

# DECENT WORK CHECK

## **KENYA** 2023

Iftikhar Ahmad

## **WageIndicator Foundation - [www.wageindicator.org](http://www.wageindicator.org)**

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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## **Bibliographical information**

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## **WageIndicator Foundation, 2023**

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# INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

# MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Constitution of Kenya, 2010
2. The Labour Institutions Act, 2007
3. Employment Act, 2007
4. Regulation of Wages (General) Order 1982
5. Public Holidays Act 1984
6. The Occupational Safety and Health Act, 2007
7. Work Injury Benefits Act, 2007
8. National Social Security Fund Act 2013
9. Retirement Benefits Act 1997
10. Sexual Offences Act, 2006
11. Children Act, 2001
12. Industrial Training Act, 1960
13. Labour Relations Act, 2007
14. Labour Institutions Act 2007

# 01/13 WORK & WAGES

## **ILO Conventions**

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

**Kenya has ratified Convention 131 (1970) only.**

### ***Summary of Provisions under ILO Conventions***

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

## Regulations on work and wages:

- The Labour Institutions Act, 2007
- Employment Act, 2007

## Minimum Wage

In accordance with the provisions of the Labour Institutions Act 2007, workers' salaries must at least be equal to the minimum wage, ensuring every worker a decent standard of living consistent with the human dignity.

The National Labour Board, a tripartite body, is entrusted with the responsibility to advise the Labour Minister on, inter alia, appointment of wage councils. The wage rates are determined by Wage Councils constituted in accordance with Labour Institutions Act 2007. The wage councils are again tripartite bodies with worker, employer and independent experts' representation. The members of the wages council are appointed for a period of three years. A wages council is entrusted with the function to investigate remuneration and conditions of employment in any sector; invite and consider written and oral representation, in prescribed manner, from interested parties; and make recommendations to the Minister on minimum wage remuneration and conditions of employment. Wages are determined for agriculture as well as general sector workers by the Agricultural and General Wage Councils constituted under the Labour Institutions Act. On the recommendation of these Councils, the Minister may issue Wages Order setting minimum rates of remuneration. Minimum wages vary by occupational sectors, skill levels and geographical areas. While determining the minimum wage, the Wage Council should take into account the

following factors: the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups; economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment and the need to encourage investment; the ability of employers to carry on their business successfully; the operation of small, medium and micro enterprises; the alleviation of poverty; the minimum subsistence level; the likely impact of any proposed conditions of employment on current employment or the creation of employment; and any other relevant factor.

A wages order sets the minimum rates of remuneration; specify the types and manner of deductions as well as the maximum amount/percentage of deductions; maximum amount deducted from pay in respect of rations supplied by the employer; regulate task based and piece work; regulate outwork, casual work and contract work; and other related terms on remuneration.

An employer who fails to pay statutory minimum wage or provide a worker with conditions of employment as provided under the Wages Order commits an offence. Labour inspector is authorized to monitor and enforce compliance with the Labour Law. Non-compliance with the Employment Act is an offence, punishable by a fine of maximum 100,000 shillings and imprisonment of 2 years.

Source: §17(10) of the Employment Act 2007; §43-47 of the Labour Institutions Act 2007; the Regulation of Wages (Agricultural Industry (Amendment) Order 2013; the

## Regular Pay

Remuneration is the total value of all payments in money or in kind, made or owed to a worker arising from the employment of that worker. Labour Institutions Act defines remuneration as the amount paid or to be paid in cash to the employee by his employer clear of any deductions, except any deduction lawfully made.

The Employment Act 2007 regulates the payment of wages to all classes of workers. According to the Act, wages can be calculated on hourly, daily, weekly or monthly basis depending on the type of contract.

The Act requires the employer to pay a worker his wages in legal tender (Kenya Shillings) during the working hours at or near the place of work on agreed pay day in cash, cheque, money order or directly deposit the amount in that worker's bank account. Payment may be made to the person authorized by the worker to receive the wage on his/her behalf, in case of his/her absence.

Wages are due at the end of the day for casual employees; at the end of the employment period for workers engaged for a period not exceeding one month; at the end of month for workers employed for a period exceeding one month; at the end of period of or month, whichever is earlier, for workers who are employed for an indefinite period.

Payment of any allowance may be made with the worker's consent, provided that the allowance is for the worker's personal

benefit and does not include any intoxicating spirit or noxious drug.

Whenever an attachment against the property of an employer is issued, the proceeds realized upon execution are paid to the court until a decree obtained with respect to worker's wages for a period of six months has been satisfied. However, this provision is not applicable when the employer is undergoing insolvency.

The employer may not compel or restrict the worker to spend his/her wages in a certain way for a particular purpose in a particular place. No wages are payable to a worker in respect of a period during which the employee is detained in custody or is serving a sentence of imprisonment imposed under any law.

Deduction of wages is prohibited in exchange for job placement. Wages may be deducted in cases including contribution to a provident fund; reasonable amount for damage/loss of employer's property; amount not exceeding a day's wage where the worker is unlawfully absent; amount equal to any shortage caused by the negligence or dishonesty of the worker; amount paid in error to worker; deductions permitted by any written law; for amount requested by worker in writing for any cause; and amount due and payable by the employee and in accordance with the written terms of an agreement and any other amounts prescribed by law. The total amount of deductions made at any one time should be up to two-thirds of the worker's wages or such other amounts as may be determined under the law.

An employer should provide pay slips to all workers at or before each pay day except casual employee or an employee engaged on piece-rate or task-rate terms or for any



period not exceeding six months. These pay slips should contain certain particulars including the gross amount of the wages or salary of the worker; the amounts of any variable and statutory deductions from that gross amount and the purposes for which they are made; and where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

Source: §2, 17-21 of the Employment Act 2007; §50 of the Labour Institutions Act, 2007

# 02/13 COMPENSATION

## ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

**Kenya has not ratified the Convention 01 & 171.**

### *Summary of Provisions under ILO Conventions*

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

## Regulations on compensation:

- Regulation of Wages (General) Order 1982
- Employment Act 2007

## Overtime Compensation

According to the General Wages Order, normal working hours are 52 per week and 60 hours per week for the night workers. Normal working hours per day are not clearly mentioned, however, for young workers normal working hours are 6 per day.

