

*Approved by Kabungu
SNA
7/12/23*


REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ON: -

CONSIDERATION OF THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2022)

 THE NATIONAL ASSEMBLY PAPERS L A I D	
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CHAIRPERSON'S FOREWORD

The Employment (Amendment) Bill (Senate Bills No. 11 of 2022) sponsored by Sen. Samson Cherarkey, MP is a Bill for an Act of Parliament to amend the Employment Act, 2007 (Rev. 2012) 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.

The Bill was published on 30th November, 2022 and Read a first time in the National Assembly on 17th August, 2023. Pursuant to Standing Order 127 (1), the Bill was committed to the Departmental Committee on Labour for consideration and reporting to the House in line with the provisions of National Assembly Standing Order 127.

The Committee in addition wrote and invited submissions from various stakeholders. It received written submissions from ten (10) stakeholders. It further received oral submissions from nine (9) stakeholders including the sponsor of the Bill.

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 members of the public and stakeholders who submitted memoranda on the Bill. Indeed, their views informed the consideration of the Bill.

On behalf of the Committee and pursuant to provisions of Standing Order 137 (1) and 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Public Service Commission(Amendment) Bill (National Assembly Bill No. 6 of 2023)

HON. ERIC MUCHANGI KAREMBA, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR

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.*
2. 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.

Oversight

3. 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; and
- iv. Salaries and Remuneration Commission.

1.2 Committee Composition

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

Hon. George Aladwa Omwera, MP
Makadara Constituency
ODM Party

Hon. Amina Dika Abdullahi, MP
Tana River Constituency
KANU

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

Hon. Peter Irungu Kihungi, MP
Kangema Constituency
UDA Party

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

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

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

Hon. Catherine Wambiliaga, MP
Bungoma County
FORD-K

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

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

Hon. Leah Sopiato Sankaire, MP
Kajiado County
UDA Party

1.4 Committee Secretariat

5. The Committee has the following technical staff, representing the Office of the Clerk:

Ms. Rose M. Wanjohi
Senior Clerk Assistant /Head of Secretariat

Mr. Samuel Wanjiru
Clerk Assistant III

Ms. Fiona Githunguri
Legal Counsel II

Mr. Fredrick Muthengi
Deputy Director, PBO

Ms. Wambui Nyachae
Research Officer III

Mr. Timothy C. Tsungulah
Research Officer III

Ms. Zainab Wario
Serjeant-At-Arms II

Ms. Rehema Koech
Audio Officer III

Ms. Rinha Sainey
Media Relations Officer III

Mr. Alex Amwata
Hansard Officer III

Ms. Felistus Muiya
Protocol Officer

PART II

2.0 CONSIDERATION OF THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2022)

2.1 Background Information

6. 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.
7. 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.

2.2 Analysis of the Bill

8. The Bill contains two (2) clauses for consideration
 - i. **Clause 1** of the Bill provides for the short title.
 - ii. **Clause 2** of the Bill provides for amendment by insertion of a new section 27A to provide for the right by the employee to disconnect and for a policy on the same.
 - iii. The Bill does not limit any fundamental rights and freedoms as provided under the Constitution.
 - iv. Under the Fourth Schedule to the Constitution, Counties are mandated to implement national labour standards and employment policy in the Counties. This is therefore a Bill that concerns Counties in terms of Article 110(1)(a) of the Constitution and Standing Orders.
 - v. The Bill is not a money bill within the meaning of Article 114 of the Constitution and its enactment shall not occasion additional expenditure of public funds.

2.3 Public participation in the review of the Bill

- vi. 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"
- vii. In line with the Constitution and Standing Orders, the Committee in the local daily newspapers of 25th August, 2023 invited the public to make representations on the Bill as per annexure 2 of the report. The Committee received ten (10) written submissions on the Employment (Amendment) (Senate Bill No. 11 of 2022).
- viii. In addition to the request for memoranda from the public, the following Stakeholders were requested to submit views to the Committee:

- i. Office of Attorney-General and Department of Justice
- ii. State Department for Public Service
- iii. State Department for Labour and Skills Development
- iv. Public Service Commission
- v. Law Society of Kenya
- vi. Kenya Law Reform Commission
- vii. Central Organization of Trade Unions Kenya
- viii. Katiba Institute
- ix. Federation of Kenya Employers (FKE)
- x. Kenya Private Sector Alliance (KEPSA)

ix. The following stakeholders submitted their memoranda to the Committee: -

- i. State Department for Labour and Skills Development
- ii. Public Service Commission
- iii. Council of Governors
- iv. Law Society of Kenya
- v. Kenya Law Reform Commission
- vi. Federation of Kenya Employers (FKE)
- vii. Kenya Association of Manufacturers (KAM)
- viii. Kenya Private Sector Alliance (KEPSA)
- ix. Central Organization of Trade Unions (COTU-(K))
- x. The National Council of NGOs

PART III

3.0 SUBMISSIONS FROM STAKEHOLDERS

3.1 Submissions by Sen. Samson Cherarkey, M.P Sponsor of the Bill

Sen. Samson Cherarkey, M.P, sponsor of the Bill, appeared before the Committee on Thursday 17th October, 2023 and submitted as follows-

9. 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. The 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.
10. In addition, the Bill seeks to improve productivity by ensuring that the right to family and privacy is observed, improve employee-employer relationship and ensuring that the Kenyan labour market is in tandem with the changing global world of work.
11. The Committee was also briefed on implementation of the right to disconnect in other jurisdictions. Countries highlighted include;
 - i. France, where employers are legally required to negotiate agreements with unions for a right to disconnect from technology after working hours.
 - ii. Portugal, where a new labour law imposed a duty on employers to refrain from contacting employees outside regular working hours.
 - iii. Belgium, where employers must include the right to disconnect in collective bargaining agreements or work rules.
12. Further, 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.

3.2 State Department for Labour and Skills Development.

State Department for Labour and Skills Development in their oral and written presentations submitted as follows-

13. Section 27A (2) be amended to provide for the rules guiding circumstances under which an employer may contract an employee during out of work hours, use of electronic devices to send or receive information messages or any digital related communication during out of work hours and circumstances under which the right to disconnect may be waived stipulated in the employment contract or collective bargaining agreement.
14. The word "section" in section 27A (4) be deleted and substituted with the word "subsection". The justification is to prevent confusion with section 10 of the Employment Act.
15. The Bill be amended to include a definition of "emergency" in section 27A (5). The justification is to ensure that the word "emergency" is clear and concise to prevent misinterpretation.

16. The Bill be amended by inserting “2007” after Labour Relations Act. The justification is to ensure correct quoting of the Labour Relations Act, 2007.
17. Section 27A (9) should be amended by deleting the word “person”, and inserting the words “Employer or his agent”, and by deleting the words “Five hundred thousand shillings” and substituting with the words “One Hundred Thousand Shillings” deleting “One Year” and substituting with “6 months”. The justification is that the amount and sentence is punitive and should be reduced to align with the Employment Act, 2007.
18. The Bill be amended by inserting “employment policy or CBA” after contract of employment in section 27A (10a). The justification is to ensure that the term out of work hours covers all categories of employees.
19. Section 27A (10)(b) be amended by inserting “employment contract and Collective Bargaining Agreement” after employment policy. The justification is to ensure that the right to disconnect covers all categories of workers.
20. Further, section 27 A (1) be amended by inserting 27A (10)(c) sub-paragraph (c) to include a definition of the word “emergency”. The justification is to provide clarity in the meaning of the word “emergency” as used in this section and prevent ambiguity and abuse of the term by employers.

3.3 The Public Service Commission

The Public Service Commission in its oral and written presentations submitted that the Bill be rejected in its entirety. Its reasons are listed as follows-

21. It does not consider the changing work environment;
22. Current work trends where work is not measured in terms of the hours of work but as of output and achievement of employment target deliverables;
23. An existing government policy allowing for flexible work arrangements such as work from home arrangements.
24. The current move to source for online employment opportunities by the government will render this provision not progressive.
25. Issues raised by the bill may be addressed by way of policy.
26. Matters of compensation for extra time worked have already been provided for both in the Employment Act and policy.
27. The amendment does not provide for ways in which the employee may compensate the employer where the employee leaves work early while also not meeting work targets.
28. That employment is a civil relationship and should therefore not attract criminal liability.

3.4 Council of Governors

- The Council of Governors in their written presentations, recommended the enactment of the amendment and noted that the Bill;
 - 29. Seeks to expand the protection of employee from burnout as espoused in section 10 (2) (g) of the Employment Act;
 - 30. Requires an institution with more than ten (10) employees to develop a policy to actualize the provisions, within their context; and
 - 31. Does not apply to the provisions of essential services specified under section 81 of the Labour Relations Act.

3.5 The Law Society of Kenya

The Law Society of Kenya submitted as follows-

- 32. The Society recommended the enactment of this Bill with an amendment that proposes the term “emergency” be defined in section 27A (5). The justification is to prevent the abuse of the limitation imposed on exercising this right and also to shield the employees who choose not to respond on the basis that the situation is not an emergency.
- 33. Further the Bill should provide for the modalities of compensation including the amount of compensation and the relief available to an employee who is not compensated. The justification is to cure the ambiguities present, with respect to the mode of compensation and the remedies available in the event of non-compensation of an employee.

3.6 Kenya Law Reform Commission

The Kenya Law Reform Commission submitted as follows-

- 34. The Commission recommended the enactment of the Bill with an amendment to insert a sub-clause delegating legislative power to the relevant Cabinet Secretary to make regulations which will provide clarity on aspects such as “nature of compensation”, “emergency”, and “out of work hours”. The justification is that this would ensure clarity on aspects such as the “nature of compensation”, “emergency”, and “out of work hours”.

Federation of Kenya Employers

- 35. The Federation of Kenya Employers submitted that it does not support the enactment of the amendment for the reasons that:
 - i. The proposed amendments not only present radical changes to the Employment Act 2007 but also introduce new stringent measures that will curtail the prerogative to manage enterprises by the owners. This will automatically pose a challenge to Industrial Relations in Kenya;
 - ii. Employees administrative prerogatives should not be curtailed by legislation. The proposed amendment infringes on the employer's right to manage the enterprise on a day-to-day basis;
 - iii. The 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. The Decent Work Agenda Country Programme that Kenya has adopted, if properly implemented, will support

- formalisation of the informal sector and hence increase the revenue collection for the Government to meet its development priorities;
- iv. The Bill fails to meet the simple threshold of the ILO conventions. If passed, the Bill will create two centers of managerial power and ultimately disharmony and indiscipline at workplaces. The ILO has provided instruments which have been successful in managing working hours.
 - v. The Bill is too prescriptive in suggesting that employers should be required to develop policies to regulate phone usage by employees outside work hours. An employee has the right to keep their phone on or off if it is a personal phone;
 - vi. Compensation for overtime is already provided for in the General Wages Order to address situations where employees work beyond set hours. Most Collective Bargaining Agreements (CBAs) provide for flexibility in management and regulation of working time;
 - vii. The Bill will have an unintended adverse consequence on the employment of youths and women in the country. The sectors and nature of work to be highly impacted by this Bill are the low to middle level skilled and service sector operations. These areas predominantly employ youth and women;
 - viii. In addition, the Bill fails to recognize the changing concept of work, workspace and work hours. The emerging "new normal" emphasises more on results (output).

36. Further, the Federation submitted as follows-

37. Section 27A (2) be amended to provide for a period of six (6) months for putting in place of a policy to guide on the right to disconnect after the commencement date. The justification is that the six (6) months period will allow organisations to develop and engage internally on the policy formulation and socialising the same with employees.
38. The Bill should also clarify that the compensation is strictly for responding to communication outside working hours. The justification is that it is not clear how the compensation will be calculated. Further, management cadre employees are not compensated for working overtime as it is considered that their pay adequately covers for the extra hours of work.
39. The Labour Relations Act, 2007 should be amended to include a provision to include the provision of section 27A (2) and (3). The justification is that this will enable alignment between trade unions and employers in terms of the expectations of the Bill where applicable.
40. Section 27A (2) (4) be amended to include the terms and conditions that support out of work hours and right to disconnect. In addition, there is a need for a further clarification for section 27(A)(7), on the form or value of compensation. The justification is that the section lacks clarity and is problematic to employers that have established arrangements that allow employees to take alternative rest hours or time for any overtime incurred.
41. Section 27A (5) be amended to provide a clear definition of the word "emergency". The justification is that the section as currently worded is restrictive as there may be emergencies that do not fall within an employee's responsibilities but which an employer may require all employees to deal with.
42. Section 27A (6) be amended to include exceptions/circumstances where an employee can be contacted during out of work hours. Such as where an employee has not completed set tasks for the day. The justification is that the amendment would give employees a blanket immunity even where there are legitimate reasons for contacting them after hours.
43. There is a need for further clarification for section 27(A)(7), on the form or value of compensation. The justification is that the section lacks clarity and is problematic to employers that have established arrangements that allow employees to take alternative rest hours or time for any overtime incurred.

44. Section 27(A)(8) be amended to include banking services as essential services. The justification is that banking services should be included as essential services due to its integral role in the economy.
45. Section 27(A)(9) be amended or deleted as it seeks to criminalise employer-employee relationships. The justification is that the proposed section should be under section 49 and 50 of the Employment Act and that criminal elements should not be introduced to it.
46. Section 27 A (10) be amended to provide for situations where employees work across time zones or have flexi working hour arrangements. The justification is that there is a need to accommodate scenarios where the scope of work cannot be limited to prescribed work hours.

3.8 Kenya Association of Manufacturers

The Kenya Association of Manufacturers recommended the enactment of the Bill and submitted as follows-

47. The Bill should define the term “emergency” to mean a circumstance mandating expeditious attention and remedial intervention, characterised by one or more of the following occurrences—
 1. Injury;
 2. loss of life;
 3. damage to property; and
 4. significant interference any disruption of ordinary activities, inclusive of, but not restricted to matters encompassing—
 - i. safety;
 - ii. health;
 - iii. security;
 - iv. business-related critical situations as defined in the organisation’s policies and
 - v. medical emergencies
48. The justification is that the Bill has introduced the term ‘emergency’ as one of the justifications for the right to disconnect, therefore should be a definition for general guidance and avoid any ambiguity in meaning
49. The Bill should outline the extent of the compensation where an employee chooses to connect during the “disconnect hours”. This provision should be as per the employer’s compensation policies and applicable guidelines. The justification is that there is a need to include additional information guiding the extent of the compensation to avoid ambiguity in the provisions.

3.9 Kenya Private Sector Alliance

The Kenya Private Sector Alliance submitted as follow-

50. Section 27 A (2) be amended to provide a detailed guideline on issues of difference in time zones, emergency, time-bound tasks beyond the control of the employer and client demands. The justification is that the regulations can expound on the contents of the policy for uniformity and clarity of scope. This can then be reviewed from time to time.

51. The Labour Relations Act, 2007 be amended by expanding the list of essential services. The justification is that Section 81 of the Labour Relations Act, 2007 is limited to a few sectors considered in essential services.
52. On compensation for working outside of work hours, the Bill should be amended to include other ways of compensation such as off-hours. Further, there are already set modes of compensation for work done outside of designated work hours such as payment for overtime. The Bill needs to provide for what constitutes fair compensation.
53. On the scope of the Bill, the amendment should apply to all employers and not just those with more than ten employees.
54. Sub-section (6) be amended by inserting the following “any dismissal arising out of this shall be deemed to be unfair dismissal as per section 45 and 46 of the Employment Act, 2012.” The justification is that this would act as a deterrent to employers from reprimanding and or subjecting employees to disciplinary action if they disregard work-related communication during out of work hours.
55. Sub-section (7) be amended by adding a section that provides for punitive actions against an employee where they fail to respond during out of work hours where an “emergency occurs”. The justification is that with an exemption created for emergencies, there ought to be clear provisions on what happens to employees who refuse or neglect to respond to employers during such situations.
56. Section 81 of the Labour Relations Act, 2007 be amended through the provision of sub-section (8) to cover current and emerging sectors. The justification is that it may be worth considering if other industries or job types should also be exempted, such as those that require 24-hour coverage or emergency response. The right to disconnect will be difficult to implement across all sectors of the economy.
57. The Bill amended to provide for a fine to a maximum of KES 100,000 and the imprisonment to a term not exceeding six months. Further, an amendment to sub-section (9) to clarify who will be liable to pay the fine and go to prison. The justification is that the proposed fine and imprisonment is too punitive and may be detrimental to businesses and employers just trying to grow their business, or discourage the employment of persons outside of essential services for fear of contravening the right to disconnect. This will work against job creation targets and economic growth. Further, the Bill is unclear who will specifically be held culpable.

3.0 Central Organization of Trade Unions (COTU-(K))

58. Central Organization of Trade Unions – Kenya (COTU (K)), as the umbrella body of workers opposed the Bill citing lack of proper comprehensive analysis of the implication of the proposed amendments.
59. The amendment of the Employment Act, 2007 is not critical at this stage given the existing provisions under Article 41 (a) of the Constitution on fair remuneration and reasonable working conditions.
60. Further, any proposed amendments should adhere to the International Labour Organization Conventions 155 and 187 on occupational safety and health for workers.
61. In addition, the mandate of the tripartite National Labour Board as established in the Labour Institutions Act, 2007 entails legislation on labour and employment to be undertaken in a tripartite forum.
62. COTU (K) implored the National Labour Board to initiate amendments especially on the employment Act 2007 advising the Cabinet Secretary to enhance fair labour practices to regulate working hours including digital work and working from home arrangements.

4.1 The National Council of NGOs

63. The National Council of NGOs, a statutory umbrella organisation established under the NGOs Coordination Act 1990, submitted that it supported the proposed amendment to provide for the right to disconnect.
64. The Council emphasised the need to formulate a policy to provide for the guidelines on the right to disconnect to provide a policy and legislative framework for any proposed laws. In addition, the framework can have broader objectives to ensure work-life balance other than just disconnecting communication.
65. In its written submissions, the Council submitted that several policies can be implemented to regulate how and when employers may contact employees during out-of-work hours. They include;
- i. Communication Policy that outlines the preferred method of communication during non-working hours, such as email, phone calls, or text messages;
 - ii. Designated emergency contact for after-hours communication. These contacts are responsible for handling urgent work-related matters and can be reached only in case of emergencies;
 - iii. Work-life balance guidelines to encourage employees to maintain a healthy work-life balance by avoiding contacting them outside of their regular working hours unless it's absolutely necessary;
 - iv. Training and education to managers and employees on the importance of respecting boundaries and promoting a healthy work-life balance, emphasising the significance of limiting after-hours communication; and
 - v. Regular policy review to ensure they align with changing work practices and employee needs.
66. While the right to disconnect is increasingly being recognized in various jurisdictions as an essential labour protection measure, the Council highlighted the circumstances under which this right could be waived. These circumstances may include:
- i. Emergency situations where the employee's input or response is urgently required. This could include situations such as natural disasters, accidents, or other unforeseen events that require immediate action or decision-making from the employee;
 - ii. Voluntary agreement where employees may voluntarily agree to waive their right to disconnect, particularly if there is a specific project or situation that necessitates ongoing communication and engagement outside of regular working hours;
 - iii. Critical business needs where the nature of the job involves critical business operations that require employees to be available outside regular working hours, such as in certain roles within healthcare, security, or other essential services;
 - iv. Specific contractual obligations where certain job contracts or agreements require employees to be available or remain accessible beyond their regular working hours. However, these contractual obligations should be clear and reasonable, and should not lead to the exploitation or overworking of employees; and
 - v. Short-term projects with strict deadlines.
67. On compensation for employees who work during out-of-work hours, the Council indicated the various forms currently available such as overtime pay, compensatory time off, shift differentials, bonuses, flexible work arrangements and additional benefits.

PART IV

4.0 COMMITTEE OBSERVATIONS

68. The Committee while considering the Bill made the following observations-

- i. That the proposed amendment is noble as it will protect the right of employees as enshrined under article 41 on the right to fair labour practice by ensuring an employer pays their employee equal remuneration for work of equal value as per section 5(5) of the Employment Act (No. 11 of 2007). Article 43 also provides that all citizens have a right to the highest attainable standards of health and with the documented effects of lack of rest during non-work time such as stress, fatigue and burnout, interfering with an employee's health and well-being this amendment would enhance the protection of this right.
- ii. The right to disconnect may be provided for through policy, however, the Constitution under Article 94 provides for the power of Parliament to make provisions having the force of law in Kenya and therefore the enactment of a law on the right to disconnect is rightly before Parliament.
- iii. Notwithstanding, the term "emergency" should be clearly defined to prevent ambiguity. Further, it should be clear that an employee should first establish whether there is an emergency or not by answering the communication.
- iv. Not all scenarios that could constitute an emergency have been defined, some sectors require employees 24 hours a day which has not been defined.
- v. The lack of clear parameters of application of the right to disconnect makes it difficult to enforce this right. It is therefore important to define other parameters beside "emergency" parameters, such as defining the term "compensation" to create a means to easily enforce this right as it is backed by the right to fair labour practice under Article 41, which includes working within defined working hours and the right to privacy under Article 31 as is enshrined in the Constitution of Kenya, 2010.
- vi. To cure the mischief, the Bill can provide for delegating legislative power to the relevant Cabinet Secretary to make regulations which will provide clarity on aspects such as "nature of compensation", "emergency", "out of work hours" as provided for under international Labour Law and to accommodate changing trends in the workplace such as flexi-working hours of contracts that require employees to work with people in different time zones. This would then provide a guideline to govern policies to be enacted by employers.
- vii. The need to redraft and insert "2007" after the Labour Relations Act, to ensure correct quoting of the Labour Relations Act, 2007 in section 27A (8). Further, the word "section" in section 27A (4) be deleted and substituted with the word "subsection". So as to prevent confusion section 10 of the Employment Act, 2007 (Rev. 2012).
- viii. There is a need for a transitional clause of six (6) months to allow organisations to develop, engage internally on the policy formulation and socialising the same with employees.
- ix. Section 27A (7)(a) provides that where an employer contacts an employee during the period when there is no mutually agreed out of work hours, the employee shall not be obliged to respond and shall have the right to disconnect. The Committee noted that this may be detrimental to the

employer when faced with an emergency situation that needs urgent attention of the employee since the employee did not answer the communication to be informed of the situation and ascertain if it's an emergency or not.

- x. There is ambiguity in such instances where an employee has not completed set tasks for the day. The proposed amendment Section 27A (6) would give employees blanket immunity even where there are legitimate reasons for contacting them after hours.
- xi. Employment is a civil relationship and should therefore not attract criminal liability by imposing fines. The offence created to ensure compliance with this amendment is punitive and that it is unclear against whom it may be enforced against. An organisation or corporation is a legal person and is in the same position in relation to criminal responsibility and liability as a natural person.
- xii. The right to disconnect should cover all categories of workers and therefore Section 27A (10)(b) be amended by inserting "employment contract and Collective Bargaining Agreement" after employment policy, to effect this. Further development of a policy to govern the right to disconnect should apply to all employers, not just those with ten (10) or more employees.


PART V

5.0 COMMITTEE RECOMMENDATIONS

69. The Committee, having considered the Bill and taken into account the views and recommendations of the public and relevant stakeholders, resolves to recommend that this House **REJECTS** the Bill in its entirety.

70. The Justification is THAT:

- i. The Bill does not consider the changing work environment and current work trends where work is not measured in terms of the hours of work but as of output and achievement of employment target deliverables;
- ii. There is an existing government policy allowing for flexible work arrangements such as remote work and flexible hours (flexitime);
- iii. The current move to source for online employment opportunities by the government will render this provision not progressive;
- iv. The issues raised by the Bill may be best addressed by way of policy;
- v. Matters of compensation for extra time worked have already been provided for both in the Employment Act and policy; and
- vi. The amendment does not provide for ways in which the employee may compensate the employer where the employee leaves work early and does not meet work targets.

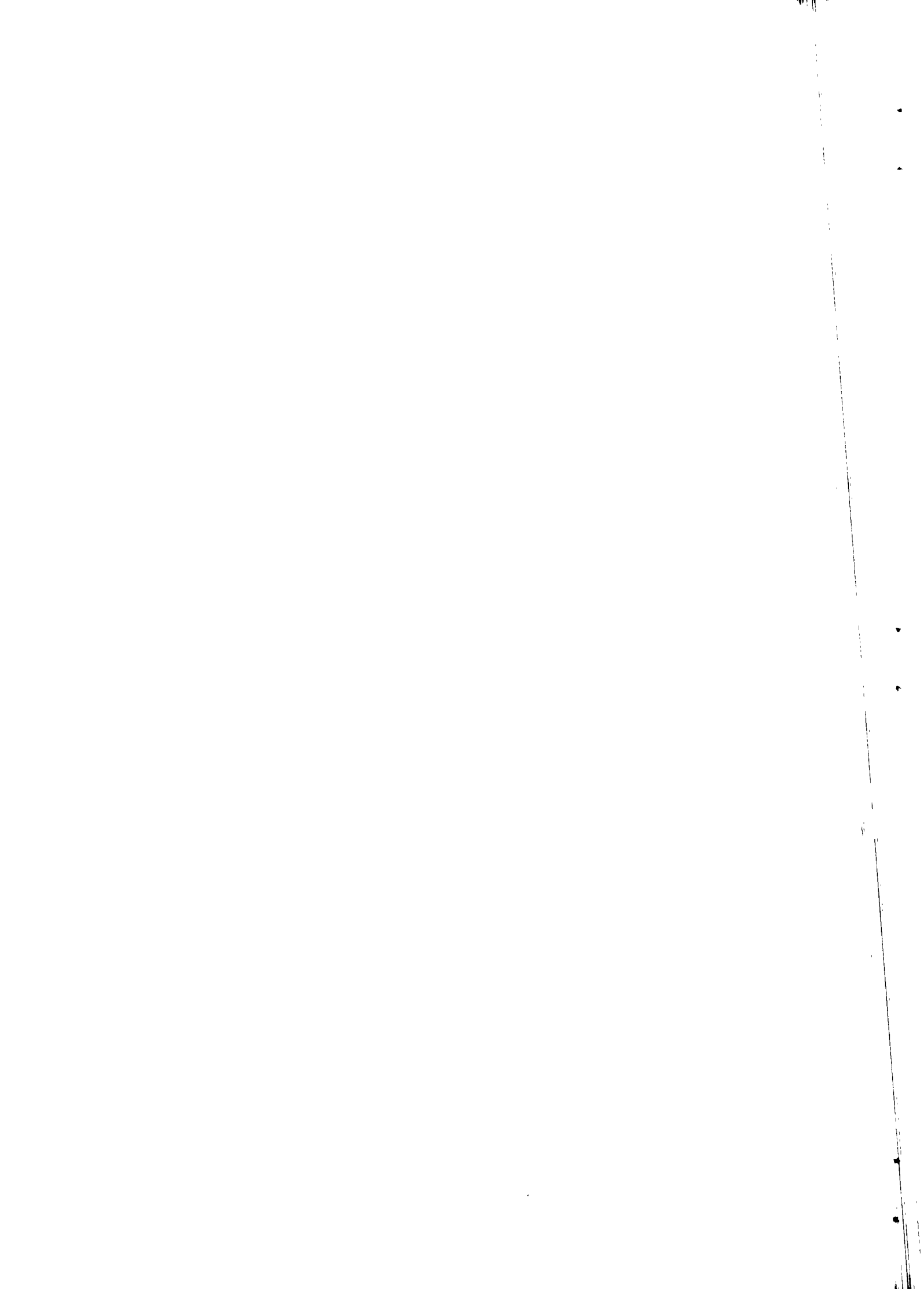
SIGNED.......... DATE 06/12/2022.....

HON. ERIC MUCHANGI KAREMBA, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON LABOUR

Annexure 1

Report Adoption List



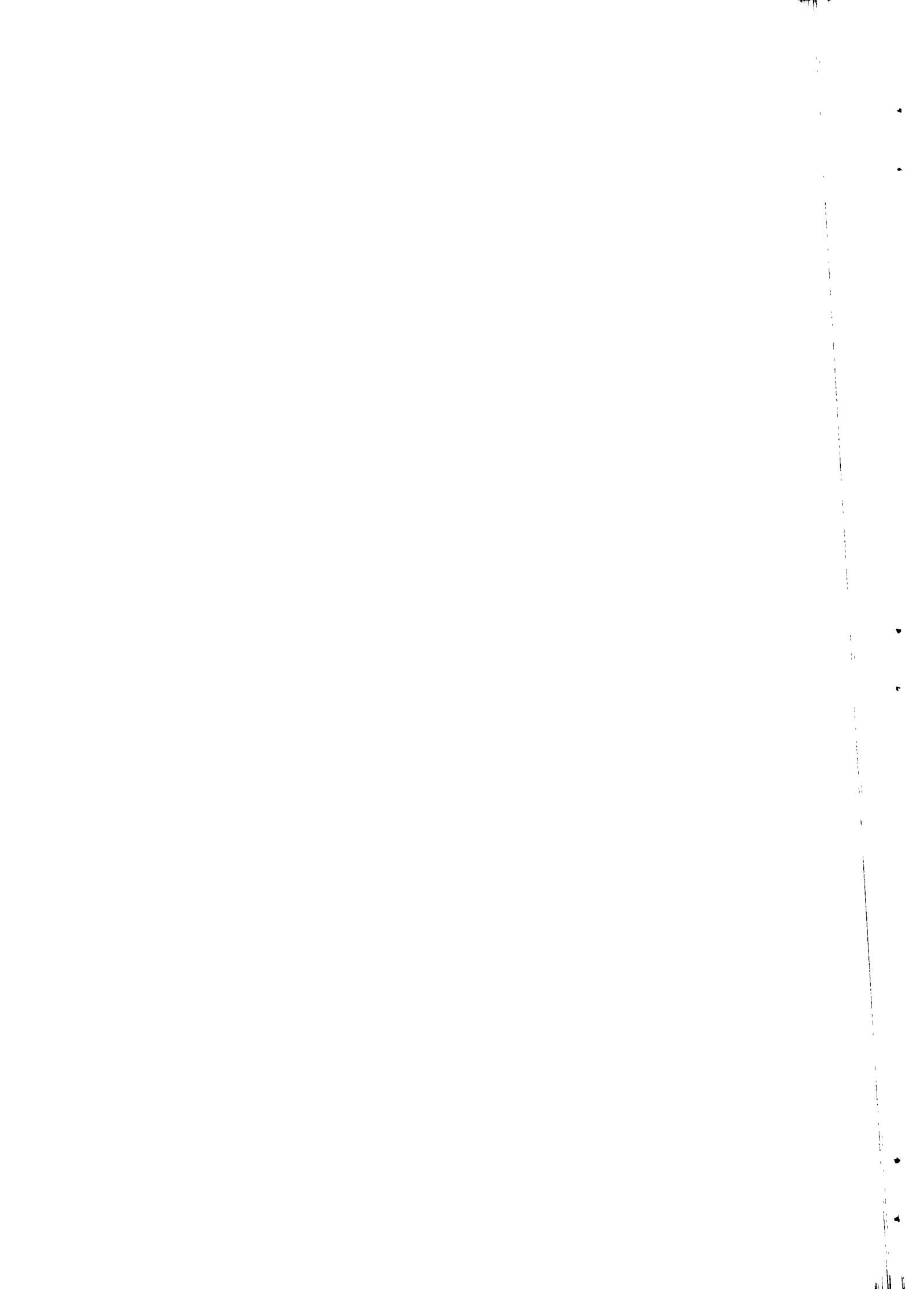


REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT-SECOND SESSION -2023
DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ADOPTION LIST

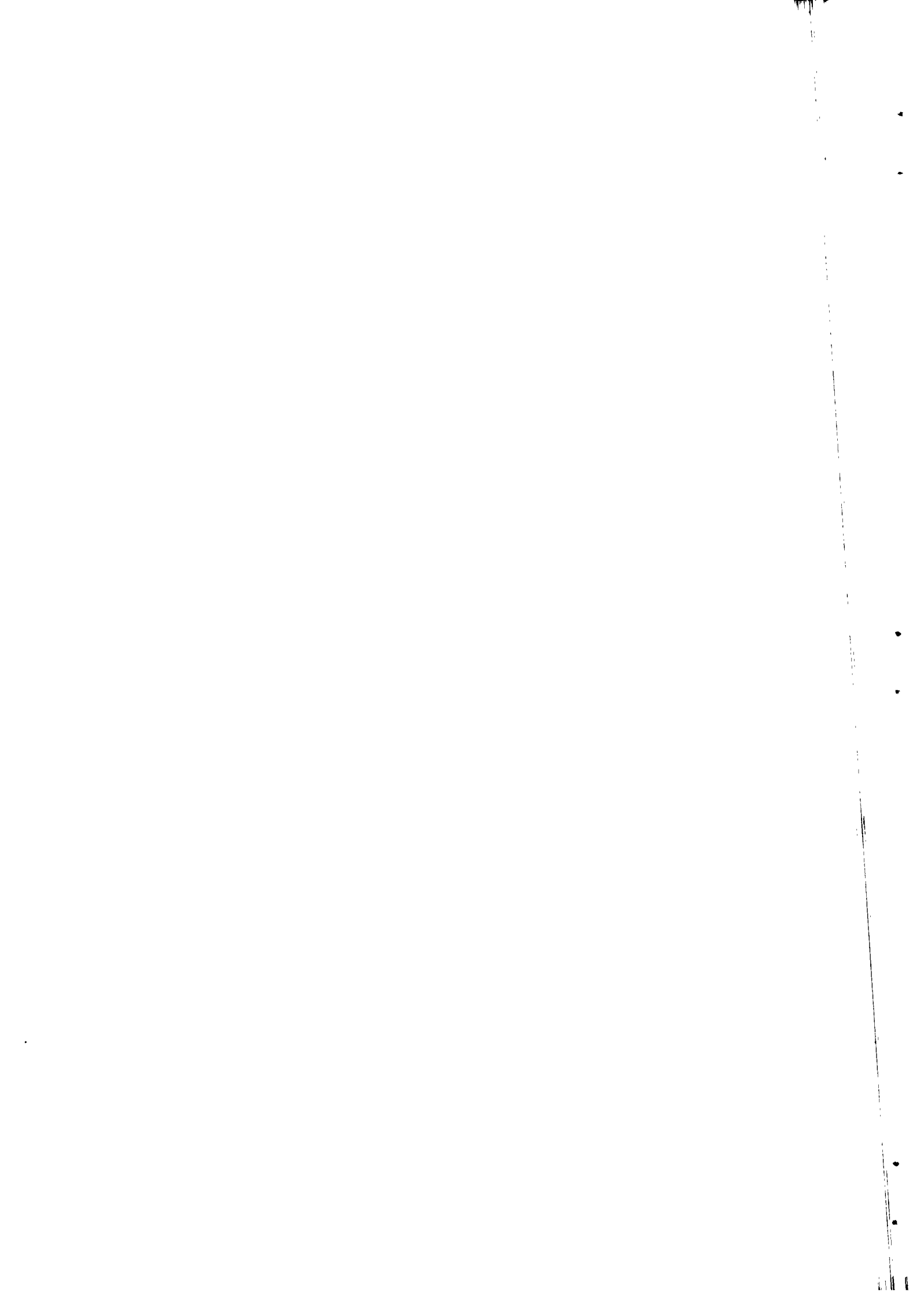
We, the members of the Departmental Committee on Labour, have pursuant to Standing Orders 199 and 216(5) (c), adopted this report on the Employment (Amendment) Bill (Senate Bill No. 11 of 2022) and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity. Date:

	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.	



