

SPECIAL ISSUE

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REPUBLIC OF KENYA

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NATIONAL ASSEMBLY BILLS, 2019

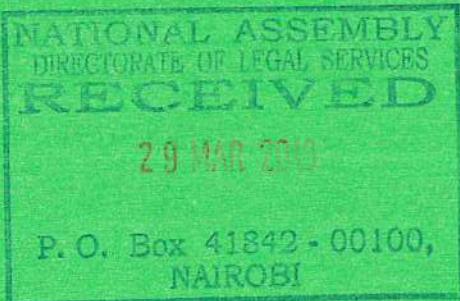
NAIROBI, 15th March, 2019

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THE EMPLOYMENT (AMENDMENT) BILL, 2019

A Bill for

AN ACT of Parliament to amend the Employment Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Employment (Amendment) Act, 2019. Short title.

2. The Employment Act in this Act referred to as the “principal Act” is amended by inserting the following new definition immediately after the definition of the term “employer” — Amendment to section 2 of No. 11 of 2007.

“exit certificate” means a written authority given by a registered adoption society to a prospective adoptive parent to take the child from the custody of the adoptive society;

3. The principal Act is amended by inserting the following new section immediately after section 29— Insertion of new section 29A in No. 11 of 2007.

Pre-adoptive leave. **29A.** (1) Where pursuant to section 157 of the Children Act, a child is to be placed in the continuous care and control of an applicant who is an employee under this Act—

- (a) the employee shall be entitled to three consecutive months pre-adoption leave with full pay from the date of the placement of the child;
- (b) in the case of a female employee who is married, the employee shall be entitled to three consecutive months pre-adoption leave with full pay from the date of the placement of the child; and
- (c) in the case of a male employee who is married, the employee shall be entitled to two weeks pre-adoption leave with full pay.

(2) An employee eligible for leave under subsection (1) shall notify the employer in

writing of the intention of the adoption society to place the child in the custody of the employee at least fourteen days before the placement of the child.

(3) A notice under subsection (2) shall be accompanied by documentation evidencing the intention of the adoption society to place the child in the custody of the employee, including a custody agreement between the employee and the adoption society and an exit certificate.

(4) Subsection (2), (3) and (7) of section 29 shall, with necessary modifications, apply to an employee eligible to leave under subsection (1).

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Principal Objective of this Bill to amend the Employment Act, 2007 in order to afford pre-adoptive leave to parents who apply for the adoption of children who are not their natural children born to them by birth

Clause 1 of the Bill is the short title.

Clause 2 of the Bill seeks to define the term exit certificate which is the authority given to a prospective adoptive parent by a registered adoption society to take an adopted child in the adoptive parents' custody.

Clause 3 of the Bill seeks to provide for pre-adoptive three consecutive months leave to prospective adoptive parents who unlike their counterparts who are accorded three months leave when they naturally bring forth a child are not provided with an opportunity to bond with and understand their new child.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit any fundamental rights or freedoms.

Statement on whether the Bill concerns county governments

The Bill does concern County Governments in terms of Article 109 (3) of the Constitution and it does affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion additional expenditure of public funds.

MARTHA WANGARI,
Member of Parliament.

*Section 2 of the Act which is intended to be amended—***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

“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 waterway, 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 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;

“lock-out” 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 [Rev. 2012] Cap. 226 Employment 9 [Issue 1]

(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 employees’ organizations;

“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 employers’ organizations;

“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; Cap. 226 [Rev. 2012] Employment [Issue 1] 10;
- (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.

Section 29 of the Act which is intended to be amended—

Maternity leave

29. (1) A female employee shall be entitled to three months maternity leave with full pay.

(2) On expiry of a female employee’s maternity leave as provided in subsections (1) and (3), the female employee shall have the right to return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.

(3) Where—

- (a) the maternity leave has been extended with the consent of the employer; or

(b) immediately on expiry of maternity leave before resuming her duties a female employee proceeds on sick leave or with the consent of the employer on annual leave; compassionate leave; or any other leave, the three months maternity leave under subsection (1) shall be deemed to expire on the last day of such extended leave.

(4) A female employee shall only be entitled to the rights mentioned in subsections (1), (2) and (3) if she gives not less than seven days' notice in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave on a specific date and to return to work thereafter.

(5) The notice referred to in subsection (4) shall be in writing.

(6) A female employee who seeks to exercise any of the rights mentioned in this section shall, if required by the employer, produce a certificate as to her medical condition from a qualified medical practitioner or midwife.

(7) No female employee shall forfeit her annual leave entitlement under section 28 on account of having taken her maternity leave.

(8) A male employee shall be entitled to two weeks paternity leave with full pay.