In accordance with the Employment Act 2007, employer may set working hours in such a way that the worker gets a day off in a week. An employer is required to pay at least 150% of the wage if overtime work is performed during normal working hours. Overtime payment for the workers that are not employed on hourly basis, is calculated on the basis of the basic hourly rate of at least one two-hundred-and twenty-fifth of the employee's basic minimum monthly wage.

The Wages Order also specifies that overtime plus time worked in normal hours per week may not exceed 116 hours in total in any period of 2 consecutive weeks. Thus, a worker can work only 6 hours of overtime in a week. For night workers this limit is 144 hours per week. For night workers, 12 hours of overtime is allowed.

Although it would normally be considered a criminal offence to force workers to do overtime, still employers has the right to schedule overtime for their employees. Therefore, employees can be asked to work

a reasonable amount of overtime to complete a job. However, collective bargaining agreements often restrict the authority of employers regarding overtime. The law does not provide for a compensatory time-off for overtime work done.

Sources: §5-6 of the Regulation of Wages (General) Order 1982; §27 of the Employment Act 2007

## Night Work Compensation

There is no premium payment for night work. Working hours for night workers are more than day time workers. Normal working hours at night cannot exceed 60 hours per week and overtime of 24 hours is allowed in a period of 2 consecutive weeks. The total working time on a fortnightly basis, inclusive of overtime, may not exceed 144 hours for night workers.

Sources: §5-6 of the Regulation of Wages (General) Order, 1982

## Compensatory Holidays / Rest Days

No provision could be identified in laws to require an employer to provide compensatory rest day for working on weekly rest day or public holiday.

## Weekend / Public Holiday Work Compensation

Workers may be required to work on weekly rest days and public holidays. In such circumstances when employees have to work on official holidays, they are entitled to receive wages at a premium rate of 200% of the normal hourly wage rate. Workers

working on weekly rest days are entitled to premium pay at the rate of 200% of the normal wage rate.

Source: §6 (1b) of the Regulation of Wages (General) Order 1982

# 03/13 ANNUAL LEAVE & HOLIDAYS

## **ILO Conventions**

Convention 132 (1970) on Holidays with Pay Convention  
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.  
In addition, for several industries, different Conventions apply.

**Kenya has ratified the Conventions 14 & 132 only.**

### ***Summary of Provisions under ILO Conventions***

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week.

## Regulations on annual leave and holidays:

- Constitution of Kenya, 2010
- Employment Act, 2007
- Public Holidays Act 1984
- Regulation of Wages (General) Order, 1982

## Paid Vacation / Annual Leave

The Employment Act provides for annual leave to all workers on completion of one year of service. The full-time workers are entitled to 1.75 days of annual leave for one month of service. This means 21 working days for 12 months of service.

In the event of termination of employment after an employee has completed two or more consecutive months of service of the 12 months leave-earning period, he/she is entitled to one and three-quarter days of leave with full pay for each completed month of service in that period to be taken consecutively. Thus, a worker with 8 months of service is entitled to only 14 days of annual leave. A worker may receive payment in lieu of annual leave in case of contract termination/resignation and if the employee has accrued a number of leave days. In such case, employer is required to pay an employee not less than one and three-quarter days' worth wages for every completed month of service in that period.

Annual leave may be taken under different intervals during the year. An employer may split the annual leave with worker's consent. However, the minimum length of annual leave, taken at one time and during the first 12 months of the entitlement of the annual leave, has to be at least two uninterrupted working days unless

otherwise specified in the employment contract. Carrying over of annual leave is allowed however such leave has to be taken within 18 months of its eligibility. The annual leave does not include public holidays, weekly rest days and other types of leave allowed under the law.

The worker is entitled to receive his full pay for the period of annual leave. Full pay includes wages and salary at the basic minimum rate excluding any deductions from wages made by virtue of the Employment Act.

Source: § 28 of the Employment Act 2007; § 9 of the Regulation of Wages (General) Order 1982

## Pay on Public Holidays

Workers are entitled to paid Festival (public and religious) holidays. Festival holidays are announced by Kenyan Government at the start of calendar year (usually 11 in number). The public holidays are regulated under the Public Holidays Act. Constitution of Kenya also provides for national days as paid public holidays.

The public holidays are New Year's Day (January 01), Good Friday, Easter Monday, Labour Day (May 01), Madaraka Day (June 01), Idd – ul – Fitr (depends on moon sighting), Moi Day (October 10), Mashujaa/Kanyatta Day (October 20), Jamhuri (Independence) Day (December 12), Christmas Day (December 25), and Boxing Day (December 26).

Additional public holidays include idd-ul-Azha (depends on moon sighting) and Diwali (according to Hindu calendar), are specified to all the person belonging to the Islamic faith and Hindu faith respectively.

The day in any year on which general election are held following the dissolution of Parliament and the day during which a President-elect is sworn in, are considered as a public holiday.

The Minister has the right to declare, by notice, any day to be a public holiday in addition or substitution of the days already considered as public holiday. If a public holiday falls on a Sunday, workers are given a day-off on the following working day.

Sources: §9(3) of Constitution of Kenya 2010; §8 of the Regulation of Wages (General) Order 1982; Public Holidays Act 1984

## Weekly Rest Days

Workers are entitled to 24 consecutive hours of rest per week. Employment Act has not specified any day as a weekly rest day. The employer and the worker may agree to defer the worker's weekly rest day. It may be rescheduled on the successive day or may be accumulated and taken at once as a fully paid leave of maximum fourteen days. Deferring of rest day is prohibited in case of young workers under sixteen years of age.

No provision could be found in law related to rest break and daily rest period.

Source: §27(2) of Employment Act 2007; §6-7 of the Regulation of Wages (General) Order 1982

# 04/13 EMPLOYMENT SECURITY

## ILO Conventions

Convention 158 (1982) on employment termination

**Kenya has ratified the Convention 158.**

### *Summary of Provisions under ILO Convention*

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).



## Regulations on employment security:

- Employment Act, 2007

## Written Employment Particulars

Employment contracts are regulated under Employment Act 2007. A contract of employment is an agreement, whether oral or written, and whether expressed or implied, to employ or to serve as a worker for a certain period of time. It includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service.