Annexure 2

Minutes



MINUTES OF THE 75TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON THURSDAY 30TH NOVEMBER 2023 IN THE COMMITTEE ROOM 12, GROUND FLOOR, NEW SENATE WING, 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. 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. Kihungi Peter Irungu, M.P.
7. The Hon. Sankaire Leah Sopiato, M.P.

COMMITTEE SECRETARIAT

1. Ms. Rose M. Wanjohi - Senior Clerk Assistant
2. Mr. Fredrick Muthengi - Deputy Director PBO
3. Mr. Samuel Wanjiru - Clerk Assistant III
4. Ms. Fiona Githunguri - Legal Counsel II
5. Mr. Timothy Chiko - Research Officer III
6. Ms. Rehema Koech - Audio Officer III
7. Ms. Rinha Sainey - Media Relations Officer III
8. Mr. Allan Gituku - Serjeant at Arms

AGENDA

1. Prayers
2. Preliminaries.
3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business (*enclosed*);
6. **Consideration of the Draft Reports on:**
 - i. **The Salaries and Remuneration Commission (Amendment) Legislative Proposal 2023.**
 - ii. **The Employment (Amendment) Bill (Senate Bills No.11 of 2022)**
 - iii. **Status of Budget implementation for the Financial Year 2022/2023**
7. Any Other Business.
8. Adjournment.

MIN. NO.563 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at fourteen minutes to one o'clock and thereafter said the Prayer. This was followed by self-introductions.

MIN.NO.564 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This Agenda was deferred.

MIN.NO.565 NA/LABOUR/2023: MATTERS ARISING.

No matter arose.

MIN.NO.566 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE.

The following business has been committed to the committee;

1. The Employment (Amendment) Bill (Senate Bill No. 11 of 2022). The Bill, sponsored by Sen. Samson Cherarkey, seeks 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. The bill was read for the first time on 17th August 2023.

Status:

The advert requesting memoranda from the public was placed in the dailies on 25th August 2023. The Committee received views from stakeholders and met the sponsor of the Bill and key stakeholders on Tuesday 17th October 2023. The Committee met with the National Council of NGOs on Tuesday 14th November 2023. The Draft report was considered and adopted on 30th November 2023 for tabling in the House.

2. The Statute Law (Miscellaneous Amendments) (No. 2) (National Assembly Bill No. 68 of 2023). The Bill, sponsored by the Leader of Majority, seeks to make various amendments to various statutes including-
 - i. The Industrial Training Act (Cap. 237). The Bill seeks to amend the Industrial Training Act to provide that the date for remitting the training levy shall be the ninth day of the month in order to harmonise it with the period within which PAYE is remitted to the Kenya Revenue Authority
 - ii. The Employment Act, 2007 (No. 11 of 2007). The Bill seeks to amend the Employment Act, 2007, to exempt the National Intelligence Service from the application of the Act in the same manner as other security organs are exempted.

Status

The Bill was read for the first time on Wednesday, 15th November 2023. Advert requesting for Memoranda placed in the newspapers on 22nd November 2023. Committee has also written key to stakeholders for submission of views.

3. The Statute Law (Miscellaneous Amendments) (National Assembly Bill No. 67 of 2023). The Bill, sponsored by the Leader of Majority, seeks to make various amendments to various statutes including the National Employment Authority Act (No. 3 of 2016). The Bill seeks to amend the National Employment Authority Act, 2016, to cure inconsistencies in the Act and align it with the National Authority Human Resources Policy and Procedures Manual.

Status

The Bill was read for the first time on Wednesday, 15th November 2023. Advert requesting for Memoranda placed in the newspapers on 17th November 2023. Committee has also written to stakeholders for the submission of views

4. The Employment (Amendment) Bill, (National Assembly Bill No. 62 Of 2023 by Hon. Didmus Wekesa Barasa, MP. The Bill 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.

Status

The Bill was read a first time on 22nd November 2023. The committee placed the advert in the dailies on 27th November 2023 and has written to stakeholders for submission of memoranda.

5. The National Employment Authority (Amendment) Bill, 2023 (Senate Bills No 48 of 2023). The Bill, sponsored by Sen. Crystal Asige, seeks to introduce provisions that seek to protect the rights, welfare and well-being of Kenyans working overseas.

Status

The Bill was referred to the Joint Committee on Labour and Diaspora Affairs and Migrant Workers for processing on 27th November 2023 by the Hon. Speaker. Committee to place an advert in the dailies and write to stakeholders for submission of memoranda.

6. The Proposed Salaries and Remuneration Commission (Amendment), 2023 by Hon Didmus Barasa Wekesa, MP seeks to amend the Salaries and Remuneration Commission Act to provide that the chairperson and members other than those appointed under Article 230 (2) (d) of the Constitution, shall serve on a part time basis for a non-renewable term of six years. The bill also caps the meetings of the Commission at fifteen.

Status

The Committee wrote to the Kenya Law Reform Commission and the Attorney General for comments and recommendations.

The Committee met the Sponsor of the Legislative proposal on Tuesday 21st November 2023. The draft report was considered and adopted on 30th November 2023 for transmittal to the Hon. Speaker.

7. The Proposed Industrial Training (Amendment) Bill, 2023 sponsored by Hon. Joshua Odongo Oron, M.P. was referred to the Committee on 29th November 2023. The legislative proposal seeks to amend the provisions of the Industrial Training Act, (Cap.237), in order to recognise prior learning as a framework that acknowledges the skills, knowledge, performance outcomes and learning achieved, through informal and non-formal learning pathways.

Status

The Committee has written to the Kenya Law Reform Commission and the Attorney General for comments and recommendations.

8. Sessional Paper No. 5 on the National Policy on Labour Migration. The main objective of the National Policy on Labour Migration is to promote inclusive and sustainable development of the country through safe, orderly and productive labour migration. The paper was laid on the table of the House on 14th September 2023.

Status:

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. The Sitting proposed a retreat from 23rd to 26th November 2023 to further deliberate on the policy but it was postponed and new dates and place will be communicated in due time.

9. 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 Committee met on Tuesday 21st November 2023 with the Cabinet Secretary, Labour and Social Protection. The Cabinet requested more time to investigate the matter and submitted a detailed response on Monday, 27th November 2023. However, the Honourable Member was not satisfied with the response. The Committee proposed a fact-finding visit to the two mentioned companies in Mombasa from 7th to 10th December 2023, which is awaiting approval.

10. Report on the status of Budget implementation FY 2022/23 for MDAs under the purview of the Committee.

Status:

The Committee met with the MDAs and independent Commissions on 9th and 10th August. Committee to consider the draft report on Wednesday 6th December 2023.

MIN. NO.567 NA/LABOUR/2023: CONSIDERATION OF THE DRAFT REPORT ON THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) LEGISLATIVE PROPOSAL 2023.

Ms. Rose Wanjohi, Senior Clerk Assistant, briefed the Committee on the Salaries and Remuneration Commission (Amendment) Legislative Proposal 2023.

The Legislative Proposal seeks to amend the Salaries and Remuneration Commission Act, 2011 to provide that the Chairperson and members of the Commission, other than those appointed under Article 230 (2) (d) of the Constitution, shall serve on a part time basis for a non-renewable term of six years. Currently, the provision provides for service on a full-term basis. The Bill also caps the meetings of the Commission at fifteen.

The Committee was further briefed on the submissions by the stakeholders.

Hon Didmus Barasa Wekesa, MP, sponsor of the proposal, submitted that the mandate of the Commissions, as provided for in Article 230(4) of the Kenyan Constitution, does not warrant the Commissioners to serve on a full-time basis. Further, the Sponsor informed the Committee that the Commission is served by a qualified and competent full-time secretariat which is charged with the roles of technical evaluation and advisory.

Therefore, the Bill seeks to reduce the operational costs associated with the full-term running of the Commission. The justification is that the functions of the Commission are periodic, the chairperson and members of the Commission are not required to perform their duties on a full-term basis

Further, Article 250 (5) of the Constitution provides that a member of a commission may serve on a part-time basis. The Sponsor reiterated the need to anchor this provision in the Salaries and Remuneration Commission Act (No. 10 of 2011)

The Kenya Law Reform Commission submitted that Bill should clarify whether the persons appointed under Article 230(2)(d), are expected to serve on a full- time basis, unlike the rest of the persons appointed under Article 230 (2) (a) (b) (c) (e) of the Constitution.

Further, it is not clear why the persons to be appointed under Article 230(2)(e) are proposed to have a different tenure from persons to be appointed under Article 230(2)(d), yet the appointing authorities particularly under 230(2)(d)(i) are persons of equal status.

The Office of the Attorney General submitted that the Bill does not raise legal or constitutional concerns. It, however, lacks transitional provisions to facilitate the transition of current full-term Commissioners to part-time.

Committee Observation

While considering the Legislative Proposal, the Committee made the following observations:

- i. The Memorandum of Objects and Reasons states that the reason for conversion from full term to part-time basis is to reduce the operational costs due to the periodic nature of the functions of the Salaries and Remuneration Commission;
- ii. The proposed amendment may result in discrimination which is against Article 27 of the Constitution, on equality and freedom from discrimination due to different terms for members of the Commission appointed under Article 230(2)(d); and
- iii. The proposal to cap the annual meetings of the Commission at fifteen, with the possibility of additional meetings under justifiable grounds, contradicts the Mwongozo Code of Governance for board and committee meetings. The Code provides for at least four meetings annually and not more than four months should elapse between the date of one meeting and the date of the next meeting.
- iv. Therefore, having a cap of fifteen meetings annually goes above the recommended limit and intervals. This is also inconsistent with the Bill's objective to reduce the operational costs of the Commission.
- v. The proposed amendment will not affect the remuneration and benefits of the current commissioners (Article 250 (8)) in addition their appointment terms are staggered over time for purposes of ensuring quorum.

Committee Recommendation

Having considered the submissions on the legislative proposal recommends that the Bill be published with the following recommendations:

- i. To retain the provisions of the Mwongozo Code of Governance for board and committee meetings as provided for in the Second Schedule of the Salaries and Remuneration Commission Act, 2011. The Commission shall have at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting;
- ii. To have a transition clause to ensure a smooth transition of terms of service of existing full-time Commissioners for effective implementation of the proposed new terms; and
- iii. Amendment to exempt persons to be appointed or ex-officio members under Article 230(2) (e) from serving on a part-time basis. The justification is that the appointing authorities particularly under Article 230(2) (d) (i) are persons of equal status.

The Report was unanimously adopted as proposed by Hon. Fabian Muli, MP, Vice Chairperson and seconded by Hon. Amina Dika, MP

MIN. NO. 568 NA/LABOUR/2023: CONSIDERATION OF THE DRAFT REPORT ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILLS NO.11 OF 2022)

Ms. Rose Wanjohi, Senior Clerk Assistant, guided the Committee through the draft report Employment (Amendment) Bill (Senate Bills No.11 Of 2022).

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.

The 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.

The Committee was further briefed on the stakeholder's submissions from:

- i. Sen. Samson Cherarkey, M.P., Sponsor of the Bill;
- ii. State Department for Labour and Skills Development;
- iii. Public Service Commission;
- iv. Council of Governors;
- v. Law Society of Kenya;
- vi. Kenya Law Reform Commission;
- vii. Federation of Kenya Employers (FKE);
- viii. Kenya Association of Manufacturers (KAM);
- ix. Kenya Private Sector Alliance (KEPSA);
- x. Central Organization of Trade Unions (COTU-(K); and
- xi. The National Council of NGOs

Committee Observation

The Committee while considering the Bill made the following observations-

- i. The proposed amendment is noble as it will protect the right of employees as enshrined under Article 41 on the right to fair labour practice by ensuring an employer pays their employee equal remuneration for work of equal value as per section 5(5) of the Employment Act (No. 11 of 2007). Article 43 also provides that all citizens have a right to the highest attainable standards of health and with the documented effects of lack of rest during non-work time such as stress, fatigue and burnout, interfering with an employee's health and well-being this amendment would enhance the protection of this right.
- ii. Notwithstanding, the term "emergency" should be clearly defined to prevent ambiguity. Further, it should be clear that an employer should first establish whether there is an emergency or not by answering the communication.
- iii. Not all scenarios that could constitute an emergency have been defined, some sectors require employees 24 hours a day which has not been defined.
- iv. The lack of clear parameters of application of the right to disconnect makes it difficult to enforce this right. It is therefore important to define other parameters beside "emergency" parameters, such as defining the term "compensation" to create a means to easily enforce this right as it is backed by the right to fair labour practice under Article 41, which includes working within defined working hours and the right to privacy under Article 31 as is enshrined in the Constitution of Kenya, 2010.
- v. To cure the mischief, the Bill can provide for delegating legislative power to the relevant Cabinet Secretary to make regulations which will provide clarity on aspects such as "nature of compensation", "emergency", "out of work hours" as provided for under international Labour Law and to accommodate changing trends in the workplace such as flexi-working hours of contracts that require employees to work with people in different time zones. This would then provide a guideline to govern policies to be enacted by employers.

- vi. The need to redraft and insert “2007” after Labour Relations Act, to ensure correct quoting of the Labour Relations Act, 2007 in section 27A (8). Further, the word “section” in section 27A (4) be deleted and substituted with the word “subsection”. So as to prevent confusion section 10 of the Employment Act, 2007 (Rev. 2012).
- vii. There is a need for a transitional clause of six (6) months to allow organisations to develop, engage internally on the policy formulation and socialising the same with employees.
- viii. The right to disconnect may be provided for through policy, however, the Constitution under Article 94 provides for the power of Parliament to make provisions having the force of law in Kenya and therefore the enactment of a law on the right to disconnect is rightly before Parliament.
- ix. Section 27A (7)(a) provides that where an employer contacts an employee during the period when there is no mutually agreed out of work hours, the employee shall not be obliged to respond and shall have the right to disconnect. The Committee noted that this may be detrimental to the employer when faced with an emergency situation that needs urgent attention of the employee since the employee did not answer the communication to be informed of the situation and ascertain if it’s an emergency or not.
- x. There is ambiguity in such instances where an employee has not completed set tasks for the day. The proposed amendment Section 27A (6) would give employees blanket immunity even where there are legitimate reasons for contacting them after hours.
- xi. Employment is a civil relationship and should therefore not attract criminal liability by imposing fines. The offence created to ensure compliance with this amendment is punitive and it is unclear against whom it may be enforced against. An organisation or corporation is a legal person and is in the same position in relation to criminal responsibility and liability as a natural person.
- xii. The right to disconnect should cover all categories of workers and therefore Section 27A (10) (b) be amended by inserting “employment contract and Collective Bargaining Agreement” after employment policy, to effect this. Further development of a policy to govern the right to disconnect should apply to all employers, not just those with ten (10) or more employees.

Committee Recommendation

The Committee, having considered the Bill and the stakeholder submissions, recommends that the House reject the Employment (Amendment) Bill (Senate Bills No.11 of 2022).

The Report was unanimously adopted as proposed by Hon. James Onyango, MP and seconded by Hon. Barasa Simiyu, MP

MIN. NO. 569 NA/LABOUR/2023: CONSIDERATION OF THE DRAFT REPORT ON THE STATUS OF BUDGET IMPLEMENTATION FOR THE FINANCIAL YEAR 2022/2023

The agenda was deferred

MIN. NO. 570 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose.

MIN. NO. 571 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at six minutes past two o’clock. The next meeting will be held on notice.

SIGNED..... DATE

(CHAIRPERSON)

MINUTES OF THE 63RD SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON TUESDAY, 17TH OCTOBER 2023 IN THE AMANI CONFERENCE ROOM, BOMA HOTEL, NAIROBI COUNTY AT 2:00 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. Kagesi Kivai Ernest Ogesi, M.P.
4. The Hon. K'Oyoo James Onyango, M.P.
5. The Hon. Kiti Richard Ken Chonga, M.P.
6. The Hon. Abdullahi Amina Dika, M.P.
7. The Hon. Chiforomodo Mangale Munga, M.P.
8. The Hon. Kihungi Peter Irungu, M.P.

APOLOGIES

1. The Hon. Lomwa Joseph Samal, M.P.
2. The Hon. Omwera George Aladwa, M.P.
3. The Hon. Wambilianga Catherine Nanjala, M.P.
4. The Hon. Aburi Donya Dorice, M.P.
5. The Hon. Barasa Patrick Simiyu, M.P.
6. The Hon. Sankaire Leah Sopiato, M.P.
7. The Hon. Siyoi Lillian Chebet, M.P.

IN ATTENDANCE

Honourable Member

1. Sen. Samson Cherarkey, M.P.

State Department for Labour and Skills Development

1. Mr. Shadrack M. Mwadime, Principal Secretary
2. Ms. Hellen A. Apiyo -Labour Commissioner
3. Mr. James Mwendwa-Chief State Counsel

Public Service Commission

1. Amb. Anthony M. Muchiri-Chairperson
2. Dr. Joyce K. Nyabuti, MBS- Commissioner
3. Ms. Joan A. Otieno, MBS- Commissioner
4. Ms. Jacqueline Manani-Director, Legal Services

Law Society of Kenya

1. Mr. Collins Odhiambo- Deputy CEO
2. Mr. Luyali Alumasa-Director of Legislation

COMMITTEE SECRETARIAT

1. Ms. Rose M. Wanjohi - Senior Clerk Assistant
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Mr. Fredrick Muthengi - Deputy Director PBO
4. Ms. Fiona Githunguri - Legal Counsel II

- | | | |
|-----------------------|---|--------------------------|
| 5. Mr. Timothy Chiko | - | Research Officer III |
| 6. Ms. Wambui Nyachae | - | Research Officer III |
| 7. Ms. Rehema Koech | - | Audio Officer III |
| 8. Ms. Alex Amwata | - | Hansard Officer |
| 9. Ms. Felistus Muiya | - | Public Relations Officer |

AGENDA

1. Prayers
2. Preliminaries.
3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business;
 - i. The Employment (Amendment) Act, 2022 (Senate Bill No. 11 of 2022)
 - ii. The proposed Salaries and Remuneration Commission (Amendment) Bill ,2023
 - iii. Sessional Paper No. 5 on The National Policy on Labour Migration
 - iv. Report on the status of Budget implementation FY 2022/23 for MDAs under the purview of the Committee.
6. Consideration of the Employment (Amendment) Bill (Senate Bill No. 11 Of 2022) with;
 - i. Ministry of Labour and Social Protection
 - ii. Public Service Commission
 - iii. Law Society of Kenya (LSK)
7. Any Other Business.
8. Adjournment.

MIN. NO.478 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at twenty minutes past two o'clock. This was followed by a prayer by The Hon. Kagesi Kivai Ernest Ogesi, M.P.

MIN.NO.479 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This Agenda item was deferred.

MIN.NO.480 NA/LABOUR/2023: MATTERS ARSISING.

There were no matters arising.

MIN.NO.481 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE.

The following business has been committed to the committee;

1. The Employment (Amendment) Senate Bill No. 11 of 2022. The Bill, sponsored by Sen. Samson Cherarkey, seeks 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. The bill was read a first time on 17th August 2023.

Status:

The advert requesting for memoranda from the public was placed in the dailies on 25th August ,2023. The Committee received views from stakeholders and meet the sponsor of the Bill and key stakeholders on Tuesday 17th October 2023.

2. The Proposed Salaries and Remuneration Commission (Amendment), 2023 by Hon Didmus Barasa Wekesa, MP seeks to amend the Salaries and Remuneration Commission Act to provide that the Chairperson and members other than those appointed under Article 230 (2) (d) of the Constitution, shall serve on a part time basis for a non-renewable term of six years. The bill also caps the meetings of the Commission at fifteen.

Status

The Committee wrote to the Kenya Law Reform Commission and the Attorney General for comments and recommendations. The Committee is scheduled to meet the Sponsor of the Legislative proposal and subsequently report to the Hon. Speaker.

3. Sessional Paper No. 5 on The National Policy on Labour Migration. The main objective of the National Policy on Labour Migration is to promote inclusive and sustainable development of the Country through safe, orderly and productive labour migration. The paper was laid on the table of the House on 14th September 2023.

Status:

The Joint Committee on Labour and Diaspora Affairs and Migrant Workers is scheduled to conduct a Joint Sitting on Thursday 19th October, 2023 to establish the terms of engagement in consideration of the Sessional Paper.

4. Report on the status of Budget implementation FY 2022/23 for MDAs under the purview of the Committee.

Status:

The committee met with the MDAs and independent Commissions on 9th and 10th August. Committee to schedule a meeting to consider the report.

MIN. NO. 482 NA/LABOUR/2023: SUBMISSIONS ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2022) BY THE STATE DEPARTMENT FOR LABOUR AND SKILLS DEVELOPMENT

Mr. Shadrack M. Mwadime, Principal Secretary, State Department for Labour and Skills Development accompanied by Ms. Hellen A. Apiyo, Labour Commissioner and Mr. James Mwendwa, Chief State Counsel appeared before the Committee and submitted as follows:

While there is no specific legislation on the right to disconnect in Kenya, the provisions in the labour laws that regulate working hours and rest periods provide a level of protection for employees' work-life balance and work-related communications outside of working hours. The laws aim to ensure reasonable working hours and protect employees' well-being, without explicitly addressing the right to disconnect in the digital age. The rights include, right to reasonable working hours, overtime compensation, rest periods, annual leave and public holidays.

Further, there are variations in the enforcement and adoption of work-life balance measures across Countries and industries. Some organizations in Kenya have implemented policies or guidelines to promote work-life balance and limit after-work communications to respect employees' personal time.

Consequently, it is important for employers to prioritize and comply with labor laws regarding work-life balance to create a healthy and productive work environment while avoiding legal and reputational risks.

Employers in Kenya may as a matter of practice, adopt various strategies to promote work-life balance among their employees. The strategies highlighted include:

- i. Flexible work arrangements

- ii. Clear communication and expectations
- iii. Implementation wellness programs that focus on physical and mental health,
- iv. Encouraging time off such as annual leaves
- v. Providing training to managers and supervisors on work-life balance.
- vi. Establishing boundaries for technology use
- vii. Senior leadership leading by example and prioritizing their own work-life balance

While some jobs or industries may require employees to be on-call or available outside of normal working hours due to operational needs, employers generally have a legal responsibility to respect employees' rest periods and provide reasonable work hours.

In some cases, work-life balance and the right to disconnect may be addressed through collective bargaining agreements, industry-specific regulations, or company policies rather than specific national laws. Additionally, there may be cultural and societal practices that influence work-life balance expectations in certain countries.

Globally, the International Labour Organization (ILO) does not have a specific convention that directly talks about the right to disconnect. However, the ILO has issued recommendations and guidelines related to work-life balance and flexible working arrangements that indirectly address the need to disconnect from work. ILO Recommendation No. 162 on Telework (2017) provides guidance on promoting work-life balance and specifies that employers should respect employees' rest periods and ensure they have the right to disconnect after work hours.

In conclusion, the State Department for Labour and Skills Development submitted that the proposed new Section 27A should be deleted entirely, giving the following reason:

- i. The Employment (Amendment) Bill, 2022 imposes practical difficulties in the organization of labour. The Government of Kenya being the main employer will most be inconvenienced – Presidential directives, Emergency, critical services, Essential services, security.
- ii. The National Labour Board, being the apex body that advises the Cabinet Secretary on all matters concerning employment and labour and legislation affecting employment and labour in Kenya, had not been involved in rendering its advice, prior to the consideration of the Employment (Amendment) Bill, 2022.
- iii. Tripartite Partners including the most representative of employers' dealing with labour, the Federation of Kenya Employers (FKE) and the most representative of trade unions (COTU-K) had not been privy in the formulation of the Employment (Amendment) Bill, 2022 as provided in the Labour Institutions Act, 2007 (No. 12 of 2007) of the laws of Kenya.
- iv. The Employment Act, 2007 is the principal law in Kenya for employment contracts that applies across the public and private sector and applies to domestic or household employment and the proposed Bill overregulates relationships that are elsewhere regulated especially on the digital economy.
- v. The proposed Employment (Amendment) Bill, 2022 deviates from the accepted practice in the formulation of labour laws in Kenya, and if allowed, it may herald an economic shut down in the country.

MIN. NO. 483 NA/LABOUR/2023: SUBMISSIONS ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2022) BY THE PUBLIC SERVICE COMMISSION (PSC)

Amb. Anthony M. Muchiri, Chairperson accompanied by Dr. Joyce K. Nyabuti, MBS, Commissioner; Ms. Joan A. Otieno, MBS, Commissioner and Ms. Jacqueline Manani, Director, legal services appeared before the Committee and submitted that the Bill should be rejected, giving the justification as highlighted below:

The Bill does not take into account the changing work environment. The current work trends where work is not measured in terms of the hours of work but as of output and achievement of employment target deliverables;

There is an existing government policy allowing for flexible work arrangements such as work from home arrangements. In addition, sourcing for online employment opportunities by the government will render this provision not progressive.

The Commission proposed that issues raised by the bill can be addressed by way of policy.

It pointed out that matters of compensation for extra time worked have already been provided for both in the Employment Act, 2007, Labour Institutions Act 2007 and various employment regulations.

The amendment does not provide for a way in which the employee may compensate the employer where the employee leaves work early while also not meeting work targets.

The Commission reported that employment is a civil relationship and should therefore not attract criminal liability.

MIN. NO. 484 NA/LABOUR/2023: SUBMISSIONS ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2022) BY THE LAW SOCIETY OF KENYA (LSK)

Mr. Collins Odhiambo, Deputy Chief Executive Officer accompanied by Mr. Luyali Alumasa, Director of Legislation appeared before the Committee and submitted that:

Mr. Collins Odhiambo reported that the Bill if based into law can promote healthier work environments, reducing burnout, and enhancing work-life balance. The benefits of introducing the right to disconnect include:

- i. Improved Work-Life Balance: implementation of the right to disconnect would help employees strike a healthier work-life balance, reducing stress and burnout. This, in turn, can enhance overall well-being and job satisfaction.
- ii. Increased productivity during working hours. Employees who have time to recharge are often more focused and efficient when they are on the job.
- iii. Protecting the right to disconnect can contribute to better mental health outcomes among the workforce. Reduced stress levels can lead to lower rates of anxiety and depression, resulting in a more resilient and mentally healthier workforce.
- iv. Clear policies regarding the right to disconnect can lead to more positive employer-employee relationships. When employees feel their well-being is valued, they are more likely to engage in their work and remain loyal to their employers.
- v. Implementing the right to disconnect in Kenyan law would provide legal clarity for both employees and employers, reducing disputes and legal challenges related to excessive working hours or unreasonable demands outside of regular work times.

- vi. Implementing the right to disconnect will align the labour laws in Kenya with International best practices as applied in other countries such as France. Kenya will therefore demonstrate its commitment to staying abreast with global labour standards and promoting employee well-being.
- vii. The proposed amendment will align with several constitution requirements including Article 41 that seeks to protect employees from exploitative work conditions and Article 43 that guarantees every person to the right to the highest attainable standards of health.

Further, the Law Society of Kenya proposed that the term “emergency” be defined to prevent the abuse of the limitation imposed on exercising the right and also to shield the employees who choose not to respond on the basis that the situation was not an emergency.

The Bill should provide for the modalities of compensation including the amount of compensation and the relief available to an employee who is not compensated. This will cure the ambiguities present, with respect to the mode of compensation and the remedies available in the event of non-compensation of an employee.

Committee Observations

The Committee having received submissions from the stakeholders, made the following observations;

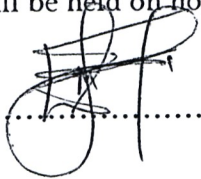
1. The Committee queried on the adequacies of the current provisions of the Constitution and Labour laws to deal with labour issues. The Committee was informed that the existing provisions are sufficient but no adequate. The Law Society of Kenya underscored the need for continuous legislation and review of existing laws to ensure control and adherence.
2. The employment is a civil relationship between employers and employees. Employees performs work or services under certain conditions in return for fair remuneration. Further, the terms of engagement are stipulated in the employment contract, Collective Bargaining Agreements and Human resources policies and manuals.
3. The proposed amendment does not contain provisions that provides for upward communication where the communication originates from the employee to management in case of emergencies. The Bill only provides that where an employer contacts an employee during the period when there is no mutually agreed out of work hours, the employee shall not be obliged to respond and shall have the right to disconnect; and may choose to respond, for which the employee shall be entitled to compensation.

MIN. NO. 485 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose.

MIN. NO. 486 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

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

SIGNED.......... DATE 24/10/2023

(CHAIRPERSON)

MINUTES OF THE 62ND SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON TUESDAY, 17TH OCTOBER 2023 IN THE AMANI CONFERENCE ROOM, HOMA HOTEL, NAIROBI COUNTY 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. Kagesi Kivai Ernest Ogesi, M.P.
4. The Hon. K'Oyoo James Onyango, M.P.
5. The Hon. Kiti Richard Ken Chonga, M.P.
6. The Hon. Abdullahi Amina Dika, M.P.
7. The Hon. Chiforomodo Mangale Munga, M.P.
8. The Hon. Kihungi Peter Irungu, M.P.

APOLOGIES

1. The Hon. Lomwa Joseph Samal, M.P.
2. The Hon. Omwera George Aladwa, M.P.
3. The Hon. Wambilianga Catherine Nanjala, M.P.
4. The Hon. Aburi Donya Dorice, M.P.
5. The Hon. Barasa Patrick Simiyu, M.P.
6. The Hon. Sankaire Leah Sopiato, M.P.
7. The Hon. Siyoi Lillian Chebet, M.P.

IN ATTENDANCE

Honourable Member

1. Sen. Samson Cherarkey, M.P.

Central Organisation of Trade Unions (COTU)

1. Mr. Albert Njeru - Executive Board Member

Federation of Kenya Employer (FKE)

1. Ms. Jacqueline Mugo, EBS, MBS, OGW - Executive Director
2. Mr. Michael Macharia – Deputy National Chairperson
3. Ms. Grace Kaome -Human Resource and Administration Manager

Kenya Private Sector Alliance (KEPSA)

1. Ms. Joyner Okonjo- Legal Advisor

COMMITTEE SECRETARIAT

1. Ms. Rose M. Wanjohi - Senior Clerk Assistant
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Mr. Fredrick Muthengi - Deputy Director PBO
4. Ms. Fiona Githunguri - Legal Counsel II
5. Mr. Timothy Chiko - Research Officer III
6. Ms. Wambui Nyachae - Research Officer III
7. Ms. Rehema Koech - Audio Officer III
8. Ms. Alex Amwata - Hansard Officer

AGENDA

1. Prayers
2. Preliminaries.
3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business;
 - i. The Employment (Amendment) Act, 2022 (Senate Bill No. 11 of 2022)
 - ii. The proposed Salaries and Remuneration Commission (Amendment) Bill ,2023
 - iii. Sessional Paper No. 5 on The National Policy on Labour Migration
 - iv. Report on the status of Budget implementation FY 2022/23 for MDAs under the purview of the Committee.
6. **Consideration of the Employment (Amendment) Bill (Senate Bill No. 11 of 2022) with;**
 - i. **Sen. Samson Cherarkey, M.P (Sponsor of the Bill)**
 - ii. **Central Organization of Trade Unions (COTU)**
 - iii. **Federation of Kenya Employers (FKE)**
 - iv. **Kenya Private Sector Alliance (KEPSA)**
7. Any Other Business.
8. Adjournment.

