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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ON: -

CONSIDERATION OF THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY
BILL NO. 62 OF 2023)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 18 JUN 2024	DAY: TUESDAY
TABLED BY: HON. ERIC MUKHARUJI (CHAIRPERSON)	
CLERK-AT-THE-TABLE: INZOFU	MWALE

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

June, 2024

NATIONAL ASSEMBLY
RECEIVED
14 JUN 2024
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

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CHAIRPERSON'S FOREWORD

The Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023) sponsored by Hon. Didmus Wekesa Barasa, MP, seeks to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees by employers from one place of work to another.

The process and practice of transfer of employees has been arbitrary and has been misused to the detriment of employees especially those in the public service. Transfers have been used as a tool by employers to punish certain employees which contravenes Article 41 of the Constitution on the right to fair labour practices.

The Bill was published on 12th October, 2023 and Read a first time in the House on 22nd November 2023. Pursuant to Standing Order 127 (1), the Bill was committed to the Departmental Committee on Labour for consideration and facilitation of public participation pursuant to Standing Order 127.

The Committee placed advertisements in the print media on 28th November, 2023 seeking public views on the Bill as required by Article 118 of the Constitution of Kenya and National Assembly Standing Order 127(3). The Committee received written memoranda from two (2) stakeholders.

The Committee considered the Bill and observed that there is a need to ensure transfer of employees from one place to another is done in good faith and in a fair, meritorious, rational manner that benefits both the employee and the employer. This will ensure prevention against demoralization, dissatisfaction and family disintegration and disorientation on the part of the employee.

Further, the Committee observed that the proposed amendment to require employee consent before effecting a transfer may hamper legitimate and necessary transfers if employees refuse, thus affecting service delivery.

The Committee recommends that the Bill be proceeded with, taking into consideration the proposed Committee amendments.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. I wish to express appreciation to the Honourable Members of the Committee and the Committee Secretariat for their resilience and commitment to duty, which made the consideration of the Bill successful. May I also on behalf of the Committee thank and appreciate the stakeholders who submitted memoranda on the Bill. Indeed, their views informed the members in consideration of the Bill.

On behalf of the Committee and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023)

Hon. Eric Muchangi Karemba, M.P.

PART I

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Labour of the 13th Parliament was constituted on 27th October, 2022 and is established under provisions of S.O 216. Standing Order No. 216(5) grants the Committee, amongst other functions to:
 - b) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - c) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
 - (ba) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - d) study and review all legislation referred to it;*
 - e) study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - f) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - g) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - (fa) examine treaties, agreements and conventions;*
 - h) make reports and recommendations to the House as often as possible, including recommendation of propose legislation;*
 - i) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - j) examine any questions raised by Members on a matter within its mandate.*
1. Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to labour, human capital and remuneration, trade union relations, and public service.

1.2 Oversight

2. In line with the assigned subject matter, and in executing this mandate, the Committee oversees the following Ministries, Departments, and Agencies (MDAs):
 - i. The State Department for Public Service and its Autonomous and Semi-Autonomous Government Agencies which include;
 - a) Kenya School of Government; and
 - b) Institute of Human Resource Management
 - ii. The State Department for Labour and Skills Development and its Autonomous and Semi-Autonomous Government Agencies, which include;
 - a) National Industrial Training Authority (NITA);
 - b) National Productivity and Competitiveness Centre (NPCC);
 - c) Kenya National Labour Board and the Wages Council;

- d) National Employment Authority (NEA);
 - e) Migrant Workers Welfare Fund
 - f) Department of Labour Migration Management;
- iii. Public Service Commission;
 - iv. Salaries and Remuneration Commission;

1.3 Committee Composition

3. The Committee was constituted by the House on 27th October 2022 and comprises the following Members of Parliament:

Chairperson

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency
UDA Party

Vice-Chairperson

Hon. Fabian Kyule Muli, MP
Kangundo Constituency
GDDP

Members

Hon. James Onyango K'Oyoo, MP
Muhoroni Constituency
ODM Party

Hon. Ernest Ogesi Kivai Kagesi, MP
Vihiga Constituency
ANC Party

Hon. Richard Kiti Chonga, MP
Kilifi South Constituency
ODM Party

Hon. Joseph Samal Lomwa, MP
Isiolo North Constituency
Jubilee Party

Hon. George Aladwa Omwera,
Makadara Constituency
ODM Party

MP Hon. Catherine Wambiliaga, MP
Bungoma County
FORD-K

Hon. Amina Dika Abdullahi, MP
Tana River Constituency
KANU

Hon. Dorice Aburi Donya, MP
Kisii County
WDM-K

Hon. Patrick Simiyu Barasa, MP
Cherangany Constituency
DAP-K Party

Hon. Mangale Munga Chiforomodo, MP
Lunga Lunga Constituency
UDM Party

Hon. Peter Irungu Kihungi, MP
Kangema Constituency
UDA Party

Hon. Leah Sopiato Sankaire, MP
Kajiado County
UDA Party

Hon. Lilian Chebet Siyoi, MP
Trans Nzoia County
UDA Party

1.4 Committee Secretariat

4. The Committee is facilitated by the following members of staff:

**Mr. Abenayo Wasike
Principal Clerk Assistant I/Head of Secretariat**

**Mr. Fredrick Muthengi
Deputy Director PBO**

**Mr. Samuel Wanjiru
Clerk Assistant III**

**Ms. Colletah Sigilai
Senior Legal Counsel**

**Ms. Josephine Osiba
Hansard reporter III**

**Ms. Wambui Nyachae
Research Officer III**

**Mr. Timothy C. Tsungulah
Research Officer III**

**Ms. Yasmin Hassan
Assistant Serjeant-At-Arms II**

**Ms. Mercylyn Kerubo
Audio Officer III**

**Mr. Ambrose Nguti
Media Relations Officer III**

**Ms. Faith Njiru
Public Communication Officer III**

PART II

2.0 CONSIDERATION OF THE EMPLOYMENT (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 62 OF 2023)

2.1 Background Information

5. The principal objective of the Employment (Amendment) Bill, (National Assembly Bill No 62 of 2023) is to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees by employers from one place of work to another.
6. The process and practice of transfer of employees has been arbitrary and has been used to the detriment of employees especially those in the public service. Transfers have been used as a tool by employers to punish certain employees, which contravene Article 41 of the Constitution on the right to fair labour practices.
7. The Bill, therefore, seeks to provide clarity on the modalities of transfer of employees in good faith and in a fair, meritorious, rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and family disintegration and disorientation on the part of employees.

2.2 Analysis of the Bill

The Bill contains two (2) clauses for consideration

8. Clause 1 of the Bill provides for the short title.
9. Clause 2 of the Bill provides for the amendment of Section 15 of the Act to provide for the regulation of the transfer of employees from one place of work to another.
10. The Bill delegates legislative powers to Cabinet Secretary but it does not limit any fundamental rights and freedoms as provided under the Constitution.
11. The Bill does not affect the functions of the County Governments in terms of Article 110(1) (a) of the Constitution
12. The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

2.3 Public participation in the review of the Bill

13. Article 118 (1) (b) of the Constitution provides as follows: -
"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees"

Standing Order 127(3) provides as follows-

"The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House"

14. In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of 28th November, 2023 invited the public to make representations on the proposed Bill as per annexure

3 of the report. The Committee received two (2) written submissions on the Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023)

15. In addition to the request for memoranda from the public, the following Stakeholders were requested to submit their views to the Committee:
 - i. State Department for Labour and Skills Development
 - ii. State Department for Public Service
 - iii. Public Service Commission
 - iv. Office of the Attorney-General
 - v. Law Society of Kenya
 - vi. Central Organization of Trade Unions (COTU-K)
 - vii. Kenya Law Reform Commission
 - viii. Katiba Institute
 - ix. Federation of Kenya Employers (FKE)

16. The Ministry for Public Service, Performance and Delivery Management (State Department for Public Service) and the Federation of Kenya Employers (FKE) submitted their memoranda to the Committee: The Committee also considered submissions by the sponsor of the Bill at pre-publication scrutiny of the Bill.

PART III

3.0 SUBMISSIONS FROM STAKEHOLDERS

3.1 Submissions by Hon. Didmus Wekesa Barasa M.P., Sponsor of the Bill

Hon. Didmus Barasa, MP appeared before the Committee on Tuesday, 1st August 2023 during the pre-publication scrutiny and submitted as follows:

17. The principal objective of the bill is to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees from one place of work to another.
18. The process of transfer of employees has been arbitrary and has been used to the detriment of employees especially those in the public service and therefore seeks a cure for managers who may use transfer as punishment to the officers. Transfer cannot cure indiscipline and incompetency at workplace and officers should be taken through the disciplinary process.
19. The Bill therefore seeks to provide clarity on the modalities of transfer of employees in good faith and in a fair, meritorious, rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and disorientation on the part of the employees.
20. Section 15(A)(4)(e) of the proposed bill provides that where an employee is to be transferred, the employer shall require the consent of the employee before effecting the transfer. He proposed the deletion of the provision requiring the employee's consent for transfer

3.2 Ministry of Public Service, Performance and Delivery Management

The State Department for Public Service in their written presentations submitted as follows-

21. On the proposed amendment in Subsection 4(a) to require the employer to give the employee the reasons for the intended transfer, the State Department submitted the need to include additional information on the reasons for the intended transfer;

4(a) That in effecting a transfer the following shall be taken into account-
(a) the transfer shall lead to improved service delivery;
(b) the interest of the children, if any, of the affected public officer; and
(c) the transfer shall not be arbitrary.

