

SPECIAL ISSUE

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SENATE BILLS, 2022

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THE EMPLOYMENT (AMENDMENT) BILL, 2022

A Bill for

AN ACT of Parliament to amend the Employment Act to provide for the right to disconnect; the right of employees to have their personal time and privacy respected and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I—PRELIMINARY

1. This Act may be cited as the Employment (Amendment) Act, 2022. Short title.

2. The Employment Act is amended by inserting the following new section immediately after section 27— Insertion of new section 27A.

The right to disconnect.

27A. (1) An employee has the right to disconnect from their employer.

(2) An employer shall, for the purposes of subsection (1) —

(a) put in place a policy regarding the—

(i) circumstances under which an employer may contact an employee during out of work hours;

(ii) use of electronic devices to send or receive information, messages or any digital work related communication during out of work hours; and

(iii) circumstances under which the right to disconnect may be waived.

(b) specify the nature of compensation for employees who work during out of work hours

(3) Where an employer has employed more than ten employees, such employer shall, in formulating a policy under subsection (2), consult the respective

employees or, where applicable, trade union.

(4) The right to disconnect shall be subject to the terms and conditions specified under section 10.

(5) The right to disconnect shall be limited only to the extent necessary to address an emergency arising out of the work falling within the responsibility of the employee.

(6) Subject to subsection (5), an employee shall not be reprimanded, punished, or subjected to disciplinary action if the employee disregards a work related communication during out of work hours.

(7) Where an employer contacts an employee during the period when there is no mutually agreed out of work hours, the employee —

(a) shall not be obliged to respond and shall have the right to disconnect; and

(b) may choose to respond, for which the employee shall be entitled to get compensation.

(8) The provisions of this section shall not apply to the provision of essential services specified under section 81 of the Labour Relations Act.

No. 14 of 2007.

(9) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(10) In this section—

(a) “out of work hours” means hours other than the hours of work agreed upon between an employer and an employee in the contract of

employment.

“right to disconnect” means an employee’s entitlement not to be contacted by the employer during out of work hours as per the employer’s policy.

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

The principal object of the Bill is to provide for the right to disconnect in the digital age. This Bill seeks to address increased employee burnout. Digital connectivity has also been noted to be slowly eroding leisure time for employees hence affecting their work life balance. This Bill therefore seeks to strike a balance between work and private life to allow digital technology to have a positive effect on workers' quality of life supported by employers

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

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Under the Fourth Schedule to the Constitution, counties are mandated to implement national labour standards and employment policy in the counties. Since majority of employees are from the counties, the Bill will have a huge impact on the provision of skilled labour in the counties.

This is therefore a Bill that concerns counties in terms of Article 110(1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 14th November, 2022.

SAMSON CHERARKEY,
Senator.