MIN. NO.468 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at forty two minutes past twelve o'clock and said the Prayer.

MIN.NO.469 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This Agenda item was deferred.

MIN.NO.470 NA/LABOUR/2023: MATTERS ARSISING.

There were no matters arising.

MIN.NO.471 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE.

The following business has been committed to the Committee;

1. The Employment (Amendment) Senate Bill No. 11 of 2022. The Bill, sponsored by Sen. Samson Cherarkey, seeks 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. The bill was read a first time on 17th August 2023.

Status:

The advert requesting for memoranda from the public was placed in the dailies on 25th August, 2023. The Committee received views from stakeholders and met the sponsor of the Bill and key stakeholders on Tuesday 17th October 2023.

2. The Proposed Salaries and Remuneration Commission (Amendment),2023 by Hon Didmus Barasa Wekesa, MP seeks to amend the Salaries and Remuneration Commission Act to provide that the chairperson and members other than those appointed under Article 230 (2) (d) of the Constitution, shall serve on a part time basis for a non-renewable term of six years. The bill also caps the meetings of the Commission at fifteen.

Status

The Committee wrote to the Kenya Law Reform Commission and the Attorney General for comments and recommendations. Committee is scheduled to meet the Sponsor of the Legislative proposal and subsequently report to the Hon. Speaker.

3. Sessional Paper No. 5 on the National Policy on Labour Migration. The main objective of the National Policy on Labour Migration is to promote inclusive and sustainable development of the country through safe, orderly and productive labour migration. The paper was laid on the table of the House on 14th September 2023.

Status:

The Joint Committee on Labour and Diaspora Affairs and Migrant Workers is scheduled to conduct a Joint Sitting on Thursday 19th October, 2023 to establish the terms of engagement in consideration of the Sessional Paper.

4. Report on the status of Budget implementation FY 2022/23 for MDAs under the purview of the Committee.

Status:

The committee met with the MDAs and independent Commissions on 9th and 10th August. Committee to schedule a meeting to consider the report.

MIN. NO. 472 NA/LABOUR/2023: Consideration of the Employment (Amendment) Bill (Senate Bill No. 11 of 2022) with Sen. Samson Cherarkey, M.P (Sponsor of the Bill)

Sen. Samson Cherarkey, Sponsor of the Bill, appeared before the Committee and submitted as follows:

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.

The 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.

In addition, the Bill seeks to improve productivity by ensuring that the right to family (Article 45) and privacy (Article 31) is observed, improve employee -employer relationship and ensuring that the Kenyan labour market is in tandem with the changing global world of work.

The Committee was also briefed on implementation of the right to disconnect in other jurisdictions. Countries highlighted include;

- i. France, where employers are legally required to negotiate agreements with unions for a right to disconnect from technology after working hours.
- ii. Portugal, where a new labour law imposed a duty on employers to refrain from contacting employees outside regular working hours.
- iii. Belgium, where employers must include the right to disconnect in collective bargaining agreements or work rules.

Further, under the Fourth Schedule to the Constitution, Counties are mandated to implement national labour standards and employment policy in the Counties. Since employees and the employers are domiciled in different 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.

MIN. NO. 473 NA/LABOUR/2023: SUBMISSIONS ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2022) BY THE FEDERATION OF KENYA EMPLOYERS (FKE)

Ms. Jacqueline Mugo, Executive Director, Federation of Kenya Employers accompanied by Mr. Michael Macharia, Deputy National Chairperson and Ms. Grace Kaome, Human Resource and Administration Manager appeared before the Committee and submitted that:

The Federation does not agree with the proposed amendments for the following reasons;

- i. The proposed amendments not only present radical changes to the Employment Act 2007 but also introduce new stringent measures that will curtail the prerogative to manage enterprises by the owners. This will automatically pose a challenge to Industrial Relations in Kenya.
- ii. The changes proposed in the amendment infringes on the employer's right to manage the enterprise on a day-to-day basis. Employers' administrative prerogatives should not be curtailed by legislation.
- iii. The 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. The Decent Work Agenda Country Programme that Kenya has adopted, if properly implemented, will support formalization of the informal sector and hence increase the revenue collection for the Government to meet its development priorities.
- iv. The Bill fails to meet the simple threshold of the ILO conventions. If passed, the Bill will create two centers of managerial power and ultimately disharmony and indiscipline at workplaces. The ILO has provided instruments which have been successful in managing working hours.
- v. The Bill is too prescriptive in suggesting that employers should be required to develop policies to regulate phone usage by employees outside work hours. An employee has the right to keep their phone on or off if it is a personal phone.
- vi. Compensation for overtime is already provided for in the Wages (General) Order to address situations where employees work beyond set hours. Most Collective Bargaining Agreements (CBAs) provide for flexibility in management and regulation of working time.
- vii. The Bill will have an unintended adverse consequence on employment of youths and women in the country. The sectors and nature of work to be highly impacted by this Bill are the low to middle level skilled and service sector operations. These areas predominantly employ youth and women.
- viii. In addition, the Bill fails to recognize the changing concept of work, workspace and work hours. The emerging "new normal" emphasizes more on results (output). The employer and the employee should be allowed to agree among themselves what arrangements work best for them.
- ix. International investors only invest when they are assured that the environment is conducive for them to conduct business (this would include the ease with which they can communicate and work with local talent). Multinational companies today account for a sizeable proportion of employers in Kenya. Such companies typically have staff that operate in different time zones around the world. Implementation of the proposed right to disconnect is likely to obstruct

and/or prevent collaboration between employees located in Kenya with colleagues in different time zones.

In conclusion, the Federation submitted that Parliament should refrain from passing the Bill on the basis that the proposed amendments will hamper the development and operations of the enterprises, job creation and the Labour market and jeopardize harmonious Industrial Relations in Kenya.

MIN. NO. 474 NA/LABOUR/2023: SUBMISSIONS ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2022) BY THE CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)

Mr. Albert Njeru, Executive Board Member appeared before the Committee and submitted as follows;

Central Organization of Trade Unions – Kenya (COTU (K)), as the umbrella body of workers opposes the bill citing lack of proper comprehensive analysis of the implication of the proposed amendments.

The amendment of the Employment Act, 2007 is not critical at this stage given the existing provisions under Article 41 (a) of the Constitution on fair remuneration and reasonable working conditions.

Further, any proposed amendments should adhere to the International Labour Organization Conventions 155 and 187 on occupational safety and health for workers.

In addition, the mandate of the tripartite National Labour Board as established in the Labour institutions Act, 2007 entails legislation on labour and employment to be undertaken in a tripartite forum. COTU (K) implored the National Labour Board to initiate amendments especially on the employment Act 2007 advising the Cabinet Secretary to enhance fair labour practices to regulate working hours including digital work and working from home arrangements.

MIN. NO. 475 NA/LABOUR/2023: SUBMISSIONS ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2022) BY THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

Ms. Joyner Okonjo, Legal Advisor appeared before the Committee and submitted as follows;

The Kenya Private Sector Alliance (KEPSA) recognized the Bill's objective to give employees the right to disconnect. With the rise of technology, employees are increasingly connected to their work outside of their normal working hours. This blurs the line between work and personal time and can lead to burnout and decreased productivity.

The right to disconnect will ensure that employees have the right to personal time and privacy, which is essential for their overall well-being. It will also ensure that employers have clear guidelines on when they can contact employees outside of their normal working hours and helps to promote a healthy work-life balance.

However, while appreciating the need to respect employees' personal time and privacy, the KEPSA submitted that the proposed changes would have significant negative impact on the private sector, particularly small and medium-sized enterprises (SMEs).

In addition, the Kenya Private Sector Alliance submitted that section 27 A (2) be amended to provide a detailed guideline on issues of difference in time zones, emergency, time-bound tasks beyond the control of the employer and client demands. The justification is that the regulations can expound on

the contents of the policy for uniformity and clarity of scope. This can then be reviewed from time to time.

The Labour Relations Act, 2007 should also be amended by expanding of the list of essential services. The justification is that section 81 of the Labour Relations Act, 2007 is limited to a few sectors considered as essential services.

On compensation for working outside of work hours, the Bill should be amended to include other ways of compensation such as off-hours. Of note is that there are already set modes of compensation for work done outside of designated work hours such as payment for overtime. The Bill needs to provide for what constitutes fair compensation.

On the scope of the Bill, the amendment should apply to all employers and not just those with more than ten employees.

KEPSA also called for an amendment that any dismissal arising out of the right to disconnect shall be deemed to be unfair dismissal as per section 45 and 46 of the Employment Act, 2012. This would act as a deterrent to employers from reprimanding and or subjecting employees to disciplinary action if they disregard work-related communication during out of work hours.

KEPSA called for punitive actions against an employee where they fail to respond during out of work hours where an "emergency occurs". An exemption is created for emergencies, and clear provisions on what happens to employees who refuse or neglects to respond to employers during such situations.

An amendment is required to cover current and emerging sectors. The justification is that may be worth considering if other industries or job types should also be exempted, such as those that require 24-hour coverage or emergency response. The right to disconnect will be difficult to implement across all sectors of the economy.

The institution proposed that the Bill is amended to reduce the fine to a maximum of KES 100,000 and the imprisonment to a term not exceeding six months. A further, there is need for clarity on who will be liable to pay the fine and go to prison. The justification is that the proposed fine and imprisonment is too punitive and may be detrimental to businesses and employers trying to grow their business, or discourage the employment of persons outside of essential services for fear of contravening the right to disconnect. This will work against job creation targets and economic growth. Further, the Bill is unclear who will specifically be held culpable.

Committee Observations

Having received the stakeholders' submissions, the Committee made the following observations;

- i. The stakeholders highlighted concern that the offence created to ensure compliance with this amendment is punitive and that it is unclear against whom it may be enforced against. An organization or corporation is a legal person and is in the same position in relation to criminal responsibility and liability as a natural person.
- ii. The right to disconnect may be provided for through policy and included in the employee contract of engagement and in collective bargaining agreements. In addition, there exist guidelines on overtime compensation. However, the Constitution under Article 94 provides for the power of Parliament to make provisions having the force of law in Kenya.
- iii. The right to disconnect is more easily implemented and effective within a traditional workday period that imposes rigid working hours. But increasingly due to changing world of work, employees desire flexible work arrangement to ensure work-life balance.

iv. There is a need for more research and study on the implementation of the right to disconnect in other jurisdictions. The structure of labour markets varies from one County to the other.

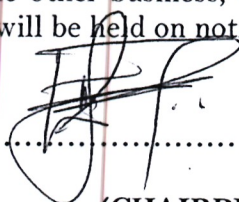
MIN. NO. 476 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose.

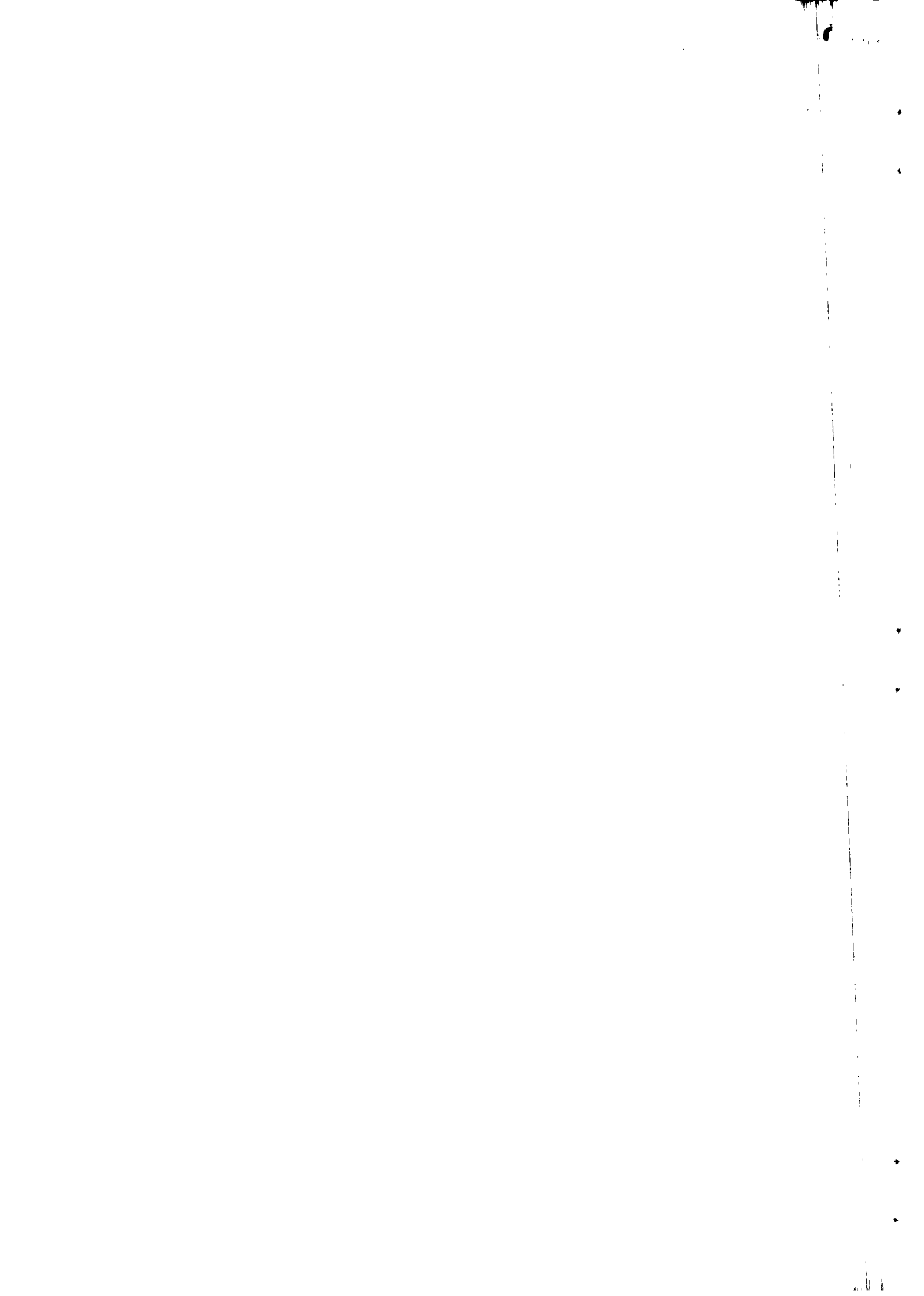
MIN. NO. 477 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

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

SIGNED..... DATE 24/10/2023.....



(CHAIRPERSON)



MINUTES OF THE 61ST SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON TUESDAY 3RD OCTOBER 2023 IN THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT PRECINCTS AT 12.00 PM

PRESENT

1. The Hon. Karemba Eric Muchangi Njiru, M.P. - Chairperson
2. The Hon. K'Oyoo James Onyango, M.P.
3. The Hon. Kiti Richard Ken Chonga, M.P.
4. The Hon. Sankaire Leah Sopiato, M.P.
5. The Hon. Siyoi Lillian Chebet, M.P.

APOLOGIES

1. The Hon. Muli Fabian Kyule, M.P. - Vice Chairperson
2. The Hon. Kagesi Kivai Ernest Ogesi, 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. Abdullahi Amina Dika, M.P.
7. The Hon. Aburi Donya Dorice, M.P.
8. The Hon. Chiforomodo Mangale Munga, M.P.
9. The Hon. Barasa Patrick Simiyu, M.P.
10. The Hon. Kihungi Peter Irungu, M.P.

COMMITTEE SECRETARIAT

1. Ms. Rose M. Wanjohi - Senior Clerk Assistant
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Mr. Fredrick Muthengi - Deputy Director PBO
4. Ms. Angela Musau - Legal Counsel II
5. Mr. Timothy Chiko - Research Officer III
6. Ms. Wambui Nyachae - Research Officer III
7. Ms. Rehema Koech - Audio Officer III
8. Ms. Rinha Sainey - Medial Relations Officer
9. Ms. Zainabu Wario - Serjeant at Arms

AGENDA

1. Prayers
2. Preliminaries.
3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business;
 - i. The Employment (Amendment) Act, 2022 (Senate Bill No. 11 of 2022)
 - ii. The proposed Salaries and Remuneration Commission (Amendment) Bill ,2023
 - iii. Sessional Paper No. 5 on The National Policy on Labour Migration
 - iv. Report on the status of Budget implementation FY 2022/23 for MDAs under the purview of the Committee.
6. Briefing and consideration of submissions on the Employment (Amendment) Bill (Senate Bill No. 11 of 2022) by Sen. Samson Cherarkey.
7. Any Other Business.
8. Adjournment.

MIN. NO.461 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at forty nine minutes past ten o'clock. This was followed by the Prayer by The Hon. Sankaire Leah Sopiato, M.P.

MIN.NO.462 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This Agenda item was deferred.

MIN.NO.463 NA/LABOUR/2023: MATTERS ARISING.

There were no matters arising.

MIN.NO.464 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE.

The following business has been committed to the committee;

1. The Employment (Amendment) Senate Bill No. 11 of 2022. The Bill, sponsored by Sen. Samson Cherarkey, seeks 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. The bill was read a first time on 17th August 2023.

Status:

The advert requesting for memoranda from the public was placed in the dailies on 25th August ,2023. The Committee has also written to key stakeholders requesting for submission of views.

2. The Proposed Salaries and Remuneration Commission (Amendment),2023 by Hon Didmus Barasa Wekesa, MP seeks to amend the Salaries and Remuneration Commission Act to provide that the chairperson and members other than those appointed under Article 230 (2) (d) of the Constitution, shall serve on a part time basis for a non-renewable term of six years. The bill also caps the meetings of the Commission at fifteen.

Status

The Committee wrote to the Kenya Law Reform Commission and the Attorney General for comments and recommendations.

3. Sessional Paper No. 5 on The National Policy on Labour Migration. The main objective of the National Policy on Labour Migration is to promote inclusive and sustainable development of the country through safe, orderly and productive labour migration. The paper was laid on the table of the House on 14th September 2023.

Status:

The Committee is scheduled to meet with the Cabinet Secretary, Ministry of Labour and Social Protection on Tuesday 26th September 2023 to deliberate on the same and report back to the House.

4. Report on the status of Budget implementation FY 2022/23 for MDAs under the purview of the Committee.

Status:

The committee met with the MDAs and independent Commissions on 9th and 10th August. Committee to schedule a meeting to consider the report.

MIN. NO. 465 NA/LABOUR/2023: BRIEFING AND CONSIDERATION OF SUBMISSIONS ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2022) BY SEN. SAMSON CHERARKEY

Ms. Angela Musau, Legal Counsel, briefed the Committee on the Employment (Amendment) Bill (Senate Bill No. 11 Of 2022) by Sen. Samson Cherarkey and submissions from the stakeholders on the same. The Bill has two clauses.

Clause 1 that provides for the short title of the Bill.

Clause 2 that provides for amendment by insertion of a new section 27A to provide for the right by the employee to disconnect and for a policy on the same.

The Committee was thereafter briefed on the written stakeholder submissions as follows:

a. Submissions by the Kenya Association of Manufacturers (KAM)

The Association recommended the enactment of the Bill with amendments to provide, THAT;

The Bill should define the term “emergency” to mean a circumstance mandating expeditious attention and remedial intervention, characterized by one or more of the following occurrences—

- 1) Injury;
- 2) loss of life;
- 3) damage to property; and
- 4) significant interference any disruption of ordinary activities, inclusive of, but not restricted to matters encompassing—
 - i. safety;
 - ii. health;
 - iii. security;
 - iv. business-related critical situations as defined in the organization’s policies and
 - v. medical emergencies

The justification is that the Bill has introduced the term ‘emergency’ as one of the justifications for the right to disconnect, therefore should be a definition for general guidance and avoid any ambiguity in meaning

The Bill should outline the extent of the compensation where an employee chooses to connect during the “disconnect hours”. This provision should be **as per the employer’s compensation policies and applicable guidelines**. The justification is that there is a need to include additional information guiding the extent of the compensation to avoid ambiguity in the provisions.

b. Submissions by the Kenya Law Reform Commission (KLRC)

The Commission recommended the enactment of the Bill with an amendment to insert a sub-clause delegating legislative power to the relevant Cabinet Secretary to make regulations which will provide clarity on aspects such as “nature of compensation”, “emergency”, and “out of work hours”. The justification is that this would ensure clarity on aspects such as the “nature of compensation”, “emergency”, and “out of work hours”.

c. Submissions by the Law Society of Kenya

The Law Society of Kenya recommended the enactment of this Bill with an amendment to propose that the term “emergency” be defined in section 27A (5). The justification is to prevent the abuse of the limitation imposed on exercising the right and also to shield the employees who choose not to respond on the basis that the situation is not an emergency.

Further the Bill should provide for the modalities of compensation including the amount of compensation and the relief available to an employee who is not compensated. The Justification is to cure the ambiguities present, with respect to the mode of compensation and the remedies available in the event of non-compensation of an employee.

d. Submissions by the Ministry of Labour and Social Protection - State Department for Labour and Skills Development

The Ministry of Labour and Social Protection submitted that Section 27A (2) should be amended to provide for the rules guiding circumstances under which an employer may contract an employee during out of work hours, use of electronic devices to send or receive information messages or any digital related communication during out of work hours and circumstances under which the right to disconnect may be waived stipulated in the employment contract or collective bargaining agreement. The word "section" in section 27A (4) be deleted and substituted with the word "subsection". The justification is to prevent confusion section 10 of the Employment Act.

The Bill should be amended to include a definition of "emergency" in section 27A (5). The justification is to ensure that the word "emergency" is clear and concise to prevent misinterpretation.

The Bill be amended by inserting "2007" after Labour Relations Act. The justification is to ensure correct quoting of the Labour Relations Act, 2007.

Section 27A (9) is amended by deleting the word "person", and inserting the words "Employer or his agent", and by deleting the words "Five hundred thousand shillings" and substituting with the words "One Hundred Thousand Shillings" deleting "One Year" and substituting with "6 months". The justification is that the amount and sentence is punitive and should be reduced to align with the Employment Act, 2007.

The Bill be amended by inserting "employment policy or CBA" after contract of employment in section 27A (10a). The justification is to ensure that the term out of work hours covers all category of employees.

Section 27A (10)(b) be amended by inserting "employment contract and Collective Bargaining Agreement" after employment policy. The justification is to ensure that the right to disconnect covers all categories of workers.

Further, section 27 A (1) be amended by inserting 27A (10)(c) sub-paragraph (c) to include a definition of the word "emergency". The justification is to provide clarity in the meaning of the word "emergency" as used in this section and prevent ambiguity and abuse of the term by employers.

e. Submissions by the Council of Governors

The Council of Governors recommended the enactment of the amendment and noted the Bill;

- i. Seeks to expand the protection of employee from burnout as espoused in section 10 (2) (g) of the Employment Act;
- ii. Requires an institution with more than ten (10) employees to develop a policy to actualize the provisions, within their context; and
- iii. Does not apply to the provisions of essential services specified under section 81 of the Labour Relations Act.

f. Submissions by the Federation of Kenya Employers (FKE)

The Federation of Kenya Employers submitted that it does not support the enactment of the amendment.

The Federation of Kenya Employers submitted, that section 27A (2) be amended to provide for a period of six (6) months for putting in place of a policy to guide on the right to disconnect after the commencement date. The justification is that the six (6) months period will allow organizations to develop and engage internally on the policy formulation and socializing the same with employees.

The Bill should also clarify that the compensation is strictly for responding to communication outside working hours. The justification is that it is not clear how the compensation will be calculated. Further, management cadre employees are not compensated for working overtime as it is considered that their pay adequately covers for the extra hours of work.

The Labour Relations Act, 2007 should be amended to include a provision to include the provision of section 27A (2) and (3). The justification is that this will enable alignment between trade unions and employers in terms of the expectations of the Bill where applicable.

Section 27A (2) (4) be amended to include the terms and conditions that support out of work hours and right to disconnect. In addition, there is a need for a further clarification for section 27(A)(7), on the form or value of compensation. The justification is that the section lacks clarity and is problematic to employers that have established arrangements that allow employees to take alternative rest hours or time for any overtime incurred.

Section 27A (5) be amended to provide a clear definition of the word "emergency". The justification is that the section as currently worded is restrictive as there may be emergencies that do not fall within an employee's responsibilities but which an employer may require all employees to deal with.

Section 27A (6) be amended to include exceptions/circumstances where an employee can be contacted during out of work hours. Such as where an employee has not completed set tasks for the day. The justification is that the amendment would give employees a blanket immunity even where there are legitimate reasons for contacting them after hours.

There is a need for further clarification for section 27(A)(7), on the form or value of compensation. The justification is that the section lacks clarity and is problematic to employers that have established arrangements that allow employees to take alternative rest hours or time for any overtime incurred.

Section 27(A)(8) be amended to include banking services as essential services. The justification is that banking services should be included as essential services due to its integral role in the economy.

Section 27(A)(9) be to amended or deleted as it seeks to criminalize employer-employee relationships. The justification is that hat the proposed section should be under section 49 and 50 of the Employment Act and that criminal elements should not be introduced to it.

Section 27 A (10) be amended to provide for situations where employees work across time zones or have flexi working hour arrangements. The justification is that there is need to accommodate scenarios where the scope of work cannot be limited to prescribed work hours.

g. Submissions by the Public Service Commission (PSC)

The Commission submitted that the Bill be rejected in its entirety. It reasons are listed as

1. It does not take into account the changing work environment;
2. Current work trends where work is not measured in terms of the hours of work but as of output and achievement of employment target deliverables;
3. An existing government policy allowing for flexible work arrangements such as work from home arrangements.
4. The current move to source for online employment opportunities by the government will render this provision not progressive.
5. Issues raised by the bill may be addressed by way of policy.
6. Matters of compensation for extra time worked have already been provided for both in the Employment Act and police.
7. The amendment does not provide for way which the employee may compensate the employer where the employee leaves work early while also not meeting work targets.
8. That employment is a civil relationship and should therefore not attract criminal liability.

h. Submissions by Kenya Private Sector Alliance (KEPSA)

The Kenya Private Sector Alliance submitted that section 27 A (2) be amended to provide a detailed guideline on issues of difference in time zones, emergency, time-bound tasks beyond the control of the employer and client demands. The justification is that the regulations can expound on the contents of the policy for uniformity and clarity of scope. This can then be reviewed from time to time.

The Labour Relations Act, 2007 be amended by expanding of the list of essential services. The justification is that Section 81 of the Labour Relations Act is limited to a few sectors considered in essential services.

On compensation for working outside of work hours, the Bill should be amended to include other ways of compensation such as off-hours. Further, there are already set modes of compensation for work done outside of designated work hours such as payment for overtime. The Bill needs to provide for what constitutes fair compensation.

On the scope of the Bill, the amendment should apply to all employers and not just those with more than ten employees.

Sub- section (6) be amended by inserting the following “any dismissal arising out of this shall be deemed to be unfair dismissal as per section 45 and 46 of the Employment Act, 2012.” The justification is that this would act as a deterrent to employers from reprimanding and or subjecting employees to disciplinary action if they disregard work-related communication during out of work hours.

Sub-section (7) be amended by adding a section that provides for punitive actions against an employee where they fail to respond during out of work hours where an “emergency occurs”. The justification is that with an exemption created for emergencies, there ought to be clear provisions on what happens to employees who refuse or neglects to respond to employers during such situations.

Section 81 of the Labour Relations Act, 2007 be amended through the provision of sub-section (8) to cover current and emerging sectors. The justification is that may be worth considering if other industries or job types should also be exempted, such as those that require 24-hour coverage or emergency response. The right to disconnect will be difficult to implement across all sectors of the economy.

The Bill amended to provide for a fine to a maximum of KES 100,000 and the imprisonment to a term not exceeding six months. Further, an amendment to sub-section (9) to clarify who will be liable to pay the fine and go to prison. The justification is that the proposed fine and imprisonment is too punitive and may be detrimental to businesses and employers just trying to grow their business, or discourage the employment of persons outside of essential services for fear of contravening the right to disconnect. This will work against job creation targets and economic growth. Further, the Bill is unclear who will specifically be held culpable.

Committee Observations

The Committee made the following observations;

1. The lack of clear parameters of application of the right to disconnect makes it difficult to enforce this right. It is therefore important to define various parameters, such as defining the term “emergency”, “compensation” to create a means to easily enforce this right as it is backed by the right to fair labour practice under Article 41, which includes working within defined working hours and the right to privacy under Article 31 as is enshrined in the Constitution of Kenya, 2010.
2. There is a need of enactment of an amendment to insert a sub-clause delegating legislative power to the relevant Cabinet Secretary to make regulations which will provide clarity on aspects such

as “nature of compensation”, “emergency”, “out of work hours” as provided for under international Labour Law and to accommodate changing trends in the work place such as flexi-working hours of contracts that require employees to work with people in different time zones. This would then provide a guideline to govern policies to be enacted by employers.

3. The proposed amendment will protect the right of employees as enshrined under article 41 on the right to fair labour practice by ensuring an employer pays their employee equal remuneration for work of equal value as per section 5(5) of the Employment Act (No. 11 of 2007). Article 43 also provides that all citizens have a right to the highest attainable standards of health and with the documented effects of lack of rest during non-work time such as stress, fatigue and burnout, interfering with an employee’s health and well-being this amendment would enhance the protection of this right.
4. The need to redraft and insert “2007” after Labour Relations Act, to ensure correct quoting of the Labour Relations Act, 2007 in section 27A (8). Further, the word “section” in section 27A (4) be deleted and substituted with the word “subsection”. So as to prevent confusion section 10 of the Employment Act, 2007 (Rev. 2012).
5. The stakeholders highlight concern that the offence created to ensure compliance with this amendment is punitive and that it is unclear against whom it may be enforced against. An organization or corporation is a legal person and is in the same position in relation to criminal responsibility and liability as a natural person.
6. There is a need for transitional clause of six (6) months to allow organizations to develop, engage internally on the policy formulation and socializing the same with employees.
7. The right to disconnect may be provided for through policy, however, the Constitution under Article 94 provides for the power of Parliament to make provisions having the force of law in Kenya and therefore the enactment of a law on the right to disconnect is rightly before Parliament.
8. Section 27A (7)(a) provides that where an employer contacts an employee during the period when there is no mutually agreed out of work hours, the employee shall not be obliged to respond and shall have the right to disconnect. The Committee noted that this may be detrimental to the employer when faced with an emergency situation that needs urgent attention of the employee since the employee did not answer the communication to be informed of the situation and ascertain if it’s an emergency or not.

The Committee resolved to invite the key stakeholders for detailed oral submission of views and recommendations.

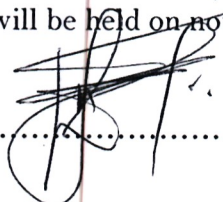
MIN. NO. 466 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose.

MIN. NO. 467 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

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

SIGNED..... DATE 29/10/2023.....



(CHAIRPERSON)



Annexure 3

**Newspaper advertisement inviting the public
to submit memoranda on the Bill**



National News

Lawsuit Court heard that CS Chelugui threatened to instruct the Kenya Ports Authority not to honour the agreement

Relief for Joho-linked firm as court stops state interference

Ministers barred from blocking deal with Autoports Nairobi Freight Terminal Ltd and Compact Freight System

BY SAM KIPLAGAT

The High Court has temporarily blocked the government from interfering in a deal that allows a company linked to former Mombasa Governor Hassan Joho to handle cargo destined for South Sudan.

Justice Alfred Mabeya issued an order restraining Transport Cabinet Secretary Kipchumba Murkomen and his Cooperatives and Micro and Small Enterprise Development counterpart Simon Chelugui from interfering with the existing arrangements between the government, Autoports Nairobi Freight Terminal Ltd and Compact Freight System.

The court heard that Mr Chelugui threatened to instruct the Kenya Ports Authority (KPA) not to honour the agreement.

"Having found that the petitioners' appointment was regular and having considered the evidence



Former Mombasa Governor Hassan Joho addresses journalists in Mombasa in late April. The High Court has barred the State from interfering with his cargo business. FILE INATION

Having found that the ... appointment was regular ... the petitioners would suffer prejudice if they were prevented from carrying out their mandate.

Justice Alfred Mabeya

“

adduced in support of the various investments made by the petitioners after their appointment, the petitioners would suffer prejudice if they were prevented from carrying out their mandate," Justice Mabeya said.

The judge certified the application as urgent and granted a conservatory order restraining the government from interfering

with the scheme pending the determination of the case. The companies, through lawyer Philip Nyachoti, said they were duly authorised by the Kenya Revenue Authority (KRA) to operate container freight stations (CFS).