22. Further, in deciding to transfer a public officer, the Commission or the authorized officer shall take into account the following:
 - i. efficiency and effectiveness of public service delivery;
 - ii. existing skills and competencies in the receiving public body or department so as not to disadvantage public officers already serving in the receiving public body or department;
 - iii. promotion of national integration and cohesion; and
 - iv. promotion of representation of Kenya's diverse communities, men and women, members of all ethnic groups, and persons with disabilities.
23. The Justification is to ensure that it is in line with the Public Service Commission Act 2017 and Public Service Commission Regulations 2020.
24. On the proposed amendment in Subsection 4(d) to require the consent of the employee before effecting the transfer, the State Department proposed the deletion of the amendment.
25. The Justification is that the amendment will hamper any transfer consideration by the employer hence affecting service delivery.
26. Further, Subsection 5 should be amended to include the age of the employee. The Justification is that employees who have two (2) years or less to retirement should not be transferred except where the skills and competencies of such an employee are required for service delivery.

3.3 Federation of Kenya Employers (FKE)

The Federation of Kenya Employers (FKE) in their written presentations submitted as follows-

27. Section 27 of the Employment Act, 2007 expressly mandates the employer to regulate the working hours of the employee in accordance with the provisions of the Act.
28. The above provision has been expanded to include all exigencies of work including formulating job descriptions, and job evaluations as well as determining the business needs and strategy.
29. Transfer has traditionally been the employer's prerogative and undertaken to meet enterprise needs.
30. In cases where transfers are effected, it has never been used to the detriment of employees both financially and circumstantially. Where a transfer may occasion other unanticipated risks, including health challenges, employers normally do not sanction it.
31. Transfer cannot be used as a punishment to an employee. Our Courts have always cited such to fall under unfair labour practice and sanctions have always followed in terms of compensation in private enterprises and quashing of such transfers in public institutions.
32. Courts have, where as a result of wanton transfer an employee has resigned, made determinations and found such to amount to constructive dismissals.
33. All transfers have taken into account an employee's financial needs by making adequate provision for transfer allowances.
34. The amendment will erode the rights of an employer to put in place strategic measures to keep businesses sustainable by injecting the right factors of production where they are needed to enhance productivity.
35. The amendment has the potential to scare away investors as it sends a negative message of over-legislating on matters that have been taken care of by common practice as well as judicial remedies.
36. The Federation proposed the amendment of sections 15A (2) to read as follows:

15A (2) An employee may be transferred to another place of work at their own request or as required by an employer subject to subsection (3)

37. In addition, the federation proposed the deletion of sections 15A (3), (4), (5), (7), (8), (9), and (10), and replace with the following one section;

15A(3) In effecting the transfer, the Employer shall -

(a) ensure the transfer is in good faith and in a fair, meritorious, rational manner that benefits both the employee and the employer

(b) ensure prevention of demoralization, dissatisfaction and family disintegration and disorientation on the part of employee.

38. Sections 15A (11) should be deleted and replaced with the following section:

15A (4) Each employer shall develop and implement a transfer policy that provides for the process, practice and measures of transfer of employees to give effect to section 15(3).

39. Further, the federation proposed that the numbering of Section 15A(12) be amended to 15A(5) and Deletion of Section 15A(13).
40. The justification of the above specific proposals is to ensure the achievement of the objects and reasons of the proposed bill without eroding the rights of employers to manage the businesses.
41. The Committee agreed with the above proposed amendments

PART IV

4.0 COMMITTEE OBSERVATIONS

4.2. The Committee considered the Bill and made the following observations-

- 1) The Constitution of Kenya establishes the Legislature as the sole law-making body in the Republic. However, Parliament, through legislation, may delegate its legislative authority to the Cabinet Secretary for purposes of coming up with subsidiary legislation for better implementation of the Act.
- 2) It is generally accepted by Employers and Trade unions that the Employer is at liberty to shift employees from one place to another to organise a given business. Further, a transfer cannot be used as a punishment to an employee. Courts have cited such to fall under unfair labour practices and sanctions have always followed in terms of compensation in private enterprises and quashing of such transfers in public institutions.
- 3) The Bill provides that an employee who is the subject of disciplinary proceedings shall not be transferred until such proceedings are concluded and all mechanisms for appeal under the Constitution or any other written law have been exhausted. However, some instances may require a transfer as an administrative action for example to defuse a tense situation.
- 4) The Bill in Clauses 15A (7) and (8) provides for the transfer of an employee subject to disciplinary proceedings, which contradict each other. Clause 7 provides that an employee who is the subject of disciplinary proceedings shall not be transferred until proceedings are concluded, whereas clause 8 states that where a transfer is made contrary to Subsection 7, such transfer shall not preclude the employer from conducting disciplinary proceedings or taking disciplinary proceedings.
- 5) There is no specific legal provision on transfers before retirement within a certain timeframe. The transfer is generally guided by the transfer policy or the administrative guidelines of the institution and the circumstances of the employees.
- 6) Not all employers can provide transport and salary advances for the transfer of an employee.
- 7) Allowing employers to develop and implement their own transfer policies may lead to mischief whereby employees' rights may be infringed upon. The transfer policies should be in line with the regulations, measures, and redress mechanisms prescribed by the Cabinet Secretary.
- 8) Employee consent before effecting a transfer may hamper legitimate and necessary transfers if employees refuse, thus affecting service delivery.

PART V

4.0 COMMITTEE RECOMMENDATIONS

43. The Committee, having considered the Bill clause by clause and submissions by the various stakeholders, recommends to the House that the Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023) by Hon. Didimus Barasa, M.P be proceeded with and be amended by deleting clause 2 and substituting therefore the following clause—

2. The Employment Act, 2007 is amended by inserting the following new section immediately after section 15—

Transfer of employees.

15A (1) In this section—

“transfer” means the deployment of an employee from one duty station to a

(2) An employee may be transferred to another place of work at their own request or as required by an employer subject to subsection (3).

(3) In effecting the transfer, the employer shall—

(a) Ensure the transfer is in good faith and in a fair, meritorious, rational manner that benefits both the employee and the employer;

(b) Ensure prevention of demoralization, dissatisfaction and family disintegration and disorientation on the part of the employee.

(4) An Employee with two or less years to retirement should not be transferred except where—

(a) the transfer is at the request of an employee; or

(b) the skills and competencies of such an employee are required for service delivery.

(5) Subject to subsection (6) an employee who is the subject of a disciplinary proceedings, shall not be transferred until such proceedings are concluded and all mechanisms for appeal under the Constitution or any other written law have been exhausted.

(6) Where it is considered necessary, an employee who is the subject of an investigation may be transferred pending the investigation and determination of allegations of unlawful conduct made against that employee.

(7) Each employer shall develop and implement a transfer policy that provides for the process, practice and measures of transfer of employees to give effect to section 15(3).

(8) An employer who contravenes the provisions of this section commits an offence and shall, on conviction be liable—

(a) in the case of a natural person, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both; and

(b) in the case of a juristic person, to a fine not exceeding five hundred thousand shillings.

(9) The Cabinet Secretary may prescribe policies, regulations, measures and redress mechanisms to give effect to this section.

SIGNED..... DATE.....

13/06/2024

HON. ERIC MUCHANGI KAREMBA, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 18 JUN 2024	DAY: TUESDAY
TABLED BY:	HON. ERIC MUCHANGI (CHAIRPERSON)
CLERK-AT-THE-TABLE:	INOSRU MWALE

Annexure 1:

Report Adoption List



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT-THIRD SESSION -2024
DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ADOPTION LIST

We, the members of the Departmental Committee on Labour, have pursuant to Standing Orders 216(5) (c) and 199, adopted this report on the Employment (Amendments) Bill, (National Assembly Bills No. 62 of 2023) and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date..... 9/04/2024

	NAMES	SIGNATURE
1.	Hon. Karemba Eric Muchangi Njiru, MP-Chair person	
2.	Hon. Muli Fabian Kyule, MP- Vice Chairperson	
3.	Hon. K'Oyoo James Onyango, M.P.	
4.	Hon. Kagesi Kivai Ernest Ogesi, M.P.	
5.	Hon. Kiti Richard Ken Chonga, M.P.	
6.	Hon. Lomwa Joseph Samal, M.P.	
7.	Hon. Omwera George Aladwa, M. P.	
8.	Hon. Wambilianga Catherine Nanjala, MP	
9.	Hon. Abdullahi Amina Dika, M.P.	
10.	Hon. Aburi Donya Dorice, M.P.	
11.	Hon. Barasa Patrick Simiyu , M.P.	
12.	Hon. Chiforomodo Mangale Munga, M.P.	
13.	Hon. Kihungi Peter Irungu, M. P.	
14.	Hon. Sankaire Leah Sopiato, M.P.	
15.	Hon. Siyoi Lillian Chebet, M.P.	

SIGN..... DATE 09/04/24
Mr. Abenayo Wasike, Principal Clerk Assistant I

Annexure 2:

Minutes

MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON TUESDAY, 9TH APRIL 2024 IN THE MEDIA CENTRE ROOM, PARLIAMENT BUILDINGS AT 12:00 PM.

