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THE SENATE

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

TWELFTH PARLIAMENT- SIXTH SESSION

REPORT ON THE EMPLOYMENT (AMENDMENT) BILL, 2021
(SENATE BILLS NO. 54 OF 2021)

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

| PAPERS LAID | |
|--------------------|----------------------------|
| DATE | 24/03/2022 |
| TABLED BY | SEN. N. MURZATO |
| COMMITTEE | SC LABOUR & SOCIAL WELFARE |
| CLERK AT THE TABLE | MARCH, 2022 |

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22/03/22

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PREFACE

1. The Standing Committee on Labour and Social Welfare was constituted in December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of Senate standing order 187.

The Committee is mandated to consider all matters related to: *manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

2. In executing its mandate, the Committee oversees the Ministries of:
 - a) Labour;
 - b) Public Service & Gender, Social Protection, Senior Citizen Affairs & Special Programmes; and,
 - c) Sports Culture and Heritage.

3. The Committee comprises the following Members:

1. Sen. Sakaja Johnson Arthur, CBS, MP -Chairperson
2. Sen. Mwaruma Johnes Mwashushe, MP -Vice Chairperson
3. Sen. Madzayo Stewart Mwachiru, CBS, MP -Member
4. Sen. Mwangi Paul Githiomi, MP -Member
5. Sen. Kihika Susan Wakarura, MP -Member
6. Sen. Makori Beatrice Kwamboka, CBS, MP -Member
7. Sen. (Dr.) Mwaura Isaac, CBS, MP -Member
8. Sen. (Dr.) Milgo Alice Chepkorir, MP -Member
9. Sen. Masitsa Naomi Shiyonga, MP -Member

ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the staff of the committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 143 (1), to present and lay on the table of the House the report of the Committee on Labour and Social Welfare on the Employment (Amendment) Bill, 2021 (Senate Bills No. 54 of 2021) for consideration by the House.



SIGNED:
SEN. JOHNSON SAKAJA, CBS, MP, CHAIRPERSON,
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE.

DATE: Tuesday, 8th March, 2022

1 INTRODUCTION

1.1 Background Information

The Employment (Amendment) Bill, 2021 (Senate Bills No. 54 of 2021) originated in the Senate and was published in the Kenya Gazette Supplement No. 186 as an ordinary bill on 8th October, 2021. The Bill was sponsored by Sen. Samson Cherarkey.

The Bill was read a first time in the Senate on Thursday, 2nd December, 2021 and committed to the Standing Committee on Labour and Social Welfare pursuant to Standing Order 140(1).

Pursuant to Article 118 of the Constitution and Standing Order No. 140 (5), of the Senate Standing Orders, the Standing Committee of the Senate on Labour and Social Welfare invited the public to make written submission of their views on the Bill through advertisements in the National Newspapers dated Friday, 17th December, 2021. The Committee also invited targeted stakeholders to make oral and written submissions through a virtual meeting held on the Zoom platform on Wednesday, 2nd February, 2022. This was to take into account the views and recommendations of the public while preparing this report.

According to its objects and memoranda, the Bill seeks to amend the Employment Act, 2007 to seek the right to disconnect in the digital age.

The Bill has been processed by the Committee and is now ready for presentation to the House for consideration.

1.2 Overview of the Employment (Amendment) Bill, 2021 (Senate Bills No. 54 of 2021)

Paragraph 13 of Part 1 of the Fourth Schedule to the Constitution assigns the function of *labour standards* to the National government. On the other hand, Article 235 of the Constitution provides that each county government is responsible for staffing within a framework of uniform norms and standards prescribed by an Act of Parliament, namely the County Governments Act, 2012 and the Employment Act, 2007.

The principal purpose of the Bill is to amend the Employment Act, No. 11 of 2007 to provide provide for the right to disconnect in the digital age.

1.2.1 Purpose of the Bill

The principal purpose of the Bill is to provide provide for the right to disconnect in the digital age. The Bill therefore seeks to strike a balance between work and private life to allow digital technology have a positive effect on workers' quality of life supported by employers.