And in a letter dated 13 December last year, CS Transport Kipchumba Murkomen instructed KPA that all cargo destined for South Sudan passing through the port should be handled and stored by the two companies after verification.

Mr Nyachoti further submitted that the companies had invested heavily to develop and improve the efficiency of their warehouses. He said Compact Freight had invested over Sh1 billion to put in place the necessary infrastructure to execute the contract.

He said with the current appointment, the companies should operate for 10 to 15 years to recoup the heavy investment.

The lawyer said it was not open to Mr Chelugui to undo what another cabinet secretary had done.

The government responded in a statement through Transport Principal Secretary Mohamed Daghar, saying, it had no mandate to appoint clearing and forwarding agents for any importer or exporter. The PS said the South Sudanese government had appointed the two companies as its preferred CFS in a letter dated November 9, 2022, which was accepted by the Kenyan government.

Mr Daghar said it was in Kenya's interest that the landlocked states use the inland container depots in Nairobi and Naivasha until President William Ruto's directive that they return to the port of Mombasa.

On this basis, he said, the Government of Kenya recommended to the Government of South Sudan to continue using the Nairobi and Naivasha inland container depots, although South Sudan is free to choose its preferred cargo clearance point.

The PS said the firms had failed to prove that the Government of Kenya had acted in a manner that amounted, or was likely to amount, to a violation of their constitutional rights as alleged. Furthermore, the case is based on rumours whose source has not been disclosed, Mr Daghar said.

skiplagat@ke.nationmedia.com



KTDA MANAGEMENT SERVICES LIMITED

NOTICE ON TRANSPORTATION OF FERTILIZER - YEAR 2023

NOTICE REFERENCE	DESCRIPTION
KTDA/1238/2023	Transportation of 92,737 Tonnes of Fertilizer (In 50Kg Bags) from Nairobi to Various KTDA-Managed Tea Factories

KTDA Management Services Limited has finalized the process of importation of 92,737 MT of bagged fertilizer for its managed tea processing factories. The first fertilizer consignment is expected to arrive in September 2023 or thereabout.

This notice is a follow up to the tender for Transportation of Bagged Fertilizer from Nairobi to various KTDA-managed tea factories (Tender Ref KTDA/123/2023) which appeared in the local dailies in the month of July 2023. After the review of various rates tendered, KTDA has approved a rate of Kshs 15.00 for factories in Zone A and Kshs 11.481 for factories in Zone B and C as detailed in the tender document. The approved rate is per tonne per kilometer inclusive of VAT.

Transporters who participated in the tender and willing to accept this offer are hereby invited to collect and sign contract documents from the office of the General Manager - Factory Operations located on 4th Floor of KTDA Farmers Building, Moi Avenue, Nairobi. The actual fertilizer arrival date will be communicated to the contracted transporters.

The transporters will be required to meet the following requirements:

1. Submission of list of trucks to be used for KTDA fertilizer transport in owner's name or leased.
2. Submission of copies of valid logbooks for the trucks listed above in owner's name or leased. (For each leased truck, a copy of the lease agreement must be submitted).
3. The trucks should have a carrying capacity of 15 tonnes and above and be registered in Kenya in owner's company name.
4. Compliance with Government requirements on commercial motor vehicles e.g. 3rd party insurance cover, relevant licenses, vehicle trucking devices and speed Governor.
5. Certificate of good conduct for the crew.
6. Fidelity guarantee cover through or validated by Majani Insurance Brokers Ltd located at Chai House, Kolihanga Street, Nairobi.

KTDA is not bound to contract with all or any transporter and will have the liberty to assign vehicles to any of its managed tea factory based on the workload.

KENNEDY A. OCHWAIDO
GROUP HEAD OF PROCUREMENT AND LOGISTICS

Kenya Tea Development Agency Holdings Limited Tel: +254 020 3227000 - 2 / 2214412 / 3 / 4
0722 952402 / 7, 0722 203451 / 2, 0733 913580, 0733 363647
@KTDA E-mail: info@ktdateas.com / Site: www.ktdateas.com



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION 2023

IN THE MATTER OF ARTICLE 118(1) (B) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
1. THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2022)
2. THE COTTON INDUSTRY DEVELOPMENT BILL (SENATE BILLS NO. 5 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 Employment (Amendment) Bill (Senate Bills No. 11 of 2022) and the Cotton Industry Development Bill (Senate Bills No. 5 of 2023) have been read a First Time in the National Assembly on 17th August, 2023 and referred to the Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. The Employment (Amendment) Bill (Senate Bills No. 11 of 2022) is a Bill originating from the Senate sponsored by Sen. Samson Cherarky, MP which seeks to provide for the right to disconnect in the digital age in order to address increased employee burnout. In addition, it 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.
2. The Cotton Industry Development Bill (Senate Bills No. 5 of 2023) is a Bill originating from the Senate sponsored by Sen. Both Syengo, MP which seeks to provide the policy and institutional framework within which the cotton industry operates by among others, establishing the Cotton Industry Development Board. The highlight of the Bill is to re-vamp cotton farming to make it a profitable, sustainable and development-oriented activity.

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	Labour
1 The Employment (Amendment) Bill (Senate Bills No. 11 of 2022)	Labour
2 The Cotton Industry Development Bill (Senate Bills No. 5 of 2023)	Agriculture and Livestock

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

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 sn@parliament.go.ke to be received on or before Wednesday, 6th September 2023 at 5.00 p.m.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
25th August 2023

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



Wagner boss years of living dangerously

► This was a man whose first years of adulthood were spent in a St Petersburg jail.

► For so many years Vladimir Putin was able to call on Prigozhin's services.

PAUL KIRBY, BBC

From the moment Yevgeny Prigozhin's mutiny in Russia collapsed two months ago there was always a sense that a man who had lived so close to the edge for so long had overplayed his hand.

Assuming he was on board his own private jet when it went down en route from Moscow to St Petersburg, this was a shocking and violent end to a very turbulent life.

For so many years Vladimir Putin was able to call on Prigozhin's services. But the botched revolt involving thousands of Wagner mercenaries went beyond the pale. President Putin condemned the rebellion as "treason" and it was soon very clear that Prigozhin's prolific role in Russia was over.

This was a man whose first years

of adulthood were spent in a St Petersburg jail, but he thrived in the 1990s with catering businesses that brought him wealth and patronage from Mr Putin himself.

It was Prigozhin's mercenary ventures in Africa, Syria and Ukraine that made him a military figure but the dynamic changed when Russia unleashed war in Ukraine and the president's one-time chef found power as well as wealth.

Unconfirmed reports suggest his Embraer Legacy plane was hit by two bursts of fire from military air defences.

If it was brought down deliberately, few will be surprised because Prigozhin had no shortage of enemies. Dmitry Utkin, who was Prigozhin's first Wagner commander, was also on the passenger list.

Prigozhin, 62, appeared to have escaped punishment for his short-lived mutiny against the Kremlin.

Under a deal to end the revolt many of his rebel mercenaries were allowed to go to a camp in Belarus while the Wagner boss himself was able to travel within Russia, showing up in St Petersburg in casual clothes during a Russian summit of African leaders in late July.



Yevgeny Prigozhin with a mercenary Ukraine. [BBC]

His witty but venomous video rant against the failings of the Russian defence establishment came to an end and state-run TV broadcast footage of raids on his luxurious home outside St Petersburg.

But Prigozhin was never going to slink off quietly to a bolthole in Belarus and it was only this week that his first video address since the botched mutiny surfaced.

The desert background indicated it had been shot in Africa and, clad in combat gear, Prigozhin declared that the temperature was 50C and his Wagner group was recruiting to make Russia "even greater on all continents, and Africa even more free".

Prigozhin appeared to be reverting to the mercenary roots he put down several years ago when he set up the Wagner private military company which helped prop up Russian allies in the Central African Republic and Syria, and challenged French influence in Mali.

Although he denied it for years, Prigozhin also founded a so-called troll-factory of pro-Kremlin bloggers in a non-descript office in St Petersburg. His Internet Research Agency was accused of meddling in the US 2016 presidential election.



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION 2023

IN THE MATTER OF ARTICLE 118(1) (B) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:
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IT IS NOTIFIED that:

1. The Employment (Amendment) Bill (Senate Bills No. 11 of 2022) is a Bill originating from the Senate sponsored by Sen. Samsen Chararkey, MP which seeks to provide for the right to disconnect in the digital age in order to address increased employee burnout. In addition, it 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.
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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:

S/No	Bill	Departmental Committee
1	The Employment (Amendment) Bill (Senate Bills No. 11 of 2022)	Labour
2	The Cotton Industry Development Bill (Senate Bills No. 5 of 2023)	Agriculture and Livestock

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

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S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
25th August 2023

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

REPUBLIC OF KENYA



PARLIAMENTARY SERVICE COMMISSION
PARLIAMENTARY JOINT SERVICES

INVITATION TO TENDER

The Parliamentary Joint Services invites sealed bids from eligible tenderers for the following Services:

S/No	TENDER REF. NO	INSURANCE TYPE	TENDER SECURITY
1.	PIS/002/2023-2024	Group Life Insurance for Members of Parliament	Kshs. 1,000,000.00
2.	PIS/003/2023-2024	Group Life Insurance for Staff of PSC	Kshs. 1,000,000.00
3.	PIS/004/2023-2024	Group Personal Accident for Member of Parliament	Kshs. 500,000.00
4.	PIS/005/2023-2024	Group Personal Accident for Staff of PSC	Kshs. 500,000.00

Qualified and interested eligible candidates may obtain further information from the Procurement Office on 4th Floor, Protection House, Nairobi during office hours 0800 to 1700 or email through procurement@parliament.go.ke or dp@parliament.go.ke. A complete set of the tender document may be downloaded free of charge from the Commission's Website; www.parliament.go.ke or Public Procurement Information Portal www.tenders.go.ke

Tenderers who download the Tender Document must forward their particulars immediately to procurement@parliament.go.ke and the Address below to facilitate any further clarification or addendum. There shall be a pre-bid meeting/site visit on 31st August, 2023, 11.00 am Protection House Ground Floor.

All Tenders must be accompanied by a tender Security as tabulated above respective of the stated tenders valid for 217 days from the date of tender opening, in form of a bank guarantee from a reputable bank recognized by the Central Bank of Kenya or an Insurance Guarantee from an Insurance company registered by the Public Procurement Regulatory Authority (PPRA) payable to the Parliamentary Joint Services.

Duly completed, serialized and paginated tender documents of the bid documents submitted including any addenda, appendices and attachments (original and copy) are to be enclosed in plain sealed envelopes, marked with the tender number, name and as prescribed under the tender documents and be dropped in the Tender Box at the Reception on 4th Floor, Protection House, Nairobi or be addressed to:

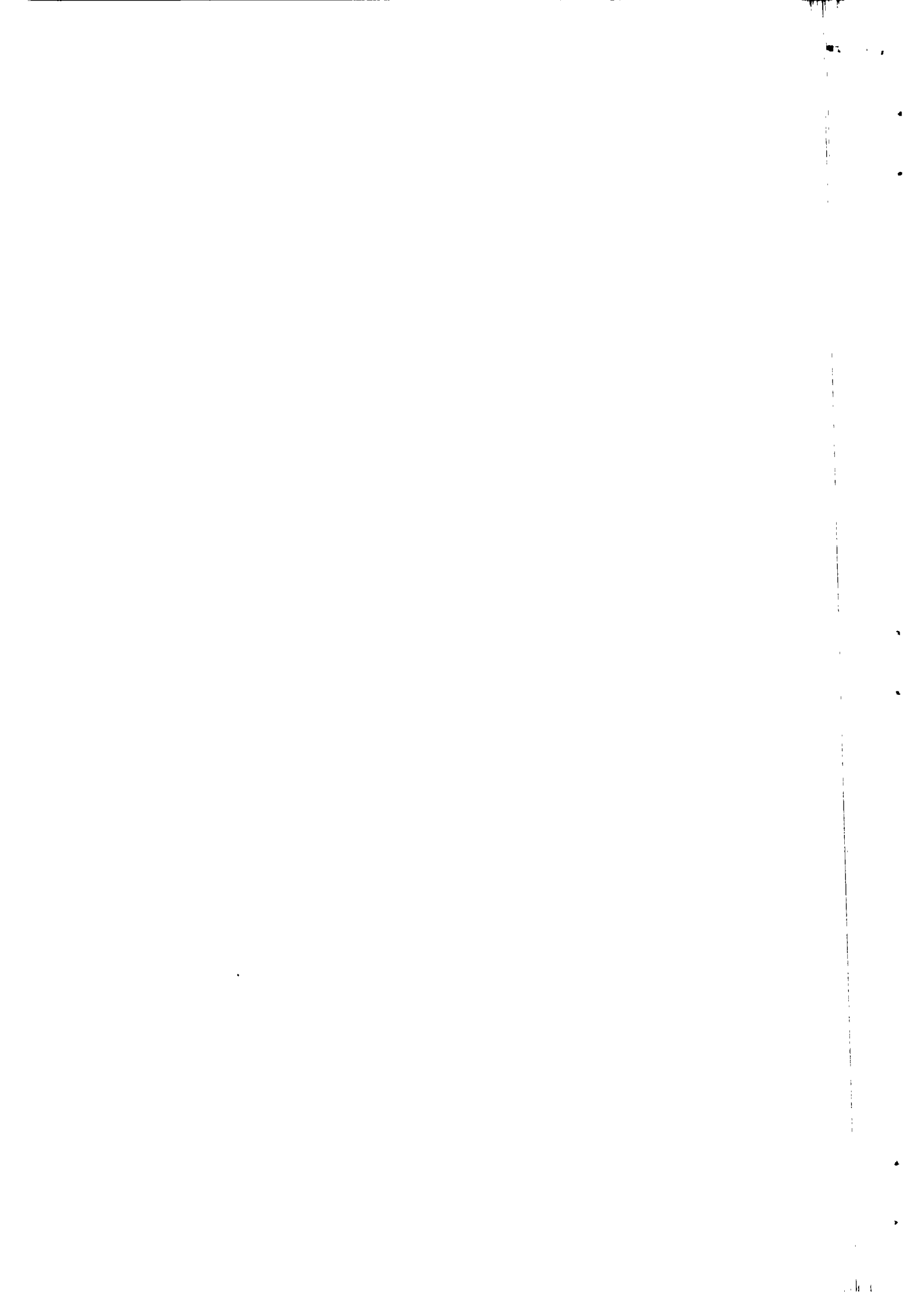
Director General, Parliamentary Joint Services,
P.O. Box 41842 00100,
NAIROBI, KENYA

So as to be received on or before 8th September, 2023 at 11.00 a.m.

Tenders will be opened immediately thereafter in the presence of the Candidates who may choose to attend or their appointed representatives, at Protection House, 4th floor Reception, Nairobi.

Prices quoted should be inclusive of all taxes and delivery costs, and must be in Kenya Shillings and shall remain valid for 182 days from the closing date of the tenders.

DIRECTOR GENERAL, PARLIAMENTARY JOINT SERVICES,
PARLIAMENTARY SERVICE COMMISSION



Annexure 4

Written submissions from stakeholders





DDC-officer
8
11/09

**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR LABOUR AND SKILLS DEVELOPMENT**

OFFICE OF THE PRINCIPAL SECRETARY

Tel: +254 (0) 2729800
Website: www.labour.go.ke
Email: ps@labour.go.ke

Social Security House
Bishops Road
P O Box 40326-00100
NAIROBI

When replying, please quote

Ref. MOL/12/19 Vol. I

7th September, 2023

The Clerk of the National Assembly
P O Box 41842 – 00100
Main Parliament Buildings
NAIROBI, KENYA

**STAKEHOLDERS SUBMISSIONS ON THE EMPLOYMENT (AMENDMENTS)
BILL (SENATE BILLS NO.11 OF 2022) TO THE DEPARTMENTAL
COMMITTEE ON LABOUR**

Reference is made to your letter Ref. NA/DDC/LABOUR/2022/086 dated 28th September, 2023 regarding the above subject matter.

This is therefore to convey the written submissions from the State Department for Labour and Skills Development for consideration by the National Assembly's Departmental Committee on Labour.

**Geoffrey Kaituko
PRINCIPAL SECRETARY**

Copy to: Cabinet Secretary

**NATIONAL ASSEMBLY
RECEIVED**

08 SEP 2023

CLERK'S OFFICE
P. O. Box 41842, NAIROBI

**DIRECTOR
RECEIVED**

11 SEP 2023

Directorate of Departmental Committees

**NATIONAL ASSEMBLY
RECEIVED**

11 SEP 2023

DEPUTY CLERK
J.W.N
P. O. Box 41842 – 00100, NAIROBI

Ms. Rose Wanjohi
P/S TNA.
DM

STATEMENT OF THE OBJECTS AND REASONS
FOR THE EMPLOYMENT (AMENDMENT) BILL, 2022.

The Employment Act 2007 defines the fundamental rights of employees and employers and the proposal to have the right to disconnect is rightly placed and timely.

The need to protect workers in the digital age is important given that the work environment has dramatically changed precipitated by the advancement, the use of technology and Covid 19. This law did not anticipate the current changes and the future of work thus the proposal is welcome.

The importance of having a “right to disconnect” law lies in its potential to address several crucial aspects of modern work environments:

1. Work-Life Balance- It helps employees maintain a healthy balance between their work and personal lives. Constant connectivity can lead to burnout and stress, impacting both mental and physical well-being.
2. Mental Health-This law can contribute to improved mental health by reducing the pressure to be constantly available. Employees can disconnect and recharge, reducing the risk of anxiety and depression.
3. Productivity- Paradoxically, overworking and constant connectivity can reduce productivity over the long term. Allowing employees to disconnect can lead to more focused and effective work during their designated work hours.
4. Creativity and Innovation-Unplugging from work can stimulate creativity and innovation. Taking time away from work-related tasks can lead to fresh perspectives and ideas.
5. Employee Retention- Companies that prioritize work-life balance through right-to-disconnect policies often have higher employee retention rates. Satisfied employees are more likely to stay with their employers.
6. Legal and Ethical Considerations-In some regions, there are legal and ethical considerations related to overtime and employee rights. Implementing right-to-disconnect policies can help organizations stay compliant with labour laws and demonstrate their commitment to ethical employment practices.
7. Diversity and Inclusion- This proposed law can benefit a diverse workforce by accommodating varying needs and responsibilities outside of work.
8. Company Culture-Promoting a healthy work-life balance can shape a positive company culture that values the well-being of its employees.

In summary, Laws on “Right to Disconnect” are important for fostering a more balanced, healthy, and productive work environment, benefiting both employees and employers in the long run.

**MATRIX OF THE MINISTRY OF LABOUR'S PROPOSED
AMENDMENTS TO THE EMPLOYMENT
(AMMENDMENT) BILL ,2022**

THE EMPLOYMENT AMENDMENT BILL ,2022	SECTION	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	27A(2)	<p>An employer shall for the purpose of subsection one</p> <p>a) Put in place a policy regarding the;</p> <p>i. Circumstances under which an employer may contract an employee during out of work hours:</p> <p>ii. Use of electronic devices to send or receive information messages or any digital related communication during out of work hours;and</p> <p>iii. Circumstances under which the right to disconnect may be waived</p> <p>(b)Specify the nature of compensation for employee who work out of work hours</p>	<ul style="list-style-type: none"> • Delete Subsection 2 entirely. • Insert Subsection 2a to read "An employer shall for the purpose of subsection 1. Put in the employment contract or collective bargaining agreement rules regarding the; i. Circumstances under which an employer may contract an employee during out of work hours: ii. Use of electronic devices to send or receive information messages or any digital related communication during out of work hours;and ii. Circumstances under which the right to disconnect may be waived. 	<p>This is to ensure that this subsection section covers all category of workers .</p>

			<ul style="list-style-type: none"> • Insert “Specify the nature of compensation for employees who work during out of work hours as point ”iv” • Insert “Specify the mode of compensation” as point “v” <p>Insert 27A(2b) to read “When an employer has employed more than 10 employees, such employer shall formulate a policy regarding the;</p> <ol style="list-style-type: none"> i. Circumstances under which an employer may contract an employee during out of work hours: ii. Use of electronic devices to send or receive information messages or any digital related communication iii. Circumstances under which the right to disconnect may be waived <p>Insert “Specify the nature of compensation for employees who work during out of work hours as point ”iv”</p> <p>Insert “Specify the mode of compensation” as point “v”</p>	
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2.	27A(2b)	Specify the nature of compensation for employees who work during out of work hours	Delete 27A(2b)	This will be captured in the recommendation of inserting this in 27A(2a)(iv),and 27A(2b)iv)
3.	27A(3)	Where an employer has employed more than 10 employees ,such employer shall,in formulating a policy under subsection(2) consult the respective employees,or where applicable trade union	Delete entirely	We recommend that this be captured in the recommended amendment in regard to inserting a new 27A(2b)
4.	27A(4)	The right to disconnect shall be subject to the terms and conditions specified under section 10.	<ul style="list-style-type: none"> • Delete "Section" • Insert "Subsection" 	This is to prevent confusion with Section 10 of the Employment Act 2007
5.	27A(5)	The right to disconnect shall be limited only to the extent necessary to address an emergency arising out of the work falling within the responsibility of the employee	Define "Emergency "in the terms and conditions	This is to ensure that the word emergency is clear and concise to prevent misinterpretation.
6.	27A(8)	The provisions of this section shall not apply to the provision of essential services specified under Section 81 of the Labor Relations Act.	Insert "2007" after Labour Relations Act.	This is to rightfully title the Labour Relations Act 2007
	27A(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 both	<ul style="list-style-type: none"> • Delete "person",Insert "Employer or his agent" • Delete "Five hundred thousand shillings" ,Insert "One Hundred Thousand Shillings" • Delete "One year" ,Insert "6 	The amount and sentence is punitive and should be reduced to align with The Employment Act 2007

			months”	
8.	27A(10a))	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	Insert “employment policy or CBA “ after contract of employment.	This is to ensure that the term out of work hours covers all category of employees.
9.	27A(10(b))	Right to disconnect means an employees entitlement not to be contacted by the employer during out of work hours as per the employers policy	Insert ”employment contract and Collective Bargaining Agreement” after employment policy	This is to ensure that the right to disconnect covers all category of workers.
10.	27A(10(c))	Not available	<ul style="list-style-type: none"> • Insert “Emergency “under this subsection • Define the meaning of the word “EMERGENCY ” 	This definition should be clearly defined to provide clarity on what it means. This will prevent ambiguity and abuse of the term from the employer.



REPUBLIC OF KENYA
MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR LABOUR AND SKILLS DEVELOPMENT
OFFICE OF THE PRINCIPAL SECRETARY

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Ref. No. ML&SP/L/36/1 (47)

17th October, 2023

The Clerk of the National Assembly
Main Parliament Buildings
P.O Box 41842-00100
NAIROBI

Attn: Daniel Mutunga

Dear *Clerk*,

STAKEHOLDERS SUBMISSION ON THE EMPLOYMENT (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2022) TO THE DEPARTMENTAL COMMITTEE ON LABOUR

Your letter dated 28th August, 2023 reference No. NA/DDC/LABOUR/2023/086 with regard to the above captioned matter refers.

We have duly carefully studied the amendments proposed to the Employment Act, 2007 as are contained in the Employment (Amendment) Bill (Senate Bills No. 11 of 2022) sponsored by Sen. Samson Cherarkey and now before the Departmental Committee on Labour of the National Assembly, seeking to provide for the right to disconnect in the digital age.

Attached herewith, please find a comprehensive written memorandum in a Matrix format that indicates the Section of the Act, specific clause, proposed amendment and its justification.

Yours

Sincerely

[Signature]

Shadrack M. Mwadime, EBS
PRINCIPAL SECRETARY

End.

Copy to: **Hon. Florence Bore**
Cabinet Secretary
Ministry of Labour & Social Protection
P.O. Box 40326-00100
NAIROBI



MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR LABOUR AND SKILLS
DEVELOPMENT

**MEMORANDUM BY THE PRINCIPAL SECRETARY ON THE
EMPLOYMENT (AMENDMENT) BILL (SENATE BILLS NO. 11 OF
2022) BY SEN. SAMSON CHERARKEY**

(a) Introduction:-

The Employment (Amendment) Bill (Senate Bills No. 11 of 2022), sponsored by Sen. Samson Cherarkey, is a Bill which seeks to provide for the right of employees to disconnect from their employers in the digital age, digital connectivity having been noted to be slowly eroding leisure time for employees hence affecting their work life balance. The Departmental Committee on Labour, established pursuant to Standing Order 216 of the National Assembly Standing Orders, has sought the State Department's views in respect of the above captioned Bill. The following is our considered submissions in respect of the same, as itemized hereunder:-

1. The concept of the right to disconnect in the digital age refers to the right of employees to be free from work-related communications and activities outside of their regular working hours. While there is no specific legislation on the right to disconnect in Kenya, our provisions in the labor laws that regulate working hours

and rest periods providing a level of protection for employees' work-life balance and work-related communications outside of working hours, are not widely acknowledged or codified. These laws aim to ensure reasonable working hours and protect employees' well-being, without explicitly addressing the right to disconnect in the digital age.

2. There may be variations in the enforcement and adoption of work-life balance measures across countries and industries. However, some organizations in Kenya have implemented policies or guidelines to promote work-life balance and limit after-work communications to respect employees' personal time.
3. Employees in Kenya have certain rights regarding work-life balance, which are protected under labor laws, particularly the Employment Act of 2007. Here are some key rights related to work-life balance for employees in Kenya:
 - (a) **Working hours:** Employees have the right to reasonable working hours, generally limited to 52 hours per week or 9 hours per day, excluding overtime.
 - (b) **Overtime compensation:** Employees who work beyond normal working hours are entitled to overtime pay, which is usually at a higher rate than regular pay.
 - (c) **Rest periods:** Employees are entitled to rest breaks during their working hours, including a minimum of one day of rest per week. This is typically the weekly rest day, which is usually on a Sunday, unless otherwise agreed.
 - (d) **Annual leave:** Employees have the right to annual leave, which is typically 21 working days per year. This allows employees to take paid time off for leisure, rest, and personal activities.

(e) **Public holidays:** Employees have the right to take leave on public holidays and may be entitled to additional pay or compensatory time off if required to work on a public holiday.

4. Employers in Kenya who fail to ensure work-life balance for their employees face potential consequences under labor laws. These consequences can include:

(a) **Legal action:** Employees who believe their rights regarding work-life balance have been violated can file complaints with relevant labor authorities or take legal action against their employers. This may result in investigations, penalties, or compensation for the affected employees.

(b) **Fines and penalties:** Employers found to have violated labor laws related to work-life balance may be subject to fines and penalties imposed by labor authorities.

(c) **Damage to reputation:** Employers who fail to prioritize work-life balance may face reputational damage and negative publicity. This can impact their ability to attract and retain talent, as well as their relationships with clients, customers, and the public.

(d) **Decreased employee morale and productivity:** A lack of work-life balance can lead to decreased employee morale, job satisfaction, and productivity. This can have a negative impact on the overall performance and success of the organization.

5. It's important for employers to prioritize and comply with labor laws regarding work-life balance to create a healthy and productive work environment while avoiding legal and reputational risks.

6. It is imperative to underscore that employers in Kenya may as a matter of practice, adopt various strategies to promote work-life balance among their employees. Some effective strategies include:

- (a) Flexible work arrangements: Offer flexible work options such as remote work, flextime, compressed workweeks, or part-time schedules. This provides employees with more control over their work hours and allows them to better balance their professional and personal commitments.
- (b) Clear communication and expectations: Set clear expectations regarding working hours, after-hours communication, response times, and the importance of disconnecting from work. Encourage open communication between managers and employees to address any challenges or concerns.
- (c) Support for well-being: Implement wellness programs that focus on physical and mental health, such as fitness activities, stress management workshops, or counseling services. Promote a healthy work environment that prioritizes employee well-being.
- (d) Encourage time off: Encourage employees to take their entitled annual leave and provide support for employees to plan and utilize their time off effectively. Discourage a culture of presentism and promote the importance of rest and rejuvenation.
- (e) Train managers and supervisors: Provide training to managers and supervisors on work-life balance, effective workload management, and maintaining a healthy work environment. Equip them with the skills to support their teams in achieving work-life balance.
- (f) Establish boundaries for technology use: Encourage employees to disconnect from work-related technology during non-working hours by

implementing policies that define acceptable communication practices outside of working hours.

(g) Lead by example: Senior leadership should lead by example and prioritize their own work-life balance. This sends a powerful message to the rest of the organization and encourages a culture that values work-life balance.

7. It's important for employers to assess the specific needs and preferences of their employees and tailor strategies accordingly. Regular feedback, evaluation, and adjustment of work-life balance initiatives are also essential to ensure their effectiveness.

8. Cultural factors can play a role in employers' efforts to promote work-life balance in Kenya. Here are a few cultural factors that may impact these efforts:

(a) Strong work ethic: Kenyan culture often emphasizes hard work, dedication, and commitment to one's job. This can sometimes lead to a work culture where long hours and high workloads are perceived as indicative of dedication and professionalism.

(b) Family and community values: Family and community ties are important in Kenyan culture. Employees may have strong obligations and responsibilities within their families and communities, which can affect their ability to achieve work-life balance.

(c) Respect for authority: Kenyan culture generally places a high value on respecting authority figures, including employers. This can make it more challenging for employees to advocate for their work-life balance needs or set boundaries with their superiors.

(d) Work-life integration: In some cases, work and personal life are more intertwined in Kenyan culture, with individuals often accommodating work

tasks or obligations outside of regular working hours. This can present challenges in creating clear boundaries and promoting work-life balance.

9. Employers need to be mindful of these cultural factors when implementing work-life balance initiatives. Sensitivity to cultural norms, effective communication, and proactive engagement with employees can help employers navigate these factors and create a work environment that respects work-life balance while still honoring cultural values.

10. Employers in Kenya may face various challenges in promoting work-life balance. Some specific challenges include:

(a) Cultural norms: As mentioned earlier, cultural values such as a strong work ethic and work-life integration can pose challenges in promoting work-life balance. Addressing these norms and striking a balance between cultural expectations and employees' well-being can be a challenge for employers.

(b) Lack of awareness: Many employers may not be fully aware of the importance of work-life balance or the specific strategies they can implement to support it. Lack of awareness can hinder the adoption of effective policies or initiatives.

(c) Limited resources: Some employers, particularly smaller businesses, may face resource constraints, making it challenging to implement comprehensive work-life balance programs or provide alternative work arrangements such as remote work.

(d) Resistance to change: The introduction of work-life balance initiatives may face resistance from both management and employees who are accustomed to traditional work practices. Overcoming resistance and fostering a cultural shift that values work-life balance can be an ongoing challenge.

(e) Workload management: Ensuring reasonable workloads and preventing excessive overtime can be challenging, especially in industries with high demands or under-staffing. Adequate staffing and workload management strategies are essential to support work-life balance.

11. Overcoming these challenges requires commitment from employers, a supportive work culture, and continuous efforts to educate, engage, and communicate with employees about the importance of work-life balance. Collaboration with industry associations, seeking expert guidance, and sharing best practices can help employers navigate these challenges effectively.

12. While specific examples may vary, here are a few examples of successful work-life balance initiatives that have been implemented by some employers in Kenya:

(a) Flexible work arrangements: Some employers have implemented flexible work arrangements, such as remote work or flexible hours, allowing employees to have more control over their work schedules and accommodate personal needs.

(b) Employee wellness programs: Employers have introduced wellness programs that prioritize physical and mental health. These programs may include activities like fitness classes, wellness workshops, stress management sessions, and counseling services.

(c) Annual leave utilization campaigns: Employers may conduct campaigns or provide incentives to encourage employees to take their entitled annual leave. This can help employees disconnect from work and recharge.

(d) Technology guidelines: Employers establish guidelines regarding after-hours communication to ensure employees have designated periods of uninterrupted personal time. These guidelines may include expectations for

response times and encourage employees to disconnect from work-related technology.

(e) Manager training and support: Employers provide training and support for managers and supervisors to ensure they effectively manage work-life balance within their teams. This includes promoting healthy workload management and encouraging open communication with employees.

(f) Employee support systems: Some employers offer access to employee assistance programs (EAPs) or counseling services to support employees with work-related stress, personal challenges, or mental health concerns.

(g) Work-life balance awareness campaigns: Employers may conduct awareness campaigns focused on work-life balance themes, organizing events, workshops, or seminars to educate employees on the importance of work-life balance and provide strategies for achieving it.

13. These examples highlight the proactive approach some employers in Kenya have taken to promote work-life balance. Implementing initiatives that align with organizational values, regularly evaluating their effectiveness, and maintaining open channels of communication with employees are key factors for success.

14. Employers in Kenya can assess the effectiveness of their work-life balance initiatives through various means. Here are some ways to evaluate the impact of these initiatives:

(a) Employee feedback and surveys: Implement regular employee surveys or feedback mechanisms to gauge employee satisfaction, perceptions, and experiences related to work-life balance. This can provide insights into how employees perceive the effectiveness of the initiatives and identify areas for improvement.

