleaning, security to information technology skills and the workers recruited for the company.[51] With the concept, work on contract basis seems subsumed under the tripartite arrangement which comprise the under listed parties:

(i) the company in need of contract workers (called the client company);[52]
(ii) the agency engaged for the purpose of recruiting contract workers for (i) above (called the contractor company) and
(iii) the workers employed on contract basis (called the outsourced employees).

The new system also introduced a new nomenclature i.e., outsourced employees which has gained acceptance as the other styles (namely; contract workers, independent workers, freelancers and work for hire staffers) used to described persons not accepted as permanent employees or internal staff of an organisation.[53]

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45 ibid
46 Federal Ministry of Labour Guidelines on Contract Staffing and Outsourcing in the Oil and Gas Sector (1971) (Hereinafter referred to as 1971 Guidelines)
47 S D Kpinpuo; A Mohammed-Muniru; J Antwi, 'Talent Outsourcing in Ghana: A Qualitative Study of Managed Service Personnel and Technology Leadership': [2023] (9) (11)
48 P A Samuelson el ta, 'Rebut and Confirm Arguments of Mainstream Economists Supporting Globalisation' *J Econ. Perspect* :[2004] (18) (3) pp. 135-146
49 ibid
50 ibid
51 Labour Law Revie*w NJLIR* [2014] (8) (40)
52 ibid
53 Kelvin (n. 41)

The client company/outsourcer seeks the services of the contractor company/ outsourcing employer (a company outside its management) to complete certain task for it through other persons. It provides the work and premises for the services it requires. The outsourcing employer takes the position of the outsourcer and acts as the master of the outsourced employee. It sets up a different compensation structure from that given to the internal employees of the outsourcer. The outsourced employee works for the outsourcer but collects his pay (strip of all benefits) from the outsourcing employer who is given service charges by the latter.

The new arrangement appears to admit contract workers into core activities of an organisation provided they possess the technological knowledge which permanent staffers may lack. Thus, the outsourced staff so engaged may manage the organisation's information technology which falls under core activity. So, in addition to providing non-core services which the teeming outsource staffers do; it also gives the organisation leverage in areas where its internal staff is lacking and makes all available under a system that is cost effective. The organisation is presumed to benefit in other ways through the system namely;

(i) increased efficiency;[54]
(ii) increased focus on work
(iii) increased flexibility to meet with changing business and commercial conditions;
(iv) access to innovation and
(v) access to skills.

The focus of outsourcing employment is usually the vibrant work force i.e., the youth within the age bracket of 18 and 35years whose interest in the acquisition of technological skill is limitless. So, they are the strength behind the survival and growth of many organisations in today's world of technological dispensation.[55]

Outsourced employees are found in both business and private endeavours. These staffers whose job are described as temporal in nature are in the banking sector, private organisations, government parastatals and they also serve researchers and practitioners where the aforementioned, desire certain achievable goals which the available staff or system cannot achieve. He is in continual demand because his services would be required whenever an organisation needs to save, create an opportunity to focus on its vital activities or have quick and unconditional access to innovative knowledge and increased sophistication of technological advancement.[56] He could also be required where the organization needs to put on-board those with excellent capabilities, minimize its operational cost in attaining the above, manage its risk to the barest minimum, allocate its resources to other set goals, have access to resources not available internally or need to take another look at some of its services not delivered as expected.[57] Circumstances under which outsourced employees are needed may be inexhaustible because any noticeable decline in organisational set goals will

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54 Kpinpuo (n. 47)

55 S k Barik; H S Rout, 'Outsourcing of Health Care Services in a Smart City of Eastern India' *J Facil Manag*.: [2021] (19) (4) pp. 458-478

56 A Schwarz; el ta, 'A Conjoint Approach to Understanding IT Application Services Outsourcing' *J Assoc. Int. Syst. Online* :[2009] (10) (10) (referenced in Kpinpuo; Mohammed-Muniru and Antwi (n. 29))

57 ibid

necessitate the need for that special uncommon skill not found internally but will enhance the internal performance, improve clients' satisfaction and investors' confidence at less cost.