Kenyan Employment Act requires that employment with duration of more than 3 months (and a contract of service which provides for the performance of any specified work which could not reasonably be expected to be completed within three months) should be in writing and written statement of particulars should be provided to a worker at the start of employment. The written particulars of employment must be given to the worker within two months of the beginning of employment.

An employment contract must specify the following: the name, age, permanent address and sex of the employee; the name of the employer; the job description of the employment; the date of commencement of the employment; the form and duration of the contract; the place of work; the hours of work; the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits; the intervals at which remuneration is paid; and 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; the duration of the contract; terms and conditions relating to entitlement to annual leave, including public holidays and holiday pay, incapacity to work due to sickness or injury; provision for sick pay and pensions and pension schemes; length of notice required to terminate the contract of employment; any collective agreements that directly affect the terms and conditions of the employment; disciplinary rules and any other prescribed matter.

In case a worker is required to work outside Kenya for a period of more than one month, the period of employment, the currency used for remuneration; and any benefits and any terms and conditions for the worker's repatriation to Kenya are mentioned in the contract

If there is a change in any of the above items, the employer is required to give a written statement containing the particulars of the change within a month after the change in question has occurred, or where that change results from the employee being required to work outside Kenya for a period of more than one month, the time when the employee leaves to start work if that is earlier.

Source: §9-10 of the Employment Act 2007

## Fixed Term Contracts

Kenyan labour Law allows hiring fixed term contract workers for tasks of permanent nature. No provisions could be located in the Employment Act on regulating the fixed term contracts (their maximum duration and renewals).

## Probation Period

According to Employment Act, Probationary contract is an employment contract of up to twelve months duration or part thereof. It must be written and expressly states that it is for a probationary period.

Probationary period should not be set higher than 6 months; however, it can be extended to one year with the consent of a worker. The probationary period cannot exceed one year as an aggregate.

Source: § 2 & 42 of the Employment Act, 2007

## Notice Requirement

Termination of employment is regulated under the Employment Act. A worker may be terminated after serving due notice or paying in lieu of notice. Length of notice period depends on the type of employment contract.

- Notice period is not provided for a worker hired on daily basis; contract may be terminated at the end of working day without any prior notice
- at least seven days' notice for workers during the probationary period (or payment in lieu of notice)
- Workers who get paid periodically for intervals shorter than one month (e.g. on weekly or fortnightly basis), a notice of equivalent period (a week or 15 days) may be served prior to contract termination
- If workers are paid on a monthly basis or longer interval, a 28-day notice must be served before contract termination

Length of notice period may be set in employment contract by mutual consent of

employer and worker, provided that the period is more than that is provided by the Act. Notice should be written in language easily comprehended by the worker, otherwise someone has to explain it to the worker, orally, in language that he/she could comprehend.

If an employer fails to give the termination notice, he/she must provide the wages and benefits that the employee would have earned during the notice period on the basis of average daily earnings over the past 12 months (provision of compensation in lieu of notice). An employer is required to give reason of termination to the worker except in cases of summary dismissal and redundancy, but in all instances termination should be based in fair reasons (including termination by notice). It is prudent for an employer to follow a fair hearing/consultation procedure to explain reasons for termination prior to terminating a contract. A worker can still claim unfair termination and it is the duty of the employer to prove that the termination was fair and procedures were followed.

To decide whether termination was just and fair, the Industrial Court is required to consider the procedure adopted by the employer in the termination, the conduct and capability of the worker up to the date of termination, the extent of compliance by the employer of statutory requirements, the previous practice of the employer in dealing with circumstances that led to the termination, and the existence of any previous warning letters issued to the worker.

A worker may lodge a complaint with labour officer within three months from the date of the unfair termination. If the termination was unjust, he/she may recommend the employer to pay wages for

the notice period required to be given; the proportion of wages due for the period the employee has worked and any other loss consequent upon dismissal arising between the date of dismissal and the date of expiry of the notice period; and the equivalent of a number of months' wages or salary for a period not exceeding 12 months based on the gross monthly wage or salary of the employee at the time of dismissal. All the amounts are subject to statutory deductions.

Where the labour officer finds the dismissal/termination unfair, he or she may recommend that the employer reinstates the worker and treat him or her as if the employment was never terminated, or re-engage the employee in work comparable to the one prior to his or her dismissal at the same wage.

Source: § 35-36 & 43-51 of the Employment Act 2007

of termination by notice in certain circumstances and its terms are fixed in employment contract. A worker is not entitled to service pay if he/she is a member of Registered Pension Fund, gratuity or service pay scheme established under collective agreement, any other scheme provided by employer whose terms are more favourable.

Source: § 35(5,6), 40(1g) of the Employment Act 2007

## Severance Pay

There is no provision for severance pay in legislation for reasons other than redundancy. Redundancy means the loss of employment by involuntary means through no fault of a worker, involving termination of employment at the initiative of the employer, where the services of a worker are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.

Severance pay, paid by the employer, in Kenya is equivalent to 15 days basic wages for each completed year of employment.

Employment Act also contains provisions relating to service pay. It is payable for each completed year of employment, in the case

# 05/13 FAMILY RESPONSIBILITIES

## **ILO Conventions**

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation  
165: Workers with Family Responsibilities (1981)

**Kenya has not ratified both the Conventions 156 & 165.**

### ***Summary of Provisions under ILO Convention***

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

## Regulations on family responsibilities:

- Employment Act, 2007

### Paternity Leave

Employment Act provides for two weeks/14 working days of paid paternity leave. Written notice is not required to proceed on paternity leave but employer may ask for it.

Source: § 29(8) of the Employment Act 2007

### Parental Leave

There is no provision in the law on paid or unpaid parental leave.

However, the Employment (Amendment) Act, 2021, effective from April 15, differs from the suggestions made in the Employment (Amendment) Bill, 2019 (the Bill), which recommended that a female married employee be entitled to 3 months of pre-adoption leave from the date of the child's placement and a male married employee be entitled to 2 weeks. The Act no longer qualifies pre-adoption leave based on gender or marital status, and it has also reduced the pre-adoption leave period from three and two weeks to one month for both male and female employees, regardless of marital status.

The employee should notify employer in writing about the intention of adoption society to place child in the custody of the employee at least 14 days before the adoption of child. It should also include the custody agreement between the adoption society and employee and an exit certificate. The exit certificate is 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.