1.2.2 Overview of the legislative proposal

The Bill proposes to insert a new section 27A on the right to disconnect to provide for—

- (a) the right to disconnect by an employee from their employer;
- (b) the development of policies under which an employer may contact an employee during out of work hours;
- (c) the definition of the “right to disconnect”; and
- (d) the definition of “out of work hours”.

The Bill—

- (a) inserts definitions of new terms and phrases as contained in the 2021 World Anti-Doping Code and Regulations and deletes terms that have become obsolete or no longer appear in the body of the principal Act;
- (b) broadens the application of the principal Act to include board members, directors, officers and specified employees, and delegated third parties and their employees, who are involved in any aspect of doping control;
- (c) inserts an additional purpose of the principal Act to safeguard the physical health and mental integrity of athletes;

1.2.3 Consequences of the Bill

The Bill will lead to policy changes in the National and county labour standards. The Bill will also provide a balance between work and private life to allow digital technology to have a positive effect on workers' quality of life supported by employers.

2 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 140 (5), the Committee invited written submissions from the public and held a stakeholder forum on Wednesday, 2nd February, 2022. The Committee received submissions from the following stakeholders –

- a) The Ministry of Labour
- b) The Federation of Kenya Employers (FKE)
- c) The Council of Governors
- d) Teachers Service Commission

Below is a summary of the submissions received from stakeholders-

- a) **The Federation of Kenya Employers (FKE)** submitted its disagreement with the proposed Employments (Amendment) Bill, 2021 that the proposed amendments are bad to the operations and development of businesses, labour market, the economy and the industrial relations.
- b) **The Council of Governors** agreed with the content of the Bill.
- c) **Teachers Service Commission** opposed the Bill.
- d) **The Ministry of Labour** made the following submissions—
 - i. **Emergency** should be defined in the proposed section 27A (2);
 - ii. The mode and rate for compensation should be specified under the proposed section 27A (3) (b);
 - iii. The Cabinet Secretary responsible for matters relating to labour and employment should be conferred with powers for policy development under the proposed section 27A (6);
 - iv. There is need to express that an employee may not be engaged during “out of work hours” to avoid burnout and to maintain work-family life balance under the proposed section 27A (7);
 - v. There is need to align the penalty in the Bill with the others in the parent Act;
 - vi. There is need to provide for safeguards for employees who choose to disconnect; and
 - vii. The proposed amendments should be put through due process as required under section 8 of the Labour Institutions Act, 2007 and be presented to the National Labour Board to fulfil the requirement for Tripartite engagement.

No amendments were proposed for the Bill.

3 COMMITTEE OBSERVATIONS AND RECOMENDATIONS

3.1 Committee Observations

Following Public Participation held on Wednesday, 2nd February, 2022, the Committee noted

1. That though the Ministry of Labour did not oppose the Amendment, they called for a more comprehensive overhaul of the Employment Act;
2. The Federation of Kenya Employers totally opposed the bill stating that it would hurt small businesses in the country;
3. The Teachers Service Commission raised concerns on how the bill would affect teachers and learning in general; and
4. That there is need to have continuous stakeholder engagements on the matter so as to come up with structures that would suit the Kenyan context.

3.2 Committee Recommendations

The Committee recommends that the Employment (Amendment) Bill, 2022 (Senate Bills No. 54 of 2021) be passed without amendment

MINUTES OF THE 10TH (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 8TH MARCH, 2022 AT 9.30 AM.

MEMBERS PRESENT

- | | |
|---------------------------------------|---------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Madzayo Stewart Mwachiru, CBS | - Member |
| 3. Sen. Makori Beatrice Kwamboka, CBS | - Member |
| 4. Sen. Naomi Masitsa Shiyonga | - Member |
| 5. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 6. Sen. (Dr.) Isaac Mwaura, CBS | - Member |

ABSENT WITH APOLOGIES

- | | |
|------------------------------|------------------|
| 1. Sen. Johnes Mwaruma | - V. Chairperson |
| 2. Sen. Paul Mwangi Githiomi | - Member |
| 3. Sen. Susan Kihika | - Member |

SENATE SECRETARIAT

- | | |
|-----------------------|------------------------------|
| 1. Ms. Mary Chesire | - Deputy Director, DCOM |
| 2. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 3. Mr. Kevin Kibet | - Clerk Assistant/HO |
| 4. Ms. Marale Sande | - Principal Research Officer |
| 5. Mr. Jeremy Chabari | - Legal Counsel |
| 6. Ms. Lilian Onyari | - Fiscal Analyst |
| 7. Ms. Fatuma Abdi | - Audio Officer |
| 8. Mr. Ruben Kimosop | - Serjeant-At-Arms |

MINUTE SEN/SCLSW/39/2022: PRELIMINARIES

The Chairperson called the meeting to order at 9.55 am. followed by a word of prayer.