PRESENT

1. The Hon. Karemba Eric Muchangi Njiru, M.P. - Chairperson
2. The Hon. Muli Fabian Kyule, M.P. - Vice Chairperson
3. The Hon. K'Oyoo James Onyango, M.P.
4. The Hon. Kiti Richard Ken Chonga, M.P.
5. The Hon. Abdullahi Amina Dika, M.P.
6. The Hon. Barasa Patrick Simiyu, M.P.
7. The Hon. Chiforomodo Mangale Munga, M.P
8. The Hon. Kihungi Peter Irungu, M.P
9. The Hon. Siyoi Lillian Chebet, M.P

APOLOGIES

1. The Hon. Kagesi Kivai Ernest Ogesi, M.P
2. The Hon. Lomwa Joseph Samal, M.P.
3. The Hon. Omwera George Aladwa, M.P.
4. The Hon. Wambilianga Catherine Nanjala, M.P
5. The Hon. Aburi Donya Dorice, M.P.
6. The Hon. Sankaire Leah Sopiato, MP

COMMITTEE SECRETARIAT

1. Mr. Abenayo Wasike - Principal Clerk Assistant I
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Ms. Wambui Nyachae - Research Officer III
4. Ms. Mercylyn Kerubo - Audio Officer III
5. Mr. Ambrose Nguti - Media Relations Officer III
6. Ms. Josephine Osiba. - Hansard Officer IIII
7. Ms. Yasmin Hassan. - Assistant Serjeant at Arms

AGENDA

1. Prayers
2. Preliminaries;
 - i. Adoption of the Agenda
 - ii. Remarks by Chairperson
- 3 Confirmation of Minutes/Matters Arising
4. Consideration of the draft report on the Employment (Amendment) Bill, (National Assembly Bill No. 62 of 2025), sponsored by Hon. Didmus Wekesa Barasa, M.P
- 5 Business Before the Committee
6. Any Other Business
7. Adjournment

The Chairperson called the meeting to order thirty minutes past twelve o'clock and said the Prayer. Thereafter, the Chairperson briefed the Committee on the agenda of the Sitting.

MIN.NO.83 NA/LAB/2024: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

Minutes of the 14th Sitting held on Tuesday, 26th March 2024 were confirmed as a true record of the deliberations having been proposed by Hon. Muli Fabian Kyule, M.P. and seconded by Hon. Siyoi Lillian Chebet, M.P.

MIN.NO.84 NA/LAB/2024:

MATTERS ARISING

Under MIN.NO.80 NA/LAB/2024:

On consideration of the status of Budget Implementation for Q1 and Q2 FY 2023/24, the Committee resolved to meet the MDAs and Independent Commissions under its purview on 25th and 26th April 2024 in Mombasa County.

During the same period, the Joint Committee on Labour and that of Diaspora Affairs and Migrant Workers propose to meet the Cabinet Secretary, Ministry of Labour and Social Protection to deliberate on and discuss the Sessional Paper No. 5 of 2023 on the National Policy on Labour Migration.

MIN.NO.85 NA/LAB/2024:

BUSINESS BEFORE THE COMMITTEE

The following business has been committed to the committee for consideration:

1. The Employment (Amendment) Bill, (National Assembly Bill No. 62 Of 2023 by Hon. Didmus Wekesa Barasa, MP.
 - Committee considered the report on Tuesday 9th April 2024 for tabling.
2. The National Employment Authority (Amendment) Bill, 2023 (Senate Bills No 48 of 2023). The Bill is sponsored by Sen. Crystal Sigei, MP. The Bill is pending for a joint sitting with the Committee on Diaspora Affairs and Migrant Workers.
3. The Proposed Industrial Training (Amendment) Bill, 2023 sponsored by Hon. Joshua Odongo Oron, M.P.
 - The Committee considered the Legislative proposal on 7/3/24. The sponsor appeared before the Committee and submitted on his proposal.
 - The Committee considered the proposal and resolved to consult the National Industrial Training Authority before reporting.
 - The Committee, at a retreat held on 15th and 16th March 2024 consulted NITA on the Same.
 - The Authority expressed its support for the proposed amendments.
 - The Committee to consider a report on the legislative proposal on 11th April 2024.
4. The Proposed Employment (Amendment) Bill, 2024 sponsored by Hon. Naomi Jillo Waqo, M.P.
 - Committee has written to the Office of the Attorney General and the Kenya Law Reform Commission for comments and recommendations.

5. Sessional Paper No. 5 on the National Policy on Labour Migration.

The Joint Committee on Labour and Diaspora Affairs and Migrant Workers met the Cabinet Secretary, Ministry of Labour and Social Protection on Thursday 9th November 2023 to deliberate on the Policy and resolved to hold a retreat for comprehensive deliberations on the said sessional paper.

The Committee's Secretariat directed to consult with the Cabinet Secretary on the dates for the proposed retreat.

6. Request for a statement regarding unfair treatment of employees of Ashton Apparel (EPZ) Ltd and Mombasa Apparel (EPZ) Ltd by Hon. Shimbwa Omar Mwinyi, M.P.

Status:

The Cabinet Secretary appeared before the Committee on Tuesday 21st November 2023 and responded to the request by Hon. Shimbwa Omar Mwinyi, M.P. However, the response was not satisfactory.

The Committee has received an updated response for consideration.

7. Report on the status of Budget implementation FY 2023/24 for MDAs under the purview of the Committee.

The Committee is scheduled to meet the MDAs under its purview on 25th and 26th April 2024, to report on the Status of Budget implementation for the 1st and 2nd Quarter FY 2023/24.

MIN.NO.86 NA/LAB/2024: CONSIDERATION OF THE DRAFT REPORT ON THE EMPLOYMENT (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 62 OF 2023), SPONSORED BY HON. DIDMUS WEKESA BARASA, M.P

The Committee was briefed on the draft report on the Employment (Amendment) Bill, National Assembly Bill No.62 of 2023.

The Committee while considering the Bill made the following observations-

- i. The Constitution of Kenya establishes the Legislature as the sole law-making body in the Republic. However, Parliament, through an Act passed by it, may delegate its legislative authority to the Cabinet Secretary for purposes of coming up with subsidiary legislation for better implementation of the Act.
- ii. It is generally accepted by Employers and Trade unions that the Employer is at liberty to shift employees from one place to another to organise the business. Further, a transfer cannot be used as a punishment to an employee. Courts have cited such to fall under unfair labour practice and sanctions have always followed in terms of compensation in private enterprises and quashing of such transfers in public institutions.
- iii. The Bill provides that an employee who is the subject of disciplinary proceedings, shall not be transferred until such proceedings are concluded and all mechanisms for appeal under the Constitution or any other written law have been exhausted. However, some instances may require a transfer as an administrative action for example to defuse a tense situation.
- iv. The Bill in Clauses 15A (7) and (8) talk about employee transfer subject to disciplinary proceedings, which contradict each other. Clause 7 provides that an employee who is the subject of disciplinary proceedings shall not be transferred until proceedings are concluded, whereas clause 8 states that where a transfer is made contrary to Subsection 7, such transfer shall not preclude the employer from conducting disciplinary proceedings or taking disciplinary proceedings.

- v. There is no specific legal provision on transfers before retirement within a certain timeframe. The transfer is guided by the transfer policy or the administrative guidelines of the institution and the circumstances of the employees.
- vi. Not all employers can provide transport and salary advances for the transfer of an employee.
- vii. Allowing employers to develop and implement their transfer policies may lead to mischief whereby employees' rights may be infringed upon. The transfer policies should be in line with the regulations, measures, and redress mechanisms prescribed by the Cabinet Secretary.
- viii. Employee consent before effecting a transfer may hamper legitimate and necessary transfers if employees refuse, thus affecting service delivery.

Having considered the Bill and the stakeholder submissions, the Committee recommended that the Bill be proceeded with and be amended by deleting clause 2 and substituting, therefore, the following clause—

2. The Employment Act, 2007 is amended by inserting the following new section immediately after section 15—

Transfer
of
employees

15A (1) In this section—

“transfer” means the deployment of an employee from one duty station

- (2) An employee may be transferred to another place of work at their own request or as required by an employer subject to subsection (3).
- (3) In effecting the transfer, the employer shall—
 - (a) Ensure the transfer is in good faith and in a fair, meritorious, rational manner that benefits both the employee and the employer;
 - (b) Ensure prevention of demoralization, dissatisfaction and family disintegration and disorientation on the part of the employee.
- (4) An Employee with two or less years to retirement should not be transferred except where—
 - (a) the transfer is at the request of an employee; or
 - (b) the skills and competencies of such an employee are required for service delivery.
- (5) Subject to subsection (6) an employee who is the subject of a disciplinary proceedings, shall not be transferred until such proceedings are concluded and all mechanisms for appeal under the Constitution or any other written law have been exhausted.

(6) Where it is considered necessary, an employee who is the subject of an investigation may be transferred pending the investigation and determination of allegations of unlawful conduct made against that employee.

(7) Each employer shall develop and implement a transfer policy that provides for the process, practice and measures of transfer of employees to give effect to section 15(3).

(8) An employer who contravenes the provisions of this section commits an offence and shall, on conviction be liable—

(a) in the case of a natural person, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both; and

(b) in the case of a juristic person, to a fine not exceeding five hundred thousand shillings.

(9) The Cabinet Secretary may prescribe policies, regulations, measures and redress mechanisms to give effect to this section.

The report on the Employment (Amendment) Bill, (National Assembly Bill No. 62 Of 2023 was unanimously adopted having been proposed by Hon. Siyoi Lillian Chebet, M.P and seconded by Hon. Chiforomodo Mangale Munga, M.P.

MIN. NO. 87 NA/LAB/2024: ANY OTHER BUSINESS

Hon. K'Oyoo James Onyango, M.P. expressed his gratitude to the Committee for the support accorded to him during the bereavement after the loss of his brother.

