

# Labour & Employment 2020

Contributing editors

Matthew Howse, Sabine Smith-Vidal, Walter Ahrens, K Lesli Ligorner and Mark Zelek



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**Matthew Howse, Sabine Smith-Vidal, Walter Ahrens,  
K Lesli Ligorner and Mark Zelek**  
Morgan Lewis

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Lexology Getting The Deal Through is delighted to publish the fifteenth edition of *Labour & Employment*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Angola, Belgium, Ghana, Israel, Kenya, Myanmar, Netherlands, Poland, Slovenia, Turkey and Zambia.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, Sabine Smith-Vidal, Walter Ahrens, K Lesli Ligorner and Mark Zelek of Morgan Lewis, for their continued assistance with this volume.



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# Kenya

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## LEGISLATION AND AGENCIES

### Primary and secondary legislation

1 | What are the main statutes and regulations relating to employment?

The Employment Act of 2007, the Labour Relations Act of 2007 and the Labour Institutions Act of 2007 are the principal statutes governing employment relationships. Other key legislation include the:

- Persons with Disabilities Act;
- Occupational Safety and Health Act;
- Work Injury Benefits Act;
- Pensions Act;
- Retirement Benefits Act;
- National Social Security Fund Act;
- National Hospital Insurance Fund Act;
- Provident Fund Act;
- Contracts in Restraint of Trade Act;
- Industrial Training Act;
- Housing Act;
- Employment and Labour Relations Court Act; and
- Data Protection Act.

### Protected employee categories

2 | Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Employment Act prohibits discrimination and harassment against employees or prospective employees on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status and HIV status. The Employment Act further prohibits discrimination in respect of recruitment, training, promotions, the terms and conditions of employment, the termination of employment and other matters relating to employment.

Other laws that prohibit discrimination or harassment in employment are:

- the Persons with Disabilities Act, which prohibits employers from discriminating against people with disabilities in relation to advertisement, recruitment and the creation, classification or abolition of posts; and
- the National Cohesion and Integration Act, which prohibits discrimination on ethnic grounds.

## Enforcement agencies

3 | What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The primary government agencies responsible for the enforcement of employment laws in Kenya are:

- the Employment and Labour Relations Court, which is tasked with hearing and deciding on disputes relating to employment;
- the State Department of Labour, which is responsible for the formulation and implementation of labour laws and policies;
- the Director of Occupational Safety and Health Services, who is responsible for implementing laws regarding the safety, health and welfare of workers and all persons lawfully present at workplaces;
- the National Labour Board, which advises the Minister of Labour and Social Protection on all matters concerning employment and labour; and
- the Wages Council, of which the main functions are to investigate the remuneration and conditions of employment in any sector and to make recommendations to the Minister of Labour and Social Protection on minimum wage remuneration and conditions of employment.

## WORKER REPRESENTATION

### Legal basis

4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The Labour Relations Act and the Constitution of Kenya 2010 allow and provide for the establishment of employee unions. An employee has a right to be a member of any union.

### Powers of representatives

5 | What are their powers?

Where an employee trade union represents a simple majority of employees that can be unionised, employers are required to recognise the union for purposes of collective bargaining.

Employers are required to grant employee trade unions reasonable access to the employers' premises. The unions can, however, only use such access to pursue lawful activities, such as recruiting members, holding meetings with members of the union and other employees outside of working hours and representing members of the trade unions in dealings with the employer.

Where an employer intends on declaring employees as redundant for any reason, the employee trade union must be notified.

Employee trade unions can institute or defend lawsuits on behalf of the employees they represent.

## BACKGROUND INFORMATION ON APPLICANTS

### Background checks

- 6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Employers can carry out background checks on employees and applicants. There is no law prescribing how these should be carried out. However, employers should be careful not to infringe on employees' right to privacy, which is protected under the Constitution and the Data Protection Act as well as other sector-specific laws such as the Health Act.

It does not make any difference if the employer conducts its own checks or hires a third party to do the checks. However, while conducting background checks, the employer or third party must adhere to the principles of data protection set out in the Data Protection Act.

### Medical examinations

- 7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Employers can require prospective employees to undertake medical examinations where the employee's medical status is relevant to the job. In those cases, a certificate of fitness will suffice, and a full medical report is not required. An employer may refuse to hire a prospective employee for failing to submit to a medical examination.

### Drug and alcohol testing

- 8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Drug screening may be conducted if it is relevant to the job in question. An employer may refuse to hire an applicant who fails to submit to the test.