MINUTE SEN/SCLSW/40/2022: ADOPTION OF THE AGENDA

The Senate Standing Committee on Labour and Social Welfare | 2022

The agenda of the Meeting was adopted after it was proposed by Sen. Beatrice Makori Kwamboka, MP and seconded by Sen. (Dr.) Alice Chepkorir Milgo, MP as follows-

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Consideration and Adoption of the Report on the Sports (Amendment) Bill, 2021;**
4. **Consideration and Adoption of the Report on the Employment (Amendment) Bill, 2021;**
5. **Consideration and adoption of the Report on the Community Groups Registration Bill, National Assembly Bills No. 20 of 2021;**
6. **Confirmation of Minutes 9, 8, 7, 6 and 5;**
7. **Consideration of the Petition on Recruitment, Remuneration and termination of ECDE Teachers serving in Nyamira County;**
8. **Statements before the Committee; and**
9. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/41/2022: CONSIDERATION AND ADOPTION OF THE REPORT ON THE EMPLOYMENT (AMENDMENT) BILL, 2021

The Committee considered the report on the Employment (Amendment) Bill, 2021 and adopted it after being proposed by Sen. Beatrice Makori Kwamboka, MP and seconded by Sen. (Dr.) Alice Milgo, MP.

MINUTE SEN/SCLSW/42/2022: CONSIDERATION AND ADOPTION OF THE REPORT ON THE SPORTS (AMENDMENT) BILL, 2021

The Committee considered the report on the Sports (Amendment) Bill, 2021 and adopted it having been proposed by Sen. (Dr.) Alice Milgo, MP and seconded by Sen. (Dr.) Isaac Mwaura, MP.

MINUTE SEN/SCLSW/43/2022: CONSIDERATION AND ADOPTION OF THE REPORT ON THE COMMUNITY GROUPS REGISTRATION BILL, NATIONAL ASSEMBLY BILLS NO. 20 OF 2021

The Committee considered the report on the Community Groups Registration Bill no. 20 of 2021 and adopted it after it was proposed by Sen. (Dr.) Alice Milgo, MP and seconded by Sen. Naomi Masitsa Shiyonga, MP.

MINUTE SEN/SCLSW/44/2022: CONFIRMATION OF MINUTES 9, 8, 7, 6 AND 5

1. The Minutes of the 9th meeting held on Saturday, 19th February, 2021 at 1.00 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Beatrice Makori Kwamboka, MP and seconded by Sen. Naomi Masitsa Shiyonga, MP;
2. The Minutes of the 8th meeting held on Saturday, 19th February, 2022 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Naomi Masitsa Shiyonga, MP and seconded by Sen. (Dr.) Alice Milgo, MP;
3. The Minutes of the 7th meeting held on Friday, 18th February, 2022 at 2:45 p.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Naomi Masitsa Shiyonga, MP and seconded by Sen. (Dr.) Alice Chepkorir Milgo, MP;
4. The Minutes of the 6th meeting held on Friday, 18th February, 2022 at 12:30 p.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. (Dr.) Alice Chepkorir Milgo, MP and seconded by Sen. Naomi Shiyonga, MP; and
5. The Minutes of the 5th meeting held on Friday, 18th February, 2022 at 10:00 a.m. were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Naomi Shiyonga, MP and seconded by Sen. (Dr.) Alice Chepkorir Milgo, MP.

MINUTE SEN/SCLSW/45/2022: CONSIDERATION OF THE PETITION ON RECRUITMENT, REMUNERATION AND TERMINATION OF ECDE TEACHERS SERVING IN NYAMIRA COUNTY

The Committee acknowledged the Petition by residents of Nyamira County and members representing Early Childhood Development Education (ECDE) Teacher's Association of Nyamira County, concerning the recruitment, remuneration and termination of ECDE Teachers in Nyamira County.