Source: §29A of the Employment (Amendment) Act, 2021

### Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities.

# 06/13 MATERNITY & WORK

## **ILO Conventions**

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

**Kenya has not ratified the Conventions 103 & 183.**

### ***Summary of Provisions under ILO Convention***

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

## Regulations on maternity and work:

- Employment Act, 2007

## Free Medical Care

The Employment Act requires that an employer has to ensure sufficient availability of proper medicines for a worker during illness and, if possible, medical attendance should also be provided during serious illness. The workers covered under the National Hospital Insurance Fund Act are entitled to medical benefits in the case of hospitalization. Pregnancy specific benefits are not provided under the Act.

Source: §34 of the Employment Act 2007

## No Harmful Work

There is no provision in the Employment Act which restricts an employer from giving arduous or harmful work to a pregnant worker. However, generally females are not allowed to work underground in mines except in certain cases as specified in the Act.

Source: § 30 of the Employment Act 2007

## Maternity Leave

Female workers are entitled to 3 months (91 calendar days) of fully paid maternity leave on the birth of a child. The worker must give a written notice of at least 7 days (or even shorter period under certain circumstances) prior to proceeding on maternity leave on a specific date and to return to work thereafter. Worker may also have to provide a certificate of her medical condition from a qualified medical

practitioner or midwife, if required by the employer. Maternity leave can be extended with the consent of employer or a worker may proceed to sick leave or annual leave or any other kind of leave with employer's consent.

A female employee does not forego her annual leave for merely taking maternity leave.

Source: § 29 of the Employment Act 2007

## Income

The maternity leave is granted with full pay and the pay during leave period is financed by the employer.

Source: § 29(1) of the Employment Act, 2007

## Protection from Dismissals

It is illegal for an employer to dismiss a female worker due to her pregnancy or any other reason connected with her pregnancy in all aspects of employment.

Source: § 46 of the Employment Act 2007

## Right to Return to Same Position

A female worker has the right to return to same job/position (or some other similar and suitable position) after availing her maternity leave, on same terms and conditions which would have applied if she had not been on maternity leave.

Source: § 29(2) of the Employment Act 2007



## Breastfeeding

Health Act 2017 has the necessary provisions on breastfeeding. The Breast-Feeding Mother Bill, 2019 currently under discussion in Kenya parliament, has provisions on breastfeeding while at work.

Employers are required to grant all nursing employees break intervals for nursing in addition to the regular times off for meals. to breastfeed or express milk. The nursing break includes the time it takes an employee to get to and from the lactation station and is counted as paid working hours provided that such interval is not more than a total of one hour for every eight-hour working period.

Employers are further required to establish Lactation stations in the workplace which shall be adequately provided with necessary equipment and facilities including hand washing equipment, refrigerates or appropriate cooling facilities, electrical outlets for breast pumps, a small table, and comfortable seats. The lactation station must not be located in the rest rooms. Employers are further required to take strict action to prevent any direct or indirect form of promotion, marketing and or selling of infant formula and or breast substitutes within the lactation stations.

The Breast-Feeding Mother Bill allows a woman worker to breastfeed a baby (until the child is 2 years old) at work or express milk at a lactation place at work (to be used later on). The draft Bill clearly specifies a lactation place as “private, clean, sanitary and well-ventilated rooms or areas in the workplace or public places where breastfeeding mothers can breastfeed or express milk comfortably”.

The draft Bill requires employers to provide breastfeeding breaks with a reasonable time duration. The breast-feeding timings shall not exceed 40 minutes in every four hours. As per the instruction of a registered medical practitioner, the breastfeeding time can exceed the limit. Employers are required to provide flexible work arrangements for breastfeeding mothers. A breastfeeding worker cannot be discriminated against on the ground of pregnancy, childbirth, breastfeeding or any other maternity related condition in employment related matters.

Source: § 71 of the Health Act, 2017



# 07/13 HEALTH & SAFETY

## **ILO Conventions**

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

**Kenya has ratified the Convention 81 only.**

### ***Summary of Provisions under ILO Conventions***

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

## Regulations on health and safety:

- The Occupational Safety and Health Act, 2007

## Employer Cares

The Occupational Health and Safety Act (OSHA) provide for the health, safety and welfare of persons employed, and all persons lawfully present at workplaces and related matters.

It is obligatory for an occupier to provide and maintain plant and systems and procedures of work that are safe and without risk to workers' health. Employer must ensure safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances. Provision of such information, instruction, training and supervision of workers as is necessary is very crucial maintain safe and healthy workplace.

Workplace and work environment that is safe, without health risks and adequate as regards facilities and arrangements for the worker's welfare at work should be maintained. Workers should be well informed of any risks and imminent danger related to new technologies and they should participate in the application and review of safety and health measures.

Occupier must also ensure proper cleanliness, ventilation, lighting, drainage of floor, sanitary convenience, avoid overcrowding and control air pollution, noise and vibration at the workplace. Every occupier is required to establish a safety and health committee at the workplace in accordance with regulations prescribed under the law.

Preventive and protective measures should be taken after proper risk assessment (at least once a year) to ensure that all chemicals, machinery, equipment, tools and process are safe and without risk to health and comply with the requirements of safety and health provisions in this Act. An occupier who fails to comply with a duty imposed on him commits an offence and he/she is liable to a fine not exceeding 500,000 shillings or to imprisonment up to six months or to both.

All the above provisions are applicable also to the mine workers, as enunciated under the Mines Act 2016.

Source: §6 & 47-95 of the Occupational Safety and Health Act 2007; §178 of the Mines Act 2016

## Free Protection

In accordance with the Occupational Safety and Health Act 2007, it is the responsibility of employer to provide free protective equipment including clothing and appliances, and where necessary, suitable gloves, footwear, goggles and head coverings to the workers involved in hazardous work. The type of PPE needed varies depending on the nature of work being performed. The right use of PPE reduces risk of accident and illness and helps in creation of safer working environment.

Safety consultant, registered by the Director, assesses the suitability and effectiveness of protective clothes and appliances.

Source: §101 & 102 of the Occupational Safety and Health Act 2007

## Training

In accordance with the Occupational Safety and Health Act 2007, it is the responsibility of an employer to provide instruction, training and supervision as is necessary to ensure health and safety at work of his workers.