- (b) Absence and turnover rates: Track employee absence rates and turnover rates over time. A decrease in absenteeism or turnover can indicate improved work-life balance and job satisfaction.
- (c) Productivity and performance metrics: Monitor productivity and performance metrics before and after implementing work-life balance initiatives. Assess changes in individual and team performance indicators, such as output, quality, and meeting deadlines, to determine if work-life balance initiatives have had a positive impact.
- (d) Utilization of support programs: Assess the utilization rate of support programs, such as employee assistance programs (EAPs) or counseling services. Higher utilization can indicate that employees are seeking support and taking advantage of resources available to them.
- (e) Employee retention and engagement: Measure employee retention rates and levels of engagement. High retention and engaged employees can be indicators of a positive work-life balance environment.
- (f) Manager assessment: Evaluate the effectiveness of managers in promoting work-life balance within their teams. Consider conducting assessments or collecting feedback from employees regarding their managers' support and implementation of work-life balance initiatives.
- (g) Cost-benefit analysis: Conduct a cost-benefit analysis to evaluate the return on investment of work-life balance initiatives. Assess the financial impact of improvements in employee satisfaction, productivity, and retention compared to the costs of implementing and maintaining the initiatives.

15. Regular evaluation and monitoring of work-life balance initiatives are crucial to identify areas of success and areas needing improvement. This assessment process

should involve gathering feedback from employees and key stakeholders, analyzing relevant metrics, and using the data collected to inform future decision-making and adjustments to the initiatives.

16. While specific examples may vary, here are a few examples of successful work-life balance initiatives that could have a positive impact on employee satisfaction in Kenya:

(a) Flexible work schedules: An employer implements flexible work schedules, allowing employees to choose their start and end times or to work from home on certain days. This initiative provides employees with greater control over their work hours and enables them to accommodate personal commitments. As a result, employees experience improved work-life balance, leading to higher job satisfaction and overall well-being.

(b) Generous parental leave policies: An employer introduces enhanced parental leave policies, offering extended leave periods and providing support in the transition back to work. This initiative recognizes the importance of family life and promotes a healthier work-life balance for employees with young children. Employees feel supported, leading to increased job satisfaction and loyalty.

(c) Wellness programs: An employer implements wellness programs that include fitness activities, stress management workshops, and mental health resources. These initiatives promote employee well-being and provide opportunities for self-care during work hours. Employees feel supported in their physical and mental health, leading to improved job satisfaction and productivity.

(d) Clear communication and boundary-setting: An employer establishes guidelines for after-hours communication, such as encouraging

employees to disconnect from work-related technology or setting expectations for response times. This initiative promotes work-life balance by allowing employees to have uninterrupted personal time. Employees appreciate the clear boundaries, leading to increased job satisfaction and reduced burnout.

(e) Alternative work arrangements: An employer offers alternative work arrangements, such as job-sharing or compressed workweeks. These initiatives provide employees with flexibility in managing their work and personal commitments. Employees experience improved work-life balance, leading to higher job satisfaction and increased motivation.

17. In each of the above examples, the successful implementation of work-life balance initiatives leads to positive impacts on employee satisfaction. Employees feel valued, supported, and empowered to achieve a healthier balance between work and personal life, which contributes to their overall job satisfaction and well-being.

(b) Salient Issues:-

18. The International Labour Organization (ILO) does not have a specific convention that directly talks about the right to disconnect. However, the ILO has issued recommendations and guidelines related to work-life balance and flexible working arrangements that indirectly address the need to disconnect from work.

19. For instance, ILO Recommendation No. 162 on Telework (2017) provides guidance on promoting work-life balance and specifies that employers should respect employees' rest periods and ensure they have the right to disconnect after work hours. Additionally, Recommendation No. 193 on the Promotion of Cooperatives (2002) highlights the importance of balancing work and personal life within cooperative enterprises.

20. To-date, there is no specific International Labour Organization (ILO) convention that directly grants the right to disconnect. However, various ILO recommendations, such as Recommendation No. 162 on Telework (2017), emphasize the need to respect rest periods and promote work-life balance, which indirectly relate to the right to disconnect. It is important to note that recommendations are non-binding guidelines and do not carry the same legal weight as conventions.
21. Given the evolving nature of work and digital technologies, discussions around the right to disconnect continue at international and national levels, but there is currently no ILO convention exclusively focused on this matter.
22. The legality of requiring employees to be always available for work depends on the laws and regulations of the specific country or jurisdiction. In many countries, there are regulations related to maximum working hours, rest periods, and the right to rest and leisure, which aim to prevent excessive work demands and promote work-life balance.
23. While some jobs or industries may require employees to be on-call or available outside of normal working hours due to operational needs, employers generally have a legal responsibility to respect employees' rest periods and provide reasonable work hours.
24. In some cases, work-life balance and the right to disconnect may be addressed through collective bargaining agreements, industry-specific regulations, or company policies rather than specific national laws. Additionally, there may be cultural and societal practices that influence work-life balance expectations in certain countries.
25. Several countries have implemented legislation related to the right to disconnect. Notable examples include:

- (a) France: France became one of the first countries to legislate the right to disconnect. Their "Right to Disconnect" law, implemented in 2017, requires companies with 50 or more employees to negotiate agreements that establish employees' rights to disconnect outside of working hours.
- (b) Italy: Italy introduced a law in 2020 that grants employees the right to disconnect. It mandates that employers negotiate with unions to establish protocols regarding work-related electronic devices and communication outside of working hours.
- (c) Spain: In Spain, the "Digital Rights Framework for Workers" was approved in 2021. It includes provisions for the right to disconnect, requiring companies to implement measures that allow employees to disconnect from work-related technology when they are not working.

(c) Practical Realities and the Law:-

26. The legal basis for employers requiring employees to be always available for work can vary depending on the jurisdiction. While laws differ between countries, there are a few common legal principles or justifications that employers may rely upon:

- (a) Employment Contracts: Employers may include specific clauses in employment contracts that outline the expectation of availability outside of regular working hours. By signing the contract, employees agree to these conditions.
- (b) Exemptions and Special Circumstances: Certain industries or job roles may have specific exemptions or regulations that require employees to be available at all times due to the nature of the work. For example, emergency response services or on-call professions may have legal requirements for availability.

(c) Collective Agreements: In unionized settings, collective bargaining agreements between employers and unions may establish the terms and conditions of work, including expectations regarding availability outside of regular working hours.

(d) Inherent Job Requirements: Certain job roles, such as upper-level management or executive positions, may inherently require employees to be available outside of regular working hours due to the responsibilities and demands of the position.

27. It is important to consult the labor laws, regulations, employment contracts, and any applicable collective agreements in Kenya to understand the legal basis for employers requiring employees to be always available for work. Labor laws, employment contracts, and collective agreements play a significant role in determining the rights and obligations of both employers and employees.

28. There are several legal arguments that employers may put forth in favor of requiring employees to always be available for work. Some of these arguments include:

(a) Operational Necessity: Employers may argue that the nature of their business or industry requires employees to be available outside of regular working hours. For example, in industries such as healthcare, emergency services, or essential infrastructure, continuous availability may be crucial to ensure public safety and service delivery.

(b) Contractual Obligations: If employment contracts clearly outline the expectation of availability outside of regular working hours, employers can argue that employees have willingly agreed to these conditions by signing the contract.

(c) Exemptions or Special Circumstances: Certain laws or regulations may provide exemptions or special circumstances where employees can be required to be available at all times. This can be true for professions like on-call medical professionals, firefighters, law enforcement officers, and others.

(d) Inherent Job Requirements: Employers may argue that certain job roles inherently require availability outside of regular working hours due to the responsibilities and demands of the position. For example, executives or senior management roles may need to be reachable at all times to handle critical business matters.

29. While there are no binding international laws specifically focused on work-life balance and the right to disconnect, several international organizations have issued guidelines and recommendations on these topics. Some notable examples include:

(a) International Labour Organization (ILO): The ILO has published various reports and recommendations on work-life balance, including the ILO Workers with Family Responsibilities Recommendation, 1981 (No. 165), which calls for policies to ensure work-life balance for employees with family responsibilities.

(b) European Union (EU) Directives: The EU has issued directives related to work-life balance, such as the Work-Life Balance Directive (2019/1158). This directive aims to enhance work-life balance for parents and caregivers by introducing provisions for parental leave, flexible working arrangements, and the right to request flexible working conditions.

(c) Organization for Economic Cooperation and Development (OECD): The OECD has provided guidelines on work-life balance, promoting policies that support flexible working arrangements, parental leave, and access to quality

childcare. These guidelines serve as a reference for member countries to develop and enhance work-life balance policies.

(d) United Nations Sustainable Development Goals (SDGs): The SDGs include goals related to promoting decent work and economic growth (Goal 8), gender equality (Goal 5), and creating inclusive societies. These goals indirectly address work-life balance and call for policies that support a healthy and harmonious integration of work and personal life.

30. These international standards and guidelines provide recommendations and best practices for governments and employers to promote work-life balance. However, their implementation depends on the specific context and policies of each country or organization.

31. Implementing the right to disconnect in Kenya may face several challenges, including:

(a) Limited awareness and understanding: Awareness of the importance of work-life balance and the potential negative effects of constant connectivity may be limited. Employers and employees may not fully understand the benefits of disconnecting from work-related communication outside of working hours.

(b) Cultural and organizational norms: Some cultures and industries prioritize constant availability and may view the right to disconnect as a lack of dedication or commitment. Overcoming these ingrained cultural and organizational norms can be challenging.

(c) Technological barriers: In some regions of Kenya, access to reliable and affordable internet connectivity may be limited. This can make it difficult for employees to disconnect if they are dependent on digital devices and communication channels.

(d) Resistance from employers: Employers may be reluctant to implement policies or guidelines that limit or regulate employee communication outside of working hours. They may fear reduced productivity or disruptions to their operations.

(e) Balancing flexibility and responsibilities: Implementing the right to disconnect requires finding a balance between providing employees with flexibility while ensuring that business operations and communication needs are effectively managed.

32. Addressing these challenges would require a multi-faceted approach involving government regulations, organizational policies, education and awareness campaigns, and a shift in cultural attitudes towards work-life balance.

(d) Conclusion:-

33. The Employment (Amendment) Bill, 2022 imposes practical difficulties in the control organization of labour. The Government of Kenya being the main employer will most be inconvenienced – Presidential directives, Emergency, critical services, Essential services, security, etc. underpinned and protected in the Constitution of Kenya, 2010 will bear the most blunt.

34. The National Labour Board, being the apex body that advises the Cabinet Secretary on all matters concerning employment and labour and legislation affecting employment and labour in Kenya, has not been involved in rendering its advice, prior to the enactment of the Employment (Amendment) Bill, 2022.

35. Tripartite Partners including the most representative federation of employers' organization dealing with labour, to wit, the Federation of Kenya Employers (FKE) and the most representative federation of trade unions (COTU-K) have not been

privity in the formulation of the Employment (Amendment) Bill, 2022 as provided in the Labour Institutions Act, 2007 (No. 12 of 2007) of the laws of Kenya.

36. The Employment Act, 2007 is the principal law in Kenya for employment contracts that applies across the public and private sector and applies to domestic or household employment and the proposed Bill overregulates relationships that are elsewhere regulated and is bad law given the absence of any law in Kenya on digital economy.

37. The position therefore of the Ministry is that Clause 27A in the proposed Employment (Amendment) Bill, 2022 is bad law and deviates from the accepted practice in the formulation of labour laws in Kenya, and if allowed, it may herald an economic shut down in the country, in absence of any policy on the subject matter and is thereby rejected, pending a comprehensive review of the entire labour laws, an elaborate process that require the involvement of the Tripartite Partners and technical assistance of the International Labour Organization, among others, in order to align those statutes to comply with the Changing World of work, Constitution of Kenya, 2010 and the International Labour Organization Conventions.

38. The following therefore is a matrix format that indicates our proposals for consideration by the Committee indicating the section of the Act, specific clause, proposed amendment and justification, as provided in Appendix A hereunder.

APPENDIX A

MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR LABOUR AND SKILLS
DEVELOPMENT

MEMORANDUM BY THE PRINCIPAL SECRETARY ON THE
EMPLOYMENT (AMENDMENT) BILL (SENATE BILLS NO. 11 OF 2022)
TO THE DEPARTMENTAL COMMITTEE ON LABOUR OF THE
NATIONAL ASSEMBLY

The Employment Act, 2007	Section	Clause	Proposed Amendment	Justification
1.	s.27	New s. 27A	Delete clause 27A entirely	<p>1. The International Labour Organization (ILO) does not have a specific convention that directly talks about the right to disconnect. However, the ILO has issued recommendations and guidelines related to work-life balance and flexible working arrangements that indirectly address the need to disconnect from work.</p> <p>2. For instance, ILO Recommendation No. 162 on Telework (2017) provides guidance on promoting work-life balance and specifies that</p>

				<p>employers should respect employees' rest periods and ensure they have the right to disconnect after work hours.</p> <p>Additionally, Recommendation No. 193 on the Promotion of Cooperatives (2002) highlights the importance of balancing work and personal life within cooperative enterprises.</p> <p>3. To-date, there is no specific International Labour Organization (ILO) convention that directly grants the right to disconnect. However, various ILO recommendations, such as Recommendation No. 162 on Telework (2017), emphasize the need to respect rest periods and promote work-life balance, which indirectly relate to the right to disconnect.</p> <p>It is important to note that recommendations are non-binding guidelines and do not</p>
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				<p>carry the same legal weight as conventions.</p> <p>4. There are no binding international laws specifically focused on work-life balance and the right to disconnect.</p> <p>5. Given the evolving nature of work and digital technologies, discussions around the right to disconnect continue at international and national levels, but there is currently no ILO convention exclusively focused on this matter.</p> <p>6. The legality of requiring employees to be always available for work depends on the laws and regulations of the specific country or jurisdiction. In many countries, there are regulations related to maximum working hours, rest periods, and the right to rest and leisure, which aim to prevent excessive work demands and promote work-life balance.</p>
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				<p>7. While some jobs or industries may require employees to be on-call or available outside of normal working hours due to operational needs, employers generally have a legal responsibility to respect employees' rest periods and provide reasonable work hours.</p> <p>8. In some cases, work-life balance and the right to disconnect may be addressed through collective bargaining agreements, industry-specific regulations, or company policies rather than specific national laws. Additionally, there may be cultural and societal practices that influence work-life balance expectations in certain countries.</p> <p>9. The legal basis for employers requiring employees to be always available for work can vary depending on the jurisdiction.</p>
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				<p>While laws differ between countries, there are a few common legal principles or justifications that employers may rely upon:</p> <p>(a) Employment Contracts: Employers may include specific clauses in employment contracts that outline the expectation of availability outside of regular working hours. By signing the contract, employees agree to these conditions.</p> <p>(b) Exemptions and Special Circumstances: Certain industries or job roles may have specific exemptions or regulations that require employees to be available at all times due to the nature of the work. For example, emergency response services or on-call professions may have legal requirements for availability.</p>
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				<p>(c) Collective Agreements: In unionized settings, collective bargaining agreements between employers and unions may establish the terms and conditions of work, including expectations regarding availability outside of regular working hours.</p> <p>(d) Inherent Job Requirements: Certain job roles, such as upper-level management or executive positions, may inherently require employees to be available outside of regular working hours due to the responsibilities and demands of the position.</p> <p>10. It is important to consult the labor laws, regulations, employment contracts, and any applicable collective agreements in Kenya to understand the legal basis for employers requiring employees to be always</p>
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				<p>available for work. Labor laws, employment contracts, and collective agreements play a significant role in determining the rights and obligations of both employers and employees.</p> <p>11. There are several legal arguments that employers may put forth in favor of requiring employees to always be available for work. Some of these arguments include:</p> <p>(a) Operational Necessity: Employers may argue that the nature of their business or industry requires employees to be available outside of regular working hours.</p> <p>For example, in industries such as healthcare, emergency services, or essential infrastructure, continuous availability may be crucial to ensure</p>
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				<p>public safety and service delivery.</p> <p>(b) Contractual Obligations: If employment contracts clearly outline the expectation of availability outside of regular working hours, employers can argue that employees have willingly agreed to these conditions by signing the contract.</p> <p>(c) Exemptions or Special Circumstances: Certain laws or regulations may provide exemptions or special circumstances where employees can be required to be available at all times. This can be true for professions like on-call medical professionals, firefighters, law enforcement officers, and others.</p>
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				<p>(d) Inherent Job Requirements: Employers may argue that certain job roles inherently require availability outside of regular working hours due to the responsibilities and demands of the position. For example, executives or senior management roles may need to be reachable at all times to handle critical business matters.</p> <p>12. Implementing the right to disconnect in Kenya may face several challenges, including:</p> <p>(a) Limited awareness and understanding: Awareness of the importance of work-life balance and the potential negative effects of constant connectivity may be limited. Employers and employees may not fully understand the benefits of disconnecting</p>
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				<p>from work-related communication outside of working hours.</p> <p>(b) Cultural and organizational norms: Some cultures and industries prioritize constant availability and may view the right to disconnect as a lack of dedication or commitment. Overcoming these ingrained cultural and organizational norms can be challenging.</p> <p>(c) Technological barriers: In some regions of Kenya, access to reliable and affordable internet connectivity may be limited. This can make it difficult for employees to disconnect if they are dependent on digital devices and communication channels.</p> <p>(d) Resistance from employers: Employers may be reluctant to implement</p>
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				<p>policies or guidelines that limit or regulate employee communication outside of working hours. They may fear reduced productivity or disruptions to their operations.</p> <p>(e) Balancing flexibility and responsibilities: Implementing the right to disconnect requires finding a balance between providing employees with flexibility while ensuring that business operations and communication needs are effectively managed.</p> <p>13. Addressing these challenges would require a multi-faceted approach involving government regulations, organizational policies, education and awareness campaigns, and a shift in cultural attitudes towards work-life balance.</p> <p>14. The Employment (Amendment) Bill, 2022</p>
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			<p>imposes practical difficulties in the control organization of labour. The Government of Kenya being the main employer will most be inconvenienced – Presidential directives, Emergency, critical services, Essential services, security, etc. underpinned and protected in the Constitution of Kenya, 2010 will bear the most blunt.</p> <p>15. The National Labour Board, being the apex body that advises the Cabinet Secretary on all matters concerning employment and labour and legislation affecting employment and labour in Kenya, has not been involved in rendering its advice, prior to the enactment of the Employment (Amendment) Bill, 2022.</p> <p>16. Tripartite Partners including the most representative federation of employers’ organization dealing with labour, to wit, the</p>
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				<p>Federation of Kenya Employers (FKE) and the most representative federation of trade unions (COTU-K) have not been privy in the formulation of the Employment (Amendment) Bill, 2022 as provided in the Labour Institutions Act, 2007 (No. 12 of 2007) of the laws of Kenya.</p> <p>17. The Employment Act, 2007 is the principal law in Kenya for employment contracts that applies across the public and private sector and applies to domestic or household employment and the proposed Bill overregulates relationships that are elsewhere regulated and is bad law given the absence of any law in Kenya on digital economy.</p> <p>18. The position therefore of the State Department is that the new Clause 27A in the proposed Employment (Amendment) Bill, 2022 is bad</p>
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			<p>law and deviates from the accepted practice in the formulation of labour laws in Kenya, and if allowed, it may herald an economic shut down in the country, in absence of any policy on the subject matter and is we thereby reject the same, pending a comprehensive review of the entire labour laws, an elaborate process that require the involvement of the Tripartite Partners and technical assistance of the International Labour Organization, among others, in order to align those statutes to comply with the Changing World of work, Constitution of Kenya, 2010 and the International Labour Organization Conventions.</p>
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Dated the 17/10....., 2023.



Shadrack M. Mwadime, MBS
PRINCIPAL SECRETARY.



PUBLIC SERVICE COMMISSION

Ref No.: PSC/LEG/019/14/158/VI(56)

7th September, 2023

Mr. Samuel Njoroge
Clerk, National Assembly
Parliament Building
NAROB

Dear Sir,

**RE : SUBMISSIONS ON THE EMPLOYMENT (AMENDMENT) BILL, 2022 TO THE
DEPARTMENTAL COMMITTEE ON LABOUR**

Reference is made to the above subject matter and to your letter dated 28th August, 2023 Ref: NA/DDC/LABOUR/2023/086.

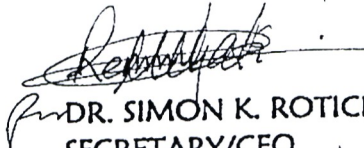
The Commission has reviewed the proposed Employment (Amendment) Bill, 2022 and hereby submits that the proposed amendment should be rejected in its entirety for the following reasons:

- a. The Bill is retrogressive as it does not take into account the changing work environment;
- b. The current trend is no longer about hours of work but about output and meeting of performance targets.
- c. There is government policy that has been proposed to allow for flexible work environment or work arrangements including virtual work and home work stations.
- d. In the current digital era where the government is planning to source for digital/online employment opportunities for the youth, the proposed amendment may not be relevant as it is not progressive.
- e. Employees have performance targets which may be met by the officers at any particular time and not specifically within the agreed work hours.
- f. The issues raised in the Bill may be addressed by way of policy.

- g. Some of the issues raised, e.g. on ways of compensation for the extra time worked have already been provided for both in the Employment Act and in policy. Such include compensation by way of overtime, honoraria, off duty, allowance, etc.
- h. The proposed amendment does not provide for ways in which an employee may compensate the employer in cases where the employee leaves work early without meeting the set targets.
- i. Employment is a civil relationship that should not attract criminal liability in terms of the fines and penalties proposed in the Bill.

As an employer, we would support proposed amendments that would address the future of work, progressive labour practices and enable the country provide a competitive edge that can compare with global trends.

Yours *Sincerely,*



DR. SIMON K. ROTICH, CBS
SECRETARY/CEO
PUBLIC SERVICE COMMISSION



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX #0401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref : COG/6/11 Vol. 3 (72)

7th September, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Main Parliament Buildings
NAIROBI

Dear Mr. Njoroge

MEMORANDA ON THE EMPLOYMENT (AMENDMENT) BILL, 2022 (SENATE BILL NO. 11 OF 2022)

The above subject matter refers.

Reference is made to your call for stakeholders to submit memoranda on the Employment (Amendment) Bill, 2022 (Senate Bill No. 11 of 2022).

We have perused the bill and we note that it;

1. Seeks to expand the protection of employees from burnout as espoused in section 10 (2) (g) of the Employment Act
2. Requires an institution with more than ten (10) employees to develop policy to actualize the provisions, within their context
3. Does not apply to the provision of essential services specified under section 81 of the Labour Relations Act.

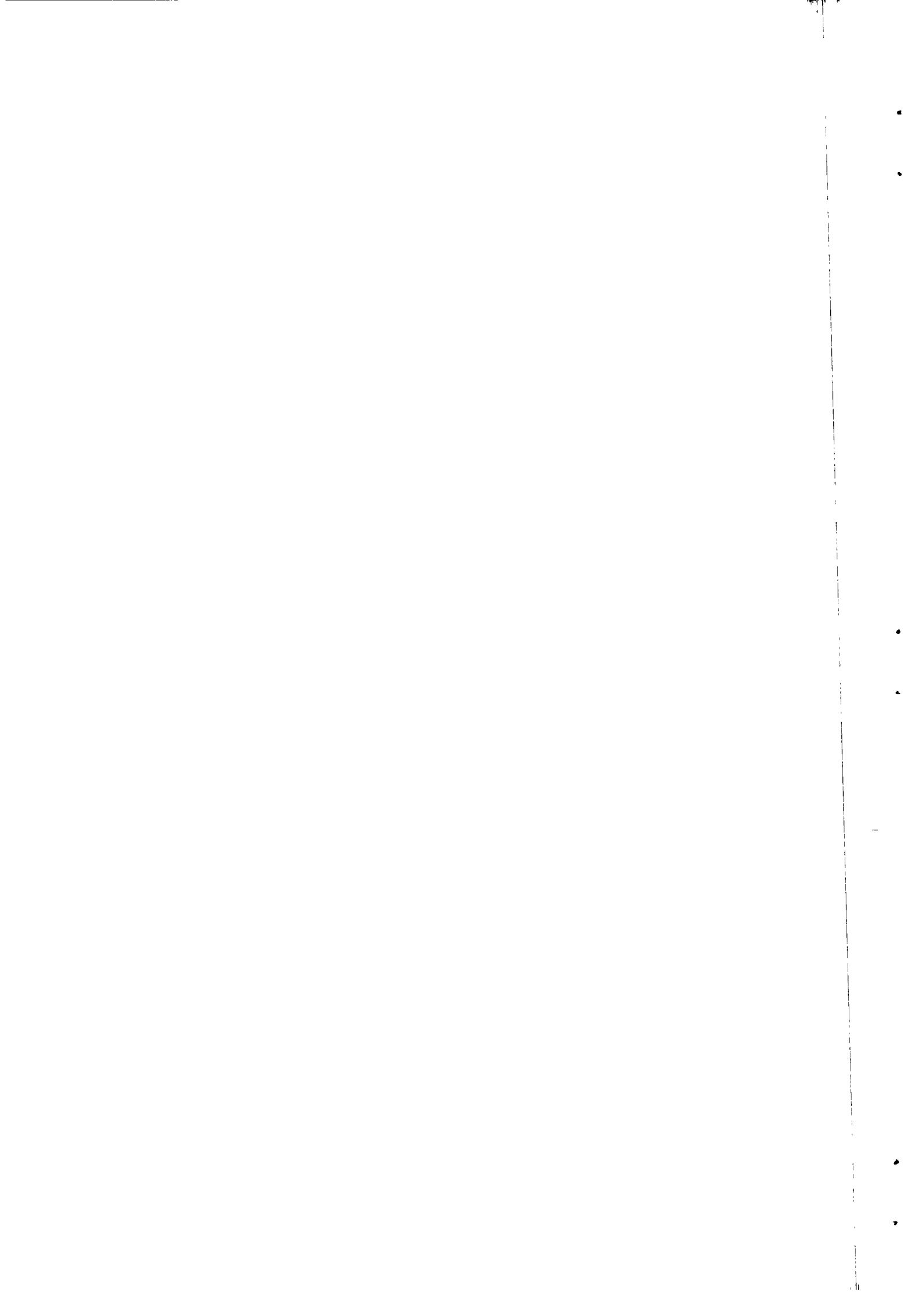
In this regard the Council supports the amendments and looks forward to implementation of the same once the Bill is passed.

Please be assured of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

Copy: All Excellency Governors
All County Executive Committee Members for Public service
All County Secretaries
All County Public Service Boards





*PO office
→
8/9/23*

LAW SOCIETY OF KENYA
Lavington, Opposite Valley Arcade
Gitanga Road
P.O. Box 72219-00200
NAIROBI
Tel. 387 4664
0720 904983

MEMORANDUM TO
PARLIAMENT

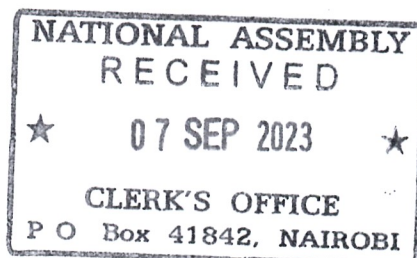
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Rose Wanyohi
to facilitate
by way
8/9/23*

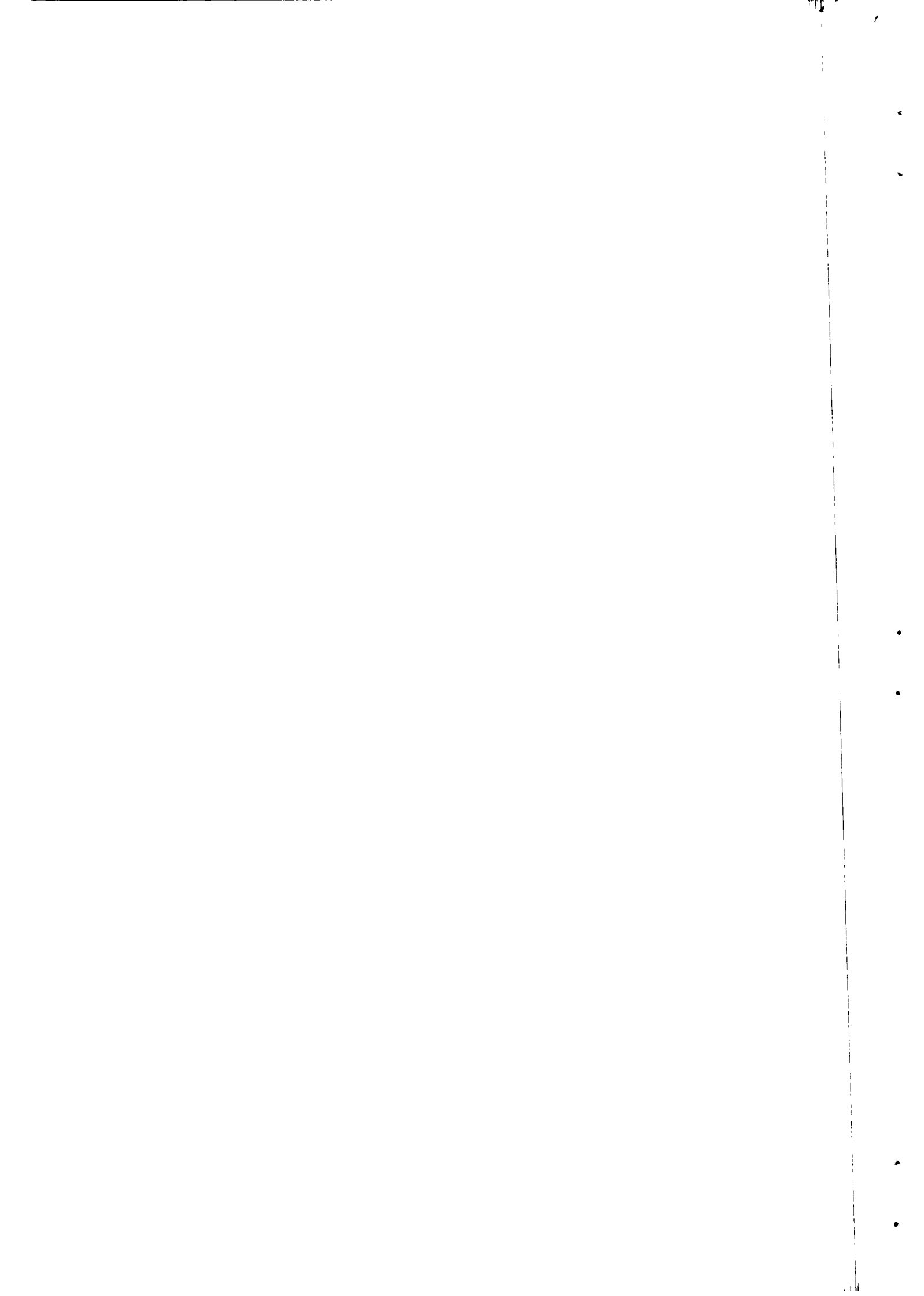
ON

THE EMPLOYMENT AMENDMENT BILL 2022

SEPTEMBER, 2023

Eric Theuri, President Law Society of Kenya
Lavington, opp Valley Arcade,
Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya
Tel: +254 111 045 300
Email: lskpresidenttheuri@gmail.com/ president@lsk.or.ke
Website: www.lsk.or.ke





THE EMPLOYMENT AMENDMENT BILL 2022

Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya currently numbering to over 21,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- **President**, Eric Theuri
- **Vice President**, Faith Mony Odhiambo
- **General Membership Representatives**, Chrysostom Akhaabi, Kabata Mwaura, Tom K'opere
- **Nairobi Representatives**, Cohen Amany, Njoki Mboce, Ochieng Gor
- **Up-country Representatives**, Byron Menezes, Lindah Kiome, Michael Wabwile, Vincent Githaiga
- **Coast Representative**, Riziki Emukule
- **Secretary/CEO**, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law

Society of Kenya makes the following submissions on The Employment Amendment Bill
2022

GENERAL COMMENT ON THE EMPLOYMENT AMENDMENT BILL 2022

The Law Society of Kenya (LSK), as the representative body for legal practitioners in Kenya, plays a crucial role in advocating for legal reforms that uphold the rights and interests of citizens. In this context, the LSK has expressed strong support for the proposed Employment Amendment Bill 2022, recognizing the importance of this legislation in aligning the country's labor practices with international standards.

The Employment Amendment Bill 2022

The Employment Amendment Bill 2022 currently under consideration in Kenya aims to introduce legislation that guarantees employees the right to disconnect from work-related electronic communication outside of their regular working hours. The Bill addresses the growing concerns related to work-related stress, burnout, and the erosion of work-life boundaries in the digital age.

1. INTRODUCTION AND BACKGROUND:

The right to disconnect refers to an individual's right to disconnect from work-related electronic communication devices and networks outside of their regular working hours. As the prevalent use of technology continues to blur the boundaries between work and personal life, it has become imperative to safeguard employees' mental health, work-life balance, and overall well-being. This amendment aims to provide legal frameworks that regulate communication expectations and protect employees from excessive work-related pressure.