The Committee deliberated on the matter and resolved to invite the Nyamira County Public Service Board (CPSB), the Governor and the petitioners to an

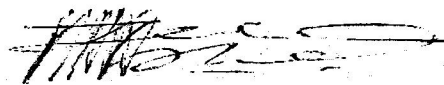
online meeting the following week to deliberate on the issues raised in the Petition.

MINUTE SEN/SCLSW/46/2022: STATEMENTS BEFORE THE COMMITTEE

The Committee resolved to comprehensively deal with this agenda item during its retreat the following week in Mombasa County.

MINUTE SEN/SCLSW/47/2022: ANY OTHER BUSINESS AND ADJOURNMENT

1. The Committee resolved to hold a Working Retreat in Mombasa County from 14th - 18th March to deal with all the pending legislative business.
2. There being no other business, the meeting was adjourned at 10.15 a.m.



SIGNATURE:

**SEN. MWARUMA JOHNES, MP,
FOR: (CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)**

DATE: TUESDAY, 15TH MARCH, 2022

MINUTES OF THE 6TH MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY, 18TH FEBRUARY 2022 AT 12.30 PM IN CONFERENCE ROOM 1B, TRADEMARK HOTEL, VILLAGE MARKET, KIAMBU COUNTY.

MEMBERS PRESENT

- | | |
|---------------------------------------|-----------------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - V. Chairperson (Virtual) |
| 3. Sen. Paul Mwangi Githiomi | - Member (Virtual) |
| 4. Sen. Makori Beatrice Kwamboka, CBS | - Member (Virtual) |
| 5. Sen. Naomi Masitsa Shiyonga | - Member (Virtual) |
| 6. Sen. (Dr.) Milgo Alice Chepkorir | - Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------------|----------|
| 1. Sen. Madzayo Stewart Mwachiru, CBS | - Member |
| 2. Sen. Susan Kihika | - Member |
| 3. Sen. (Dr.) Isaac Mwaura, CBS | - Member |

IN ATTENDANCE

- | | |
|------------------------------|-----------------------|
| 1. Sen. Samson Cherarkey, MP | - Sponsor of the Bill |
|------------------------------|-----------------------|

SENATE SECRETARIAT

- | | |
|-------------------------|----------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Kevin Kibet | - Clerk Assistant/HO |
| 3. Ms. Marale Sande | - Senior Research Officer |
| 4. Mr. Jeremy Chabari | - Legal Counsel |
| 5. Mr. Frank Mutulu | - Media Relations Officer |
| 6. Mr. Humphrey Ringera | - Research Officer/CA |
| 7. Ms. Sakina Halako | - Secretary, DCOM's Office |
| 8. Mr. Hassan Adow | - Office Assistant |
| 9. Ms. Fatuma Abdi | - Audio Officer |
| 10. Mr. Ruben Kimosop | - Serjeant-At-Arms |
| 11. Mr. Collins Leteipa | - Intern, DCOM's Office |
| 12. Mr. Athman Ramadhan | - Intern, DCOM's Office |

MINUTE SEN/SCLSW/22/2022: PRELIMINARIES

The Chairperson called the meeting to order at 12.30 pm. followed by a word of prayer. This was followed by introductions by all Present.

MINUTE SEN/SCLSW/23/2022: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. Paul Mwangi Githiomi, MP and seconded by Sen. Naomi Masitsa Shiyonga, MP as follows-

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Consideration of the Public Hearing Submissions Matrix of the Employment (Amendment) Bill (Senate Bill No. 54 of 2021); and,**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/24/2022: CONSIDERATION OF THE PUBLIC HEARING SUBMISSIONS MATRIX OF THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 54 OF 2021)

