



The Employment (Amendment) Bill 2021: An Employee's Right to Disconnect

The Senate has published for public participation the Employment (Amendment) Bill 2021 (the "Bill"). The Bill seeks to provide for employees' right to disconnect. The Bill defines the right to disconnect as the right of an employee not to be contacted by the employer outside agreed working hours. The Bill defines 'out of work hours' as hours other than those agreed in the contract of employment.

We analyse the salient features of the Bill below.

An employee who exercises his right to disconnect outside agreed working hours shall not be reprimanded, punished, or subjected to disciplinary action.

An employer with more than ten (10) employees is required to develop a right to disconnect policy in consultation with employees or trade union representatives. The policy should provide for, situations whereby an employer may contact an employee during out of work hours; the use of electronic devices to send or receive work-related communication during out of work hours; and situations where the right to disconnect may be waived. Such policy shall also specify the manner of compensation for employees who work outside working hours.

If the Bill is passed, an employer who contravenes section 27A will be liable to either a fine not exceeding KES 500,000.00 or imprisonment for a term not exceeding one year.

Exemptions

The Bill provides the following exemptions to the right to disconnect:

- a) essential service providers as set out in the Fourth Schedule to the Labour Relations Act are excluded. This includes persons involved

in the provision of water, hospital, fire, ferry and air traffic control services among others.

- b) an employer may also contact an employee out of work hours where such contact is to address an emergency.

Conclusion

Working trends have changed due to the evolving nature of work in the 21st Century where work has gradually grown to be part and parcel of an employee's life. This has created a challenge for employees who find themselves increasingly working longer hours. The rationale for the proposed right to disconnect is to cure employee burnout and ensure work-life balances are protected. A similar piece of legislation has been passed in Ontario, Canada.

In the EU, the right to disconnect has been implemented based on each country's employment context. For example, in France, the law requires that employers with at least 50 employees negotiate agreements with trade unions to provide for the right to disconnect during out of work hours.

However, while the Bill has good intentions, there is need to consider its appropriateness in a growing economy with high rates of unemployment and underemployment.

We will monitor the progress of the Bill and update accordingly.

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