2. IMPORTANCE OF THE AMENDMENT:

This bill holds paramount importance in promoting healthier work environments, reducing burnout, and enhancing work-life balance. The benefits of introducing the right to disconnect are manifold:

- a) **Improved Work-Life Balance:** Implementation of the Right to Disconnect would help employees strike a healthier work-life balance, reducing stress and burnout. This, in turn, can enhance overall well-being and job satisfaction.
- b) **Increased Productivity:** Encouraging employees to disconnect during their non-working hours can lead to increased productivity during working hours. Employees who have time to recharge are often more focused and efficient when they are on the job.
- c) **Better Mental Health:** Protecting the Right to Disconnect can contribute to better mental health outcomes among the workforce. Reduced stress levels can lead to lower rates of anxiety and depression, resulting in a more resilient and mentally healthier workforce.
- d) **Enhanced Employee-Employer Relations:** Clear policies regarding the Right to Disconnect can lead to more positive employer-employee relationships. When employees feel their well-being is valued, they are more likely to engage in their work and remain loyal to their employers.
- e) **Legal Clarity:** Implementing the Right to Disconnect in Kenyan law would provide legal clarity for both employees and employers, reducing disputes and legal challenges related to excessive working hours or unreasonable demands outside of regular work times.

3. FOSTERING INTERNATIONAL PRACTICE:

Numerous countries have recognized and implemented the right to disconnect, aligning their labor laws with international best practices for instance;

1. **France as a Pioneer:** The concept of the Right to Disconnect initially gained prominence in France in 2017 when the country introduced a law requiring companies with 50 or more employees to negotiate guidelines on when employees can switch off from work-related electronic devices. This groundbreaking legislation recognized the importance of work-life balance and set a precedent for other nations to follow.

2. European Union Directive: In 2019, the European Union (EU) introduced the Directive on Transparent and Predictable Working Conditions, which includes provisions on the Right to Disconnect. EU member states are required to ensure that workers have adequate rest periods and the right to disconnect from work-related devices, demonstrating the growing international consensus on this issue.

By amending the Employment Act to introduce the right to disconnect, Kenya would demonstrate its commitment to staying abreast with global labor standards and promoting employee well-being.

4. CONSTITUTIONAL REQUIREMENTS

The proposed amendment to the Employment Act aligns with several constitutional requirements, including:

a) Article 41: This article enshrines the right to fair labor practices, seeking to protect employees from exploitative and unfair working conditions. Recognizing the right to disconnect would ensure that employees are not subject to constant work-related interruptions that infringe upon their personal lives.

b) Article 43: The right to disconnect supports the realization of Article 43 of the Kenyan Constitution, which guarantees every person the right to the highest attainable standards of health and the right to accessible and adequate housing. Regular disconnection from work-related obligations supports good mental health, thus contributing to overall well-being.

SPECIFIC COMMENTS ON THE EMPLOYMENT AMENDMENT BILL 2022

Provision of the bill	Issue	Proposal
Clause 27A (5)	This section provides that; <i>“(5) The right to disconnect shall be limited only to the extent</i>	We propose that term “emergency” be defined in the bill.

	<p><i>necessary to address an emergency arising out of the work falling within the responsibility of the employee.”</i></p> <p>This part does not define what an emergency entails. Accordingly, the amendment is meant to not only prevent the abuse of the limitation imposed on exercising the right but to also shield the employers from employees who choose not to respond on the basis that the situation is not an emergency.</p>	
<p>Clause 27A (7) (b)</p>	<p>This section provides that; <i>“(7) Where an employer contacts an employee during the period when there is no mutually agreed out of work hours, the employee — (b) may choose to respond, for which the employee shall be entitled to get compensation.”</i></p> <p>This provision fails to provide for the modalities of compensation including the amount of compensation and the relief available to an employee who is not compensated.</p>	<p>We propose an amendment to provide for the modalities of compensation including the amount of compensation and the relief available to an employee who is not compensated.</p> <p>The amendment seeks to cure the ambiguities present, with respect to the mode of compensation and the remedies available in the event of non-compensation of an employee.</p>

The Law Society of Kenya's support for the Employment Amendment Bill 2022 reflects a commitment to aligning the country's labour laws with international practices that prioritize employee well-being and work-life balance. By advocating for this legislation, the LSK is contributing to the creation of a more equitable and healthier work environment in Kenya, in keeping with global labor standards. The Right to Disconnect is not just a legal

concept but a reflection of evolving societal expectations for fair and balanced workplaces in the digital age. We urge the honorable members of Parliament to support and enact this vital amendment to the Employment Act.

In conclusion, we humbly submit that our comments be considered before enacting the Bill.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Eric Theuri', is written over a vertical red line.

Eric Theuri
President Law Society of Kenya

KENYA LAW REFORM COMMISSION



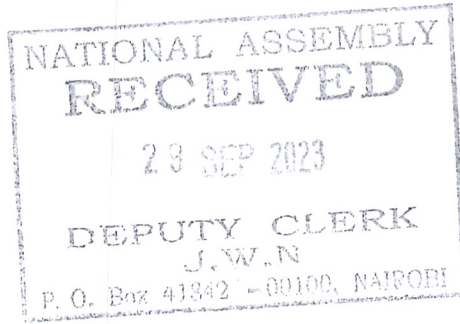
"A Vibrant Agency for Responsive Law Reform"

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When replying please quote

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KLR/8/64VOL.I(6)



KENYA LAW REFORM COMMISSION
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TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

.....20.
26th September, 2023

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

*DD c-1100
&
29/09*

*Rose Wanjohi
to facilitate
w.w.l.g
28/9/23*

(Attn: Daniel Mutunga)

Dear *Daniel,*

RE: COMMENTS ON THE EMPLOYMENT (AMENDMENT) BILL, 2023

Please refer to the above matter and your letter Ref: NA/DDC/LABOUR/2023/086 dated 28th August, 2023.

Enclosed herewith please find the Commission's comments on the Employment (Amendment) Bill, 2023 for further action.

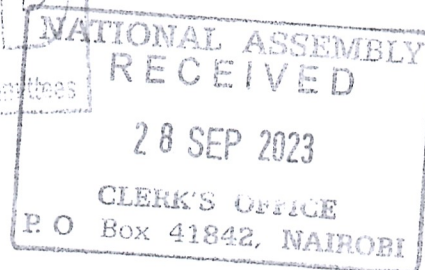
As always, we thank the National Assembly for the continued support and cooperation.

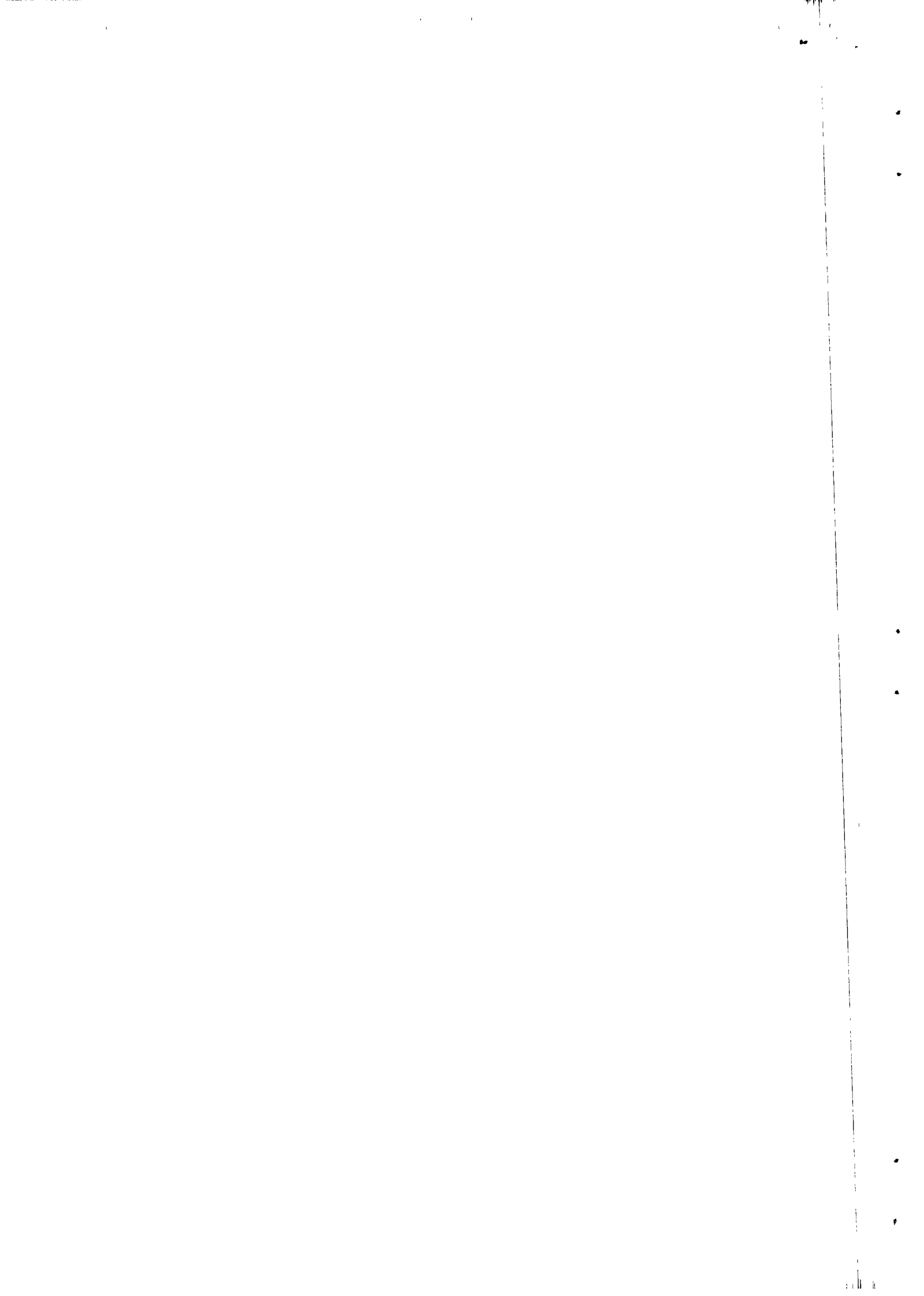
Yours *Sincerely,*
Joash Dache

**Joash Dache, MBS
SECRETARY/CEO**

Encl

**Copy to: Christine Agimba
Chairperson
Kenya Law Reform Commission**







September 13, 2023

COMMENTS ON THE EMPLOYMENT (AMENDMENT) BILL, 2023

I. OVERVIEW OF THE BILL

The Employment (Amendment) Bill 2021 (the “Bill”) seeks to amend the Employment Act, 2007 to introduce an employee’s ‘right to disconnect’. The Bill defines the right to disconnect as an employee’s right to not be contacted by their employer outside of contractual working hours, except when necessary for the purposes of dealing with a workplace emergency.

The Bill places an obligation on the employer to put in place a policy framework outlining the exceptions to the right to disconnect, as well as the circumstances under which the right may be waived. Additionally, the policy must outline the parameters for the use of electronic devices to communicate with an employee outside work hours. If an employer has more than ten (10) employees, the policy is to be developed in consultation with the employees and/or a trade union, where applicable.

The Bill further prescribes that an employee is not obliged to respond to a communication, if contacted outside of work hours, and that if the employee chooses to respond, he/she is to be compensated. The Bill also states that an employer cannot penalise an employee who chooses not to respond to such an out-of-hours communication.

Essential service providers (as prescribed under section 81 of the Labour Relations Act, 2007) are excluded from the right to disconnect. The Cabinet Secretary for Internal Security may, from time to time, declare any other service as an essential service.

II. KLRC COMMENTS

The right to disconnect is a proposed human right regarding the ability of people to disconnect from work and primarily not to engage in work-related electronic communications such as e-mails or messages during non-work hours.

The modern working environment has been drastically changed by new communication and information technologies. The boundary between work life and home life has shrunk with the introduction of digital tools into employment. While digital tools bring flexibility and freedom to employees they also can create an absence of limits, leading to excessive interference in the private lives of employees.

We have noted that several countries, primarily in Europe, have some form of the right to disconnect included in their law. Here are some examples of how the right to disconnect is implemented in different countries:

- In France, a law was passed in 2017 that gives employees the right to ignore work emails and calls outside of working hours.
- In Italy, a law was passed in 2021 that requires employers to establish policies that allow employees to disconnect from work outside of working hours.
- In Belgium, a law was passed in 2022 that requires employers to negotiate with employees on policies that allow employees to disconnect from work outside of working hours.

The right to disconnect shares similarities with several preexisting human rights. The most notable of these is the right to rest and leisure found in Article 24 of the UDHR. This right explicitly places limitations on the amount of time people can work for, something that the right to disconnect takes further and places into the modern age.

The right to disconnect also crosses into the Article 23 of the UDHR, that everyone has the right to work and receive fair remuneration and to join trade unions to protect their interests.

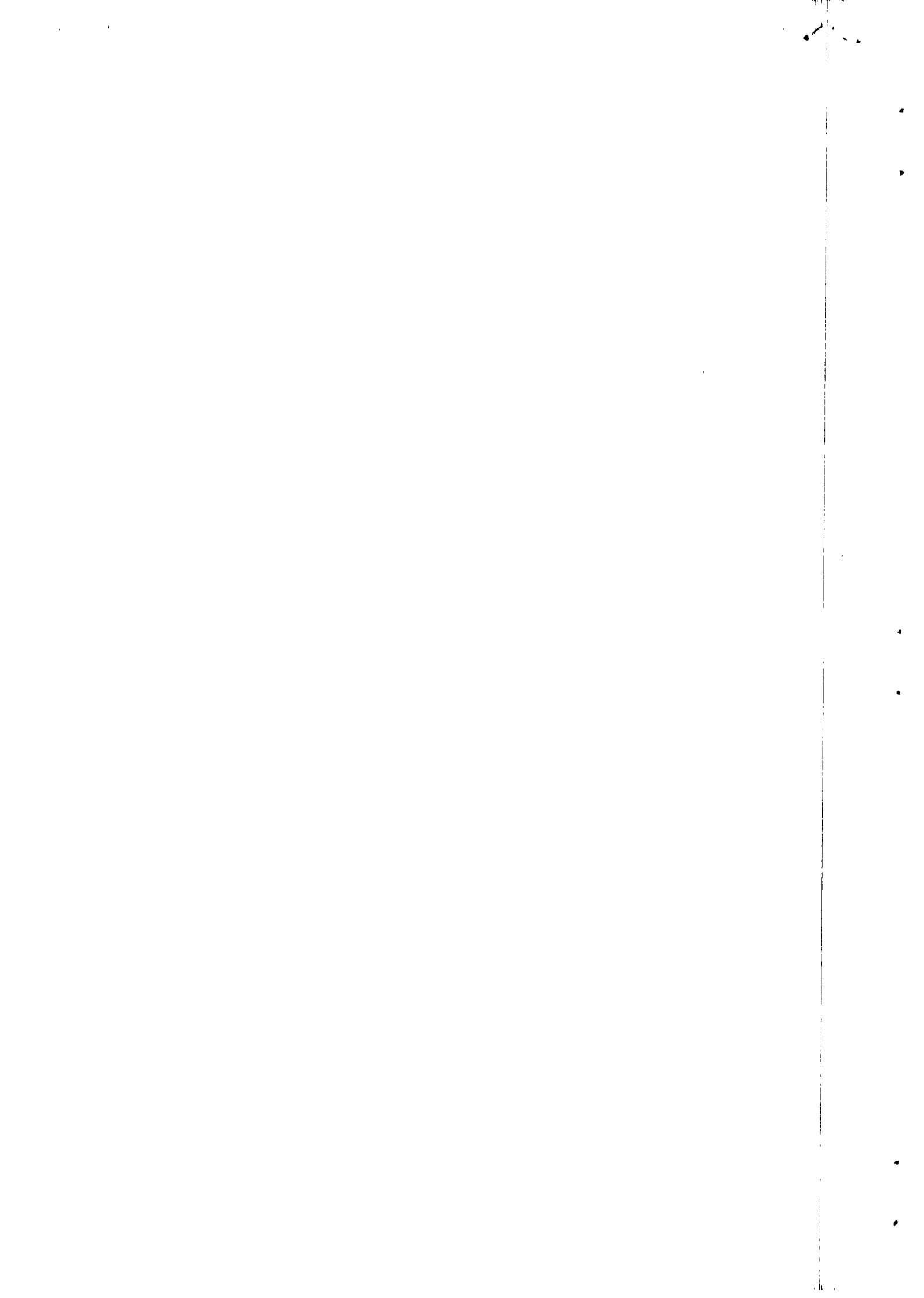
The International Labour Organization has affirmed the need for workers to be able to disconnect from technology in order to avoid the blurring of the lines between work life and personal life.

The Commission appreciates this Bill and endorses the inclusion of the right to disconnect into the law as an important step towards protecting workers' rights and well-being.

CONCLUSION AND RECOMMENDATION

The Commission recommends the enactment of this Bill by the National Assembly.

However, we recommend inserting a sub-clause delegating legislative power to a relevant Cabinet Secretary to make regulations which will shed light to certain unclear aspects such as “nature of compensation,” “emergency,” and “out of work hours” should be resolved with clear, unambiguous definitions preferably through the regulations.



② D. D. K. 12/09

CNA
① Seal
SNA
11/9/23

06th August 2023

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

FKE MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL, 2022 (SENATE BILL NO. 11 OF 2022)

③ Done
12/09/23

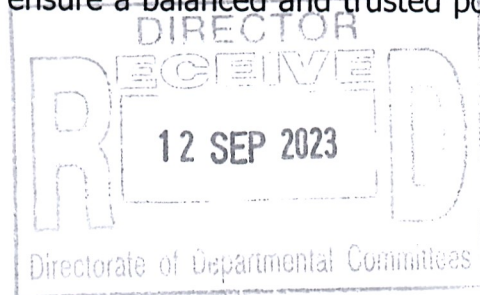
1.0 Background

The Federation of Kenya Employers (FKE) is the most representative employers' organization in Kenya. The Federation members employ a total of 1.35 million wage employees in Kenya. This represents 61% of the formal private sector employment in Kenya. The role of the Federation is to improve the business environment for employers in Kenya through advocacy, effective representation, social dialogue, and provision of value-add services. In addition to representing employers in Kenya at local level, the Federation also represents employers at regional and international level including at East Africa Employers Organization, Business Africa Employers Confederation, International Organization of Employers (IOE), and International Labour Organization (ILO).

The Employment (Amendment) Act, 2022 seeks to amend section 27 of the Employment Act, 2007 by inserting a new section 27A – on the "right to disconnect".

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

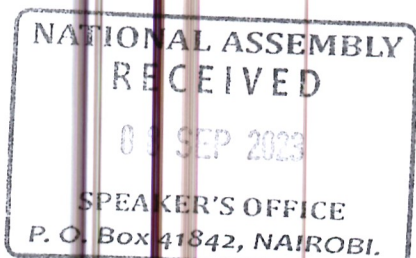
- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair labour practices
- Resilient and competitive employers
- Harmonious industrial relations
- Social Justice
- Feasibility and affordability of the costs associated with implementation of the policy



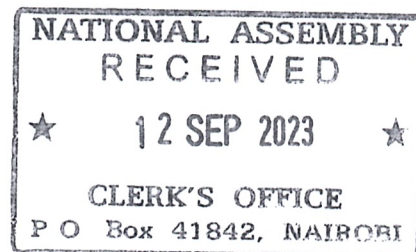
2.0 FKE Position on the Proposed Amendments

On the right of the employee to disconnect, the **Federation of Kenya Employers (FKE) does not** agree with the proposed amendments for the reasons that;

1. The proposed amendments not only present radical changes to the Employment Act 2007 but also introduce new stringent measures that will curtail the prerogative to manage enterprises by the owners. This will automatically pose a challenge to Industrial Relations in Kenya. The



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- changes proposed negates the very essence of managing enterprises freely to meet the demands and challenges brought about by the market forces.
2. These changes touch on employers' administrative prerogatives that should not be curtailed by legislation. The changes, in our view, infringe on the employer's right to manage the enterprise on a day-to-day basis.
 3. We have to factor in the high level of informality in Kenya and the need to formalize the informal economy to create more and better jobs. The 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. The Decent Work Agenda Country Programme that Kenya has adopted, if properly implemented, will support formalization of the informal sector and hence increase the revenue collection for the Government to meet its development priorities.
 4. The Bill fails to meet the simple threshold of the ILO conventions. If passed, the Bill will create two centers of managerial power and ultimately disharmony and indiscipline at workplaces. The ILO has provided instruments which have been successful in managing working hours. Some of them include
 - i. Hours of Work (Industry) Convention, 1919 (No. 1)
 - ii. Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)Under hours of work (Commerce & Offices) convention, 1930, there is a provision for temporary exceptions which may be granted in the following cases:
 - (a) in case of accident, actual or threatened, force majeure, or urgent work to be done on machinery or plant, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment.
 - (b) in order to prevent the loss of perishable goods or avoid endangering the technical results of the work;
 - (c) in order to allow for special work such as stocktaking and the preparation of balance sheets, settlement days, liquidations, and the balancing and closing of accounts;
 - (d) in order to enable establishments to deal with cases of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures.
 5. The Bill is too prescriptive in suggesting that employers should be required to develop policies to regulate phone usage by employees outside work hours. An employee has the right to keep their phone on or off if it is a personal phone. If the phone is an official one, then the employee is under obligation to use it as required by the enterprise. If the nature of the business requires such shift system or extension of working time to meet the business demands, then such laws which are prescriptive in nature will kill enterprises.

6. The payment of overtime is already provided for in the General Wages Order to address situations where employees work beyond set hours. Most Collective Bargaining Agreements (CBAs) provide for flexibility in management and regulation of working time. So far, to our knowledge, no Union or employee has raised such concerns.
7. The Bill will have an unintended adverse consequence on employment of youths and women in this country and who are most vulnerable. The sectors and nature of work to be highly impacted by this Bill are the low to middle level skilled and service sector operations. These areas predominantly employ youth and women. It is our humble submission that the Senate should not aggravate the employment situation of youth and women in Kenya by introducing more rigidities in the labour market.
8. The Bill fails to recognize that the concept of Work, Workspace and work hours have changed, and we must all adapt to it. It is a Bill stuck in the past against the reality of the New Normal! This is not cured by passing impractical amendments to an already onerous Employment Act. Flexibility is important for the Labour sector to thrive in the new normal brought by challenges including the pandemic. The emerging "new normal" emphasizes more on results (output). The employer and the employee should be allowed to agree among themselves what arrangements work best for them. This Bill will make it hard for the employer and employee to effectively respond to challenges such as those presented by covid-19 pandemic and the new workplace realities.
10. Although the law identifies the right to leave work at the end of the work day, it does not create an obligation to disconnect. This shifts the burden of disconnecting to the employee. While proponents of such laws might suggest that this allows employees to take charge and choose whether to disconnect or not, the reality is more complicated. Employees may feel pressure from their employers or managers, or desire to get ahead by being more available, and thus may still opt to connect and respond to online communications after hours. In turn, this may disadvantage those who choose to exercise their right to disconnect and deter those that otherwise would.
11. Section 27(7) of the Bill indicates that where an employer contacts an employee outside work hours, the employee may choose to respond, for which they would be entitled to compensation. The Bill, however, gives no further guidance on the form or value of compensation, creating ambiguity in this regard. Further, "compensation" in common parlance is taken to mean money. Such an understanding would be problematic for employers that have established arrangements that allow employees to take alternative rest hours/time for any overtime incurred.
12. International investors only invest when they are assured that the environment is conducive for them to conduct business (this would include the ease with which they can communicate and work with local talent). Multinational companies today account for a sizeable proportion of employers in Kenya. Such companies typically have staff that operate in **different time zones around the world**. Implementation of the "right to disconnect" (as currently

envisaged in the Bill) is likely to obstruct and/or prevent collaboration between employees located in Kenya with colleagues in different time zones. This does not mean that employees should be subjected to unwarranted long working hours. However, taking into account the need to create more employment for Kenyans and to attract investment into our country, the intentions behind the proposals in this Bill could be counterproductive for Kenyans. The Bill in its current form is likely to negatively impact Kenya's ability to attract foreign investment, thus negatively impacting on the country's economy.

13. The engagement between an employer and employee during out of work hours is a management issue and should not be legislated. This should be left as it is addressed in the current practices through the Collective Bargaining Agreements (CBAs) and the Human Resource Policy Manuals at workplaces according to the unique operational requirements and needs of specific enterprises.

3.0 Way Forward

The Federation of Kenya Employers (FKE) does not agree with the proposed amendments in the Employment (amendment) Bill, 2022 (Senate Bills No. 11 of 2022). As such, FKE submits that the Senate refrains from passing the Bill on the basis that the proposed amendments will hamper the development and operations of the enterprises, job creation and the Labour market and jeopardize harmonious Industrial Relations in Kenya.



Mrs. Jacqueline Mugo, EBS
Executive Director/ CEO
Federation of Kenya Employers (FKE)



4.0 Matrix Summary of the Proposed Amendments and Justification

Section of the Bill	Details of the Bill	Comment/ Proposal	Justification
Section 27A (2)	<p>(2) An employer shall for purposes of (1) above –</p> <p>a) Put in place a policy regarding the:</p> <p>(i) Circumstances under which an employer may contact an employee during out of work hours;</p> <p>(ii) Use of electronic devices to send or receive information, messages or any digital work-related communication during out of work hours; and</p> <p>(iii) Circumstances under which the right to disconnect may be waived.</p>	<p>(a) Proposal to provide a period of Six (6) months for the putting in place of the Policy to guide on the right to disconnect after commencement/effective date.</p>	<p>The six(months) period will allow organizations to develop and engage internally on the policy formulation and socializing the same with employees.</p>
Section 27A (2) (b)	<p>(b) Specify the nature of compensation for employees who work during out-of-work hours</p>	<p>Seems to introduce blanket compensation for colleagues who work outside working hours (including management cadre). This may be an additional cost to employers in the current tough economic period. Propose to remove it or clarify that the compensation is strictly for</p>	<p>The practicality of this may be difficult to implement since it's not clear how the compensation will be calculated. Is it per email, text, or is it per response given? How much? Who determines the value of the compensation?</p> <p>Customarily, management cadre colleagues are not compensated for working overtime since their</p>

[Handwritten Signature]



		responding to communication outside working hours	pay is considered to cover these extra hours and responsibilities.
Section 27A (2) (3)	Where an employer has employed more than ten employees, such employer shall in formulating a policy under subsection (2), consult the respective employees or, where applicable, trade union.	Proposal to amend the Labour Relations Act of 2007 to include this provision and the role trade unions shall play in this regard.	This will enable alignment between trade unions and employers in terms of the expectations of the Bill where applicable.
Section 27A (2) (4)	The right to disconnect shall be subject to the terms and conditions specified under section 10. Proviso of Section 10 below; 10 (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.	Proposal to amend and include the terms and conditions that support out of work hours and right to disconnect. This section is not clear.	A concise definition of these terms and conditions to be stipulated in the Bill to eliminate ambiguity and ensure consistent application of the section by all players.
Section 27A (5)	The right to disconnect shall be limited only to the extent necessary to address an emergency arising out of the work falling within the responsibility of the employee.	Proposal to define Emergency and the player that defines emergency -Is it the employee or employer? Section (7) read	The Section as currently worded is too limiting. There would be emergencies which do not fall within an employee's responsibilities but which an



**FEDERATION OF
KENYA EMPLOYERS**

The Voice of Employers

		within the set working hours.	
Section 27(A) (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; and (b) May choose to respond, for which the employee shall be entitled to get compensation.	There is need for guidance on the form or value of compensation. In any case, this is also provided for as overtime in law.	The fact that the Bill does not give further guidance on the form or value of compensation makes in ambiguous. Furthermore, "compensation" in common parlance is taken to mean money. Such an understanding would be problematic for employers that have established arrangements that allow employees to take alternative rest hours/time for any overtime incurred.
Section 27(A) (8)	The provisions of this section shall not apply to the provision of essential services specified under section 81 of the Labour Relations Act.	Proposal to include Banking Services as an essential service provider.	Banking Services should be included as an essential service provider due to the integral role banking plays.
		Need to clarify if Banks/financial institutions are considered essential services as per section 81 of the Labour institutions act 2007.	During Covid-19 Banks/ Financial services were gazetted as essential services
Section 27(A) (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 imprisonment for a term not exceeding one year or to both.	Proposal to delete/amend this section as it seeks to criminalize employer-employee relationships	Our proposal is that the remedies for this section should be under Section 49 and 50 of the Employment Act and that criminal elements should not be introduced to it.



**FEDERATION OF
KENYA EMPLOYERS**

The Voice of Employees

<p>Section 27(A) (10)</p>	<p>In 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.</p>	<p>Proposal to recognize that some organizations are multinationals, or businesses which trade across time-zones This is a factor that may play out during 'out of work hours. There should be an overriding right/objective for such scenarios. The Bill is also silent about key work out of-hours events such as trainings, conferences and travel time. Proposal and consider where employers have flexible working models that allow an employee to choose working hours, how is this to be implemented e.g., breast-feeding mothers and with remote working, employees in management grade have the latitude of staggering their tasks to suit their needs. The employer can therefore contact the employee at odd hours.</p> <p>There's need to accommodate scenarios where the scope of work cannot be limited to prescribed work hours.</p>
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**FEDERATION OF
KENYA EMPLOYERS**

The Voice of Employers

		<p>Consideration or proposal to have this section limited to junior roles as more senior roles would have responsibilities to manage emerging demands from regulators, clients and diverse macros.</p>	
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Mbr of KEPSA



KAM/10/14/rl /mb/jw/AM/2023

6th September 2023

Mr. Samuel Njoroge
The Clerk, National Assembly
Parliament of Kenya, Parliament Buildings
P.O Box 41842 - 00100
NAIROBI

① D/Dc
Please deal.
Soni
14/09/23
② Rose Wangari
Deal
14/9

Dear Sir,

RE: SUBMISSION OF KAM MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL 2022

The Kenya Association of Manufacturers (KAM) presents its compliments and appreciates the continued support.

Following the call for views on the Employment (Amendment) Bill 2022, we wish to submit our Memorandum.

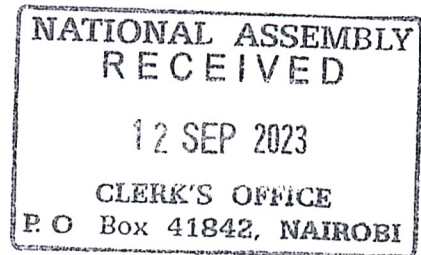
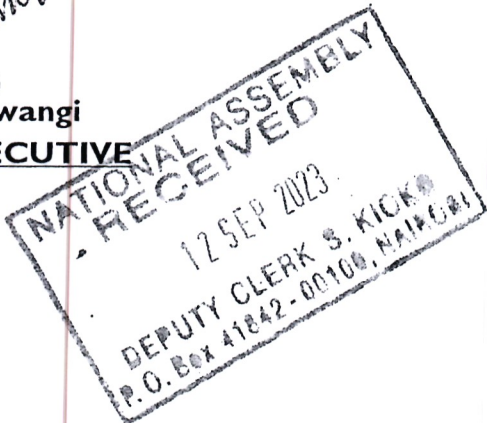
The purpose of this letter is to therefore submit the Kenya Association of Manufacturers' Memorandum on the Employment (Amendment) Bill 2022.

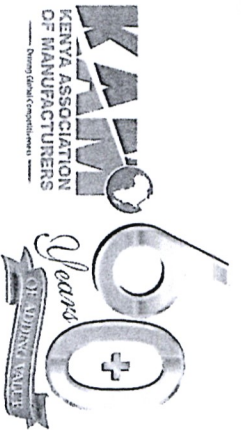
Feedback may be communicated to us via our physical address and advance feedback email to ceo@kam.co.ke or on mobile to +254 722 370446.

Your early feedback will be appreciated.

Yours sincerely,

Anthony Mwangi
CHIEF EXECUTIVE
Encl.





MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL, 2022

Submitted to

**SAMUEL NJORGE
THE CLERK, NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS, NAIROBI**

Presented By

**ANTHONY MWANGI, CHIEF EXECUTIVE,
KENYA ASSOCIATION OF MANUFACTURERS (KAM)**

SEPTEMBER 2023 – NAIROBI, KENYA

1.0 INTRODUCTION

Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through its strong linkages with all sectors of the economy. KAM has over 950 members and represents over 40% of Kenya's manufacturing value add industries.

KAM represented Kenya's manufacturing sector interests in the East Africa Trade integration process through the design, ratification, and implementation of the Customs Union, and the Common Market Protocol. The integration process in East Africa has been successful with Kenya Playing a critical role. The EAC region integration is expected to spur the manufacturing sector to enhance intra-EAC trade in value-added products and thus grow the economies of the region.