1. The Committee received submissions on the above bill from the following Stakeholders -
 - a) The Federation of Kenya Employers (FKE)
 - b) The Council of Governors
 - c) Teachers Service Commission
 - d) The Ministry of Labour
2. The Federation of Kenya Employers (FKE) stated that it was opposed to the proposed Employments (Amendment) Bill, 2021 as the said amendments were detrimental to the operations and development of businesses, labour market, the economy and the industrial relations.
3. The Council of Governors agreed with the content of the Bill.
4. Teachers Service Commission opposed the Bill, stating that it would affect learning especially teachers who served in boarding schools;
5. The Ministry of Labour stated that more comprehensive amendments were needed in the Employment Act and made the following submissions—
 - (a) Emergency should be defined in the proposed section 27A (2); Secretariat to advise further
 - (b) The mode and rate for compensation should be specified under the proposed section 27A (3) (b); this should be left to the employers and employees
 - (c) The Cabinet Secretary responsible for matters relating to labour and employment should be conferred with powers for policy development under the proposed section 27A (6);

- (d) There is need to express that an employee may not be engaged during “out of work hours” to avoid burnout and to maintain work-family life balance under the proposed section 27A (7);
 - (e) There is need to align the penalty in the Bill with the others in the parent Act;
 - (f) There is need to provide for safeguards for employees who choose to disconnect; and
 - (g) The proposed amendments should be put through due process as required under section 8 of the Labour Institutions Act, 2007 and be presented to the National Labour Board to fulfil the requirement for Tripartite engagement.
6. The Committee considered the above submissions and resolved not to make any amendments to the Bill.

MINUTE SEN/SCLSW/25/2022: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at 1.45 p.m.



SIGNATURE:
(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: TUESDAY, 8TH MARCH, 2022

MINUTES OF THE 1ST (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY, 2ND FEBRUARY, 2022 AT 10.00 AM.

MEMBERS PRESENT

1. **Sen. (Dr.) Milgo Alice Chepkorir** - **Member (Ag. Chairperson)**
2. Sen. Paul Mwangi Githiomi - Member
3. Sen. Naomi Masitsa Shiyonga - Member
4. Sen. Makori Beatrice Kwamboka - Member

ABSENT WITH APOLOGIES

1. **Sen. Johnson Sakaja, CBS** - **Chairperson**
2. **Sen. Johnes Mwaruma** - **V. Chairperson**
3. Sen. Susan Kihika - Member
4. Sen. Madzayo Stewart Mwachiru, CBS - Member
5. Sen. (Dr.) Isaac Mwaura, CBS - Member

IN ATTENDANCE

1. Hon. Simon Chelugui - CS, Labour
2. Hon. (Eng.) Peter Tum - PS, Labour
3. Mr. Francis Wanyeki - Office of the Cabinet Secretary (CS)
4. Mr. Patrick Mwangi - Senior Assistant Secretary, (MOL)
5. Ms. Hellen Opiyo - Ag. Labour Commissioner
6. Mr. Philip Didi - Cabinet Secretary (CS)'s Technical Advisor
7. Ms. Angela Mbaya - National Employment Authority (NEA)
8. Mr. Stephen Obiro - Head of Advocacy, Communication and Partnerships (FKE)
9. Mr. George Masese - Ag. Head of Industrial Relations, Legal & Membership Services (FKE)
10. Mr. Samson Mugwe - Ag. Head, Finance & Procurement (FKE)
11. Ms. Grace Kaome - Manager, HR & Administration, (FKE)
12. Ms. Ruth Chitwa - Manager, PR & Communications (FKE)

SENATE SECRETARIAT

1. Ms. Mwanate Shaban - Clerk Assistant
2. Mr. Kevin Kibet - Clerk Assistant/HO
3. Ms. Marale Sande - Senior Research Officer
4. Mr. Jeremy Chabari - Legal Counsel
5. Mr. Frank Mutulu - Media Relations Officer
6. Ms. Fatuma Abdi - Audio Officer

MINUTE SEN/SCLSW/01/2022: PRELIMINARIES

The Ag. Chairperson called the meeting to order at 10.25 a.m. followed by a word of prayer. This was followed by introductions from all present.