MIN. NO. 88 NA/LAB/2024: ADJOURNMENT

There being no other business, the meeting was adjourned at thirteen minutes past one o'clock. The next meeting will be held on Thursday, 11th April 2024.

SIGNED.....  DATE 15/5/24

(CHAIRPERSON)

MINUTES OF THE 12TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON TUESDAY, 19TH MARCH 2024 IN THE BOARD ROOM ON GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 12:00 PM.

PRESENT

1. The Hon. Karemba Eric Muchangi Njiru, M.P. - Chairperson
2. The Hon. Muli Fabian Kyule, M.P. - Vice Chairperson
3. The Hon. K'Oyoo James Onyango, M.P.
4. The Hon. Abdullahi Amina Dika, M.P.
5. The Hon. Barasa Patrick Simiyu, M.P.
6. The Hon. Siyoi Lillian Chebet, M.P.
7. The Hon. Sankaire Leah Sopiato, MP

APOLOGIES

1. The Hon. Kagesi Kivai Ernest Ogesi, M.P
2. The Hon. Kiti Richard Ken Chonga, M.P
3. The Hon. Lomwa Joseph Samal, M.P.
4. The Hon. Omwera George Aladwa, M.P.
5. The Hon. Wambilianga Catherine Nanjala, M.P
6. The Hon. Aburi Donya Dorice, M.P.
7. The Hon. Chiforomodo Mangale Munga, M.P
8. The Hon. Kihungi Peter Irungu, M.P

COMMITTEE SECRETARIAT

1. Mr. Abenayo Wasike - Principal Clerk Assistant I
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Ms. Colleta Sigilai - Senior Legal Counsel
4. Ms. Wambui Nyachae - Research Officer III
5. Mr. Timothy Tshungulah. - Research Officer III
6. Ms. Mercylyn Kerubo - Audio Officer III
7. Ms. Josephine Osiba - Hansard Reporter III
8. Ms. Yasmin Hassan. - Assistant Serjeant at Arms II

AGENDA

1. Prayers
2. Preliminaries;
 - i. Adoption of the Agenda
 - ii. Remarks by Chairperson
3. Confirmation of Minutes/Matters Arising
4. Consideration of the Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023)
 - Briefing by the Legal Counsel
5. Business Before the Committee
6. Any Other Business
7. Adjournment

The Chairperson called the meeting to order thirty minutes past twelve o'clock and said the Prayer. This was followed by a round of introductions.

MIN.NO.66 NA/LAB/2024: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This agenda was deferred.

MIN.NO.67 NA/LAB/2024: MATTERS ARISING

No matter arose

MIN.NO.68 NA/LAB/2024: BUSINESS BEFORE THE COMMITTEE

The following business has been committed to the committee for consideration:

1. The Employment (Amendment) Bill, (National Assembly Bill No. 62 Of 2023 by Hon. Didmus Wekesa Barasa, MP.
 - The Committee considered the Bill.
2. The National Employment Authority (Amendment) Bill, 2023 (Senate Bills No 48 of 2023). The Bill is sponsored by Sen. Crystal Sigei, MP. The Bill is pending for a joint sitting with the Committee on Diaspora Affairs and Migrant Workers.
3. The Proposed Industrial Training (Amendment) Bill, 2023 sponsored by Hon. Joshua Odongo Oron, M.P.
 - The Committee considered the Legislative proposal on 7/3/24. The sponsor appeared before the Committee and submitted on his proposal.
 - The Committee considered the proposal and resolved to consult the National Industrial Training Authority before reporting.
 - The Committee, at a retreat held on 15th and 16th March 2024 consulted NITA on the Same.
 - The Authority expressed its support for the proposed amendments.
 - The Committee to consider a report on the legislative proposal after short recess.
4. Sessional Paper No. 5 on the National Policy on Labour Migration.

The Joint Committee on Labour and Diaspora Affairs and Migrant Workers met the Cabinet Secretary, Ministry of Labour and Social Protection on Thursday 9th November 2023 to deliberate on the Policy and resolved to hold a retreat for comprehensive deliberations on the said sessional paper.

The Committee's Secretariat directed to consult with the Cabinet Secretary on the dates for the proposed retreat.

5. Request for a statement regarding unfair treatment of employees of Ashton Apparel (EPZ) Ltd and Mombasa Apparel (EPZ) Ltd by Hon. Shimbwa Omar Mwinyi, M.P.

Status:

The Cabinet Secretary appeared before the Committee on Tuesday 21st November 2023 and responded to the request by Hon. Shimbwa Omar Mwinyi, M.P.

The matter is pending for further submissions by the Cabinet Secretary as her response was not sufficient and resolved to give her more time to investigate the matter and submit a more comprehensive statement.

6. Report on the status of Budget implementation FY 2023/24 for MDAs under the purview of the Committee.

The Committee is scheduled to meet the MDAs under its purview in April 2024, after the short recess, to report on the Status of Budget implementation for the 1st and 2nd Quarter FY 2023/24.

MIN. NO.69 NA/LAB/2024: BRIEFING ON THE EMPLOYMENT
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL
NO. 62 OF 2023)

The Legal Counsel, guided the Committee through the Bill, Clause by Clause.

Clause 1 of the Bill provides for the short title while Clause 2 of the Bill provides for the amendment of Section 15 of the Act to provide for the regulation of the transfer of employees from one place of work to another.

The Committee was also briefed on the stakeholders' submissions as follows;
The State Department for Public Service in their written presentations submitted as follows-

On the proposed amendment on Subsection 4(a) to require the employer to give the employee the reasons for the intended transfer, the State Department submitted the need to include additional information on the reasons for the intended transfer;

- 4(a) That in effecting a transfer the following shall be taken into account-*
- (a) the transfer shall lead to improved service delivery;*
 - (b) the interest of the children, if any, of the affected public officer; and*
 - (c) the transfer shall not be arbitrary.*

Further, in deciding to transfer a public officer, the Commission or the authorized officer shall take into account the following:

- i. efficiency and effectiveness of public service delivery;
- ii. existing skills and competencies in the receiving public body or department so as not to disadvantage public officers already serving in the receiving public body or department;
- iii. promotion of national integration and cohesion; and
- iv. promotion of representation of Kenya's diverse communities, men and women, members of all ethnic groups, and persons with disabilities.

The Justification is to ensure that it is in line with the Public Service Commission Act 2017 and Public Service Commission Regulations 2020.

On the proposed amendment on Subsection 4(d) to require the consent of the employee before effecting the transfer, the State Department proposed the deletion of the amendment.

The Justification is that the amendment will hamper any transfer consideration by the employer hence affecting service delivery.

The Committee agreed with the deletion of the amendment.

Further, Subsection 5 should be amended to include the age of the employee. The Justification is that employees who have two (2) years or less to retirement should not be transferred except where the skills and competencies of such an employee are required for service delivery. **The Committee**

agreed with the amendment and proposed the inclusion of a provision to allow the transfer of officers who request or consent.

The Federation of Kenya Employers in their written presentations submitted as follows :

Section 27 of the Employment Act, 2007 expressly mandates the employer to regulate the working hours of the employee in accordance with the provisions of the Act. This provision has been expanded to include all exigencies of work including formulating job descriptions, job evaluations as well as determining the business needs and strategy.

Courts have, where as a result of wanton transfer an employee has resigned, made determinations and found such to amount to constructive dismissals.

Further, all transfers have taken into account the financial needs of an employee by making adequate provision for transfer allowances. The amendment will erode the rights of an employer to put in place strategic measures to keep businesses sustainable by injecting the right factors of production where they are needed to enhance productivity.

The amendment has the potential to scare away investors as it sends a negative message of over-legislating on matters that have been taken care of by common practice as well as judicial remedies.

The Federation proposed the amendment of sections 15A (2) to read as follows:

15A (2) An employee may be transferred to another place of work at their own request or as required by an employer subject to subsection (3)

In addition, the federation proposed the deletion of sections 15A (3), (4), (5), (7), (8), (9), and (10), and replace with the following one section;

15A(3) In effecting the transfer, the Employer shall -
(a) ensure the transfer is in good faith and in a fair, meritorious, rational manner that benefits both the employee and the employer
(b) ensure prevention of demoralization, dissatisfaction and family disintegration and disorientation on the part of employee.

The Committee agreed with the proposed amendment.

In addition, Section 15A (11) should be deleted and replaced with the following section:

15A (4) Each employer shall develop and implement a transfer policy that provides for the process, practice and measures of transfer of employees to give effect to section 15(3).

Further, the federation proposed that the numbering of Section 15A(12) be amended to 15A(5) and Deletion of Section 15A(13).

The Committee disagreed with the proposed deletion of Section 15A(13) which gives powers to the Cabinet secretary to prescribe policies and regulations.

The justification of the above specific proposals is to ensure the achievement of the objects and reasons of the proposed bill without eroding the rights of employers to manage the businesses.

Committee observations.

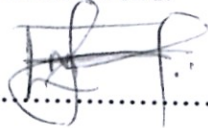
- i. The Constitution of Kenya establishes the Legislature as the sole law-making body in the Republic. However, Parliament, through an Act passed by it, may delegate its legislative authority to the Cabinet Secretary for purposes of coming up with subsidiary legislation for better implementation of the Act.
- ii. It is generally accepted by Employers and Trade unions that the Employer is at liberty to shift employees from one place to another to organize the business. Further, a transfer cannot be used as a punishment to an employee. Courts have cited such to fall under unfair labour practice and sanctions have always followed in terms of compensation in private enterprises and quashing of such transfers in public institutions.
- iii. The Bill provides that an employee who is the subject of disciplinary proceedings, shall not be transferred until such proceedings are concluded and all mechanisms for appeal under the Constitution or any other written law have been exhausted. However, some instances may require a transfer as an administrative action for example to defuse a tense situation.
- iv. There is no specific legal provision on transfers before retirement within a certain timeframe. The transfer should be guided by the transfer policy or the administrative guidelines of the institution and the circumstances of the employees.