KAM has a membership of manufacturers across thirteen manufacturing sectors and Services ranging from **Food and Beverage, Pharmaceutical; Automotive; Chemical and Allied; Metal and Allied; Paper and Paperboard; Leather and Apparel; Textile and Apparel; Plastics and Rubber; Timber, Wood, and Furniture; Electric and Electronic; Building, Mining, and Construction; Agro-Processing.**

2.0 PROPOSED AMENDMENTS TO THE EMPLOYMENT (AMENDMENT) BILL, 2022

In response to the call for public participation in the afore-referenced Bill, we propose the following amendments to be considered before the draft Bill is enacted:

3.0 SUMMARY OF FEEDBACK

We appreciate that the Bill has acknowledged and provided for exemptions to the "right to disconnect" in cases of any emergencies. This move recognizes there will be such emergencies and is in alignment with global best practices on the same. To strengthen the provisions, we propose:

- For a **general definition of emergencies to be included to guide employers on the extent of the same while developing their policies.**
- **On compensation in circumstances where an employee chooses to connect during the 'disconnect hours'** we propose that the provisions provide that the extent of the compensation should be guided by organizations policy since they may vary from employer to employer depending on their capacity.

4.0 DETAILED PROPOSED AMENDMENTS TO THE EMPLOYMENT (AMENDMENT) BILL, 2022

PROPOSED AMENDMENTS TO THE EMPLOYMENT (AMENDMENT) BILL, 2022

PROPOSED AMENDMENTS TO THE EMPLOYMENT (AMENDMENT) BILL, 2022		
CLAUSE	PROPOSAL	JUSTIFICATION
<p>1. Clause 2 Proposed section 27A (5) (5) The right to disconnect shall be limited only to the extent necessary to address an emergency arising out of the work falling within the responsibility of the employee.</p>	<p>We propose the inclusion of a new definition of the word 'emergency' to mean as follows:</p> <p>"Emergency" means a circumstance mandating expeditious attention and remedial intervention, characterized by one or more of the following occurrences:</p> <ol style="list-style-type: none"> 1) Injury 2) Loss of Life 3) Damage to Property 4) Significant Interference: Any disruption of ordinary activities, inclusive of, but not restricted to, matters encompassing: <ol style="list-style-type: none"> (i) Safety (ii) Health (iii) Security (iv) Business-related critical situations as defined in the organization's policies. (v) Medical Emergencies 	<p>We make the proposal to define the term 'emergency' based on the following proposals:</p> <ul style="list-style-type: none"> • The Bill has introduced the term 'emergency' as one of the justifications for the right to disconnect. There is therefore a need to provide a definition for general guidance and avoid any ambiguity in its meaning. • Employers should be facilitated to retain the ability to contact workers in defined emergency situations such as health and safety information among the other areas proposed. • The definition guidance will support the existing provision allowing employers to put in place a policy that may define an emergency as anything and everything that an employee does or may do daily.



The Voice of the Private Sector in Kenya

KEPSA MEMORANDUM ON THE EMPLOYMENT AMENDMENT BILL 2022 (SENATE BILLS NO. 11 OF 2022) TO BE SUBMITTED ON 07TH SEPTEMBER 2023

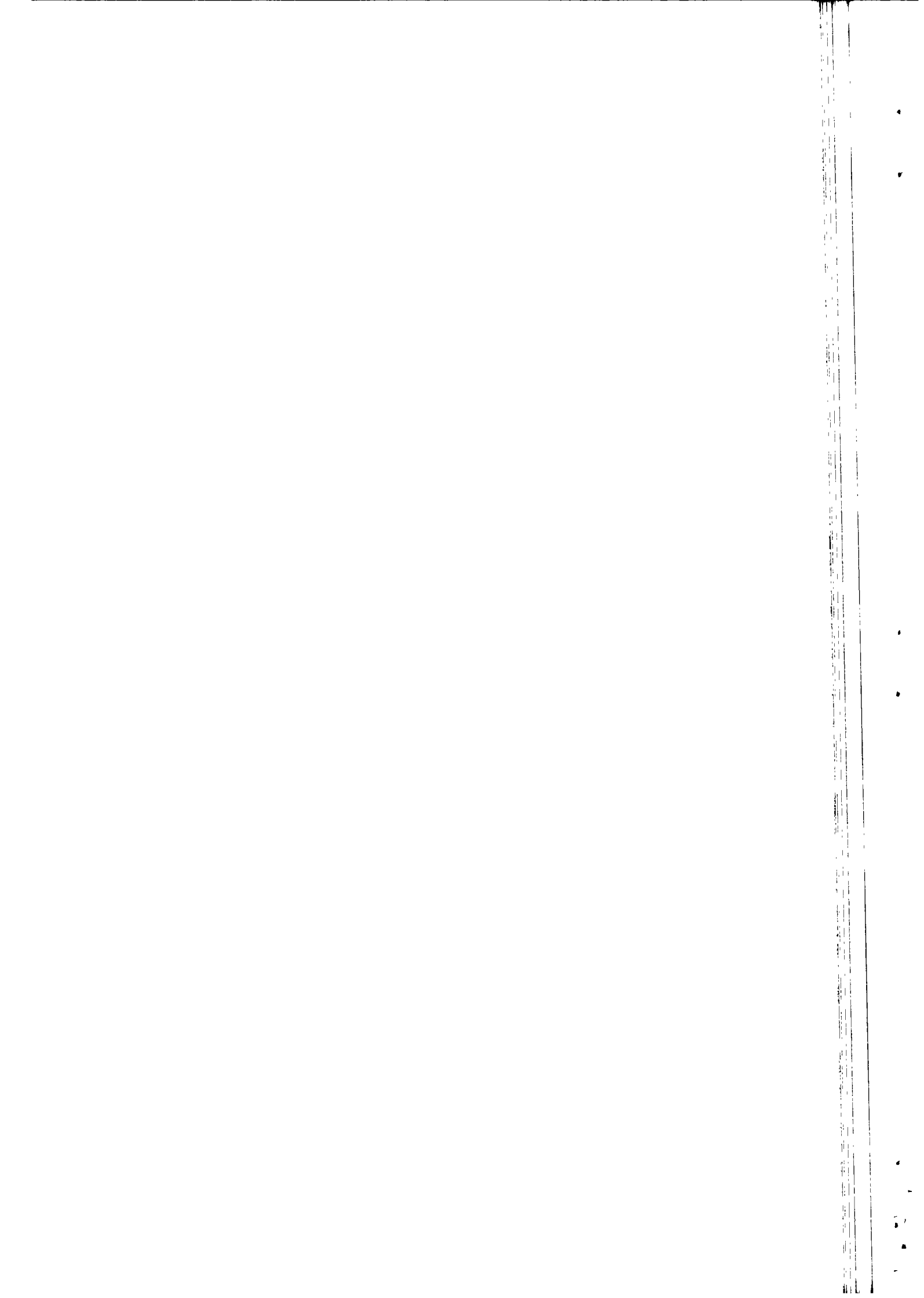
Introduction

KEPSA is the umbrella body of the private sector for all sizes of local and foreign businesses, Trade Associations and Chambers of Commerce from all the sectors of the economy to enable them speak with one voice when engaging government and other stakeholders on cross cutting policy issues affecting private sector development. Through the International Chamber of Commerce- Kenya, which we host, and direct membership of corporates, SMES and business associations, we reach to over two million business in Kenya. We are also the focal point of the East Africa Business Council (EABC) which brings us all private sector umbrella associations in the East African Region. KEPSA is a member of the Africa Business Council – the body of all Umbrella Associations and Chambers of Commerce in Africa. By hosting the ICC Kenya, and membership to the Africa Business Council, KEPSA has access to all the world Chambers of Commerce and Business Associations giving us access to over 45 million business globally. We support businesses with information and merging trends affecting investments and competitiveness, support training, B2B and opportunities to network for business, financial linkages, mentoring, access to markets, value chains and access to investment opportunities

The ease of doing business and competitiveness index is key in ensuring business make their contribution to sustainable economic development of the country.

KEPSA Position on the proposed Amendments

The Kenya Private Sector Alliance (KEPSA) has carefully considered the proposals in the Employment (Amendment) Bill, 2022 KEPSA recognizes the Bill's objective to give Employees the right to disconnect. With the rise of technology, employees are increasingly connected to their work outside of their normal working hours. This blurs the line between work and personal time and can lead to burnout and decreased productivity. The right to disconnect will ensure that employees have the right to personal time and privacy, which is essential for their overall well-being. It will also ensure that employers have clear guidelines on when they can contact employees outside of their normal working hours and helps to promote a healthy work-life balance.

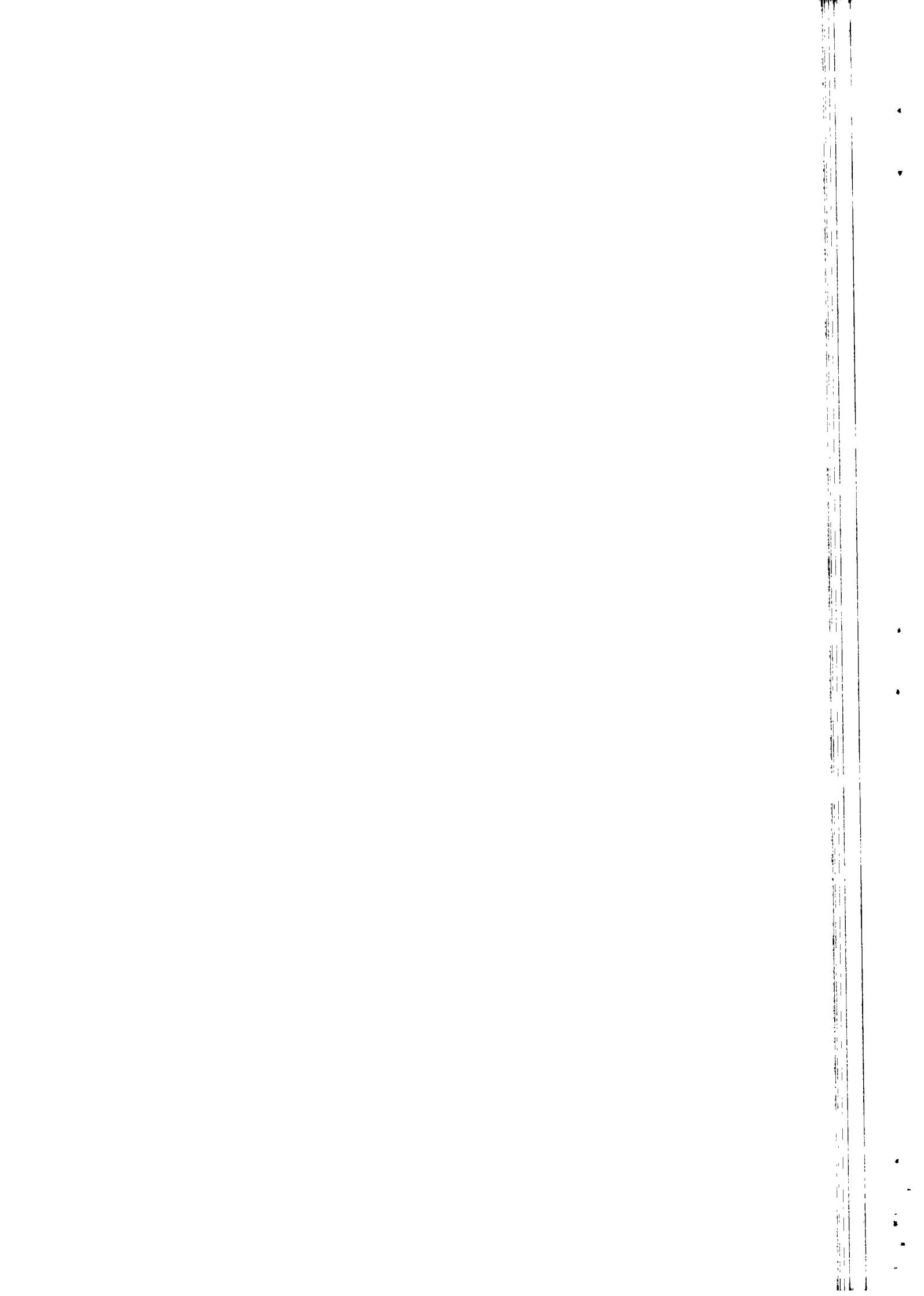




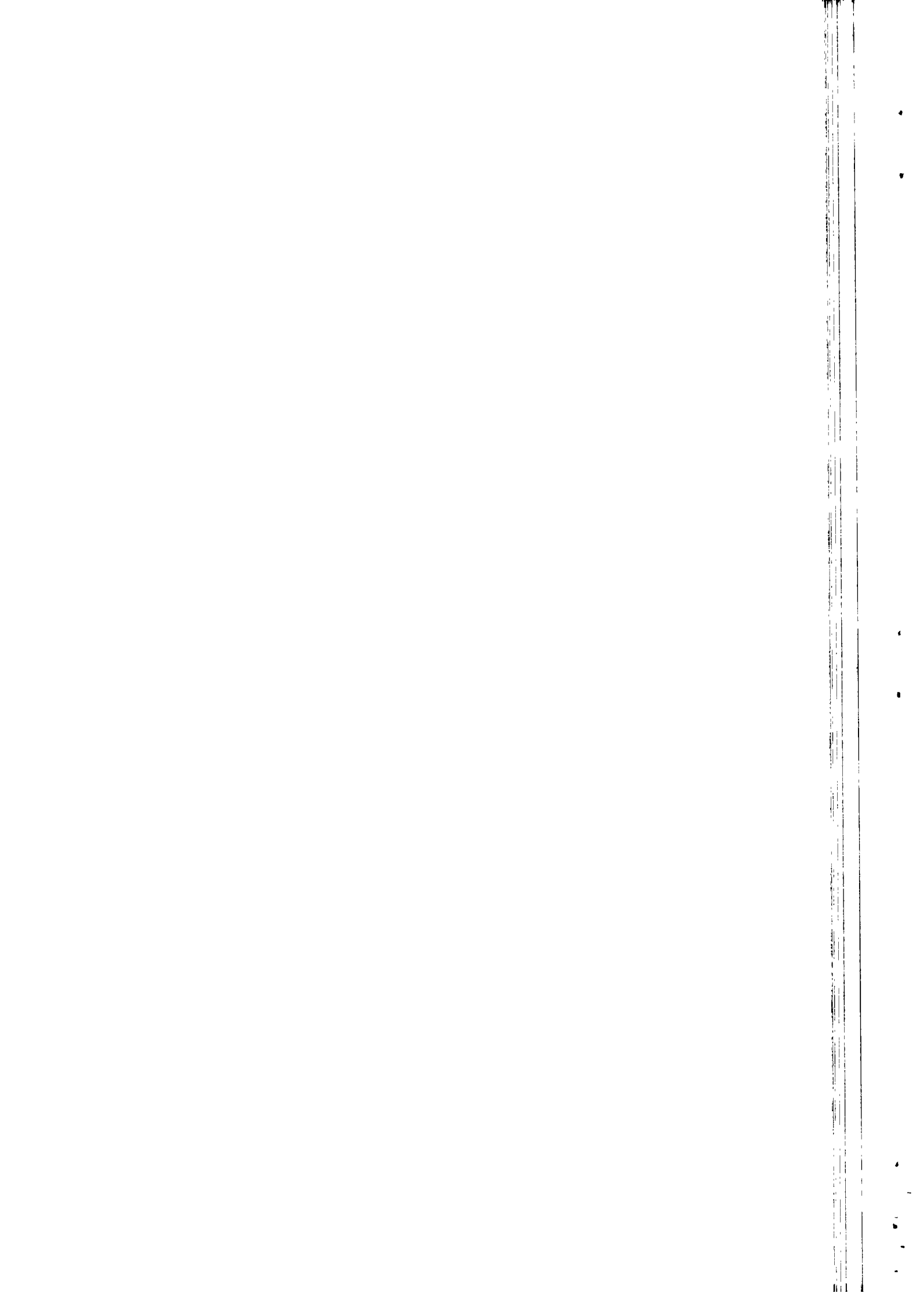
While we appreciate the need to respect employees' personal time and privacy, we believe that the proposed changes will have significant negative impacts on the private sector, particularly small and medium-sized enterprises (SMEs).

Following the call for submission of memorandum from the public on the Employment Amendment Bill 2022 from the Senate, that seeks to provide for the right to disconnect in the digital age, we as KEPSA submit as follows:

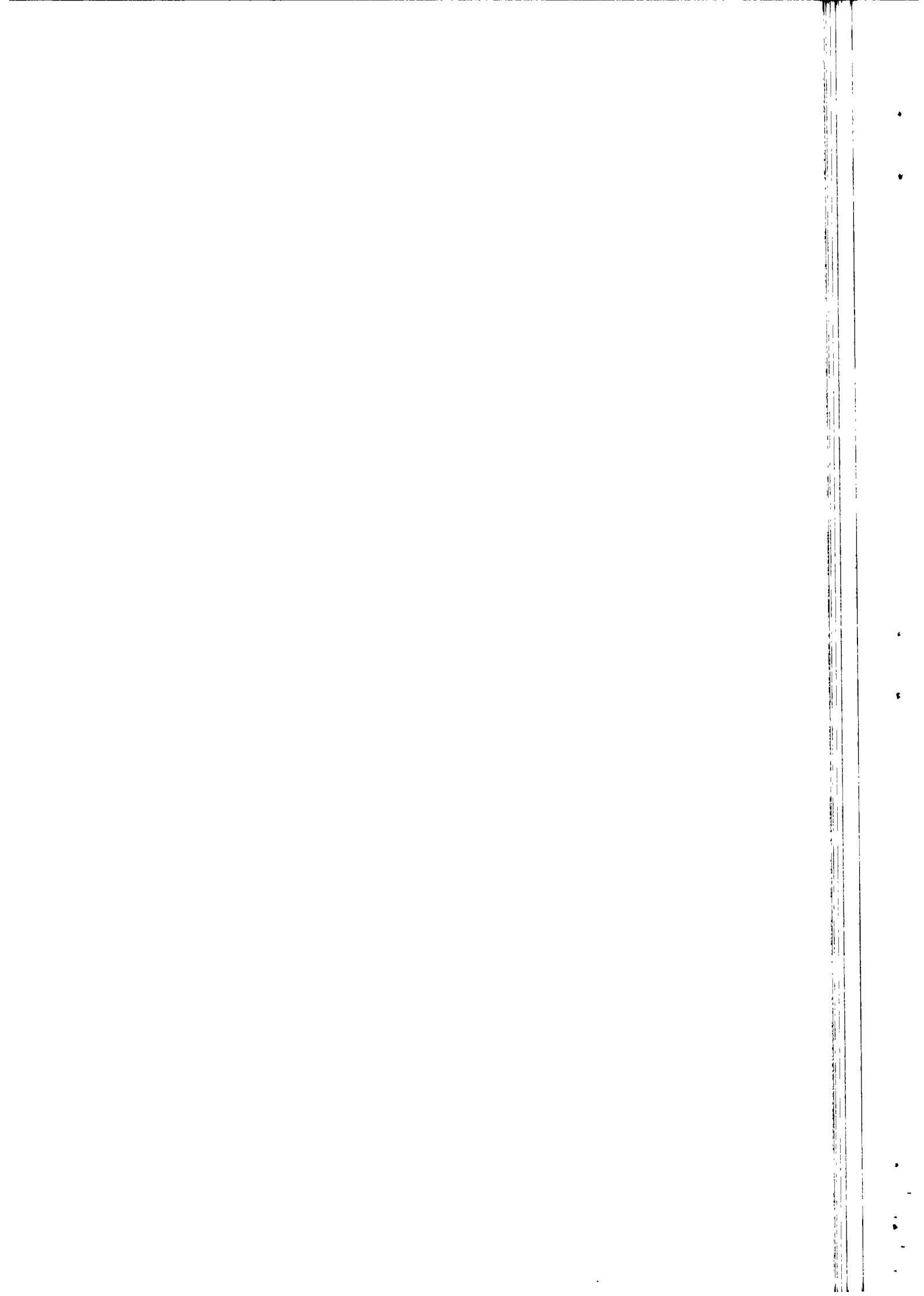
Clause	Proposed Amendment	Rationale for Amendment and Recommendations
Insertion of a new Section 27A(2) 27A. (2) An employer shall, for the purposes of subsection (1)(a) put in place a policy regarding the — (i) circumstances under which an employer may contact an employee during out of work hours; (ii) use of electronic devices to send or receive information, messages or any digital work related communication during out of work hours; and	Regulations should give further and more detailed guidance on this such as: -differences in time zones -what constitutes an emergency -time bound assignments beyond the control of the employer -client demands -Subject to technological interferences like network delays or cloud hitches where emails take longer to leave the	The regulations can expound on the contents of the policy for uniformity and clarity of scope. This can be reviewed from time to time.



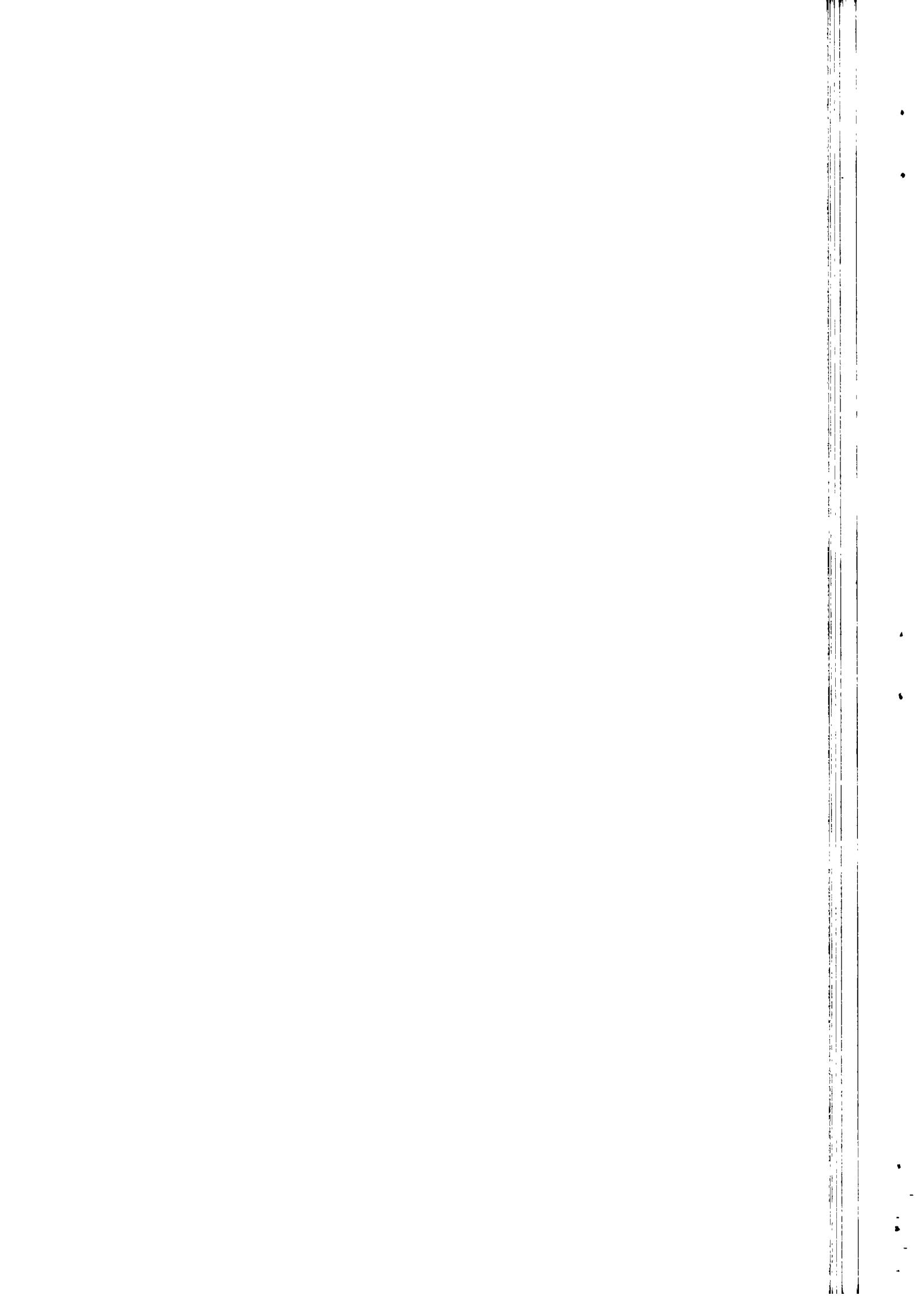
<p>(iii) circumstances under which the right to disconnect may be waived.</p>	<p>The list of essential services needs expansion, the Covid essential services list is a good guide as it includes crucial sectors such as security services that are incapable of being bound by the traditional 8 hour working model.</p>	<p>Section 81 of the Labour Relations Act is limited to a few sectors considered essential services.</p>
<p>(b) specify the nature of compensation for employees who work during out of work hours.</p>	<p>-It can be amended to state that compensation can be in the form of hours off and not just monetary compensation. -In terms of work done outside of working hours, there is already provision for overtime pay, can the Bill refer to this model of compensation? The Bill should also provide clear guidelines on what constitutes fair compensation.</p>	<p>Youths are nowadays moving away from the traditional 8-5 model. Should employees choose to work outside work hours, the employer should respect their autonomy and, in such instances, compensation should be excluded. The Bill should factor in productivity-based output and Flexitime arrangements. The Bill should consider that compensation can be flexible. It need not be monetary. For example, an employee can work over and above work hours and be given an out of office day or a leave day. Monetary compensation may prove difficult to implement in terms of computation of monies.</p>



<p>(3) Where an employer has employed more than ten employees, such employer shall, in formulating a policy under subsection (2), consult the respective employees or, where applicable, trade union.</p>	<p>It should apply to all employers, not just those with more than ten employees.</p>	<p>For example, will the Employer pay for the Employee accepting the call, or the quantity of work done?</p> <p>Public participation breeds ownership, as the employee is part and parcel of the process. They own it and are therefore more likely to comply.</p>
<p>(6) Subject to subsection (5), 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.</p>	<p>Add a clause below this stating: Any dismissal arising out of this shall be deemed to be unfair dismissal as per Section 45 and 46 of the Employment Act 2007.</p>	<p>While prohibiting employers from reprimanding, punishing or subjecting employees to disciplinary action if they disregard work-related communication during out of work hours could lead to employees abusing the right to disconnect and not being held accountable for their actions, we can also further protect employees from dismissal as proposed.</p>
<p>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; and</p>	<p>Add a Clause immediately after Clause 7 that speaks to the reverse, where an employee refuses to respond during emergency situations, especially because the preceding Clause 6 expressly prohibits the employer from taking any action against the employee.</p>	<p>As the Bill exempts emergency cases, and there ought to be clear provisions on what happens to employees who refuse or neglect to respond to employers during such situations. The Bill also needs to consider the reverse where an employee uses company hours to do personal stuff e.g. going to the bank for personal errands.</p>

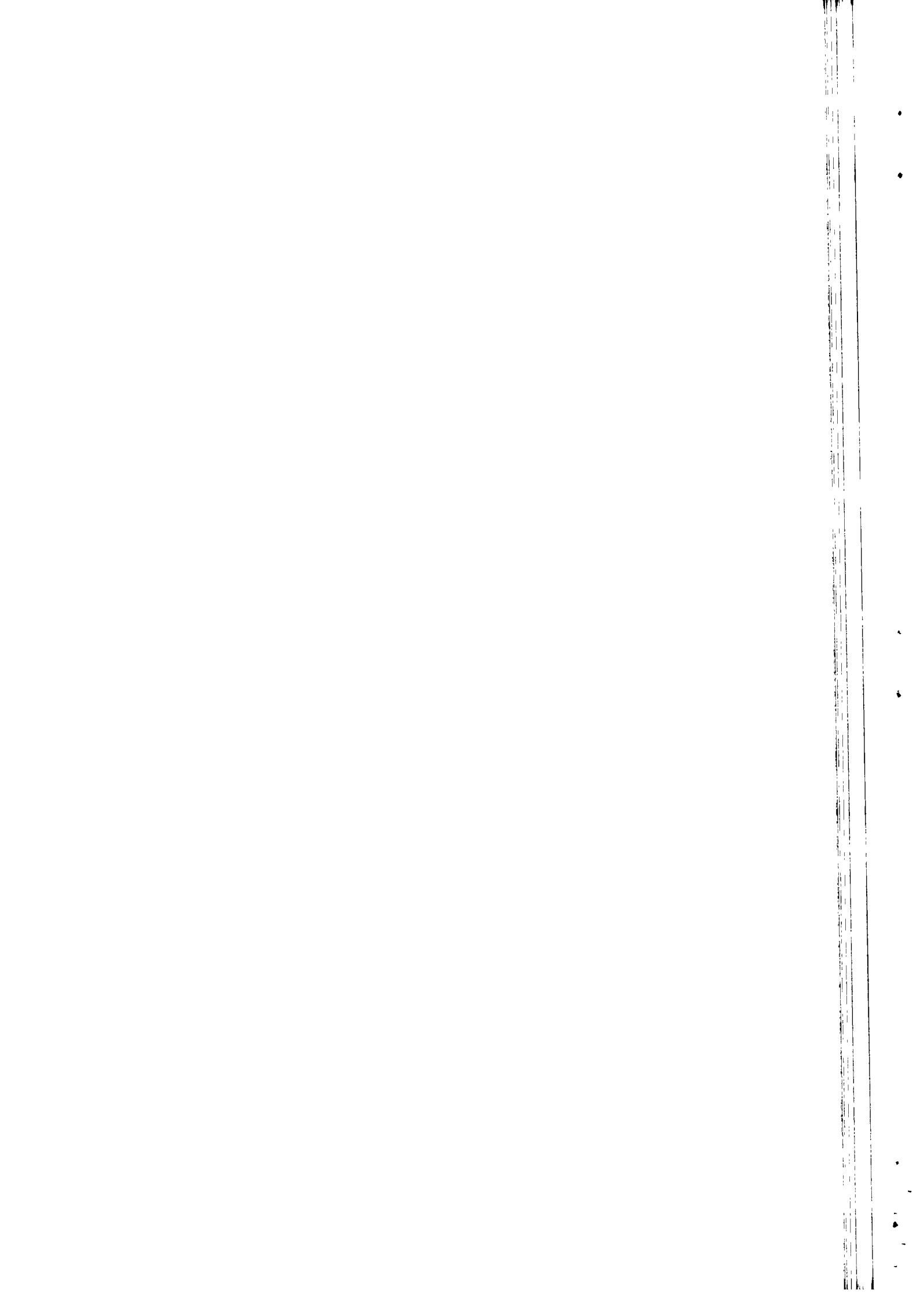


<p>(b) may choose to respond, for which the employee shall be entitled to get compensation.</p>		
<p>(8) The provisions of this section shall not apply to the provision of essential services specified under Section 81 of the Labour Relations Act.</p>	<p>Section 81 of the Labour Relations Act can be amended through this Amendment Bill and updated to cover current and emerging sectors.</p>	<p>It may be worth considering if other industries or job types should also be exempted, such as those that require 24-hour coverage or emergency response. The right to disconnect will be difficult to implement across all sectors of the economy.</p>
<p>(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.</p>	<p>We propose for a reduction in the proposed fine to a maximum of KES 100,000 and the imprisonment to a term not exceeding six months.</p> <p>We further propose to amend the proposed subsection (9) to clarify specifically who will be liable to pay the fine and go to prison.</p>	<p>The proposed fine and imprisonment is too punitive and may be detrimental to businesses and employers just trying to grow their business, or discourage the employment of persons outside of essential services for fear of contravening the right to disconnect. This will work against job creation targets and economic growth.</p> <p>On liability, the Bill is unclear who will specifically be held culpable. Is it the immediate supervisor of the employee, the senior management, or the Board of Directors?</p> <p>If managers are to be responsible, this might create a steep responsibility on managers and not the Company, yet the Company is the owner of the policy, thus creating enforceability issues.</p>



Looking at best practices around the globe, the common trait is that of emphasis on this being implemented through **negotiation between employer and employee**. For instance:

1. **France's El Khomri law (2016)**-Employers must negotiate with employees on the use of digital tools outside of working hours; employees have the right to disconnect and cannot be penalized for not responding to work communications outside of working hours.
2. **Italy's Dignity Decree (2018)**-Employers cannot require employees to respond to work communications outside of working hours, except in cases of emergency or with prior agreement;
3. **Spain's Organic Law on Data Protection (2018)**- Employees have the right to disconnect from digital tools outside of working hours; employers must negotiate with employees on the use of such tools.
4. **Germany's Teleworking Act (2020)**- Employers must ensure that employees working from home have the right to disconnect and cannot be penalized for not responding to work communications outside of working hours.
5. **Phillipines' Alternative Work Arrangements Act (2019)**- Employees have the right to disconnect from work-related communications outside of working hours; employers must negotiate with employees on the use of such communications.
6. **Luxembourg's Labour Code (2006)**-Employees have the right to disconnect from digital tools outside of working hours; employers must negotiate with employees on the use of such tools.
7. **Ireland's Code of Practice on the Right to Disconnect (2021)**-Employers should negotiate with employees on the use of digital tools outside of working hours; employees have the right to disconnect and cannot be penalized for not responding to work communications outside of working hours.