Employment of worker at any machine or in any process that may cause ill health or bodily injury is prohibited unless worker has been fully instructed about the hazards involved and precautions that must be observed. Worker should be properly trained or required to work under supervision of experienced persons.

The training is carried out on recruitment; transfer or change of job; introduction of new work equipment or materials or change in equipment or materials; and introduction of new technology. The training must be arranged regularly at workplace during working hours and adapted accordingly with the new and changed risks.

Employer must ensure that all the persons involved in work must receive appropriate instructions regarding safety and health risks including emergency procedures during their activities at the workplace and actions to be taken in case of an emergency.

If a person fails to comply with these provisions, he/she commits an offence and is liable to a fine up to 200,000 shillings or to imprisonment up to six months or to both.

Source: §99 of the Occupational Safety and Health Act 2007

## Labour Inspection System

Labour inspection system is present in Kenya. Occupational Safety and Health Act provides for a vibrant labour inspection system (part IV).

The Occupational Safety, Health and Injury Benefits Authority (OSHIBA) is responsible for the implementation of occupational health and safety, for improving and ensuring health, safety, security and good working conditions at the enterprises, inspecting enterprises and ensuring the law enforcement.

The national legislation provides inspectors the power to enter, inspect and examine the work premises at any time during day or night with or without prior notice; take measurements, photographs, samples and make recordings for the purpose of examination and investigation; ask for registers, documents, certificates and notices to inspect, examine and copy them; interview any one; if the inspector is a medical practitioner he/she may carry out medical examinations; and may take police officer along with him/her if necessary.

If an occupier or his representatives do not facilitate the inspector and obstruct the execution of his duties, he/she commits an offence and is liable to a fine up to 100,000 shillings or to imprisonment up to six months or to both.

Labour inspectors are authorized to conduct proceedings arising under this Act; to obtain samples of any substance used or intended to be used at workplace; to deal with the cause of imminent danger by seizing it or causing it to be rendered harmless; and issue notices (improvement or prohibition). Inspector must not disclose

any information obtained during the course of his/her duty, otherwise he/she is liable to a fine up to 100,000 shillings.

Source: §32-42 of the Occupational Safety and Health Act 2007

# 08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

## **ILO Conventions**

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

**Kenya has not ratified the Conventions 102, 121 & 130.**

### ***Summary of Provisions under ILO Conventions***

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

## Regulations on sick leave & Employment Injury Benefits:

- Employment Act, 2007
- Work Injury Benefits Act, 2007

## Income

In accordance with the Employment Act every worker is entitled to paid sick leave (sickness benefit) for up to 14 days per year, after completion of 2 months of service with an employer. In order to avail sickness benefits, worker must ensure the production of certificate of incapacity to work, signed by a qualified medical practitioner or a person acting on the practitioner's behalf who is in charge of a dispensary or medical aid centre.

Employer may provide fully paid sick leave for the first 07 days, and half wages are paid for the remaining 07 days. This full pay includes basic pay excluding deduction.

Source: §30 of the Employment Act 2007; ISSA Country Profile 2017

## Medical Care

In accordance with the Employment Act, an employer has to ensure sufficient availability of proper medicines for a worker during illness and, if possible, medical attendance should also be provided during serious illness. The workers covered under the National Hospital Insurance Fund Act are entitled to medical benefits in the case of hospitalization and these include general medical care, specialist care, medicine, hospitalization, and transportation.

Source: §34 of the Employment Act 2007

## Job Security

According to the Employment Act 2007, an employer may not dismiss a worker during his/her period of sick leave, pregnancy or disability. Such a dismissal would be unfair.

Source: §46 of the Employment Act 2007

## Disability / Work Injury Benefit

Work injuries are divided into three categories: (i) permanent incapacity (ii) temporary incapacity and (iii) fatal injury leading to death of a worker.

In the case of permanent incapacity/disability, a lump sum of 96 months of the insured's monthly earnings is paid and a lump-sum of 60 months of the insured worker's earnings is paid for a permanent partial disability, up to 240,000 shillings.

In the case of temporary disability, an insured worker after certification from medical board and waiting period of three days may receive temporary disablement benefit of 50% of his average daily earning up to 540 Shillings (If the incapacity lasts for more than three days).

In the case of fatal injury, fully dependent survivors receive benefit equivalent to a lump-sum of 60 months of deceased worker's earnings. In absence of fully dependent survivors, reduced benefit is paid to partially dependent survivors. The amount of benefit ranges from 35,000 shillings to 240,000 shillings.

The Funeral grant is also provided. A lump sum of the cost of funeral is paid to the dependents or 20,000 shillings are paid by the employer if there are no dependents.

All the above-mentioned benefits are periodically adjusted by the Minister of Labour.

Source: §10 & 28-37 of the Work Injury Benefits Act 2007; ISSA Country Profile 2017

# 09/13 SOCIAL SECURITY

## **ILO Conventions**

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

**Kenya has not ratified the above-mentioned Conventions.**

### ***Summary of Provisions under ILO Conventions***

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.



## Regulations on social security:

- National Social Security Fund Act 2013
- Retirement Benefits Act 1997

## Pension Rights

The National Social Security Fund Act 2013 provides for old age benefit (pension) when the insured person (male or female) attains the age of 60 years, or retired from regular paid employment.

A person is eligible for retirement pension on attaining the pensionable age (of 60 years) or attaining the age of 50 years in case of opting for early retirement.

A member may elect to have the value of his Pension Credit Fund at the date of his retirement applied to the pension payable to the member.

The pension payable to a member on his retirement is of such amount as can be purchased by his pension fund credit at the date of his/her retirement. A pension which becomes payable may be purchased in the member's name from a registered insurer of the member's choice.

A member who is entitled to receive pension may elect to receive part of his/her pension fund credit as a lump-sum however this cannot exceed one-third of Tier II Pension Fund Credit.

Source: §36 of the National Social Security Fund Act 2013; Retirement Benefits Act 1997; ISSA Country Profile 2017

## Dependents' / Survivors' Benefit

A survivors' pension is paid to the dependents if a member dies before the pensionable age and was contributing to the Pension Fund at the time of his death and at least 36 monthly contributions had been made by the member immediately before the date of death. The survivors' pension must be equal in value to the member's Pension Fund Credit except that the Tier I credit in respect of the deceased member is increased by an amount equal to the last Tier I monthly contribution multiplied by the lower of the "half the number of months of potential employment between the member's date of death and attainment of pensionable age" and "90 months".

