It is common practice to find employees resigning upon becoming aware of disciplinary proceedings against them in respect of alleged acts of gross misconduct. Resignation is employed to avoid summary dismissal which is the penalty for gross misconduct under most contracts of employment. It also denies the employer an opportunity to, as a matter of policy, address the alleged acts of gross misconduct and take appropriate sanctions against such employee as a deterrent. The legal question is, how should an employer deal with or react to the resignation by an employee during or in anticipation of disciplinary proceedings? Employers are keen to avoid payment of any form of terminal benefits to an employee who is guilty of gross misconduct or resigns in anticipation of disciplinary proceedings.

Does an employee have a legal right to resign in anticipation of disciplinary action?

The simple answer is YES! We note that in most cases where an employee resigns in anticipation of disciplinary proceedings, the resignation is usually with immediate effect. The right of an employee to resign with immediate effect is a Constitutional right. The employee has an absolute and unfettered right to resign, and this right can be exercised at any point in the course of his employment.

Options of the employer where an employee resigns in anticipation of disciplinary proceedings?

Employers have reacted in different ways and forms to a resignation during and/or in anticipation of disciplinary proceeding. A common reaction by most employers is to reject the resignation and proceed with the disciplinary proceeding. The is the typical response of most employers. We advise that this approach is illegal and unlawful. It does not matter whether there is a provision in the contract of employment or policy of the employer that gives the employer powers to reject a resignation during disciplinary proceedings. In fact, any such provision in the contract of employment or employee handbook is illegal and unconstitutional. No employer can prevent an employee from resigning from its employment. It is not open to the employer for whatsoever reason to refuse to accept the resignation of the employee.

We therefore advise that the legal option for an employer where an employee resigns with immediate effect is to forfeit any terminal benefit accruable to the employee. There is no doubt that resignation with immediate effect is a violation of most contracts of employment. The common mode for voluntary termination of employment is with notice. The courts in Nigeria have held that the consequence of resignation with immediate effect is that the employee will forfeit all benefits under the contract of employment as the resignation was in breach of the contract of employment.
Therefore, an employer has a right to forfeit any benefit accruable to the employee upon the employee’s voluntary termination of his employment to evade a disciplinary measure. Whilst this may not have the same effect with a dismissal, we however believe that it addresses the issue of payment of terminal benefit which is the key difference between voluntary termination and summary dismissal.

1. See section 34(1)(c) of the Constitution of the Federal Republic of Nigeria, 1999 which provides that: “no person shall be required to perform forced or compulsory labour” ↩
2. See the decision in Dr (Mrs) Ebele Felix v. Nigerian Institute of Management (unreported) Suit No: NICN/LA 321/2014, judgment delivered on 4th July 2017 ↩

Your Key Contacts

Funke Agbor  
Partner, Lagos  
D +234 1 279 7038  
M +234 803 304 7951  
funke.agbor@dentons.com

Michael Akinleye  
Senior Associate, Lagos  
D +234 1 279 7035  
M +234 806 922 1928  
michael.akinleye@dentons.com

Adesoji Ojerinde  
Senior Counsel, Lagos  
D +234 1 279 7035  
M +234 802 681 2616  
adesoji.ojerinde@dentons.com