



LABOUR SAFETY & HEALTH BILL (LSHB) 2012 – A BETTER ALTERNATIVE FOR THE EMPLOYER?

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LABOUR SAFETY AND HEALTH BILL – A BETTER ALTERNATIVE FOR THE EMPLOYER?

- LSHB - A RESPONSE TO THE NEED FOR REFORMATION OF OSH LAWS
 - THE FACTORIES ACT IS THE MAJOR OSH ACT IN NIGERIA
 - IN EXISTENCE FOR ALMOST THREE DECADES – A RELIC OF COLONISATION
 - PROVISION ARE PRESCRIPTIVE IN NATURE

LABOUR SAFETY AND HEALTH BILL – A BETTER ALTERNATIVE FOR THE EMPLOYER?

- THE SCOPE OF ITS APPLICATION IS QUITE UNCLEAR
 - “... TO PROVIDE FOR FACTORY WORKERS AND A WIDER SPECTRUM OF WORKERS ...BUT FOR WHOM NO PROVISIONS HAD BEEN MADE”
 - CF WITH ITS SECTION 87 THAT PROVIDES FOR 10 OR MORE PEOPLE IN A WORKPLACE.
- HAS BECOME OBSOLETE IN THE LIGHT OF INCREASED AND DYNAMIC INDUSTRIALISATION

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- HIGHLIGHTS OF THE LSHB (2012)
 - ESTABLISHMENT OF NATIONAL COUNCIL OF OCCUPATIONAL HEALTH AND SAFETY (NCOSH) AND NATIONAL INSTITUTE FOR OCCUPATIONAL HEALTH AND SAFETY
 - PROTECTION OF PREGNANT AND NURSING EMPLOYEES
 - RECOGNITION OF THE NATIONAL INDUSTRIAL COURT HAVING JURISDICTION OVER OSH MATTERS.

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- ESTABLISHMENT OF A TRIPARTITE APPROACH IN THE MANAGEMENT OF OSH
- A PROACTIVE STYLED LEGISLATION CONTRARY TO PRESCRIPTIVE LEGISLATION AS FOUND UNDER THE FACTORIES ACT.
- PREPARATION AND REGULAR REVISION OF WRITTEN STATEMENT OF GENERAL POLICY AND IMPLEMENTATION OF SAME AT THE WORKPLACE

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- EMPLOYMENT OF SAFETY AND HEALTH REPRESENTATIVES OR COMMITTEES TO ENSURE HEALTH AND SAFETY STANDARDS AT WORK
- NOTE THAT MANY SIMILARITIES EXIST BETWEEN THE PROVISIONS OF THE BILL AND THE HSWA 1974

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- THE SAME APPLIES IN THE AREA OF DUTIES OF THE EMPLOYER TO THE EMPLOYEE.
 - SAFETY IN HANDLING, STORING AND TRANSPORTATION OF FACILITIES
 - MAINTENANCE OF PLANTS AND SYSTEMS OF WORK WITHOUT RISKS TO HEALTH OF WORKERS
 - PROVISION OF INFORMATION, INSTRUCTION, TRAINING AND SUPERVISION TO ENSURE WORKER SAFETY
 - PROVISION AND MAINTENANCE OF A SAFE AND HAZARD FREE WORK ENVIRONMENT.

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- AS IDENTICAL AS THESE MAY BE, THE HSWA CARRIES A QUALIFICATION NAMELY: “SO FAR AS IS REASONABLY PRACTICABLE”. THE BILL DOES **NOT** DO THE SAME.
- ***SUBMISSION:***
- THAT REGARDLESS OF THE SIMILARITIES IN THE DUTIES OF THE EMPLOYER TO THE EMPLOYEE ON THE FACE OF IT UNDER BOTH PIECES OF LEGISLATION, BOTH CANNOT CARRY THE SAME PURPORT.

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- **IMPORT:**
- THE PRESENCE OF THE PHRASE MITIGATES/ABSOLVES THE LIABILITY OF THE EMPLOYER; THE ABSENCE DOES THE CONTRARY.

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- **ILLUSTRATION 1:**
- SPIFF THE OWNER OF A CABLE MANUFACTURING COMPANY PROVIDES HIS WORKERS WITH TRAINING ON THE USE OF EQUIPMENT BIANNUALLY. HE PROVIDES SUFFICIENT PPE AND HAS SAFETY SUPERVISORS ON FIELD ALL DAY. HE ENSURES THAT THE PLANTS IN THE COMPANY ARE REGULARLY SERVICED. BEN, AN EMPLOYEE, WORKING ON A PLANT NOTICED THE MACHINE WAS CHURNING OUT DEFECTIVE PIECES. THE MACHINE STOPPED WORKING AND BEN SWITCHED OFF THE PLANT TO REMOVE THE DEFECTIVE PIECE BEFORE GOING TO REPORT TO THE SUPERVISOR. UNFORTUNATELY, AS HE PUT HIS HAND INSIDE, THE MACHINE SUDDENLY SWITCHED BACK ON AND MANGLED HIS LEFT ARM.