4. COMPARATIVE STUDY OF OUTSOURCING ENGAGEMENTS FOR PART-TIME WORKERS ACROSS JURISDICTIONS

The recruitment of job seekers on part-time basis through outsourcing process seems to be globally acceptable. The new modality appear to retain some of the material features of the traditional procedure in some jurisdictions while in other jurisdictions, the traditional procedure seems abandoned.[58] In Nigeria, part-time workers engaged under the recruitment outsourcing process or through the traditional employment method are deemed to be on temporal employment which is controlled by a different regulation from that put in place for permanent workers.[59] Outsourced engagement in Ghana is differentiated from contract employment by the recruitment mode adopted. The first involves a third-party participation while the second is done directly by the client company.[60] Generally, part-time outsourced employees and contract workers tend to render services which are mainly non-core activities and are occasionally deployed to core areas of an organisation to fill missing gaps.[61] This article has adopted the use of both terms interchangeably to refer to the same phenomenon, namely; workers who are not employed on permanent basis by organisations and so are not part of their internal employees.

Modern day outsourced services are marketed both on shore and off shore in some jurisdictions thereby offering the outsourced employee a wider range of choice for his service delivery and for organisations which are resource trapped, the opportunity of remaining viable under minimal cost.[62] Contract/outsourced employment may have similar objectives across jurisdictions but its modus operandi seem different even within the same jurisdiction as it is in Nigeria where a federal guideline is provided for such employment for only oil and gas workers while part-time workers in other sectors appear neglected. This part of the article highlights the operational framework of temporal workers in selected jurisdictions.

4.1 China

China appears to be one of the jurisdictions where global employment outsourcing is yet to be recognised but a similar arrangement called dispatch services is given legal approval.[63] Highlights of the working of that arrangement are as follows:

(i) three parties' involvement namely; the client company, an employment company and a dispatched employee;[64]

(ii) the employment company and the client company enter an agreement for a labour dispatch service which must be written and executed by both parties;

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58 ibid

59 1971 Guidelines (n. 46)

60 Kpinpuo; Mohammed-Muniru and Antwi (n. 47)

61 F Monteduro; V Allegrini, 'How Outsourcing Affects the E- Disclosure of Performance Information by Local Governments' *Govern.Info. Q*: [2007] (37) (1)

62 Kpinpuo; Mohammed-Muniru and Antwi (n. 47)

63 C C Philip, 'Dispatch Work in China: A Study from Case Records Part I (2017) Vol 43:3 https://doi.org/10.1177/0097700417693590> accessed 14 March 2025

64 ibid

(iii) the employment company executes an employment contract with the dispatched employee;
(iv) the employment company carries out the duties of an employer to the dispatch employee i.e., he pays his salary, social insurance and other benefits, and his income tax;
(v) the client company may allow the dispatch employee to perform tax which duration is for six months or to support a supporting function or replaces another staff for a short period;
(vi) the dispatch employee shall not exceed 10% of the total employees of the client company;
(vii) the dispatch employee's appointment may be regularised by the client company where he meets two conditions; he must have been seen to be of good conduct and would have worked for the client company consistently for a period not less than three years.[65]

A notable feature of the dispatch service arrangement in this jurisdiction is that it is regulated by a uniform law which emphasises the importance of agreement between the various parties and makes the conditions of service known at the inception of the contract.

4.2 Ghana

Outsourced arrangement in Ghana is used for the engagement of temporal workers who have both specialised and non-specialised skills.[66] The former is engaged mainly in banks to minimise cost, enhance service quality and create room for management to concentrate on the main business operations of the bank.[67] There may be no specified agreement for parties in the arrangement but the Labour Law in Ghana has provisions on the conditions of service for employees under a short tenure employment. The law provides among others that their contract with the client company is renewable after every six months and that they stand a chance of being appointed as permanent staff of the organisation where they work after five years of their stay there.[68] The above seems to guarantee job security and growth in one's specialised area which are important indices in job satisfaction.

4.3 Nigeria

Outsourced employees/contract workers in most organisations in Nigeria do not enter into agreement with the party/parties they are responsible to, so; do not have any oral or written document on their work conditions. Their terms of engagement are often presumed because where there is an agreement between the other two principal parties, it is hidden from them and there is no uniform law to give the necessary guidance. The only instrument which appears to regulate contract arrangement in Nigeria is that put in place for oil and gas workers.[69] The other temporal workers are left at the mercy of the client company where

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65 ibid
66 Kpinpuo; Mohammed-Muniru and Antwi (n. 47)
67 ibid
68 ibid
69 1971 Guidelines (n. 46)

recruitment is done directly by the latter or the contractor company where an agency undertakes that duty.

