

DRAFT EMPLOYMENT ACT (AMENDMENT) BILL, 2015

A BILL FOR -

AN ACT of Parliament to amend the Employment Act, 2007 and for connected purposes.

ENACTED by the Parliament of Kenya as follows-

Amendment to Section 1 of the Employment Act, 2007	1. This Act may be cited as the Employment Act (Amendment) Act, 2015.
Amendment to Section 2 of the Employment Act, 2007	2. The Employment Act, 2007 (in this Act referred to as the “Principal Act”) is amended in section 2 - (a) in the definition of “authorised officer”, by the introducing immediately after the words “labour officer”, the words “ <i>labour inspector</i> ”; (b) by substituting the word “Minister” wherever it appears in the Act, with the words “ <i>cabinet secretary</i> ”; (c) in the definition of “redundancy”, by introducing after the word “and”, the words “ <i>as a result of</i> ” ; (d) in the definition of “worst forms of child labour”, by substituting the word “juveniles” with the word “ <i>children</i> ”; (e) by substituting the definition of “disability” with the following new definition- <i>“disability” means a physical, sensory, mental or other impairment including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic, or environmental participation;</i> (2) by the introduction of the following new definitions their proper alphabetical sequence- (a) “term contract” (b) “piece rate work”
Amendment to Section 3 of the Employment Act, 2007	3. Section 2 of the Principal Act is amended - (a) in sub-section 2(a) by substituting the words “armed forces” with the words “ <i>National Defence Forces</i> ”

	(b) in sub-section 2(b) by substituting the words “Kenya police “ and “Kenya Administration Police” by the words ‘ <i>National Police Service</i> ’
Amendment to Section 4 of the Employment Act, 2007	4. The Principal Act is amended in sub-section (3)(a) of section 4, by the introduction immediately after the word “pregnancy”, of the words “ <i>marital status</i> ”.
Amendment to Section 5 of the Employment Act, 2007	5. Section 5 of the Principal Act is amended - (1) immediately after sub-section (2), by introducing the following new sub-section- <i>No employer shall employ-</i> (a) <i>an illegal foreign national;</i> (b) <i>a foreign national whose status does not authorize him or her to be employed by such person;</i> (c) <i>a foreign national on terms, conditions or in a capacity different from those contemplated in such foreign national’s status</i> (2) in sub-section (3)(a), by substituting that paragraph with the following- <i>“No employer shall discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”</i>
Amendment to Section 6 of the Employment Act, 2007	6. Section 6 of the Principal Act is amended- (a) by the introduction of a new sub-section (5) immediately after sub-section (4) – <i>“The policy statement made under sub-section (2) shall apply in the case of an employer who is sexually harassed.”</i> (b) by the introduction of a new sub-section immediately after subsection 4 as follows:
Amendment to Section 9 of the Employment Act, 2007	7. The Principal Act is amended in section 9 by the introduction of a new sub-section immediately after sub-section (4) as follows- <i>An employer shall in all instances where the contract is written, avail a copy of the contract for an employee’s retention.</i>

<p>Amendment to Section 10 of the Employment Act, 2007</p>	<p>8. Section 10 of the Principal Act is amended–</p> <p>(1) by renumbering (6) to (6)(a); and</p> <p>(2) by introducing immediately after sub-section (6), the following new paragraph–</p> <p><i>“6(b) Where a person has initiated a case against the employer before the expiry of the period stated in sub-section (1), it shall be the duty of the employer to ensure the safe custody of all records in the employer’s possession until the case has been finalised and all appeals exhausted.”</i></p>
<p>Amendment to Section 19 of the Employment Act, 2007</p>	<p>9. Section 19 of the Principal Act is amended in sub-section (6) by deleting the paragraph and substituting with the following–</p> <p><i>“Where proceedings are brought under sub-section (5) in respect of failure by the employer to remit deductions from an employee’s remuneration, the court may in addition to fining the employer order the employer to either–</i></p> <p><i>(a) refund the employee the money deducted from the employee’s wages; or</i></p> <p><i>(b) to pay the intended beneficiary on behalf of the employee with the employer’s own funds.”.</i></p>
<p>Amendment to Section 24 of the Employment Act, 2007</p>	<p>10. Section 24 of the Principal Act is amended in sub-section (5) by substituting the words “district commissioner” with “<i>county administrator</i>”</p>
<p>Amendment to Section 27 of the Employment Act, 2007</p>	<p>11. Section 27 of the Principal Act is amended–</p> <p>(1) in the title, by introducing immediately after the word “Work” the words “<i>and rest day</i>”</p> <p>(2) in sub-section (1), by deleting the full stop at the end of the paragraph and introducing the following words,</p> <p><i>”but shall in no event provide maximum hours exceeding 48 hours spread over 6 days in one week”</i></p>
<p>Amendment to Section 29 of the Employment Act, 2007</p>	<p>12. Section 29 of the Principal Act is amended -</p> <p>(1) in the title, by the introduction after the word “Maternity” of the words “<i>and paternity</i>” ;</p> <p>(2) in sub-section (1), by the deleting the full stop at the end of the paragraph and introducing the following words; “<i>which shall be calculated using working days.</i>”</p>

