

THE EMPLOYMENT ACT, 2007

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**AN ACT of Parliament to repeal the Employment Act,
declare and define the fundamental rights of
employees, to provide basic conditions of
employment of employees, to regulate
employment of children, and to provide for
matters connected with the foregoing.**

ENACTED by the Parliament of Kenya, as follows—

PART 1 — PRELIMINARY

Short title and
commencement.

1. This Act may be cited as the Employment Act, 2007, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires—

“authorised officer” means a labour officer, employment officer or medical officer;

“Board” means the National Labour Board;

“casual employee” means a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty four hours at a time;

“child” means a person who has not attained the age of eighteen years;

“collective agreement” means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employers’ organization”;

“contract of service” means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured

learnership but does not include a foreign contract of service to which Part XI of this Act applies;

“dependent” means a member of an employee’s family or a relative who substantially depends on that employee for his livelihood;

“Director” means a person appointed as the Director of Employment;

“disability” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person’s social and economic participation;

“employee” means a person employed for wages or a salary and includes an apprentice and indentured learner;

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

“forced or compulsory labour” means any work or service which is extracted from any person under the threat of any penalty ,including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service;

“HIV” means the Human Immune-Deficiency Virus;

“industrial undertaking” includes—

(a) a mine, quarry and other works for the extraction of any substance from the surface or under the surface of the earth;

(b) a factory or a place where raw materials are manufactured, processed or packaged;

- (c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland water way, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephone installation, electrical undertaking, gas work, water work or other work of construction, as well as the preparation for or laying of the foundations of any such work or structure; or
- (d) transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand:

Provided that—

- (i) the Minister, if he sees fit so to do, having regard to the nature of the work involved in any employment carried on in any industrial undertaking, may by order declare that the employment shall be excluded from the provisions of this Part relating to industrial undertakings, and thereupon the employment shall be deemed not to be employment in an industrial undertaking for the purposes of this Part;
- (ii) an undertaking of which a part only is an industrial undertaking shall not for that reason alone be deemed to be an industrial undertaking;

“labour inspector” means a person appointed as a labour inspector;

“labour officer” means a person appointed as the Commissioner of Labour, a Senior Deputy Commissioner of Labour, a Deputy Commissioner of Labour, an Assistant Commissioner of Labour, a Chief Industrial Relations Officer, a Deputy Chief Industrial Relations Officer, a

Senior Labour Officer, an Industrial Relations Officer or a Labour Officer;

“lockout” means the closing of a place of employment or the suspension of work or refusal by an employer to employ any employees—

- (a) for the purpose of compelling the employees of the employer to accept any demand in request of a trade dispute; and
- (b) not for the purpose of finally terminating employment.

“migrant worker” means a person who migrates to Kenya with a view to being employed by an employer and includes any person regularly admitted as a migrant worker;

“mine” includes an undertaking, whether public or private, for the extraction of a substance from the surface, or from under the surface of the earth.

‘Minister’ means the Minister for the time being responsible for labour matters;

“organisation” includes employees’ trade unions and employers organisations;

“parties” means the parties to a contract of service;

“piece work” means any work the pay for which is ascertained by the amount of work performed irrespective of the time occupied in its performance;

“probationary contract” means a contract of employment, which is of not more than twelve months duration or part thereof, is in writing and expressly states that it is for a probationary period;

“redundancy” means the loss of employment, occupation, job or career by involuntary means through no

fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;

“Registrar” means the Registrar of Trade Unions;

“remuneration” means the total value of all payments in money or in kind, made or owing to an employee arising from the employment of that employee;

“strike” means the cessation of work by employees acting in combination, or a concerted refusal or a refusal under a common understanding of employees to continue to work, for the purpose of compelling their employer or an employers’ organization of which their employer is a member, to accede to any demand in respect of a trade dispute;

“task” means such amount of work as can, in the opinion of an authorised officer, be performed by an employee in an ordinary working day;

“trade union” means an association of employees whose principal purpose is to regulate relations between employees and employers and includes an employer’s organisation;

“woman” means a female of the age of eighteen years or above;

“worst form of child labour” with respect to juveniles, means their employment, engagement or usage in any activity comprising of-

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict;

- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child;

“young person” means a child who has attained the age of sixteen years but has not attained the age of eighteen years;

Application.