The guideline for oil and gas contract workers/part-time outsourced employees provides inter alia thus:

(i) there shall be an agreement between the principal company and contractor company and included in that agreement shall be a clause which empowers the principal company to deduct from the contract sum whatever is owed to the contract staff by the contractor in cases of default in payment of wages and/or other agreed entitlement of the worker;

(ii) the contract agreement between the principal company and the contractor company shall make collective bargaining between contractors and their employees (contract workers and outsourced employees) mandatory;

(iii) outsourcing shall be restricted to non-core business of the client company except for proven short-term projects;

(iv) contract staff who meets company recruitment standards shall be given opportunity for regular employment when vacancies exist;

(v) Qualified contract staff shall be given opportunities in line with the principal companies recruiting standards before such vacancies are advertised;

(vi) All contract staff under manpower/labour contract shall belong to the National Union of Petroleum and Natural Gas Workers or Petroleum and Natural Gas Senior Staff Association;

(vii) There shall be job security and capacity development for contract staff working in the oil and gas sector;

(viii) contractor company shall submit during the prequalification for contract, details of remuneration, training and development plan for their employment.

The above guidelines appear to address pertinent issues on employment which implementation tend to create a balance in services provided by both temporary and permanent workers. For example, clause (iv) makes it possible for a temporary staff to become a permanent staff provided the standards set for such rise are met. Clause (v) gives priority to internal appointment of temporal staff before advertisement is made public. Clause (vi) tends to suggest that a temporary staff can be a senior staff of the organizations. The guidelines may be part of the solution to the plights of contract workers which have been neglected year after year.

5. THE PLIGHTS OF MODERN-DAY CONTRACT WORKERS

Some of the terms often used to describe contract workers seem contradictory to the nature of services they provide in organisations. A contract worker who may be called a part time worker or a temporary staff may put in the same number of work hours or more than the hours of work done by the permanent staff. The temporal nature of his work is no longer adhered to as some contract workers have been so engaged for more than fifteen years by the same organisation under the same work condition made known to them on the first day of their appointment. They are also not freelancers because the where, when and how of their service delivery is controlled by another. It may equally not be proper to address them as hired hands because in addition to the hands, they possess the brain represented in the

certificate which is a necessary prerequisite for their engagement and work placement. Therefore, the position occupied by permanent staff could be filled by them but for the privilege they lack.

The true master of the contract staff is not clearly defined to him under the outsourcing engagement. He does the work of Mr. A (the client company who may be seen as the indirect master) under Mr. A's work premises but he is neither answerable to him nor protected by him. Mr. B (the contractor company who may be called the direct master) who remunerates and could reprimand him may not be in the position to understand all the intricacies in the work for which he is hired and so may neither provide valuable advice on safety precautions nor be involved in the procurement of the same for the purpose of overcoming hazards that are prone to such jobs. The absence of the above input put the contract worker, first; in a risky situation and secondly in a dilemma of the master to confront when his life is threatened in the course of his work and who will save him when in immediate danger.

The clumsy nature of this arrangement is more revealing when there is the need to spell out who will be held vicariously liable for the contract staffer's negligence at work.[70] He has no work agreement with the client company which work is the subject of the negligence. The contractor company which he knows has no work for him to perform in the nature of which negligence may be detected. So, the third party whose property or person is affected in the cause of the outsourced employee's work may hold the wrong master vicariously liable or forgo the claims which he would have been entitled to if substantiated in court. The negative effects of the absence of a legal appraisal of the tripartite arrangement take its toll not only on the contract worker but also on those who come in contact with the services he provides.

The modern-day contract worker styled under the name of outsourced staff as a slave more in his country than outside his country. Whilst in his country, he works as a contract staff under a poor remuneration scheme that is never reviewed year after year irrespective of the remarkable improvements he may bring into the organisation or the unequalled efficiency he may display in the discharge of his work which may improve the ratings of the organisation. He is deprived of all work benefits, so; he is not paid any compensation for extra time put into work as his counterpart on permanent work basis would be paid; not given any work bonus where the organization makes high profits or gets national or international recognition that is commendable (to which his input is added); not entitled to sick leave or medical care (even where the client company is a health care provider), vacations, maternity leave or insurance benefits.[71] All of which is accessible to permanent staffers of the same organisation.