## HIRING OF EMPLOYEES

### Preference and discrimination

- 9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

The law provides that employers have an obligation to promote equal opportunities and eliminate discrimination in employment policies and practice. The Employment Act prohibits discrimination in respect of recruitment.

However, the employment laws also provide that it is not discriminatory to:

- take measures for affirmative action that are consistent with the promotion of equality or the elimination of discrimination in the workplace;
- distinguish, exclude or give preference to any person on the basis of an inherent requirement of a job;
- employ a citizen in accordance with the national employment policy; or
- restrict access to certain categories of employment where it is necessary in the interest of state security.

- 10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

It is not mandatory for an employment contract to be written. The law recognises both oral and written contracts.

Where oral employment contracts exist, these must be written if the employment exceeds three months or the specified work cannot reasonably be expected to be completed within an aggregate period of less than three months.

A written contract of service should state;

- the name, age, permanent address and sex of the employee;
- the name of the employer;
- the job description;
- the date of commencement of the employment;
- the form and duration of the contract;
- the place of work;
- the hours of work;
- the remuneration, the scale or rate of remuneration, the method of calculating that remuneration and the details of any other benefits;
- the intervals at which remuneration is paid;
- the date on which the employee's period of continuous employment began;
- entitlement to annual leave, 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);
- information regarding incapacity to work owing to sickness or injury, including any provisions for sick pay;
- pensions and pension schemes where applicable;
- the length of notice that the employee is obliged to give and entitled to receive to terminate his or her contract of employment;
- any collective agreements that directly affect the terms and conditions of the employment;
- where the employee is required to work outside Kenya for a period of more than one month, the contract must state:
  - the period for which he or she is to work outside Kenya;
  - the currency in which the remuneration is to be paid while he or she is working outside Kenya;
  - any additional remuneration payable to him or her;
  - any benefits due to him or her owing to his or her working outside Kenya; and
  - any terms and conditions relating to the employee's return to Kenya; and
- where an employer has 50 or more employees, a statement specifying the disciplinary rules applicable to the employee or reference to the provisions of a document that is reasonably accessible to the employee and that specifies the rules.

- 11 | To what extent are fixed-term employment contracts permissible?

Fixed-term contracts are allowed. The maximum duration of these contracts is not limited by law; they can be for as long as the employer and employee agree.

### Probationary period

- 12 | What is the maximum probationary period permitted by law?

The probationary period is set at a maximum of six months. This period may, however, be extended for a further period of not more than six months. The employee's consent is required for such an extension.

## Classification as contractor or employee

13 | What are the primary factors that distinguish an independent contractor from an employee?

Common law provisions have developed guidelines that assist in distinguishing the two. These are as follows:

- Nature of the contract: an employee is engaged under a contract of service while an independent contractor agrees to complete a specific task under a contract for service.
- Degree and extent of control: if the individual works under the supervision and control of the engaging entity, he or she is likely to be considered an employee rather than an independent contractor.
- Exclusivity: where an individual works for one entity, he or she is likely to be considered an employee, whereas if the individual works for several entities, he or she is likely to be considered an independent contractor.
- Defined hours of work: an individual whose working hours are dictated by the engaging entity is more likely to be considered an employee.
- Receipt of benefits such as annual leave, medical cover and housing allowance: these benefits are granted to employees and not independent contractors.
- Right to decline to perform certain tasks: an independent contractor can decline an assignment without disciplinary action being taken, unlike in the case of an employee.
- Degree of integration into the organisation: employees are considered to be part of an organisation while independent contractors are outsiders to an organisation.
- Extent to which work can be delegated: employees cannot assign their employment contracts or work to others while independent contractors may delegate or subcontract the work given.

## Temporary agency staffing

14 | Is there any legislation governing temporary staffing through recruitment agencies?

There is no specific legislation governing temporary staffing through recruitment agencies.

## FOREIGN WORKERS

### Visas

15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

Where a foreign national is seeking to work in Kenya, he or she is required to obtain one of the following types of work authorisations:

- special pass: this is a temporary work authorisation issued by the department of immigration services. It is issued for periods of one, two or three months up to a maximum of six months in every 12-month period.
- work permit: this is a long-term work authorisation issued for a period of one or two years up to a maximum of five years. The five-year limit may be extended on application to the director of immigration services.

### Spouses

16 | Are spouses of authorised workers entitled to work?

No. For a spouse of a foreign worker to work in Kenya, he or she must obtain a work permit.