MIN. NO. 70 NA/LAB/2024:

ADJOURNMENT

There being no other business, the meeting was adjourned at two o'clock. The next meeting will be held on Thursday 21st March 2024.

SIGNED.....



DATE

21/3/24

(CHAIRPERSON)

**MINUTES OF THE 8TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR
HELD ON TUESDAY, 12TH MARCH 2024 IN THE COMMITTEE ROOM ON GROUND
FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 12:00 PM.**

PRESENT

1. The Hon. Kihungi Peter Irungu, M.P (*Chairing*)
2. The Hon. K'Oyoo James Onyango, M.P.
3. The Hon. Kagesi Kivai Ernest Ogesi, M.P
4. The Hon. Kiti Richard Ken Chonga, M.P.
5. The Hon. Abdullahi Amina Dika, M.P.
6. The Hon. Barasa Patrick Simiyu, M.P.
7. The Hon. Chiforomodo Mangale Munga, M.P

APOLOGIES

1. The Hon. Karemba Eric Muchangi Njiru, M.P. - Chairperson
2. The Hon. Muli Fabian Kyule, M.P. - Vice Chairperson
3. The Hon. Lomwa Joseph Samal, M.P.
4. The Hon. Omwera George Aladwa, M.P.
5. The Hon. Wambilianga Catherine Nanjala, M.P
6. The Hon. Aburi Donya Dorice, M.P.
7. The Hon. Sankaire Leah Sopiato, MP
8. The Hon. Siyoi Lillian Chebet, M.P

COMMITTEE SECRETARIAT

1. Mr. Abenayo Wasike - Principal Clerk Assistant I
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Ms. Colleta Sigilai - Senior Legal Counsel
4. Ms. Wambui Nyachae - Research Officer III
5. Mr. Timothy Tshungulah. - Research Officer III
6. Ms. Mercylyn Kerubo - Audio Officer III
7. Ms. Josephine Osiba - Hansard Reporter III
8. Mr. Ambrose Nguti - Media Relations Officer III
9. Ms. Yasmin Hassan. - Assistant Serjeant at Arms II

AGENDA

1. Prayers
2. Preliminaries;
 - i. Adoption of the Agenda
 - ii. Remarks by Chairperson
3. Confirmation of Minutes/Matters Arising
4. Consideration of the Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023)
Sponsored by Hon. Didmus Barasa Wekesa, M.P:
 - Briefing by the Legal Counsel.
5. Business Before the Committee
6. Any Other Business
7. Adjournment

The Chairperson called the meeting to order at thirty minutes to one o'clock. This was followed by a Prayer by Hon. Chiforomodo Mangale Munga, M.P and a round of introductions.

The Chairperson further guided the Committee through the Agenda of the meeting. The agenda was adopted having been proposed by Hon. Abdullahi Amina Dika, M.P and seconded by Hon.Chiforomodo Mangale Munga, M.P.

MIN.NO.051 NA/LAB/2024: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

Minutes of the 7th Sitting held on Thursday, 7th March 2024 were confirmed as a true record of the deliberations having been proposed by Hon. Chiforomodo Mangale Munga, M.P and seconded by Hon. Abdullahi Amina Dika, M.P.

MIN.NO.052 NA/LAB/2024:

MATTERS ARISING

Under Minute MIN.NO.045 NA/LAB/2024:

The Secretariat informed the Committee that the proposed retreat with the Ministry of Labour and Social Protection and the National Industrial Training Authority, scheduled for 24th -28th March 2024 in Mombasa County, had been rescheduled for 14th to 17th March 2024.

The retreat was rescheduled following a request by the Ministry of Labour and Social Protection vide the Cabinet Secretary for Labour's letter dated 6th March 2024.

The Committee approved the proposed new dates and directed the Secretariat to facilitate its attendance.

MIN.NO.053 NA/LAB/2024:

BUSINESS BEFORE THE COMMITTEE

The following business has been committed to the committee for consideration:

1. The Employment (Amendment) Bill, (National Assembly Bill No. 62 Of 2023 by Hon. Didmus Wekesa Barasa, MP.
 - The Committee scheduled the Bill for consideration on 12th and 14th March, 2024.
2. The National Employment Authority (Amendment) Bill, 2023 (Senate Bills No 48 of 2023). The Bill is sponsored by Sen. Crystal Sigei, MP. The Bill is pending for a joint sitting with the Committee on Diaspora Affairs and Migrant Workers.
3. The Proposed Industrial Training (Amendment) Bill, 2023 sponsored by Hon.Joshua Odongo Oron, M.P.
 - The Committee considered the Legislative proposal on 7/3/24. The sponsor appeared before the Committee and submitted on his proposal.
 - The Committee considered the proposal and resolved to consult the National Industrial Training Authority before reporting.
4. Sessional Paper No. 5 on the National Policy on Labour Migration.

The Joint Committee on Labour and Diaspora Affairs and Migrant Workers met the Cabinet Secretary, Ministry of Labour and Social Protection on Thursday 9th November 2023 to deliberate on the Policy and resolved to hold a retreat for comprehensive deliberations on the said sessional paper.

The Committee's Secretariat directed to consult with the Cabinet Secretary on the dates for the proposed retreat.

5. Request for a statement regarding unfair treatment of employees of Ashton Apparel (EPZ) Ltd and Mombasa Apparel (EPZ) Ltd by Hon. Shimbwa Omar Mwinyi, M.P.

Status:

The Cabinet Secretary appeared before the Committee on Tuesday 21st November 2023 and responded to the request by Hon. Shimbwa Omar Mwinyi, M.P.

The matter is pending for further submissions by the Cabinet Secretary as her response was not sufficient and resolved to give her more time to investigate the matter and submit a more comprehensive statement.

6. Report on the status of Budget implementation FY 2023/24 for MDAs under the purview of the Committee.

The Committee is scheduled to meet the MDAs under its purview in April 2024, after the short recess, to report on the Status of Budget implementation for the 1st and 2nd Quarter FY 2023/24.

MIN. NO.054 NA/LAB/2024: BRIEFING ON EMPLOYMENT (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 62 OF 2023)

The Secretariat briefed the Committee on the Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023) Sponsored by Hon. Didmus Barasa Wekesa, M.P as follows;

- a) The principal object of the Bill is to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees by employers from one place of work to another.
- b) The process and practice of transfer of employees has been arbitrary and has been misused to the detriment of employees especially those in the public service.
- c) Transfers have become a tool used by employers to punish certain employees which contravenes Article 41 of the Constitution on the right to fair labour practices.
- d) The Bill seeks to provide clarity on the modalities of transfer of employees in good faith and in a fair, meritorious, rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and disorientation on the part of employees.

In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of 28th November, 2023 invited the public to make representations on the proposed amendments in the Bill.

Further, the following Stakeholders were requested to submit their views to the Committee:

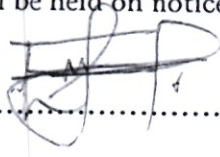
- i. State Department for Labour and Skills Development
- ii. State Department for Public Service
- iii. Public Service Commission
- iv. Office of the Attorney General
- v. Katiba Institute
- vi. Central Organization of Trade Unions (COTU-K)
- vii. Federation of Kenya Employers
- viii. Kenya Law Reform Commission

The Committee received Memoranda from the State Department for Public Service and the Federation of Kenya Employers (FKE). The office of the Attorney General requested for more time to submit its views on the Bill.

The Committee resolved to conduct another session for further deliberations on the Bill and consideration of stakeholders' submissions.

MIN. NO. 055 NA/LAB/2024: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty eight minutes past one o'clock. The next meeting will be held on notice.

SIGNED.......... DATE 21/3/24.....

(CHAIRPERSON)

Annexure 3:

Newspaper advertisement inviting the public to submit Memoranda on the Bill

Tel: 0702597390/1
0733120020/2 Ext. 2101
057 2505222/3

E-mail: registrar.aa@mmust.ac.ke
Website: www.mmust.ac.ke



P.O Box 190,
Kakamega - 50100,
Kenya.

MASINDE MULIRO UNIVERSITY OF SCIENCE AND TECHNOLOGY
Office of the Registrar (Academics Affairs)

**NOTICE OF THE 20TH GRADUATION CEREMONY AND
CHANGE OF REHEARSAL DATE**

Masinde Muliro University of Science Technology (MMUST), a Premier University in Science, Technology and Innovation, wishes to inform all the **2022/2023 Academic Year graduands**, as well as members of the public, that the **20th Graduation Ceremony** will be held on **Friday 1st December, 2023**. The event will be held at MMUST main campus – Kakamega, starting from 7.00 a.m and will be live on the University YouTube channel (Discover MMUST) and Facebook page (Masinde Muliro University of Science Technology Official).

Consequently, **Rehearsal** for the Graduation ceremony will take place on **Wednesday, 29th November, 2023** starting from **9:00am**. For more information, please visit the University website www.mmust.ac.ke.

enquiries

For more information, please contact;

Registrar (Academic Affairs)

P.O Box 190-50100 – Kakamega.