MINUTE SEN/SCLSW/02/2022: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. Naomi Shiyonga, MP and seconded by Sen. Paul Mwangi Githiomi, MP as follows—

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Stakeholder Meeting on the Employment (Amendment) Bill, 2021 (Senate Bills No. 54 of 2021); and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/03/2022: STAKEHOLDER MEETING ON THE EMPLOYMENT (AMENDMENT) BILL, 2021 (SENATE BILLS NO. 54 OF 2021)

1. The Committee noted that the Employment (Amendment) Bill, 2021 by Sen. Cherargei and was read a first time on 2nd December, 2021 and Committed to the Standing Committee on Labour and Social Welfare.
2. The Committee also noted that it had invited the Ministry of Labour, Federation of Kenya Employers (FKE), Council of Governors (COG), County Assemblies Forum (CAF) and Central Organization of Trade Unions (COTU) for a Stakeholder forum on the Bill.
3. The Committee acknowledged receipt of memoranda from FKE and COG, noting COG's apology for the meeting attendance.

a) Presentation by the Cabinet Secretary (CS), Labour

The Cabinet Secretary (CS) for Labour, Hon. Chelugui presented as follows;

1. That, the proposal to have the right to disconnect by an employee is rightly placed, taking into account the need to protect workers in the digital age due to changes in the work environments that have been escalated by COVID-19 pandemic;
2. That, Remote and digital working spaces are the future of work and therefore the Ministry welcomed the proposal by Sen. Cherargei;
3. That, the Ministry is advises against piecemeal amendments and recommends looking into recommendations that will assist in improving the amendment;
4. That, the Bill aims at amending section 27 of the Employment Act, 2007 by creating section 27 (a) which proposes the right by an employee to

- disconnect, right to have their personal time and privacy respected and connected purposes;
5. That, the definitions of the words “emergency” and “essential services” are necessary, with a clear elaboration on circumstances that may be deemed to be an emergency;
 6. That, Employers must provide technical and material support to facilitate dispensation of services during out of work hours;
 7. That, there is need to expressly define out of work hours and this might involve providing a list of mutually agreed hours that maybe included in the policy;
 8. That, the penalty the Bill proposes, Kshs. 500,000, is punitive and should be reduced to align to other penalties in the Act;
 9. That, the amendment Bill, if adopted, will be useful in bridging the existing gap in the current labour laws. However, in its current form, if adopted, will pose a challenge in fostering harmonious relationships. For instance, employees would be exposed to victimization and mistreatment at work whenever they disconnect.
 10. That, in order to comprehensively address the changes currently being experienced in the world of work, the proposed amendment should be considered alongside, Employment Act, 2007, Labour Relations Act, 2007 and Labour Institutions Act, 2007, WIBA Act and OSH Act to avoid contradictions in outcomes and to save cost; and,
 11. That, the proposed amendment ought to have been subjected to due process as prescribed in the Labour Institution Act, section 58 and be considered by the National Labour Board to fulfill the provision for tripartite engagement.

The CS, Labour concluded by informing the Committee that the Ministry had held consultations with the Solidarity Centre from the USA and had deliberated on the various issues affecting the Labour Sector, with a special focus on the Future of Work across the globe. He noted that all government bodies should embrace the emerging trends.

b) Presentation by the Federation of Kenya Employers

Mr. Stephen Obiro, Head of Advocacy, Communication and Partnerships (FKE) presented as follows;

1. That, the proposed amendments not only present radical changes to the Employment Act 2007 but also introduces new stringent measures that will curtail the prerogative to manage enterprises by the owners;
2. That, with the concept of formalizing the informal economy, this bill introduces changes that will make it difficult to persuade the informal

enterprises to join the mainstream economy for the country's general growth and decent work;

3. That, the Bill fails to meet the simple threshold of the ILO conventions. The bill, if passed, will create two centers of managerial power and ultimately disharmony and indiscipline at workplaces;
4. That, overtime is already provided for in the General Order. Most CBAs provide for flexibility in management and regulation of working time;
5. That, the bill will have an unintended adverse consequence on employment of youths and women in this country and who are most vulnerable;
6. That, the Bill fails to recognize that the concept of Work and Workspaces and working which have become the New Normal;
7. That, Flexibility is important for the Labour sector to thrive in the new normal following the covid-19 pandemic outbreak; and
8. That, the FKE does not agree with the proposed amendments in the Employment (amendment) Bill, 2021 (Senate Bills No. 54 of 2021) and therefore requests the Senate to not pass the proposed bill.