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- **ILLUSTRATION 2:**
- A-Z PLC PROVIDES HOUSE PAINTING SERVICES. ALEX, THE OWNER, ARMS HIS WORKERS WITH SUFFICIENT TRAINING AND INFORMATION DONE BY CERTIFIED HEALTH AND SAFETY EXPERTS. ALEX ALSO PROVIDES WORKERS WITH MANUALS, VIDEOS AND OTHER RELEVANT MATERIALS TO ENSURE THEIR SAFETY. HE HAS A SAFETY SUPERVISOR GO WITH THEM TO EACH HOUSE-PAINTING JOB, ALL AT AN EXTRA COST TO ALEX. ON SITE ONE DAY, THE LADDER ON WHICH ONE OF HIS WORKERS STOOD TO WORK SHIFTED AND TOUCHED AN OVER GROUND ELECTRICITY CABLE BURIED UNDER SAND. THE WORKER WAS ELECTROCUTED AND FATALLY INJURED.

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- WHAT IS THE RESPONSIBILITY OF EACH EMPLOYER UNDER THE HSWA AND THE LSHB IN EACH SCENARIO?
- UNDER THE HSWA, THE EMPLOYER IS HIGHLY LIKELY TO BE LET OFF THE HOOK ONCE HE CAN PROOF THAT FOLLOWING HIS RISK ASSESSMENT, HE TOOK STEPS THAT WERE REASONABLE PRACTICABLE TO AVERT DANGER.
- THE EMPLOYER UNDER THE A JURISDICTION WHERE THE BILL WOULD APPLY IS UNLIKELY TO ACHIEVE THE SAME RESULT. HE IS LIKELY TO BE STRICTLY LIABLE.

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- THIS MARKS THE DIFFERENCE BETWEEN THE NATURE OF THE DUTIES UNDER THE HSWA ON ONE HAND AND THE BILL ON THE OTHER.

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- **IMPLICATION:**
- THE EMPLOYER IS MORE LIKELY TO ENSURE THAT HE DOES NOT BECOME STRICTLY LIABLE FOR THE DANGERS THE EMPLOYEES MIGHT FIND THEMSELVES RATHER THAN ENSURING THE SAFETY OF HIS WORKERS.
- THAT THE STYLE OF THE BILL MAY NOT BE ANY DIFFERENT FROM THE PRESCRIPTIVE ACT THAT IT INTENDS TO IMPROVE UPON.

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- **OBSERVATIONS:**

- THAT OUR DRAFTSMEN PLACE A LOT OF RELIANCE ON LAWS FROM FOREIGN JURISDICTIONS PARTICULARLY THE UK
- WHILE IT IS NOT DISPUTED THAT LESSONS MAY BE DRAWN FROM OTHER JURISDICTIONS ESPECIALLY THOSE THAT APPEAR TO HAVE BETTER RESOLUTIONS OF ISSUES IN THEIR LEGISLATIVE ENACTMENTS, CERTAIN FACTORS MUST HOWEVER BE TAKEN INTO CONSIDERATION.

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- THE MOTIVATION BEHIND SUCH ENACTMENTS
- LEGAL, SOCIO-CULTURAL, POLITICAL AND ECONOMIC VALUES OF THE JURISDICTION UNDER STUDY.
- ONCE THIS IS DONE, ONLY THEN CAN THE QUESTING JURISDICTION DECIDE WHETHER TO RELY OR NOT.

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- **CONCLUSION:**
- IT MAY NOT BE TOO LATE IN THE DAY FOR THE LEGISLATION TO RETRACE ITS STEPS AND DO WHAT IS RIGHT.
- ACCORDING TO OPUTA JSC IN THE CASE OF *FEDERAL CIVIL SERVICE COMMISSION V LAOYE (1989)*,
 - “IT IS FAR BETTER TO ADMIT AN ESTABLISHED MISTAKE AND CORRECT SAME RATHER THAN PERSEVERE IN ERROR”

The background features a light gray gradient with several realistic water droplets of various sizes scattered in the corners. The droplets have highlights and shadows, giving them a three-dimensional appearance. One large droplet is in the top-left corner, another in the top-right, and a cluster of smaller ones is in the bottom-right.

• **THANK YOU FOR LISTENING!!!**