3. (1) This Act shall apply to all employees employed by any employer under a contract of service.

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(2) This Act shall not apply to—

- (a) the armed forces or the reserve as respectively defined in the Armed Forces Act;
- (b) the Kenya Police, the Kenya Prisons Service or the Administration Police Force;
- (c) the National Youth Service;
and
- (d) an employer and the employer’s dependants where the dependants are the only employees in a family undertaking.

(3) This Act shall bind the Government.

(4) The Minister may, after consultation with the

Board and after taking account of all relevant conventions and other international instruments ratified by Kenya, by order exclude from the application of all or part of this Act limited categories of employees in respect of whom special problems of a substantial nature arise.

(5) The Minister may, after consultation with the Board, by order exclude from the application of all or part of this Act categories of employed persons whose terms and conditions of employment are governed by special arrangements:

Provided those arrangements afford protection that is equivalent to or better than that part of the Act from which those categories are being excluded.

(6) Subject to the provisions of this Act, the terms and conditions of employment set out in this Act shall constitute minimum terms and conditions of employment of an employee and any agreement to relinquish vary or amend the terms herein set shall be null and void.

PART II — GENERAL PRINCIPLES

Prohibition against forced labour.

4. (1) No person shall use or assist any other person in recruiting, trafficking or using forced labour.

(2) The term “forced or compulsory labour” shall not include—

(a) any work or service exacted by virtue of compulsory military service laws for work of a purely military character;

Provided that forced or compulsory recruitment of children for use in armed conflict shall be deemed to be forced or compulsory labour;

(b) any work or service which forms part of the normal civic obligations of the citizens of Kenya;

- (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the work or service is carried out under the supervision and control of a public authority and that the person is not hired out to or placed at the disposal of private persons, companies or associations;
- (d) any work or service exacted in cases of an emergency, such as in the event of war or disaster or threat of calamity in any circumstance that would endanger the existence or the well-being of the whole or part of the population; and
- (e) minor communal services performed by the members of the community in the direct interest of the said community provided the members of the community or their representatives are consulted.

(3) A person who contravenes the provisions of this section commits an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Discrimination in employment.

5. (1) It shall be the duty of the Minister, labour officers and the Industrial Court—

- (a) to promote equality of opportunity in employment in order to eliminate discrimination in employment; and
- (b) to promote and guarantee equality of opportunity for a person who, is a migrant worker or a member of the family of the migrant worker, lawfully within Kenya.

(2) An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.

(3) No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee—

- (a) on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status;
- (b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.

(3) It is not discrimination to—

- (a) take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace;
- (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job;
- (c) employ a citizen in accordance with the National employment policy; or
- (d) restrict access to limited categories of employment where it is necessary in the interest of state security.

(4) An employer shall pay his employees equal remuneration for work of equal value.

(5) An employer who contravenes the provision of the section commits an offence.

(6) In any proceedings where a contravention of this

section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act omission is not based on any of the grounds specified in this section.

(7) For the purposes of this section—

- (a) “employee” includes an applicant for employment;
- (b) “employer” includes an employment agency;
- (c) an “employment policy or practice” includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities , training and development, performance evaluation systems, promotion, transfer, demotion, termination of employment and disciplinary measures.

Sexual
harassment.

6. (1) An employee is sexually harassed if the employer of that employee or a representative of that employer or a co-worker—

- (a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express—
 - (i) promise of preferential treatment in employment;
 - (ii) threat of detrimental treatment in

employment; or

(iii) threat about the present or future employment status of the employee;

(b) uses language whether written or spoken of a sexual nature;

(c) uses visual material of a sexual nature; or

(d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.