## General rules

17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

The laws governing the employment of Kenyan citizens are also applicable to foreign workers. Foreign workers are also governed by the Kenya Citizenship and Immigration Act (KCIA). The KCIA regulates the issuance of work permits to foreign nationals in Kenya. An employer must check that a foreign national has a permit to work in Kenya. The permit must state the name of the employer, the position in which the foreign worker is employed and the effective date and duration of the permit. An employer who employs a foreign worker without a permit commits an offence punishable by a fine of up to 1 million Kenyan shillings or imprisonment for up to five years, or both.

## Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

To obtain a work permit, it is advisable to undertake a labour market test. This is because the department of immigration services insists that foreign nationals may only fill positions that are highly specialised or technical or those where the skills required are not available locally.

## TERMS OF EMPLOYMENT

### Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

A working week for a person working during daytime hours should consist of not more than 52 hours of work spread over six days of the week. The normal working week of a person employed for night work should consist of not more than 60 hours of work per week.

An employee may opt out of these restrictions. This waiver must be inserted in the employment contract. Employers must be careful especially when dealing with low-ranking employees since the working hour restrictions were enacted to protect these employees from exploitation owing to their weak bargaining power. For management level employees, the working hours are not restricted unless specifically limited in the contract of employment.

### Overtime pay

20 | What categories of workers are entitled to overtime pay and how is it calculated?

Overtime pay is mandatory for low-ranking employees unless it is specifically excluded in the employment contract. The inverse is applicable for management level employees. They are not entitled to overtime pay unless it is expressly provided for in their employment contract.

Overtime is calculated at either of the following rates:

- one-and-a-half times the normal hourly rate for time worked in excess of the normal number of hours per week; or
- twice the normal hourly rate for time worked on the employee's normal rest day or a public holiday.

For employees who are not employed by the hour, the basic hourly rate is deemed to be no less than one-125th of the employee's basic minimum monthly wage.

Overtime plus time worked during the normal hours per week must not exceed 144 hours for employees engaged in night work or 116 hours for all other adult employees in any period of two consecutive weeks.

**21 | Can employees contractually waive the right to overtime pay?**

Yes, this must be by a written and signed agreement.

**Vacation and holidays****22 | Is there any legislation establishing the right to annual vacation and holidays?**

The Employment Act provides that employees are entitled to a minimum of 21 working days' annual leave after every 12 consecutive months of service with an employer. Where employment is terminated after the completion of two or more consecutive months of service during any 12 months' leave-earning period, the employee is entitled to not less than one and three-quarter days of leave with full pay in respect of each completed month of service in that period.

**Sick leave and sick pay****23 | Is there any legislation establishing the right to sick leave or sick pay?**

The Regulation of Wages (General) Order and the Employment Act provide for sick leave. The Employment Act provides that where the terms and conditions of a contract of service are regulated by any regulations or contract between the parties in addition to the Act, the document with more favourable terms apply. Consequently, sick leave is governed by the Regulation of Wages (General) Order, which provides that after two months' continuous service with an employer, an employee is entitled to a maximum of 30 days' sick leave with full pay and thereafter to a maximum of 15 days' sick leave with half pay in each period of 12 months' consecutive service.

**Leave of absence****24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?**

Leave of absence is not provided for in Kenya's employment laws. Leave of absence may, however, be provided for at the discretion of the employer in the employment contract or employer policies.

**Mandatory employee benefits****25 | What employee benefits are prescribed by law?**

Employees are entitled to:

- paid annual leave of at least 21 working days;
- paid maternity leave of at least 90 calendar days;
- paid paternity leave of at least 14 calendar days;
- paid sick leave (in the event of absence owing to illness) up to a maximum of 30 days with full pay, and thereafter to 15 days with half pay;
- provisions for housing, water and food (which may be conveniently provided through a consolidated salary);
- provision of medical care; and
- social security registration, for which the employer and employee must both contribute 6 per cent of an employee's pensionable earnings per month.

**Part-time and fixed-term employees****26 | Are there any special rules relating to part-time or fixed-term employees?**

Not applicable.

**Public disclosures****27 | Must employers publish information on pay or other details about employees or the general workforce?**

No, this is not required; however, listed companies are required to prepare a policy statement on their director's remuneration. In addition, directors of listed companies are required to prepare a directors' remuneration report each financial year. The report should include information on:

- the total amount of the salary and fees paid to or receivable by the director in respect of qualifying services;
- the total amount of bonuses paid or receivable by the director;
- the total amount paid as expense allowances;
- the total estimated value of any benefits received by the director, other than in cash; and
- applicable share option information.