The survivors' pension is paid to the nominated beneficiary within one year of the death of the worker in such proportions as stipulated by the member. If the deceased member did not satisfy the qualifying conditions, the dependents are entitled to the payment of a lump sum benefit equal to his Pension Fund Credit.

On the death of a member who paid at least six-monthly contributions immediately preceding his death, a grant for defraying funeral expenses is paid to the next of kin in one lump sum of 10,000 shillings.

A claim for payment of a funeral grant must be submitted not later than sixty days from the date of the death of the Member.

Source: §37 & 40 of the National Social Security Fund Act 2013; ISSA Country Profile 2017

## Unemployment Benefits

No provision in law for unemployment insurance and benefits.

A National Employment Authority is established under an Act of 2016. The functions of the Authority include the following:

- a. advise on formulation of employment policies and strategies for national and county governments and facilitate implementation of such policies;
- b. develop methodologies for employment measurement, management and promotion;
- c. conduct periodic surveys on labour market skills requirements and advise training institutions and job seekers appropriately to ensure that training and skills match the job market requirements;
- d. monitor implementation of employment policies and programmes;
- e. register persons seeking employment and maintain an integrated and up-to-date database of all persons seeking employment;
- f. facilitate the employment and placement of job seekers in formal and informal or any other form of employment, locally and internationally;
- g. circulate in a timely manner job vacancies advertised to job seekers throughout Kenya through appropriate means;
- h. provide counselling to the unemployed and undertake activities to promote employment; and
- i. take necessary steps to encourage equal opportunity employment

practices for the benefit of the unemployed

The Authority can also take the necessary steps to protect the unemployed against any form of abuse or exploitation.

Sources: National Employment Authority Act 2016; ISSA Country Profile 2017

## Invalidity Benefits

A member is entitled to invalidity pension if he/she suffers physical or mental disability of a permanent nature as certified by a medical board established under the Act and has made at least 36 monthly contributions immediately preceding the date of invalidity.

The invalidity pension is determined similarly as old age/retirement pension except that the Tier I credit in respect of the member is increased by an amount equal to the last Tier I monthly contribution multiplied by the lower of the "half the number of months of potential employment between the member's date of death and attainment of pensionable age" and "90 months".

A member who does not meet the contribution requirement (of 3 years) is entitled only to the payment of a lump-sum benefit equal to the member's Pension Fund Credit.

Sources: §38 of the National Social Security Fund Act 2013; ISSA Country Profile 2017

# 10/13 FAIR TREATMENT

## **ILO Conventions**

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

**Kenya has ratified the Conventions 100 and 111.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

## Regulations on fair treatment:

- The Constitution of Kenya, 2010
- Employment Act, 2007
- Sexual Offences Act, 2006

## Equal Pay

In accordance with the Constitution of Kenya, all human beings are born equal and are equal before the law. The Constitution recognizes the right to fair remuneration.

The Employment Act, 2007 requires every employer to ensure that men and women workers are paid equally for work of equal value. It is also a liable offence to discriminate in remuneration matters.

Source: § 27 & 41 of the Constitution of Kenya 2010; §5(5 & 6) of the Employment Act 2007

## Sexual Harassment

Sexual harassment at workplace is prohibited by law and an employer is supposed to create a policy prohibiting sexual harassment at workplace. However, law does not propose any punishment.

In accordance with the Employment Act, a worker is harassed sexually if the employer or its representative or a co-worker request (directly or indirectly) for any form of sexual favour in order to get preferential treatment at workplace; or threaten the worker of detrimental treatment on present or future employment status of the worker. Any kind of sexual behaviour that makes the victim feel uncomfortable includes using language (written or spoken) or visual material of sexual nature; and showing physical

behaviour of sexual nature is considered sexual harassment.

In an establishment with 20 or more workers, employer may issue a policy statement on sexual harassment, which clearly defines sexual harassment and states that the workplace is free of sexual harassment. Employer must take measure to ensure that workers are not subjected to sexual harassment and take appropriate disciplinary measures against the person involved in sexual harassment.

The policy statement must also describe the procedure through which worker may bring the complaints of sexual harassment to the attention of the employer. Employer must keep confidential all the information related to the complainant except where disclosure is necessary for the purpose of investigation or taking disciplinary measures. Each worker should be well aware of the provisions of the policy statement.

In accordance with the Sexual Offences Act of 2006, any person, who being in a position of authority, or a person holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment and is liable to imprisonment of at least three years or to a fine of at least 100,000 shillings or to both.

Source: §6 of the Employment Act 2007; §28 of the Sexual Offences Act 2006

## Non-Discrimination

The Constitution of Kenya prohibits discrimination either directly or indirectly

against any person on the basis of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Employment Act, with specific reference to employment, states that person's access to any institution, employment or facility, or the enjoyment of any right may not be denied because of person's belief or religion. The Act further prohibits employer from discrimination against a current or a prospective worker on the basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. Discrimination in the process of recruitment, training, promotion, terms and conditions of employment, termination of employment and other matters related to employment is not allowed.

Anti-union discrimination and discrimination against person with disabilities is also prohibited under the Labour Relations Act and Persons with Disabilities Act 2003 respectively. In accordance with Persons with Disabilities Act, no person can deny a person with a disability access to opportunities for suitable employment. A qualified employee with a disability is subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees. An employee with a disability is entitled to exemption from tax on all income accruing from his employment.

The National Council for Persons with Disabilities endeavours to ensure the implementation of five percent quota for persons with disabilities in all casual,

emergency and contractual positions in employment in the public and private sectors.

Source: §27 & 32(3) of the Constitution of Kenya 2010; §5(3) of the Employment Act 2007; §5 of the Labour Relations Act 2007; §12-13 of the Persons with Disabilities Act 2003

## Equal Choice of Profession

Women are not allowed work in the same industries as men (especially mining sector).