Customer Care - 0572505222 - Email: registrar.aa@mmust.ac.ke

Website: www.mmust.ac.ke

MMUST is an ISO 9001:2015 Certified Institution



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - SECOND SESSION (2023)
THE NATIONAL ASSEMBLY

**IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:**

- 1. THE APPELLATE JURISDICTION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2023); AND**
- 2. THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 62 OF 2023)**

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Appellate Jurisdiction (Amendment) Bill (National Assembly Bill No. 49 of 2023) and the Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023) have been read a First Time and referred to Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

- 1. The Appellate Jurisdiction (Amendment) Bill (National Assembly Bill No. 49 of 2023)** is a Bill sponsored by the **Leader of the Minority Party, Hon. James Olyo Wandayi, MP** which seeks to amend the Appellate Jurisdiction Act No. 12 of 2012 to delete references to the death sentence.
- 2. The Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023)** is a Bill sponsored by **Hon. Didmus Wekesa Barasa, MP** which seeks to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees from one place of work to another. The Bill seeks to provide clarity on the modalities of transfer of employees in good faith and in a fair, meritorious, rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and disorientation on the part of employees.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below—

BILL	COMMITTEE
1. The Appellate Jurisdiction (Amendment) Bill (National Assembly Bill No. 49 of 2023)	Justice and Legal Affairs
2. The Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023)	Labour

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cpa@parliament.go.ke to be received on or before **Friday 8th December 2023 at 5.00 p.m.**

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/home-business/bills.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
(28th November 2023)

For the Welfare of Society and the just Government of the People

TTS THE SEASON
A Very KENYAN Christmas

FRIDAY 8TH, SATURDAY 9TH & SUNDAY 10TH DECEMBER 2023

THE JUNCTION MALL - ROOFTOP

POP-UP Christmas MARKET

12 PM TO 5 PM

TTS MAIN SHOW

7:00 PM

ADVANCE TICKETS

1,700/-

GATE TICKETS

2,200/-

CHILDREN

500/-

TICKETS AVAILABLE ON ticketsasa.com

Directed by **ATEMI OYUNGU & LISA ODUOR-NOAH**



Politics Some leaders in the Opposition ranks have criticised the report for failing to tackle the high cost of living

Raila calls crisis meeting over Bomas talks report

Azimio MPs to discuss proposals by team and take a common position, end divisions

BY JUSTUS OCHIENG

The Raila Odinga-led Azimio la Umoja One Kenya Coalition has convened a crisis Parliamentary Group (PG) meeting on Thursday to deliberate on the report of the National Dialogue Committee (NADCO) amid divisions among its top leadership over the issue of the cost of living.

National Assembly Minority Leader Opiyo Wandayi yesterday invited Azimio legislators to the PG at Jaramogi Oginga Odinga Foundation (JOF) in Upper Hill, Nairobi on Thursday November 30, 2023 at 10am.

...at the meeting, members shall deliberate on the report of the National Dialogue Committee with a view to taking a common position," states Mr Wandayi's invite to MPs in part.

The PG follows sharp differences by opposition luminaries, with Azimio council chairman, former president Uhuru Kenyatta, said to be uncomfortable with the report over the handling of the matter of the cost of living.

Narc Kenya leader Martha Karua and her DAP-Kenya counterpart Eugene Wamalwa have already distanced themselves from the report, with the latter insisting he would not append his signature to it despite being a member of the committee that drafted it.

Mr Odinga on Sunday said he had received the report but was yet to read it and make his comments, a statement that sources within the coalition yesterday said was intended to moderate the ongoing sharp criticism of the report by his colleagues.

"Remember the dialogue be-



ODM leader Raila Odinga addresses party delegates at Rangenyo Primary School in Nyamira yesterday. RUTH MBULANI/NATION

tween the government and opposition was initiated by members of the diplomatic community who pushed for it and both President Ruto and Mr Odinga have no option but to support it in a bid to ensure peace and stability in the country, away from street protests," a source within Azimio told *Nation* yesterday.

The source pointed out that Western envoys were keen on how both camps handle the report, and with President Ruto already endorsing it, all eyes were now on Mr Odinga.

Some opposition legislators have also started attacking the report even before the PG, with Saboti MP Caleb Amisi, Mr Odinga's ally, voicing his reservations over the failure to effectively handle the issue of cost of living by the committee.

It was not immediately clear whether Mr Kenyatta would attend the meeting.

Mr Wamalwa who on Sunday insisted that Kenyans were given a raw deal and vowed not to append his signature to the report, yesterday said he will attend the PG and voice his concerns.

When reached for comment on whether Kenya Kwanza would also hold a PG to take a common stand on the report, National Assembly Majority Leader Kimani Ichung'wa said "PGs are convened by the party leader (President Ruto) and he hasn't."

President Ruto had already announced himself on the line on Sunday, urging MPs to support it as he promised to implement the recommendations of the committee.

Among the recommendations agreed upon by the team at creation of the post of Official Opposition Leader with two duties, and entrenching the Cabinet Secretary's office law.

Other proposals by the team include evaluating the 2022 electoral process, expanding the IEBC election panel, extending the period for presidential petition from 14 to 21 days and cutting the government's travel budget.

Yesterday, a source within the Azimio coalition told *Nation* that Mr Odinga was facing a tough balancing act, and was "damned if he supports the report, and damned if he does not support it".

Another source in Azimio disclosed that whereas Mr Odinga and Mr Musyoka hold that street protests is within the law, they were reluctant to return their supporters to the streets, a move that appears to clash with Mr Karua's take.

The source said there is a feeling that some leaders from Mt Kenya region were pushing for the protests "yet they have not been able to rally their supporters to the streets".



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - SECOND SESSION (2023)
THE NATIONAL ASSEMBLY

IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE APPELLATE JURISDICTION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2023); AND
2. THE EMPLOYMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 62 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Appellate Jurisdiction (Amendment) Bill (National Assembly Bill No. 49 of 2023) and the Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023) have been read a First Time and referred to Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. The Appellate Jurisdiction (Amendment) Bill (National Assembly Bill No. 49 of 2023) is a Bill sponsored by the Leader of the Minority Party, Hon. James Opiyo Wandayi, MP which seeks to amend the Appellate Jurisdiction Act No. 12 of 2012 to delete references to the death sentence.
2. The Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023) is a Bill sponsored by Hon. Didmus Wekesa Barasa, MP which seeks to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees from one place of work to another. The Bill seeks to provide clarity on the modalities of transfer of employees in good faith and in a fair, meritorious, rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and disorientation on the part of employees.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below—

BILL	COMMITTEE
1. The Appellate Jurisdiction (Amendment) Bill (National Assembly Bill No. 49 of 2023)	Justice and Legal Affairs
2. The Employment (Amendment) Bill (National Assembly Bill No. 62 of 2023)	Labour

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41942-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to csa@parliament.go.ke to be received on or before Friday 8th December 2023 at 5.00 p.m.

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
(20th November 2023)

For the Welfare of Society and the just Government of the People



TECHNICAL AND VOCATIONAL EDUCATION
AND TRAINING AUTHORITY

SELECTION PANEL FOR APPOINTMENT OF MEMBERS OF THE TECHNICAL AND VOCATIONAL EDUCATION
AND TRAINING AUTHORITY (TVETA) BOARD

ADVERTISEMENT FOR THE POSITIONS OF MEMBERS OF THE TECHNICAL AND VOCATIONAL EDUCATION
AND TRAINING AUTHORITY

A. INTRODUCTION

Pursuant to the provisions of Section 8 (5) of the TVET Act, 2013 the Selection Panel invites applications from suitably qualified Kenyan citizens to fill the positions of member of the TVETA Board of Directors.

B. REQUIREMENT FOR APPOINTMENT

- For appointment as member of the TVETA Board of Directors, a person should—
- i. Possess at least a Bachelor's degree from a university recognized in Kenya
 - ii. Have proven knowledge and experience of more than fifteen (15) years in matters relating to any of the following:
 - Technical and Vocational Education and Training
 - Legal matters
 - Financial matters
 - iii. Have served in a Senior Management Position (Assistant Director Job Group P in Civil Service) or its equivalent position in public or private sector for a period of more than five (5) years.
 - iv. Meets the requirements of Chapter Six of the Constitution.

C. TERMS OF SERVICE

The member shall hold office on a part time basis for a term not exceeding three (3) years and shall be eligible for reappointment for one further term.

D. APPLICATION PROCEDURE

- All applications should include the following:
- a) Application letter and detailed Curriculum Vitae
 - b) Copies of university certificates and National Identity card or Valid passport
 - c) Clearance Certificates from the following organizations:
 - i. The Kenya Revenue Authority (KRA)
 - ii. The Ethics and Anti-Corruption Commission (EACC)
 - iii. Department of Criminal Investigations (DCI)
 - iv. Higher Education Loans Board (HELB)
 - v. Credit Reference Bureau (CRB) clearance certificate

Note: Degree certificates obtained out of Kenya should be accompanied with a letter of Recognition and Equation of Qualification from the Commission for University Education.

For additional details, please visit the Authority's website www.tveta.go.ke where you will find comprehensive specifications and requirements of the advertised position.

Applications should be emailed to: selectionpanel@tveta.go.ke OR send via Posta OR hand delivered to Utalii House, Director General's office, 8th Floor in a clearly marked envelope by Tuesday 19th December 2023, by 5.00 pm addressed to:

The Chairperson
Selection Panel for the Appointment of Member TVETA Board
Utalii House, 8th Floor
P.O. Box 35625-00100
NAIROBI

Annexure 4:

Written submissions from stakeholders



REPUBLIC OF KENYA
MINISTRY OF PUBLIC SERVICE, PERFORMANCE AND DELIVERY MANAGEMENT
STATE DEPARTMENT FOR PUBLIC SERVICE
Office of the Principal Secretary

Telegraphic address: "Personnel", Nairobi
 Telephone: Nairobi 227411
 Telex: 23125
 Fax: 243620
 When Replying please quote:

P.O. BOX 30050 – 00100
 NAIROBI,
 KENYA.