He concluded by inviting the Committee to an Employers' Conference whose theme is 'the Changing Labour Market' that will be held from 3rd-4th March, 2022.

c) Members' Interventions

The Committee thanked the Stakeholder for their comprehensive submissions on the Bill.

MINUTE SEN/SCLSW/04/2022: ANY OTHER BUSINESS AND ADJOURNMENT

1. The Committee was informed that the Committee was set to hold another meeting in the afternoon, 2.30 pm, to engage Stakeholders on the Community Groups Registration Bill, 2021 (National Assembly Bills no. 20 of 2021).
2. There being no other business, the meeting was adjourned at 11.26 a.m.



SIGNATURE:

(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: SATURDAY, 19TH FEBRUARY, 2022

Teachers fined Sh4.2m for caning pupil

Parents of minor, code named EJK, moved to the constitutional court after he was beaten by two teachers.

EJK's parents sought to transfer him but the school gave a letter that it was impossible to find a new institution for the minor.

KAMAU MUTHONI, NASSIRU

Two teachers and a private school have been fined Sh4.2 million for caning and injuring a pupil over alleged indiscipline.

The court found that the child's rights had been abused and awarded damages of Sh4.2 million to be paid by the teachers and the school.

"Upon consideration of the pleadings, submissions and relevant laws, and exhibits produced in support of the petition and noting the injuries suffered by the minor, I am satisfied that the petitioners have demonstrated and proved the minor's rights were violated by the respondents."

"The petitioner (EJK) is entitled to award of damages of Sh4 million."

ruling Justice James Makau.

The judge also awarded the parents of the child Sh200,000 for the trouble they went through to find a new school for the minor and to ensure pupil heals from trauma.

"The petitioners (EJK parents) are awarded Sh200,000 for the violation of their rights to be paid by the respondent jointly and respectively," Justice Makau ruled.

In yesterday's judgement, the primary school will now pay its former pupil and parent the amount as compensation for injuries caused by the teachers.

The judgement is based on a case where in March this year a pupil, code named EJK, went home but was not his bubbly self.

After his mother inquired what had happened, the minor told her that his teachers had caned him for unknown reasons.

True to the minor's word his body bore marks from the beating.

The minor's parents reported the incident to Soweto Police Station, but nothing happened.

When their efforts to pursue criminal charges against the two teachers hit a dead end, they opted to move to a constitutional court.



Justice James Makau

They asked the judge to find that EJK was tortured and treated in an inhumane manner.

According to the two parents, the minor refused to go back to school out of fear that he would be killed and he had nightmares.

EJK's parents sought to transfer him but the school wrote a letter that it was impossible to find a new institution for the minor.

According to the parents, the corporal punishment and the letter were a demonstration of violence, cruelty, torture, inhumane treatment and degrading the child.

This, they argued, was against the rights of a minor and against international conventions on children.

The school responded saying that the boy's parents withdrew the complaint at the police station.

At the same time, it asserted that its teachers were instilling discipline on the minor with the consent of his parents.

"The respondents have also not denied issuing a letter that negatively impacts on the minor's repute and as a result he has been unable to find another school jeopardising his right to education."

"In my view based on the cited laws and the evidence adduced by the petitioners, I find that there is no doubt that the respondents violated the minor's rights as alluded to in the petitioners' pleadings," said Justice Makau.

With the ongoing debate on whether to bring the ban back to schools to tame indiscipline, this judgement by the High Court brings a new twist to the issue.

Education Cabinet Secretary George Magoha and his Interior counterpart Fred Matiangi recently hunted at re-introduction of the cane.

The two officers said caning of errant students could be the answer to a spate of indiscipline cases witnessed in schools.

Kenya National Association of Parents chair Nicholas Maiyo said that caning can only be allowed back in schools if teachers are not allowed to dispense it.

"We can only allow once we have agreed who will cane the child but not the teacher because they harm our children," said Maiyo.

A number of schools have had their dormitories burnt down and in most cases, the incidents were blamed on students who are said to set the dormitories on fire so they could be sent home.



The government in 2001 banned corporal punishment in schools and enacted the Children's Act.