Source: §91 of the Employment Act, 2007

# 11/13 MINORS & YOUTH

## **ILO Conventions**

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

**Kenya has ratified the Conventions 138 and 182.**

### ***Summary of Provisions under ILO Conventions***

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

## Regulations on minors and youth:

- The Constitution of Kenya, 2010
- Employment Act, 2007
- Children Act, 2001
- Industrial Training Act, 1960

## Minimum Age for Employment

In accordance with article 53 of the Constitution, every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.

Under provisions of Employment Act, a child under the age of 16 years can't be employed. Children between the ages of 13 to 16 years may perform light work only. Employment of child under 13 years of age is prohibited.

However, the Industrial Training Act allows minors under age 15 to work as apprentice in an industrial undertaking without setting a minimum age. The Children Act defines child as any person below eighteen years of age. According to this Act, every child has a right to free basic education and it is the duty of the government and the parents to provide education to the child.

Sources: §53 of the Constitution of Kenya 2010; §56 of the Employment Act 2007; §7 of the Children Act 2001; §8 Industrial Training Act 1960

## Minimum Age for Hazardous Work

Employment Act defines young person as a child who has attained the age of sixteen years but has not attained the age of eighteen years.

According to Children Act, every child (under 18 years) has to be protected from economic exploitation and any work that is likely to be hazardous or interferes with the child's education, or is harmful to the child's health or physical, mental, spiritual, moral or social development.

The Act prohibits worst form of child labour, which include all forms of slavery or practices similar to slavery; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; 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; and work that is likely to harm the health, safety or morals of the child.

It is prohibited to employ children at night between 18:30 and 06:30 except when ordered by the Minister in case of emergency. The minimum age for hazardous work is 18 years.

An authorized officer may request medical examination of the children employed in an enterprise, at any point during the employment, in order to establish that their jobs are not beyond their physical capabilities.

Employer must keep and maintain a register of employed children indicating age and date of birth; date of entry into and of leaving the employment; and such other particulars as may be prescribed.

A person involved in worst form of child labour or who does not abide by the regulation related to the child's employment is liable to a fine up to

200,000 shillings or to imprisonment up to twelve months or to both.

Sources: §2, 53-64 of the Employment Act 2007; §10 (1) of the Children Act 2001



# 12/13 FORCED LABOUR

## **ILO Conventions**

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

**Kenya has ratified both Conventions 29 & 105.**

### ***Summary of Provisions under ILO Conventions***

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

## Regulations on forced labour:

- The Constitution of Kenya, 2010
- Employment Act, 2007

## Prohibition on Forced and Compulsory Labour

The Constitution of Kenya prohibits forced labour. The Employment Act defines forced and compulsory labour as 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.

The Act prohibits all forms of forced or compulsory labour. A person who contravenes the provisions of this section commits an offence and shall, on conviction be liable to a fine of at least 500,000 shillings or to imprisonment for a term of at least two years or both.

Source: §30 of the Constitution of Kenya 2010; §2 & 4 of the Employment Act 2007

## Freedom to Change Jobs and Right to Quit

Workers have the right to change jobs after serving due notice on their employer. For more information, please refer to the section on employment security.

Source: §35-36 of Employment Act 2007

## Inhumane Working Conditions

The normal weekly working hours are 52 hours per week. Inclusive of overtime, the weekly working hours can be extended to 58 hours per week (116 hours over a two-week period). For more information, please refer to the section on compensation.

# 13/13 TRADE UNION

## ILO Conventions

Freedom of association and protection of the right to organize: Convention 87 (1948)  
Right to Organize and Collective Bargaining: Convention 98 (1949)

**Kenya has ratified the Conventions 98 only.**

### *Summary of Provisions under ILO Conventions*

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

## Regulations on trade unions:

- The Constitution of Kenya, 2010
- Labour Relations Act, 2007
- Labour Institutions Act 2007

## Freedom to Join and Form a Union

The Constitution and the Labour Relations Act provide for Freedom of Association. Every worker has a right to form, join or participate in the activities and programs of a trade union (and leave a trade union).

Principal purpose of a trade union is to regulate relations between workers and employers. Basically, a trade union fights for better working conditions and remuneration for its members. It advocates sound relations between employers and workers through the promotion and protection of freedom of association, collective bargaining agreements and dispute resolution. More specifically, trade unions negotiate for wages, work rules, complaint procedures, rules governing hiring, firing and promotion of workers, benefits, workplace safety and policies. The agreements negotiated by the union leaders are binding on the rank-and-file members and the employer and in some cases on other non-member workers.

Union members are free to elect their representatives and formulate their work program. They may draw up their own statutes and administrative regulations, as long as these are not contrary to laws in effect and public order.

The unions must get registered with the Ministry by filing their statutes and list of names of those responsible for management and administration. Employer may deduct union dues from the

wages of the members only after their written consent. Discriminatory behaviour is prohibited by employer on the basis of union affiliation or participation in union activities. Moreover, workers are allowed to participate in union activities outside working hours.

No person can discriminate against an employee or a candidate for employment for exercising any right related to trade union membership, participation in trade union activities and leaving the trade union.

No person can require a current or prospective worker to become a member of union or give up trade union membership; prevent a current or prospective worker from exercising any right conferred under the Labour Relations Act; and dismiss or in any way prejudice a current or prospective worker because of past, present or anticipated trade union membership; for participation in the formation or the law full activities of a trade union; for exercising any right conferred under the Labour Relations Act or participating in proceedings specified under the Act or for failing or refusing to do something that an employee may not lawfully permit or require an employer to do.

No one can give advantage to a current or prospective worker for not exercising trade union rights however parties can always settle disputes by giving away some of their rights.

The Labour Relations Act 2007 allows for an employee who is above 16 years to join and participate in the activities of a trade union (however cannot become member of trade union executive under the age of 18 years). A voting member of a trade union must be one employed in the sector for which the trade union is registered and his/ her

subscriptions must not be more than 13 weeks in arrears.

Source: §41 of the Constitution of Kenya 2010; §4-14 of the Labour Relation Act, 2007

## Freedom of Collective Bargaining

In accordance with article 41 of the Constitution, every trade union, employers' organisation and employer has the right to engage in collective bargaining. According to the Labour Relations Act, collective agreement is a written agreement concerning any terms and conditions of employment made between a trade union and an employer, group of employers or organisation of employers.

Every trade union, employers' organisation and employer has the right to engage in collective bargaining. Labour Relations Act allows for collective bargaining in all enterprises.