**POST-EMPLOYMENT RESTRICTIVE COVENANTS****Validity and enforceability****28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?**

Contracts with restrictive clauses, including post-termination covenants, are allowed. However, it is upon the courts to determine the enforceability of these clauses, which is done on a case-by-case basis. The factors considered in determining the enforceability of post-termination covenants (not to compete, solicit or deal customers) include giving the nature of the specific profession, trade, business or occupation concerned; the period of time and the area within which the post-termination covenant is expressed to apply; the circumstances of each specific case; the interests of the parties; and the general public interest. The courts will not enforce a restraint that goes beyond affording adequate protection to the legitimate interest of an employer.

There is no prescribed maximum period; it depends on what is reasonable in the circumstances of each case.

**Post-employment payments****29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?**

This will depend on the specific provisions of the employment contract between the employer and the employee.

**LIABILITY FOR ACTS OF EMPLOYEES****Extent of liability****30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?**

An employer is vicariously liable in civil action for the torts committed by its employees' in the general course of their employment. An employer may be liable even for acts that it did not authorise if these are so connected with an act that it had authorised.

**TAXATION OF EMPLOYEES****Applicable taxes****31 | What employment-related taxes are prescribed by law?**

Employers are required to act as agents of the Kenya Revenue Authority and deduct and remit an income tax referred to as 'pay as you earn' from the employment income of employees.

## EMPLOYEE-CREATED IP

### Ownership rights

- 32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

There is no legislation specifically addressing employees' rights to inventions that they make in the course of their employment. The general position is that intellectual property, including inventions, is owned by the employer unless the employment contract provides otherwise.

### Trade secrets and confidential information

- 33 | Is there any legislation protecting trade secrets and other confidential business information?

Trade secrets and confidential business information are not protected under any legislation, and where such protection is desired, it should be provided for in the employment contract.

## DATA PROTECTION

### Rules and obligations

- 34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Constitution and the Data Protection Act protect employee privacy and personal data. The laws place an obligation on the employer to keep an employee's personal data confidential, even after retirement. The right to privacy in the workplace is, however, limited. An employer is permitted to monitor its employees, provided that the monitoring is done in a way that is lawful.

- 35 | Do employers need to provide privacy notices or similar information notices to employees and candidates?

No.

- 36 | What data privacy rights can employees exercise against employers?

Employers are prohibited from having an employee's property or person searched, their possessions seized or their personal information unnecessarily required or revealed.

## BUSINESS TRANSFERS

### Employee protections

- 37 | Is there any legislation to protect employees in the event of a business transfer?

Kenya does not have legislation on the transfer of employees in the event of a business transfer. A business transfer does not result in the transfer of the employees related to it. Employees remain under the employment of the employing entity unless their employment contracts are terminated on the grounds of redundancy and in accordance with the redundancy procedure prescribed in the Employment Act, or the employment is terminated by mutual agreement between the employer and employee.

## TERMINATION OF EMPLOYMENT

### Grounds for termination

- 38 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Termination must be with cause. Cause is defined as a valid and fair reason related to the conduct, performance or compatibility of the employee or operational requirements that necessitate a redundancy.

The exceptions to the general rule for termination with cause are the termination of fixed-term contracts owing to effluxion of time and the termination of probationary contracts. Once a fixed-term contract comes to an end, an employer has no obligation to justify termination for a cause other than the lapse of the fixed period. As for probationary contracts, the courts have held that requiring an employee to give fair and just reasons for the termination of a probationary contract renders probation meaningless because it is a period for the employer and employee to relate with each other before making any confirmation.

### Notice

- 39 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Yes, notice or pay in lieu of notice must be given prior to dismissal.

- 40 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employer may dismiss an employee without notice or payment in lieu of notice when the employee has, by his or her conduct, indicated that he or she has fundamentally breached his or her obligations arising under the employment contract.

Any of the following may amount to a fundamental breach of obligations that would justify summary dismissal:

- without leave or other lawful cause, the employee absents him or herself from work;
- during working hours, by becoming or being intoxicated, the employee renders him or herself unwilling or incapable to perform his work properly;
- the employee wilfully neglects to perform any work that was his or her duty to perform, or carelessly and improperly performs any work that, from its nature, was his or her duty to have performed carefully and properly under his or her contract;
- the employee uses abusive or insulting language, or behaves in an insulting manner, to the employer or to a person placed in authority over him or her by the employer;
- the employee knowingly fails, or refuses, to obey a lawful and proper command that was within the scope of his or her duty to obey;
- the employee is arrested for a cognisable offence punishable by imprisonment and is not within 14 days either released on bail or on bond or otherwise lawfully set at liberty; or
- the employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of the employer or its property.