(2) An employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment.

(3) The policy statement required under subsection (2) may contain any term the employer considers appropriate for the purposes of this section and shall contain—

(a) the definition of sexual harassment as specified in subsection (1);

(b) a statement—

(i) that every employee is entitled to employment that is free of sexual harassment;

(ii) that the employer shall take steps to ensure that no employee is subjected to sexual harassment;

(iii) that the employer shall take such

disciplinary measures as the employer deems appropriate against any person under the employer's direction, who subjects any employee to sexual harassment;

(iv) explaining how complaints of sexual harassment may be brought to the attention of the employer; and

(v) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation thereto.

(4) An employer shall bring to the attention of each person under the employer's direction the policy statement required under subsection (2).

PART III — EMPLOYMENT RELATIONSHIP

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| Contract of service. | 7. No person shall be employed under a contract of service except in accordance with the provisions of this Act. |
| Oral and written contracts | 8. The provisions of this Act shall apply to oral and written contracts. |
| General provision of contract of service. | 9. (1) A contract of service—
(a) for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or
(b) which provides for the performance of any specified work which could not reasonably be expected to be completed within |

a period or a number of working days amounting in the aggregate to the equivalent of three months;

shall be in writing.

(2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3)

(3) For the purpose of signifying his consent to a written contract of service an employee may—

(a) sign his name thereof, or

(b) imprint thereon an impression of his thumb or one of his fingers in the presence of a person other than his employer.

(4) Where an employee is illiterate or cannot understand the language in which the contract is written, or the provisions of the contract of service, the employer shall have the contract explained to the employee in a language that employee understands.

Employment
particulars.

10. (1) A written contract of service specified in section 9 shall state particulars of employment which may, subject to subsection(3) be given in instalments and shall be given not later than two months after the beginning of the employment—

(2) A written contract of service shall state—

(a) the name, age, permanent address and sex of the employee;
(b) the name of the employer;

(c) the job description of the employment;

- (d) the date of commencement of the employment;
- (e) the form and duration of the contract;
- (f) the place of work;
- (g) the hours of work;
- (h) the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits;
- (i) the intervals at which remuneration is paid; and
- (j) the date on which the employee's period of continuous employment began, taking into account any employment with a previous employer which counts towards that period; and
- (k) any other prescribed matter.

(3) The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the instalment containing them, is given of—

- (a) any terms and conditions relating to any of the following—
 - (i) entitlement to annual leave, including public holidays,, and holiday pay, (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

- (ii) incapacity to work due to sickness or injury, including any provision for sick pay; and
- (iii) pensions and pension schemes,
- (b) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;
- (c) where the employment is not intended to be for an indefinite period, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;
- (d) either the place of work or, where the employee is required or permitted to work at various places, an indication of that place of work and of the address of the employer;
- (e) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the person by whom they were made, and;
 - (i) where the employee is required to work outside Kenya for a period of more than one month—
 - (ii) the period for which that employee is to work outside Kenya;
 - (iii) the currency in which remuneration is to be paid while that employee is working outside Kenya;
 - (iv) any additional remuneration payable to the employee, and any benefits due to the employee by reason of the employee working outside Kenya; and

(iv) any terms and conditions relating to the employee's return to Kenya.

(4) Subsection (3)(a)(iii) does not apply to an employee of a body or authority if—

- (a) the employee's pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act; and
- (b) any such provision requires the body or authority to give to a new employee information concerning the employee's pension rights or the determination of questions affecting those rights.

(5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.

(6) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.

(7) If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.

Statement of initial particulars.

11. (1) If in the case of a statement under section 10 there are no particulars to be entered under subsection (2) (d) or (j) or under any of the other provisions of section 10 (2) or (3), that fact shall be stated in the statement.

(2) A statement under section 10 may refer the employee