Ref. No. MPSG&AA.6

Date: 14th December, 2023

The Clerk of the National Assembly
 Parliament Buildings
NAIROBI

D/DC
Please deal.
15/12/23

Samuel Kariuki
Please deal
15/12/2023

Attn: Jeremiah Ndombi, MBS

**RE: INVITATION TO SUBMIT VIEWS ON THE EMPLOYMENT (AMENDMENT) BILL,
 (NATIONAL ASSEMBLY BILL NO. 62 OF 2023) TO THE DEPARTMENTAL
 COMMITTEE ON LABOUR**

Reference is made to your letter Ref. NA/DDC/LABOUR/2023/102 dated 30th November, 2023 on the above subject matter.

Submitted herewith, are the views by the Ministry of Public Service, Performance and Delivery Management for your further consideration.

Amos N. Gathecha
Amos N. Gathecha, EBS, 'ndc' (K)
PRINCIPAL SECRETARY

**NATIONAL ASSEMBLY
 RECEIVED**
 15 DEC 2023
 DEPUTY CLERK S. KIOKO
 P. O. Box 41842 - 00100, NAIROBI

Copy to: Hon. Moses K. Kuria, HSC
 Cabinet Secretary
 Ministry of Public Service, Performance and Delivery Management
NAIROBI

Encl.

18 DEC 2023

**NATIONAL ASSEMBLY
 RECEIVED**
 ★ 15 DEC 2023 ★
 CLERK'S OFFICE
 P O Box 41842, NAIROBI

**VIEWS ON THE EMPLOYMENT (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 62 OF 2023) SPONSORED
BY HON. DIDMUS WEKESA BARASA, MP TO THE DEPARTMENTAL COMMITTEE ON LABOUR**

Section No.	Page	Specific Clause	Proposed Amendment	Justification
15A	1737	<p>Subsection (4) (a)</p> <p>Consider adding more information on the reasons for intended transfer as per the column on proposed amendment</p>	<p>It is proposed that you consider to include the following:</p> <p>That in effecting a transfer the following shall be taken into account—</p> <p>(a)the transfer shall lead to improved service delivery;</p> <p>(b)the interest of the children, if any, of the affected public officer; and</p> <p>(c)the transfer shall not be arbitrary.</p> <p>In making a decision to transfer a public officer, the Commission or the authorized officer shall take into account the following:</p> <p>(a) efficiency and effectiveness of public service delivery;</p> <p>(b) existing skills and competencies in the receiving public body or</p>	<p>To be in line with Public Service Commission Act 2017 and Public Service Commission Regulations 2020</p>

			<p>department so as not to disadvantage public officers already serving in the receiving public body or department;</p> <p>(c) promotion of national integration and cohesion; and</p> <p>(d) promotion of representation of Kenya's diverse communities, men and women, the members of all ethnic groups and persons with disabilities.</p>	
15A	1737	Subsection (4) (d) require the consent of the employee before effecting the transfer.	Consider deletion of Subsection (4) (d).	It will hamper any transfer consideration by the employer hence affecting service delivery.
15A	1738	Section 5	Consider under Section 5 to include the age of the employee.	Employees who have two (2) years or less to retirement should not be transferred except where the skills and competencies of such an employee are required for service delivery.



D/DC
Please desl.
13/12/23

TO: THE CLERK, NATIONAL ASSEMBLY
FROM: THE FEDERATION OF KENYA EMPLOYERS (FKE)

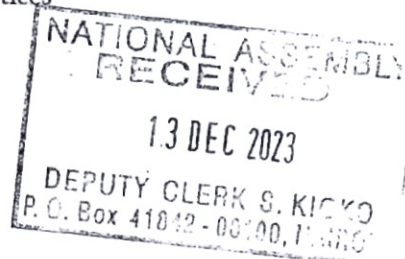
FKE MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL NA BILL NO. 62 OF 2023

1. BACKGROUND

The Federation of Kenya Employers (FKE) is the most representative employers' organization in Kenya. The Federation has 4000 members who employ a total of 1.2 million employees in Kenya. The role of the Federation is to improve the business environment for Kenyan employers through advocacy, effective representation, social dialogue and provision of value-add services. In addition to representing Kenyan employers at local level, the Federation also represents members at regional and international level including at East Africa Employers Organization, BUSINESSAfrica and International Organization of Employers (IOE), and International Labour Organization (ILO).

In taking a policy position, FKE is guided with the need to ensure a balanced and trusted policy position that promotes:

- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair labour practices
- Resilient and competitive employers
- Harmonious industrial relation.
- Social justice
- Feasibility and affordability of the costs associated with implementation of the policy
- Ease of doing business
- International Labour Standards and fair practices



2. FKE POSITION IN RESPECT TO PROPOSED AMENDMENT OF THE EMPLOYMENT ACT, 2007 ON THE TRANSFER OF EMPLOYEES

- a) Section 27 of the Employment Act, 2007 expressly mandates the employer to regulate the working hours of the employee in accordance with the provisions of the Act.
- b) The above provision has been expanded to include all exigencies of work including formulating job descriptions, job evaluations as well as determining the business needs and strategy.
- c) Transfer has traditionally been the prerogative of the employer and undertaken to meet enterprise needs.
- d) In cases where transfers are effected, it has never been used to the detriment of an employee both financially and circumstantially. Where a transfer may occasion other unanticipated risks, including health challenges, employers normally do not sanction it.
- e) Transfer cannot be used as a punishment to an employee. Our Courts have always cited such to fall under unfair labour practice and sanctions have always followed in terms of compensation in private enterprises and quashing of such transfers in public institutions.
- f) Courts have, where as a result of wanton transfer an employee has resigned, made determinations and found such to amount to constructive dismissals.
- g) All transfers have taken into account the financial needs of an employee by making adequate provision for transfer allowances.
- h) The amendment will erode the rights of an employer to put in place strategic measures to keep businesses sustainable by injecting the right factors of production where they are needed to enhance productivity.
- i) The amendment has the potential to scare away investors as it sends a negative message of over-legislating on matters that have been taken care of by common practice as well as judicial remedies.

3. SPECIFIC PROPOSALS ON THE PROPOSED EMPLOYMENT (AMENDMENT) BILL NA BILL NO. 62 OF 2023

- i). Amend sections 15A(2) to read as follows:

15A(2) An employee may be transferred to another place of work at their own request or as required by an employer subject to subsection (3)

- ii). Delete sections 15A (3), (4), (5), (7), (8), (9), and (10), and replace with the following one section:

15A(3) In effecting the transfer, the Employer shall -

(a) ensure the transfer is in good faith and in a fair, meritorious, rational manner that benefit both the employee and the employer

(b) ensure prevention of demoralization, dissatisfaction, and family disintegration and disorientation on the part of employee.

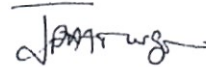
- iii). Delete sections 15A (11) replace with the following section:

15A(4) Each employer shall develop and implement a transfer policy that provides for the process, practice and measures of transfer of employees to give effect to section 15(3).

- iv). Numbering of Section 15A(12) be amended to 15A(5)
v). Delete section 15A(13)

The above specific proposals will ensure the achievement of the objects and reasons of the proposed bill without eroding the rights of employers to manage the businesses.

JACQUELINE MUGO (MRS), EBS, MBS, OGW



The Executive Director & CEO
Federation of Kenya Employers

(Signed)

07/12/2023

(Date)



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

*DJS
DDCS
no deal.
18/12/23*

Our Ref: AG/LDD/139/1/46

13th December, 2023

The Principal Secretary,
State Department for Labour and Skills Development,
Ministry of Labour and Social Protection,
Social Security House, Bishops Road,
NAIROBI

*Done by
Samuel Wanjiru
Please deal
18/12/2023*

RE: THE PROPOSED EMPLOYMENT (AMENDMENT) BILL, (NATIONAL ASSEMBLY BILL NO. 62 OF 2023).

We refer to the above captioned subject matter and a letter from the National Assembly under REF: NA/DDC/LABOUR/2023/102 dated 30th November, 2023. The Departmental Committee on Labour forwarded the above-mentioned Bill to our office for comments.

We note that the policy informing this Bill lies with the Ministry of Labour and Social Protection. In view of this position, we hereby seek your policy guidance in respect of the proposed amendments to enable us advice and comment comprehensively on the subject matter, noting the urgency.

[Signature]
CHRISTINE RIGHA
SENIOR PARLIAMENTARY COUNSEL
FOR: ATTORNEY-GENERAL

Copy to:

Hon. J.B.N. Muturi, EGH
ATTORNEY GENERAL

Hon. Shadrack J. Mose
Solicitor General

Mr. Jeremiah Ndombi, MBS
Deputy Clerk, N/A

DIRECTOR
GENERAL
18 DEC 2023
Director of Departmental Committee

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.state.law.officer@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240537
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified





REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

*DDCS
DLS
PS deal.
WA
12/12/23*

Our Ref: AG/LDD/139/1/46

13th December, 2023

The Clerk of the National Assembly
Clerk's Chambers, Parliament Buildings
P. O. Box 41842-00100
NAIROBI

*Samuel Kianjira
Please deal
18/12/2023*

**RE: PRE-PUBLICATION SCRUTINY OF THE PROPOSED EMPLOYMENT
(AMENDMENT) BILL, 2023**

Reference is made to your letter dated the 30th November, 2023 and referenced NA/DDC/LABOUR/2023/102 requesting this Office for views on the proposed Employment (Amendment) Bill, 2023 by Hon. Didmus Wekesa Barasa.