### Severance pay

- 41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Yes. The Employment Act requires an employer to pay an employee who has been declared redundant severance pay. Severance pay is, however,

not payable where an employee's services are terminated on account of insolvency.

Severance pay is calculated at the rate of not less than 15 days' pay for each completed year of service.

### Procedure

42 | Are there any procedural requirements for dismissing an employee?

These are as follows:

- An employee should be issued with a written notice to show cause regarding why he or she should not be dismissed from employment.
- The notice to show cause must sufficiently explain the alleged offence and invite the employee to a disciplinary meeting or hearing. It must also inform the employee that dismissal is contemplated and that he or she is entitled to attend the meeting with a fellow colleague.
- The employee must be given reasonable time to prepare his or her defence before the meeting.
- During the meeting, the employee should be given a fair opportunity to explain his or her case.
- The employer should take time to deliberate on what appropriate disciplinary action must be taken against the employee.
- If a decision is made to dismiss the employee, it should be communicated in writing, giving the reasons for the dismissal. Thereafter, the employer must, within seven days, deliver to a labour officer in the district in which the employee was working a written report specifying the circumstances leading to, and the reasons for, the dismissal and stating the period of notice and the amount of wages in lieu thereof to which the employee would have been entitled. The report must specify the amount of any wages and other allowance earned by the employee since the date of his or her dismissal. The report is a mere notification and not a requirement prior to the dismissal.

Where the employee is employed on a probationary contract, the employer may dismiss the employee simply by giving a minimum of seven days' notice of termination of the contract, or by payment of seven days' wages in lieu of notice.

### Employee protections

43 | In what circumstances are employees protected from dismissal?

Employees are protected from dismissal where the reasons of dismissal or the circumstances leading to the dismissal are as a result of the employee's:

- pregnancy;
- going on leave or the proposal to take any leave to which the employee was entitled;
- membership or proposed membership to a trade union;
- participation or proposed participation in the activities of a trade union outside working hours or with the consent of the employer within working hours;
- seeking office as an officer of a trade union or a workers' representative;
- refusal or proposed refusal to join or withdraw from a trade union;
- initiation or proposed initiation of a complaint or other legal proceedings against the employer, except where the complaint is shown to be irresponsible and without foundation; or
- participation in a lawful strike.

### Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

There are no special rules for mass terminations or collective dismissals.

### Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Collective and class actions are allowed.

### Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

There is no mandatory retirement age in the private sector. This may be provided for in the employment contract or the employer's human resources manual or employment policies.

In the public sector, an individual must retire at 60 years. However, there are instances where exceptions may be granted, particularly to management level or highly specialised employees.

## DISPUTE RESOLUTION

### Arbitration

47 | May the parties agree to private arbitration of employment disputes?

Yes, the law allows employment disputes to be referred to private arbitration.

### Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

An employee may waive their statutory and contractual right to potential employment claims by mutual agreement with the employer. The requirement for a valid waiver is that it should be entered voluntarily. Consideration (economic or otherwise) is not necessary for the waiver to be valid and, in those cases, it is best to use a deed rather than a simple contract as the underlying instrument.

### Limitation period

49 | What are the limitation periods for bringing employment claims?

No civil action or proceedings based or arising out of an employment contract may be instituted unless it is commenced within three years of the act, neglect or default complained of or in the case of continuing injury or damage, within 12 months of the cessation thereof.

## UPDATE AND TRENDS

### Key developments of the past year

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

The parliament has tabled an employment amendment bill that proposes certain key changes to existing employment laws. Key proposals include the proposal to make it mandatory for all employees

affected by an impending merger or acquisition of their employer to be consulted and informed on the manner in which it will affect them. The bill proposes to create a mechanism for the transfer of employees where there is transfer of business. It also proposes the transfer of an employer's liabilities to the employee, in the event of a transfer of business, to the acquirer of the business. The bill is pending debate in parliament, but it is likely to be contentious as it would interfere with an acquiring entity's freedom to optimise its business in the short to medium term. Other proposed employment changes in the bill include the introduction of provisions on the suspension of employees, adoption leave, flexible working time and prohibition on restraint of trade clauses in employment contracts.

Kenya recently passed the Data Protection Act 2019, which gives effect to every person's constitutional right to privacy. The employer is, therefore, required to keep an employee's personal data confidential and to use it for reasons directly relevant to the employment.



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