In order to bargain collectively, employer must agree to the reasonable rules for bargaining and respond to proposals made by the union in a reasonable way. Employer must also provide reasonable resources and information to unions involved in collective bargaining. Persons involved in bargaining have to keep confidential the information provided by the employer.

A collective bargaining agreement must be written and signed by the chief executive officer of any employer, the chief executive or national secretary of an employers' organisation that is a party to the agreement or a representative designated by that person; and the general secretary of any trade union that is a party to the agreement or a representative designated by the general secretary. The agreement is

registered with the industrial court and become effective from the date agreed upon by the parties. The terms of the collective agreement are incorporated into the contract of employment of every employee covered by the collective agreement. The term (duration) of a collective agreement is usually for a period of two years.

National Economic and Social Council (NESC) is an advisory body that participates indirectly in Kenya's social dialogue. However, its policy, advice and recommendations seek to provide an objective and favourable environment for engagements between employees, employers, government (executive, legislature and judiciary) and new entrants in the social dialogue space such as NGOs and think tanks. NESC provides advice to government on strategic policies aimed at promoting economic growth, social equity, employment creation, reduction of poverty and inequality.

The Labour Institutions Act 2007 provides for a tripartite National Labour Board which advises the Minister for Labour on all matters concerning employment and labour including legislation and policy making. The Board also appoints members of the Wages Council as well as the Industrial Court.

Source: §41 of the Constitution of Kenya 2010, § 54-61 of the Labour Relation Act 2007; Labour Institutions Act 2007; Executive Order through Kenya Gazette Notice No. 7699 of 24 September 2004

## Right to Strike

Right to strike is recognized by constitution and is a fundamental worker right.

Compulsory recourse to arbitration, long and complex conciliation and mediation procedures prior to strike actions generally restrict the right to strike. Strike is prohibited to the workers engaged in essential services.

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' organisation of which their employer is a member to accede to any demand in respect of a trade dispute.

Peaceful strike is allowed only after all the methods of dispute resolution fail. Members of union must inform the employer and the Ministry of Labour at least 7 days prior to the proposed date of strike. Strikers are not allowed to force other workers to participate in strike and they have the right to return to work without any punishment once the strike is over.

Workers are allowed to participate in protected/legal strike that complies with the provisions of the Act. An employer may not dismiss or take disciplinary action against a worker nor can civil proceedings be instituted against any person for participating in a protected strike or for any conduct in contemplation or furtherance of a protected strike.

Employer is not obliged to pay salaries to the workers on protected strike. Employers also have the right to lockout workers. This right is subject to the same rules and restrictions as the right to strike.

The Labour Relation (Amendment) Bill, 2019 has been under consideration in

Kenya parliament to regulate strikes in essential services. The trade union workers shall hold a ballot prior issuing the intention of strike notice. To hold strike in the essential services, at least 50% of the workers should support strike

The essential services are defined as 'a service the interruption of which would probably endanger the life of a person or health of the population or any part of the population.'. The essential services include, among others, hospital services, air traffic services, fire services and water supply services. There shall be no lock out or strike in any of the essential services.

Source: §41 of the Constitution of Kenya 2010; §76-81 of the Labour Relation Act 2007

# QUESTIONNAIRE

## DECENTWORKCHECK.ORG

Check

DecentWorkCheck Kenya is a product of WageIndicator.org and  
www.mywage.org/kenya



National Regulation exists



National Regulation does not exist

## 01/13 Work &amp; Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

## 02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

## 03/13 Annual Leave &amp; Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

## 04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

## 05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>





## 06/13 Maternity &amp; Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>





\* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".







# DECENTWORKCHECK.ORG

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy<br><i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child   |  | <input type="checkbox"/> | <input type="checkbox"/> |





## 07/13 Health & Safety

- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |









## 08/13 Sick Leave & Employment Injury Benefits

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |    | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury                                       |   | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease     |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 09/13 Social Security

- |     |   |   |                          |                          |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit   |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

## 10/13 Fair Treatment

- |     |  |   |                          |                          |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination                                     |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Sex/Gender   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Race   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Colour   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Religion   |  | <input type="checkbox"/> | <input type="checkbox"/> |
|     | Political Opinion  |  | <input type="checkbox"/> | <input type="checkbox"/> |

\* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

# DECENTWORKCHECK.ORG

	Nationality/Place of Birth	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Social Origin/Caste	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Family responsibilities/family status	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Age	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Disability/HIV-AIDS	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Trade union membership and related activities	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Language	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Sexual Orientation (homosexual, bisexual or heterosexual orientation)	😞	<input type="checkbox"/>	<input type="checkbox"/>
	Marital Status	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Physical Appearance	😊	<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy/Maternity	😊	<input type="checkbox"/>	<input type="checkbox"/>
40	I, as a woman, can work in the same industries as men and have the freedom to choose my profession	😞	<input type="checkbox"/>	<input type="checkbox"/>

## 11/13 Minors & Youth

41.	In my workplace, children under 15 are forbidden	😊	<input type="checkbox"/>	<input type="checkbox"/>
42.	In my workplace, children under 18 are forbidden for hazardous work	😊	<input type="checkbox"/>	<input type="checkbox"/>

## 12/13 Forced Labour

43.	I have the right to terminate employment at will or after serving a notice	😊	<input type="checkbox"/>	<input type="checkbox"/>
44.	My employer keeps my workplace free of forced or bonded labour	😊	<input type="checkbox"/>	<input type="checkbox"/>
45.	My total hours of work, inclusive of overtime, do not exceed 56 hours per week	😊	<input type="checkbox"/>	<input type="checkbox"/>

## 13/13 Trade Union Rights

46.	I have a labour union at my workplace	😊	<input type="checkbox"/>	<input type="checkbox"/>
47.	I have the right to join a union at my workplace	😊	<input type="checkbox"/>	<input type="checkbox"/>
48.	My employer allows collective bargaining at my workplace	😊	<input type="checkbox"/>	<input type="checkbox"/>
49.	I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination	😊	<input type="checkbox"/>	<input type="checkbox"/>

# DECENTWORKCHECK.ORG

## Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Kenya scored 35 times "YES" on 49 questions related to International Labour Standards

### If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

### If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

### If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.