We kindly request for additional time to enable us consider the Bill, undertake the necessary consultations and obtain policy guidance from the responsible offices.

**CHRISTINE RIGHA
SENIOR PARLIAMENTARY COUNSEL
FOR: ATTORNEY-GENERAL**

Copy to: **Hon. J. B.N. Muturi, EGH**
Attorney-General

Hon. Shadrack J. Mose
Solicitor-General

18 DEC 2023

SPECIAL ISSUE

Kenya Gazette Supplement No. 186 (National Assembly Bills No. 62)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

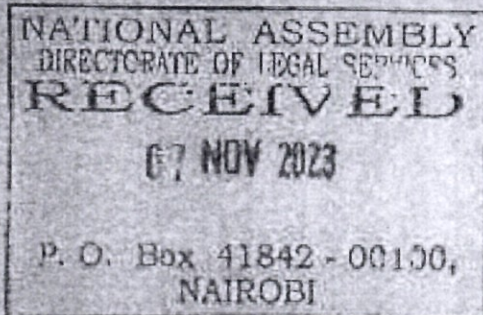
NAIROBI, 12th October, 2023

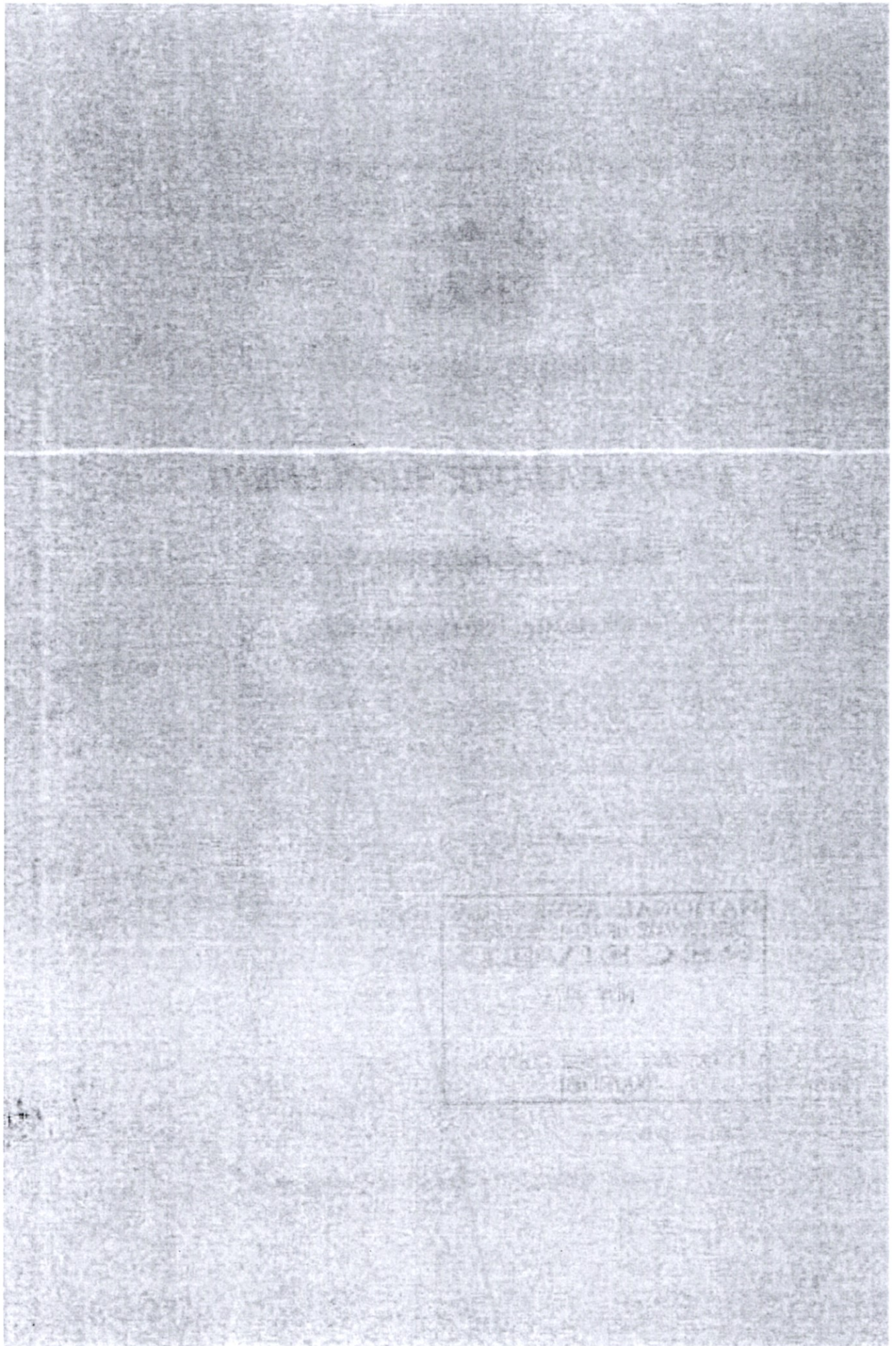
CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Employment (Amendment) Bill, 2023 1737





THE EMPLOYMENT (AMENDMENT) BILL, 2023**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—

1. This Act may be cited as the Employment (Amendment) Act, 2023.

Short title.

2. The Employment Act, 2007 is amended by inserting the following new section immediately after section 15.—

Insertion of new section 15A in No. 11 of 2007.

Transfer of employees.

15A (1) In this section —

“transfer” means the deployment of an employee from one duty station to another.

(2) An employee may be transferred to another place of work at their own request or as required by an employer subject to subsection (4).

(3) Subject to subsection (2), an employee who wishes to transfer to another place of work, shall notify the employer in writing of the intention to move to another place of work and such request shall be considered in accordance with subsection (5).

(4) Where an employee is to be transferred, the employer shall —

- (a) give the employee the reasons for the intended transfer;
- (b) inform the employee of the implications of the transfer on the employee’s contract of service;
- (c) notify the employee of the measures that the employer envisages shall be taken in relation to the employee, if any;
- (d) require the consent of the employee before effecting the transfer; and

- (e) where applicable, facilitate the employee to move to the new place of work by—
 - (i) providing reasonable transport for the movement of the employee and his or her personal effects; or
 - (ii) providing a salary advance to enable the employee to move, which would be recoverable in reasonable instalments.

Provided such facilitation shall not be provided where the employee was transferred at their own request.

(5) In effecting a transfer, the employer shall be taken into account—

- (a) the requirement for compliance with the transfer policy of the employer;
- (b) the requirement for compliance with the criteria of transfer set by the employer;
- (c) the interests of the employer;
- (d) the duration of transfer, whether permanent or temporary;
- (e) the length and frequency of the transfer;
- (f) the skills and competencies of the employee;
- (g) the interests of the employee in terms of promotion, sickness and other extenuating factors;
- (h) the efficiency and effectiveness of the work of the employer;
- (i) the existing skills and competencies in the place of work where the employee is being

transferred to so as not to disadvantage the employee or the employer;

- (j) the requirement that the transfer shall not be arbitrary; and
- (k) the requirement that the transfer is not used to punish employees.

(7) An employee who is the subject of disciplinary proceedings, shall not be transferred until such proceedings are concluded and all mechanisms for appeal under the Constitution or any other written law have been exhausted.

(8) Where a transfer is made contrary to subsection (7), such transfer shall not preclude the employer from conducting disciplinary proceedings or taking disciplinary action against the employee.

(9) Where it is considered necessary, notwithstanding subsection (7), an employee who is the subject of an investigation may be transferred pending the investigation and determination of allegations of unlawful conduct made against that employee.

(10) Unless otherwise provided in an agreement between an employee and an employer, the transfer of an employee shall not break the continuity of the period of employment or terminate or vary the contract of service of any employee.

(11) Each employer should develop and implement a transfer policy for its employees.

(12) An employer who contravenes the provisions of this section commits an offence and shall, on conviction be liable—

- (a) in the case of a natural person, to a fine not exceeding five hundred

thousand shillings or to imprisonment for a term not exceeding twelve months or to both; and

(b) in the case of a juristic person, to a fine not exceeding five hundred thousand shillings.

(13) The Cabinet Secretary may prescribe policies, regulations, measures and redress mechanisms to give effect to this section.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal objective of this Bill is to amend the provisions of the Employment Act, 2007 to regulate the transfer of employees by employers from one place of work to another.

The process and practice of transfer of employees has been arbitrary and has been misused to the detriment of employees especially those in the public service. Transfers have become a tool used by employers to punish certain employees which contravenes Article 41 of the Constitution on the right to fair labour practices.

This Bill therefore seeks to provide clarity on the modalities of transfer of employees in good faith and in a fair, meritorious, rational manner that will benefit both the employee and the employer by preventing demoralization, dissatisfaction and family disintegration and disorientation on the part of employees.

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

The Bill delegates legislative powers to Cabinet Secretary but it does not limit fundamental rights and freedoms.

Statement on whether the Bill concerns County Governments

The Bill does not concern county governments 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 2nd October, 2023.

DIDMUS WEKESA BARASA,
Member of Parliament.

Section 15 of No. 11 of 2007 which it is proposed to amend —

15. Informing employees of their rights

An employer shall display a statement in the prescribed form of the employee's rights under this Act in a conspicuous place, which is accessible to all the employees.