	<p>(3) in sub-section (8),</p> <p>(a) by the deleting the full stop at the end of the paragraph and introducing the following; <i>“which shall be calculated using working days.”</i></p> <p>(b) by substituting the word “employer” with the word <i>“employee”</i>.</p>
<p>Amendment to Section 30 of the Employment Act, 2007</p>	<p>13. Section 30(1) of the Principal Act is amended by deleting the section and substituting with the following new section-</p> <p><i>After 2 months of continuous service with an employer, an employee shall be 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 consecutive months of service</i></p> <p><i>Provided that</i></p> <p>(i) <i>An employee shall not be entitled to such payment unless he produces to the employer a certificate of incapacity covering the period of sick leave claimed signed by a medical practitioner in charge of a dispensary or medical aid centre, or by a person authorised by him in writing and acting on his behalf.</i></p> <p>(ii) <i>An employee shall not be eligible for sick leave under this paragraph in respect of any incapacity due to gross neglect on his part.</i></p>
<p>Amendment to Section 35 of the Employment Act, 2007</p>	<p>14. Section 35 of the Principal Act is amended-</p> <p>(1) in sub-section (5) by deleting the words “the terms of which shall be fixed.”</p> <p>(2) by introducing, immediately after sub-section (5), the following new paragraphs-</p> <p>(a) <i>“Upon normal termination, a worker shall be entitled to gratuity as provided in the contract provided it is not less than equivalent to 15 days pay for each completed year of service.”</i></p> <p>(b) <i>“Where an employee who works on a contract, has worked for an aggregate of 1 year, irrespective of payment of wages whether monthly or weekly, that employee shall be entitled to service pay for every year worked”.</i></p> <p>(c) <i>Terminal dues under this section, shall be calculated on the basis of the last earned basic salary</i></p>

Introduction of a new section	<p>15. The Principal Act is amended immediately after section 35 by the introduction of a new section as follows-</p> <p><i>Retirement</i> <i>Where an employee is retired whether under normal retirement or on medical grounds-</i></p> <p><i>(1) the employer shall be under obligation to provide the employee with proof of such retirement; and</i></p> <p><i>(2) the employee shall be entitled to retirement benefits under section 35(6).</i></p>
Amendment to Section 44 of the Employment Act, 2007	<p>16. Section 44 of the Principal Act is amended by the introduction of a new paragraph immediately after sub-section (4) as follows-</p> <p><i>“Where an employee is summarily dismissed for lawful cause, the employee shall, on dismissal be paid all wages, accrued allowances due to him up to the date of his dismissal and any monies paid into a pension scheme.”</i></p>
Amendment to Section 45 of the Employment Act, 2007	<p>17. Section 45 of the Principal Act is amended by the repeal of sub-section (3).</p>
Amendment to Section 47 of the Employment Act, 2007	<p>18. Section 47 of the Principal Act is amended by the repeal of sub-section (6).</p>
Amendment to Section 48 of the Employment Act, 2007	<p>19. Section 48 of the Principal Act is amended -</p> <p><i>(1) by deleting the words, “no advocate shall represent a party in the proceedings before a labour officer, but any” and substituting thereof the word ”a”.</i></p> <p><i>(2) by introducing before the word “official” the word “advocate”</i></p>
Amendment to Section 53 of the Employment Act, 2007	<p>20. Section 53 of the Principal Act is amended -</p> <p><i>(1) in sub-section (1) by deleting the paragraph and substituting with the following –</i> No person may employ a child in employment— <i>(a) that is inappropriate for a person of that age;</i> <i>(b) that places at risk the child’s well-being, education, physical or mental health, or spiritual, moral or social development.</i></p> <p><i>(3) A person who employs a child in contravention of this sub-section commits an offence.</i></p>

Amendment to Section 54 of the Employment Act, 2007	<p>21. Section 54 of the Principal act is amended-</p> <p>(a) in sub-section (1), by deleting the words “constituting worst forms of child labour” and substituting with “<i>in contravention of sub-section (1)</i>”</p> <p>(b) in sub-section (2) by inserting a comma and the words “<i>children officer</i>” immediately after the words “labour officer”.</p> <p>(c) in sub-section (4), by deleting the words “constituting worst forms of child labour” and substituting with “<i>in contravention of sub-section (1)</i>.”</p>
Amendment to Section 74 of the Employment Act, 2007	<p>22. Section 74 of the Principal act is amended-</p> <p>(1) by the introduction of a new sub-section immediately before sub-section (2) as follows-</p> <p style="text-align: center;"><i>“The employer shall keep or cause to be kept a record of hours worked on a daily basis.”</i></p> <p>(2) by renumbering the section appropriately.</p>
Amendment to Section 87 of the Employment Act, 2007	<p>23. Section 87 of the Principal act is amended by the introduction of a new sub-section immediately after sub-section (3) as follows-</p> <p style="text-align: center;"><i>“The Director of Public Prosecutions shall gazette labour officers qualified to be prosecutors pursuant to article 157(2) of the Constitution.”</i></p>
Introduction of a new section 87A	<p>24. Section 87 of the Principal Act is amended-</p> <p>(1) in sub-section (1) by the introduction, immediately after the words “labour officer” the words “ <i>or any other mediator or arbitrator the parties may agree upon or appointed by the Mediation, Conciliation and Arbitration Commission</i>”.</p> <p>(2) in subsection (1) by the introduction, immediately before the words “Industrial Court” the words “<i>Mediation, Conciliation and Arbitration Commission</i>”.</p> <p>(3) by deleting sub-section (2) and introducing the following new subsections-</p> <p>(a) Where an agreement is reached through the labour officer, a mediator or an arbitrator, the agreement shall be recorded by the Industrial Court and an order made accordingly.</p> <p>(b) Where no agreement is arrived at the parties may file a suit at the designated magistrate’s court or Industrial Court</p>

	(c) No other courts other than the designated magistrate's court or the Industrial Court shall entertain a suit under sub-section (1)
Amendment to Section 88 of the Employment Act, 2007	<p>25. Section 88 of the Principal Act is amended by the introduction of a new paragraph, immediately after sub-section (3), as follows-</p> <p><i>“An employer who withholds the original document of an employee commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or two years imprisonment or both”.</i></p>