SPECIAL ISSUE

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NATIONAL ASSEMBLY BILLS, 2026

NAIROBI, 23rd October, 2026

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THE EMPLOYMENT (AMENDMENT) BILL, 2026

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, 2026. Short title.

2. Section 45 of the Employment Act is amended by deleting subsection (3) and substituting therefor the following new subsections— Amendment of section 45 of Cap. 226.

(3) An employee who has been continuously employed by the same employer for a period of at least six months immediately preceding the date of termination may lodge a complaint for unfair termination.

(3A) The requirement of six months' continuous employment does not apply where the termination is alleged to be based on—

(a) discrimination;

(b) pregnancy;

(c) trade union membership or participation in trade union activities; or

(d) any other ground protected under this Act, the Constitution, or other written law.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Employment Act, Cap. 226 in order to eliminate the thirteen months waiting period before an employee qualifies to claim unfair termination. The proposed amendment seeks to protect an employee against unjust and unfair dismissal and to promote the right to equality and freedom from discrimination under Article 27 of the Constitution.

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

This Bill does not delegate legislative powers or limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill does not concern county governments in terms of Article 110(1)(a) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Part 1 of the Fourth Schedule to the Constitution provides that labour standards are a national government function.

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

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the 6th October, 2026.

MISHI JUMA MBOKO,
Member of Parliament.

Section 45 of Cap. 226 which it is proposed to amend—

Section 45 of the Employment Act

Unfair termination

45.(1) No employer shall terminate the employment of an employee unfairly.

(2) A termination of employment by an employer is unfair if the employer fails to prove—

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason—

(i) related to the employees conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in The Employment Act, 2007 51 accordance with fair procedure.

(3) An employee who has been continuously employed by his employer for a period not less than thirteen months immediately before the date of termination shall have the right to complain that he has been unfairly terminated.

(4) A termination of employment shall be unfair for the purposes of this Part where-

(a) the termination is for one of the reasons specified in section 46; or

(b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee .

(5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour Officer, or the Industrial Court shall consider-

(a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;

(b) the conduct and capability of the employee up to the date of termination;

(c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;

(d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and

(e) the existence of any previous warning letters issued to the employee.