There had been numerous cases of students being injured by teachers out to discipline them. In a bid to stem such cases, corporal punishment was banned.

The Children's Act, 2001 entitles children to protection from all forms of abuse and violence.

It addresses provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship care and protection of children and provision for the administration of children's institutions.

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KENYA REVENUE AUTHORITY

Public Notice

Tax Procedures Act (Common Reporting Standards) Regulations 2021

The National Treasury and Planning and Kenya Revenue Authority would like to inform Financial Institutions and members of the public that the Cabinet Secretary for the National Treasury and Planning has drafted The Tax Procedures Act (Common Reporting Standards) Regulations, 2021 for carrying out of the provisions of Section 6A and B of the Tax Procedures Act, 2015 (As amended in the Finance Act 2021).




In compliance with the Statutory Instruments Act, The National Treasury and Planning and Kenya Revenue Authority hereby invite interested members of the public and stakeholders to submit their views on the draft Common Reporting Standards Regulations. The submissions should be addressed to the Commissioner General, Kenya Revenue Authority, P.O Box 48240-00100, Nairobi or emailed to stakeholder_engagement@krs.go.ke to be received on or before **Tuesday, 4th January, 2022**.

For more information on the draft Common Reporting Standards Regulations, please visit the Kenya Revenue Authority Website at www.krs.go.ke

Commissioner for Intelligence & Strategic Operations

www.krs.go.ke

Kenya Revenue Authority (KRA) is a public body established by the Kenya Revenue Authority Act, 2015. It is a body corporate with legal personality, separate from the Government of Kenya. It is a body corporate with legal personality, separate from the Government of Kenya. It is a body corporate with legal personality, separate from the Government of Kenya.

Tutufe Ushuru, Tujitegemei!

REPUBLIC OF KENYA



TWELFTH PARLIAMENT | FIFTH SESSION

THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sittings of the Senate held on Tuesday, 16th November, 2021 and Thursday, 2nd December, 2021, the Bills listed below were introduced in the Senate by way of First Reading and the following committees were appointed to examine the Bills:

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 148 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The Memoranda may be sent **by email** on the address senate@parliament.go.ke and copied to the email addresses of the respective Committees indicated at the fourth column below, to be received on or before **Friday, 7th January, 2022 at 5:00 p.m.**

| Bill | Committee Referred To | Email Address |
|---|---|--|
| a) The Material, Newsprint and Child Health Bill (Senate Bill No. 32 of 2021) | Standing Committee on Health | senate@parliament.go.ke |
| b) The County E-Health Bill (Senate Bill No. 30 of 2021) | Standing Committee on Health | senate@parliament.go.ke |
| c) The Employment (Amendment) Bill (Senate Bill No. 54 of 2021) | Standing Committee on Labour and Social Welfare | senate@parliament.go.ke |

The Bills may be accessed on the Parliament website at www.parliament.go.ke.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

SPECIAL ISSUE

Kenya Gazette Supplement No. 186 (Senate Bills No. 54)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2021

NAIROBI, 8th October, 2021

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THE EMPLOYMENT (AMENDMENT) BILL, 2021**A Bill for**

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

ENACTED by the Parliament of Kenya as follows —

1. This Act may be cited as the Employment (Amendment) Act, 2021.

Short title.

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

Insertion of new section 27A.

The right to disconnect.

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

(2) An employer may contact an employee during out of work hours if such contact is necessary for the purpose of addressing an emergency.

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

(a) put in place a policy regarding the—

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

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

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

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

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

(5) Subject to subsection (2), an employee shall not be reprimanded, punished, or subjected to disciplinary action if the employee disregards a work related communication during out of work hours.

(6) An employer with over ten employees shall develop the policy under subsection (3) in consultation with the employees or the respective trade union.

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

- (a) shall not be obliged to respond and shall have the right to disconnect; or
- (b) may choose to respond, for which the employee shall be entitled to get compensation.

No. 14 of 2007.

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

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

(10) For the purpose of this section—

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

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

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

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

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

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

Statement on how the Bill concerns county governments

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

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

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

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

Dated the 14th June, 2021.

SAMSON CHERARGEI,
Senator.