His work conditions can be likened to one in a servitude employment. He is not entitled to a furnished office space similar to that given to those on permanent employment.[72] The client company expects him to work from a small crowded place with dilapidated furniture in which case he may be forced to carry his work tools on his laps to deliver his

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70 Owolabi and Badmus (n. 22)

71 T Felico; A Samagaio; R Rodrigues, 'Adoption of Management Control Systems and Performance in Public Sector Organizations': *J Bus. Res*. [2021] (124) pp. 593-602 (referenced in Kpinpuo; Mohammed-Muniru and Antwi (n. 47)

72 ibid

services. He is equally denied opportunities for capacity building as no training, seminar or workshop is put in place for him funded either by his indirect master (the client company) or direct master (contractor company). Yet, he is expected to bring into the former company; the latest advancements in technical and technological knowledge for unmatched proficiency in his service delivery during his stay in the organisation.[73]

There are no job satisfaction incentives in the management of contract employment in modern times.[74] Job security seems unguaranteed, no job promotion and no indications that the employment of a contract staffer can be regularised into a permanent status. His employment terms which are mostly not documented, may include a pay of thirty thousand (N30,000) naira a month as a messenger whether he holds a post-graduate degree or not. The job given to him may be taken away unannounced, sometimes; for reasons not directly associated with his service delivery. The client company may require better services at lower cost while the contractor company may feel his profit margin is unattractive. So, he repudiates the contract and throws the contract worker into the labour market with no consideration given to how he may survive the sudden change of affairs.[75] Added to his odds is the fact that he may remain as a messenger even after thirty years in the organisation because there is no elevation in the work nomenclature that is given to him. Even the employment of new contract workers will not in any way change his status as he is addressed and given the same work description as the new employees who joined thirty years after him.[76]

The privilege provided in the 1971 Federal Guidelines for oil and gas contract workers is not given to contract workers in other sectors of the economy.[77] The practice which most organisations adopt is for management to internally advertise and employ new staffers where there are vacancies sometimes through the services of the contractor companies which engaged the contract workers for the organisations. The employers make no recourse to the existing contract work force even where the latter possess higher or the same academic and professional qualification needed for the new placement. Thus, the contract worker is not only deprived the opportunity of gradually ascending into the organisation's internal employment by virtue of the number of years spent there but he is also denied the opportunity of competing with others for the purpose of changing his work status.[78]

The contract worker's employment no matter its duration is not pensionable.[79] He may be more efficient, innovative and dedicated than those employed on permanent work basis, he leaves with no terminal work benefits.[80] Perhaps, his fate could best be described as that of one who is used, dumped and left wretched. He may be termed lucky if the period to which the use of his talent is put terminates at fifteen years in which case, he may find another meaningful employment for the next fifteen or twenty years of his work force.

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73 ibid
74 ibid
75 M Belcourt, 'Outsourcing: The Benefits and the Risk' (2006) *Human Resource Management Review* 16:2 pp 269-279
76 ibid
77 1971 Guidelines (n. 46)
78 Kpinpuo; Mohammed-Nuniru and Antwi (n. 47)
79 ibid
80 N P Cote; R R Bruce, 'Downsizing with Competitive Outstanding: Its impact on Absenteeism in the Public Sector': *Viesoki Politika Ir Administravimas* [2024] (7) pp 74-80

However, where all his work life is on contract employment not because he is mandatorily made to take up the employment for that long but because of his inability to get better offers; he may retire into penury because the organisation which sapped all the good in him has no vision for his life after work. Thousands of workers in most developing countries fall into this category of work force since employment for the less-privileged in these countries seem restricted at present to the supposedly temporary basis.

6. CONCLUSION

It would appear that the fusion of the services of both permanent and contract staff is needed for organisational growth in modern times. While one handles the core and confidential activities of an organisation the other compliments the services of the former and may assume the position of the former where some deficiencies are found. The permanent older staff may not be abreast with the continual changes in the developing world, so; the personnel with such skills become indispensable tools to keep up with global modernization. This probably explains why some organisations will outsource its accounting jobs or its information technology services because it desires efficient result.

Outsourcing has also been linked to cost effective management system although some school of thought tend to disagree.[81] Its overall gains seem to be one sided. The employees who provide the services that produce the positive change are neglected in terms of remuneration and general welfare. Their work conditions can also be improved upon so that the disparity between them and the permanent staffers will not be so large. The above has become imperative considering the fact that most organisations and government agencies now adopt the practice of engaging outsourced employees who will pay less, yet get better services.

The plight of today's contract workers can be addressed with appropriate legal instrument. The intervention of the law is needed to checkmate outsourcing agencies so that their focus will not only be to make profit at the detriment of the outsourced employees. Similarly, the policies of the companies that engage outsourcing agencies need to be reviewed in line with appropriate laws put in place to accommodate the interests of all parties in the outsourcing engagement particularly that of the outsourcing employee who more or less is the underdog of the arrangement.

The legal intervention which some countries like Nigeria has begun in some sectors can be enacted as a law by the legislative arm of government and made to apply to all sectors and to all persons irrespective of work type. Such law when enacted will be subjected to periodic reviews to reflect changes in the world.

[81] Felico; Samagaio and Rodrigues (n. 61)