Conclusion

We believe that implementing a comprehensive framework to provide employees with the right to disconnect and prioritize personal time is crucial for promoting work-life balance and improving employee well-being. By prioritizing these initiatives, organizations can create a culture of respect for employees' personal time and ultimately foster a more productive and engaged workforce.

We are also cognizant of the limitations that some of these proposals may place on certain sectors that may hinder the ease of doing business and raise the cost of doing business and cost of compliance. For example, enforcement will be an impossible task. There will be en masse non-compliance with the law. This will lead to an overflow of claims at the Labour courts which will clog up the courts that are already suffering from a seemingly insurmountable backlog.

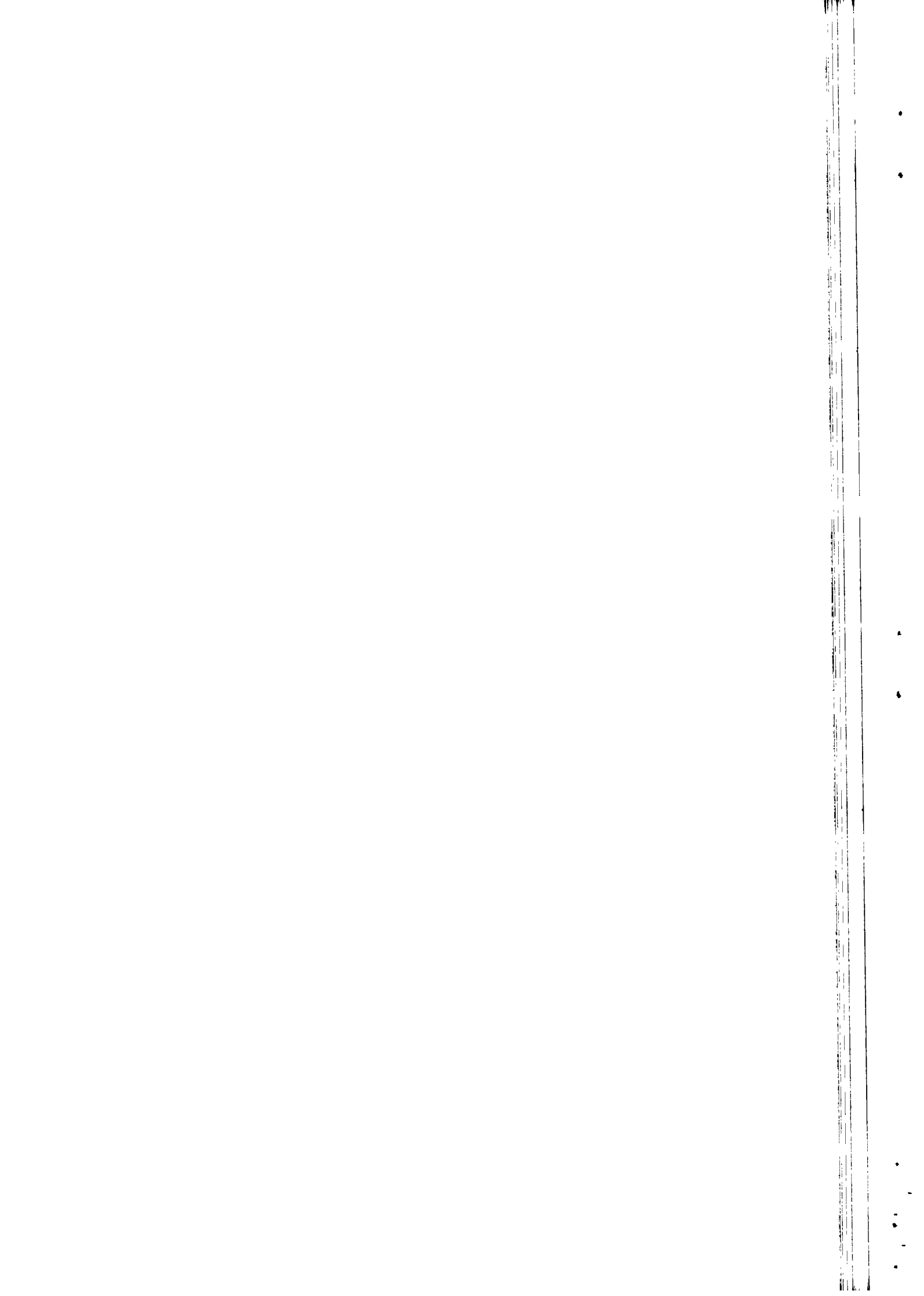
In light of the above concerns, we urge the National Assembly to reconsider the proposed changes to the Employment Act 2007 and our submissions herein.

Thank you for your consideration and attention.

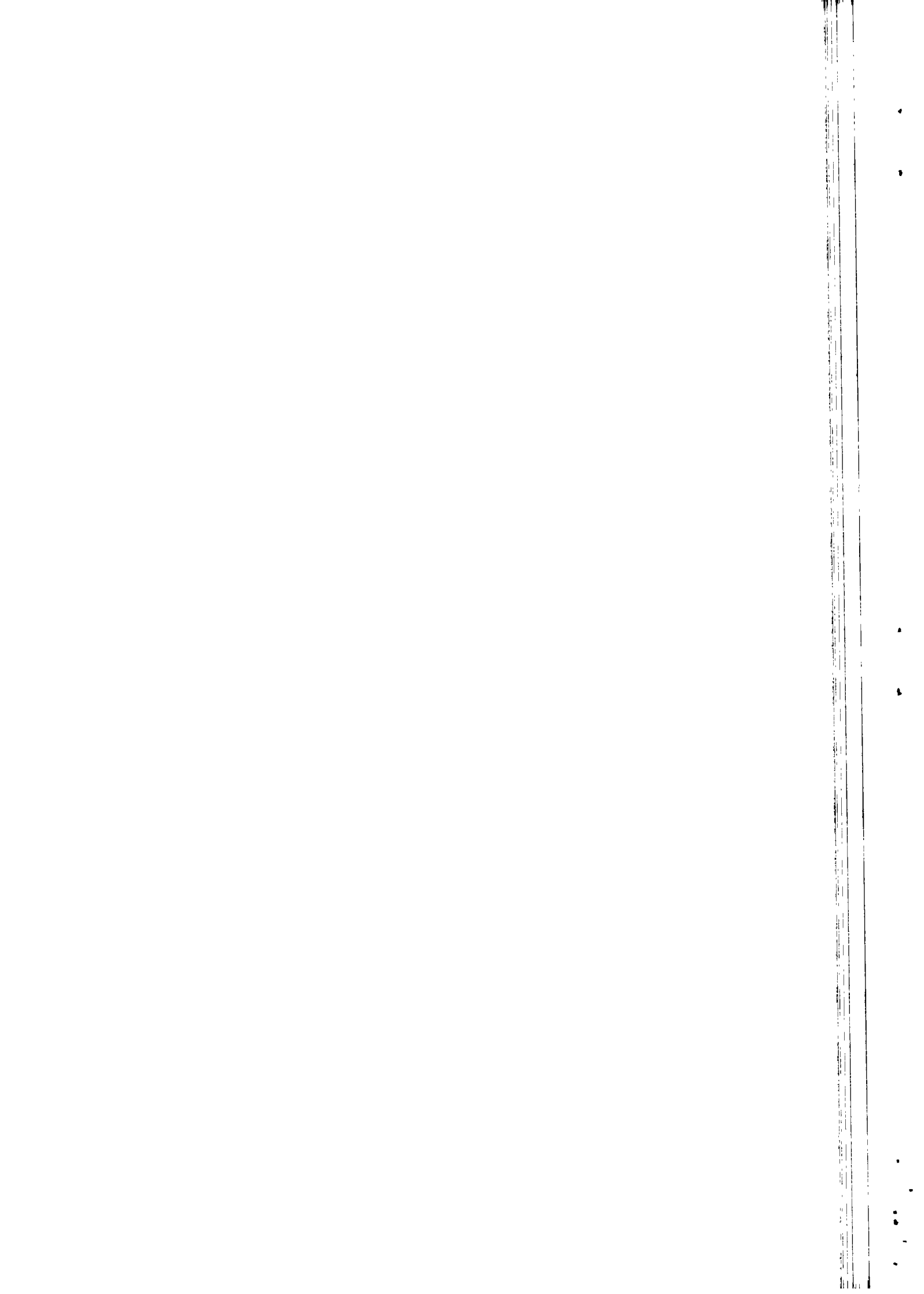
Best Regards,



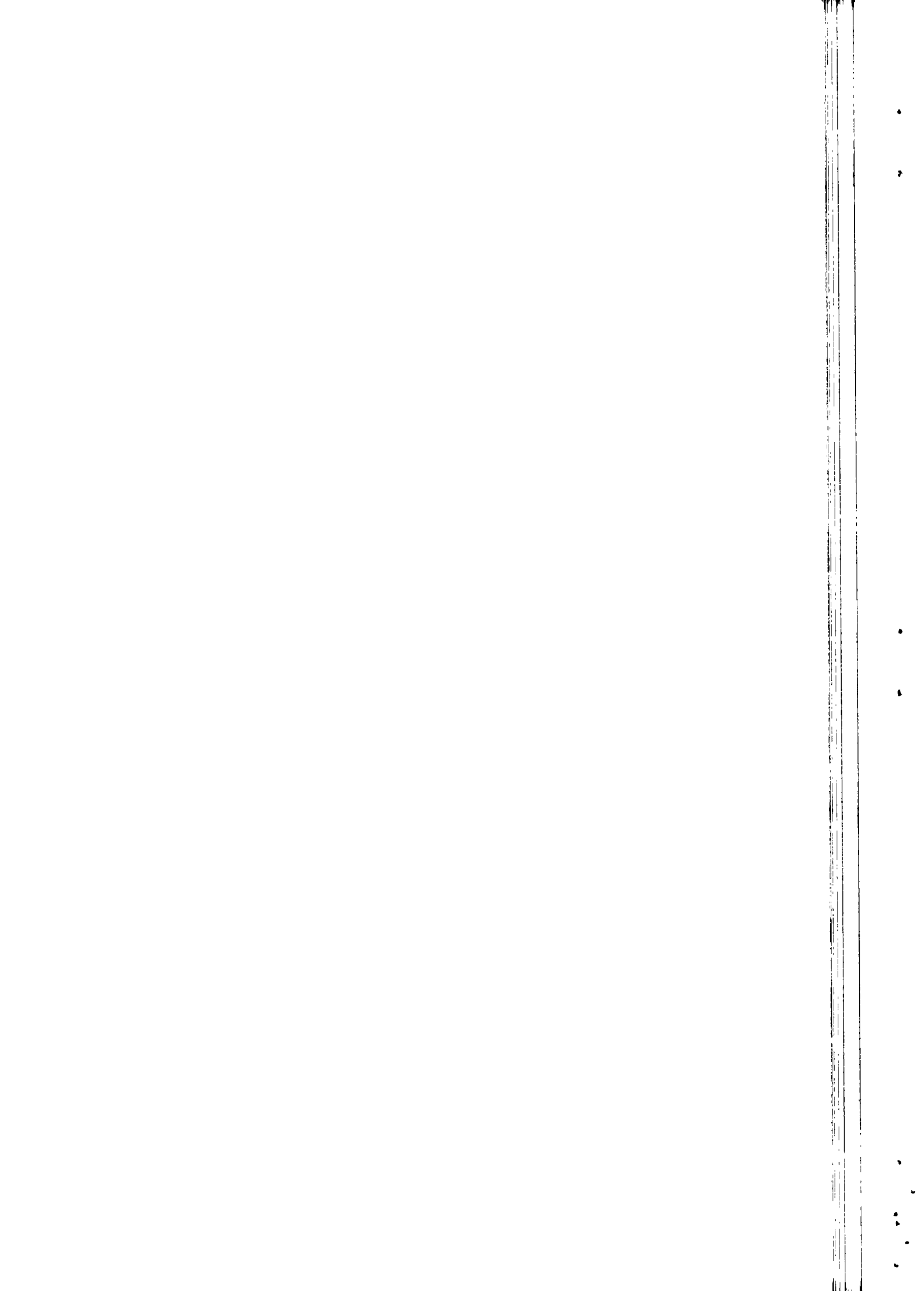
Carole Kariuki, EBS, MBS, HSC
Chief Executive Officer



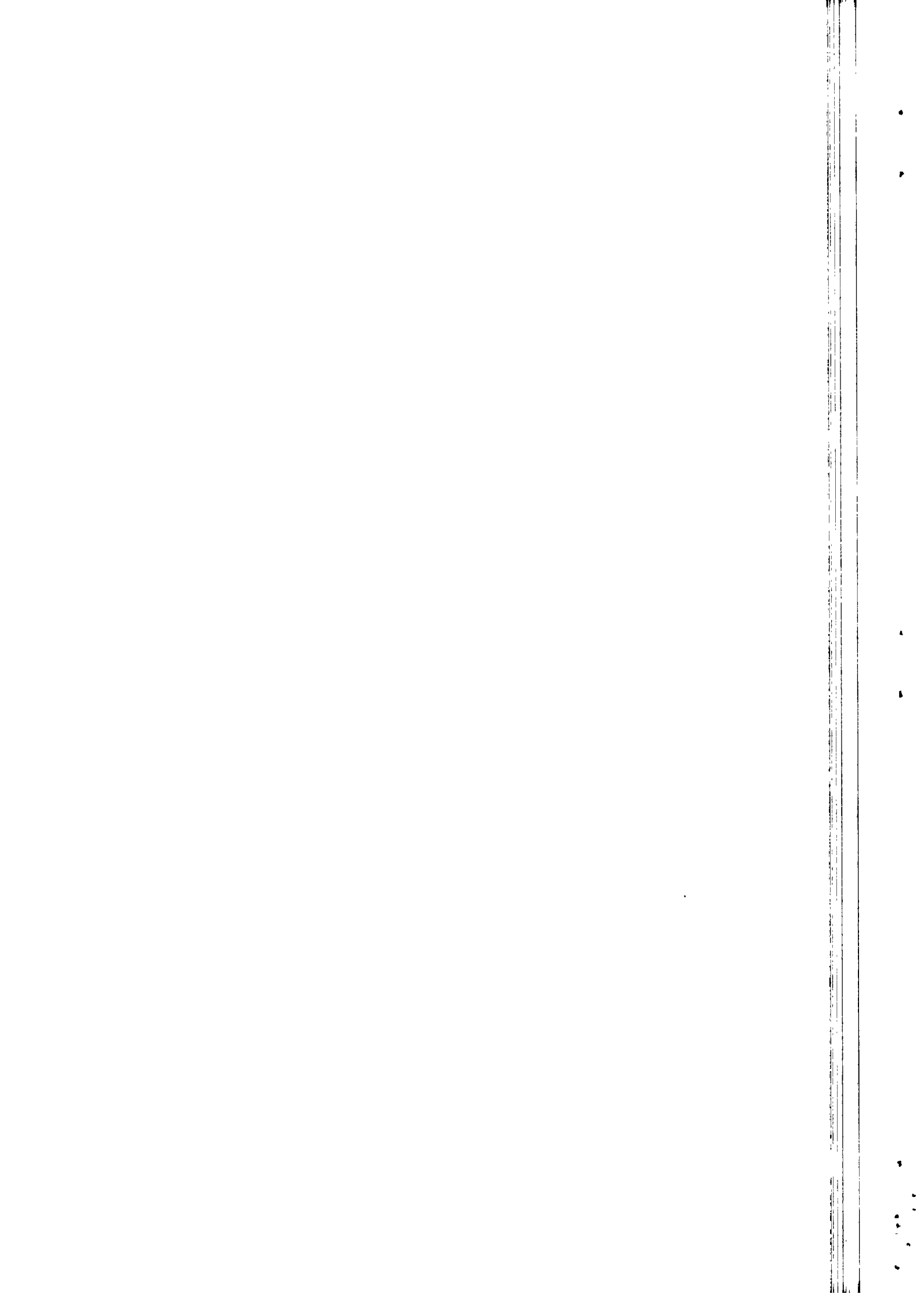
KEPSA Business Membership Organization (BMOS)	
1	Africa E-Mobility Alliance
2	Agricultural Employers' Association
3	Agrochemicals Association of Kenya
4	American Chamber of Commerce Kenya
5	Association of Consulting Engineers of Kenya
6	Association of Gaming Operators
7	Association of Kenya Feed Manufacturers
8	Association of Kenya Insurers
9	Association of women in Energy and Extractives in Kenya
10	British Chambers of Commerce Kenya
11	Business Ireland Kenya Association
12	Business Processes Outsourcing Association of Kenya
13	Car Importers Association of Kenya
14	Chartered Institute of Arbitrators (Kenya Branch)
15	Delegation of German Industry & Commerce in Kenya
16	Domain Registrars Association of Kenya
17	East African Private Equity & Venture Capital Association
18	East African Tea Trade Association
19	Electricity Sector Association of Kenya
20	Environment Institute of Kenya
21	European Business Council
22	Event Managers Association of Kenya
23	Federation of Kenya Employers
24	Federation of Public Transport Sector
25	French Society of Kenya
26	Geothermal Association of Kenya



27	Institute of Surveyors of Kenya
28	Institute of Certified Public Accountants of Kenya
29	Institute of Certified Secretaries
30	Institution of Engineers of Kenya
31	Japan External Trade Organization
32	Kenya Association of Air Operators
33	Kenya Association of International Schools
34	Kenya Association of Manufacturers
35	Kenya Association of Pharmaceutical Industry
36	Kenya Association of Travel Agents
37	Kenya Association of Women Business Owners
38	Kenya Association of Women in Tourism
39	Kenya Auto Bazaar Association
40	Kenya Bankers Association
41	Kenya Forex & Remittance Association
42	Kenya Green Building Society
43	Kenya Healthcare Federation
44	Kenya Institute of Supplies Management
45	Kenya International Freight & Warehousing Association
46	Kenya Motor Industry Association
47	Kenya Oil & Gas Association
48	Kenya Private Schools Association
49	Kenya Property Developers Association
50	Kenya Renewable Energy Association
51	Kenya Ships Agents Association
52	Kenya Tea Growers Association
53	Kenya Tourism Federation



54	Kenya Transporters Association of Kenya
55	Kenya Water Industry Association
56	Kenya Women Teachers Association
57	Law Society of Kenya
58	Leasing Association of Kenya
59	Marketing Society of Kenya
60	Medical Technology Industry Association of Kenya (MEDAK)
61	National Association of Private Universities of Kenya
62	Oil & Gas Contractors Association of Kenya
63	Organization of Women in International Trade
64	Petroleum Outlets Association of Kenya
65	Protective Security Industry Association
66	Public relations society of Kenya
67	Retail Trade Association of Kenya
68	Rural Private Hospitals Associations of Kenya
69	Safaricom Dealers Association
70	Seed Trade Association of Kenya
71	Shippers Council of Eastern Africa
72	SME Founders Association
73	Technology Service Providers Association of Kenya
74	The Architectural Association of Kenya
75	The Institute of Human Resource Management
76	The Kenya Flower Council
77	The SME Support Centre Limited
78	Town & County Planners Association of Kenya
79	United Business Association
80	Water Service Providers Association



Central Organization of Trade Unions (Kenya)

All correspondence should be addressed to the Secretary General

Chairman - General

Secretary - General

Dr. Francis Atwoli, NOM (DZA), CBS,EBS,MBS

Treasurer - General

Rebecca Nyathogora, HSC



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website: www.cotu-kenya.org

Our Ref:
COTU/ADM 3/12/130

17th October, 2023

Jeremiah Ndombi, MBS
Clerk of National Assemblt
Parliament Building
P.O Box 41842-00100
NAIROBI

Dear Sir,

RE-SUBMISSION OF MEMORANDUM: - THE EMPLOYMENT (AMENDMENT) BILL, 2022

The Central Organization of Trade Unions in Kenya COTU (K) acknowledge your letter dated 8th March 2023 referenced SN/DSE/SCLSW/2023/30 on stakeholder engagement on the above-mentioned bill.

Further, I wish to highlight two submissions of Memorandum from the Central Organisation of Trade Unions, COTU (K) on 28th January 2023 and 10th March 2023. Following our Presentation in the Online Stakeholders Meeting on 13th March, 2023 we wish to have the final submission to your kind attention.

Deputy Secretary General: Benson Okwaro
1st Vice Chairman: Rev. Joel Chebii, OGW
2nd Vice Chairman: Francis Murage

1st Assistant Secretary General: Ernest N. Nadome
2nd Assistant Secretary General: Carolyn Rutto
Deputy Treasurer General: Bro.Washington O. Ododa



COTU (K) Harmonized Memorandum on The Employment (Amendments) Bill, 2022

In 2007, the Employment Act of 2007 was enacted into law. The Act was among the five labour related laws enacted that year, which included the Labour Relations Act, Labour Institutions Act, the Work Injury Benefits Act and the Occupation, Safety and Health Act.

The Act represents the main legal foundation for terms and conditions for the provision of services and compensation among other responsibilities of employers.

To amend This Act, The Employment (Amendment) Bill 2022 proposes the establishment of workers' right to disconnect, the right to protection of personal time and privacy, but on the other hand the proposed bill limits this right of workers for compensation of overtime for workers.

The proposed Bill seeks to engage workers by their employer outside their normal working hours. While this might be reasonable certain issues must be of importance namely:

- a) The mandate of the tripartite National Labour Board as stipulated in the Labour Institutions Act Art 7 (b) entails legislation on labour and employment. Thus, COTU (K) recognizes that the Employment Act 2007 does not outline the hours of work and the overtime compensation and appeals to the **National Labour Board** to urgently initiate an amendment as parts of its mandate in enhancing fair labour practices to regulate working hours including digital work and working from home.

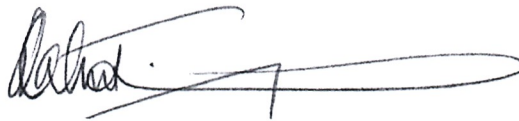


COTU (K) as the umbrella body for workers **Opposes the Bill** since there is no proper and comprehensive analysis of the implication of these proposed changes. The Amendment Bill 2022 to the Employment Act 2007 is not critical at this stage we rely on the provisions of our 2010 Constitution Article 41 (a) to fair remuneration

and

- b) to reasonable working conditions. Any proposed amendments should adhere to the International Labour Organisation, ILO Conventions 155 and 187 on Occupational Safety and Health for workers.

Yours sincerely,



Dr. Francis Atwoli, NOM (DZA)CBS, EBS, MBS
SECRETARY GENERAL

*ILO Convention
c 144*





The National Council of NGOs

Empowering Member Organizations.

Tel: 0202715259 / 0722450798 / 0721843924.

NYAYO House 16th Floor RM 19 & 24.

P.O Box 58786 -00200, Nairobi

E-mail: ngoscouncilofkenya@gmail.com or info@ngocouncilofkenya.org
communication@ngocouncilofkenya.org, Website: www.ngocouncilofkenya.org

Working in partnerships with Government and key stakeholders for PEACE and sustainable Development in Kenya

14th November 2023

NGO COUNCIL MEMORUNDUM.

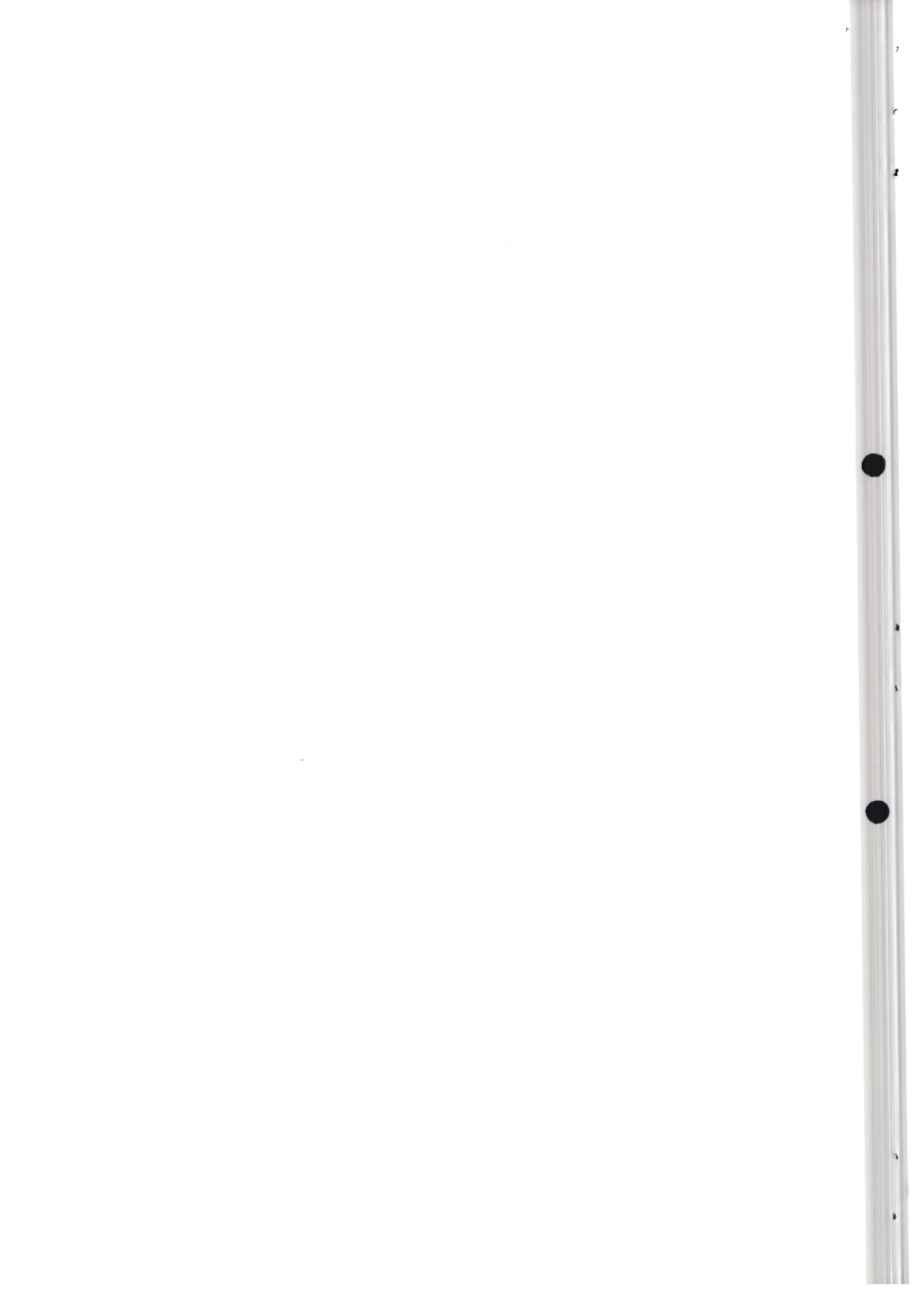
TO

DEPARTMENTAL COMMITTEE

ON LABOR, TO CONSIDER

THE EMPLOYMENT (AMENDMENT)

BILL (SENATE BILLS NO.11 OF 2022).

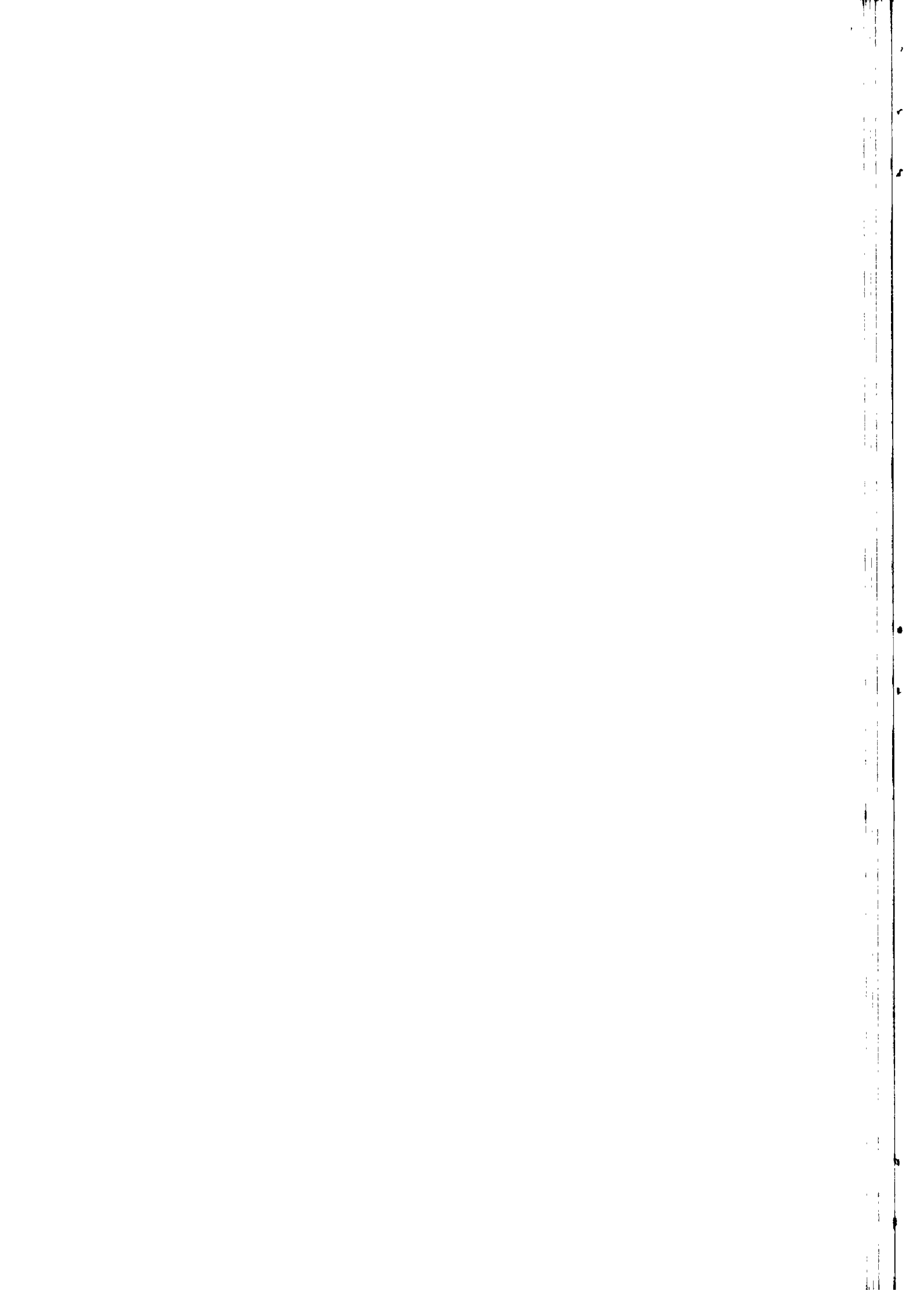


The National Council of NGOs Popularly known as The NGO Council is a STATUTORY umbrella Organization established under the NGOs Coordination Act 1990, to bring together ALL registered both National and International Non-Governmental Organizations (NGOs) in Kenya to promote self-regulation, enhance capacity building of NGOs, policy intervention and representation of the NGOs sector and working towards realization for sustainable Development in Kenya. The Council Champions the key values of probity, Integrity, Transparency and accountability and good governance in Kenya.

Several policies can be implemented to regulate how and when employers may contact employees during out of work hours.

These policies are often created to promote a healthy work-life balance and to prevent burnout. Here are some examples of such policies:

1. **Communication Policy:** There may establishment of a communication policy that outlines the preferred method of communication during non-working hours, such as email, phone calls, or text messages. This policy can specify that non-urgent matters should be communicated during working hours.
2. **Designated Emergency Contact:** Designate specific employees as emergency contacts for after-hours communication. These contacts are responsible for handling urgent work-related matters and can be reached only in case of emergencies.
3. **Work-Life Balance Guidelines:** Employers may encourage employees to maintain a healthy work-life balance by avoiding contacting them outside of their regular working hours unless it's absolutely necessary.
4. **Use of Communication Tools:** Use specific guidelines for the use of communication tools, such as email or messaging applications, during non-working hours. For instance, they might encourage employees to set boundaries and use the "Do Not Disturb" feature on their devices.
5. **Time Zone Considerations:** If the institutions operate in multiple time zones, they may establish guidelines for contacting employees in different time zones, considering the time differences and ensuring that out-of-hours contact is minimized as much as possible.
6. **Clear Expectations:** Employers can set clear expectations regarding after-hours communication, specifying the situations in which it is appropriate to contact employees outside of regular working hours.
7. **Flexibility and Accommodations:** Some policies include provisions for flexible working arrangements, such as flexible working hours or remote work options, to accommodate employees' personal needs and promote a healthy work-life balance.
8. **Training and Education:** Employers may provide training and education to managers and employees on the importance of respecting boundaries and promoting a healthy work-life balance, emphasizing the significance of limiting after-hours communication.
9. **Regular Policy Review:** There may be regular review of communication policies to ensure they align with changing work practices and employee needs. Regular feedback from employees can help in refining these policies over time.



10. **Consequences for Violations:** Employers might specify the consequences for violating the after-hours communication policy, emphasizing the importance of respecting employees' personal time and well-being.

a. **i. Some common circumstances where an employer may contact an employee outside of their regular work hours include:**

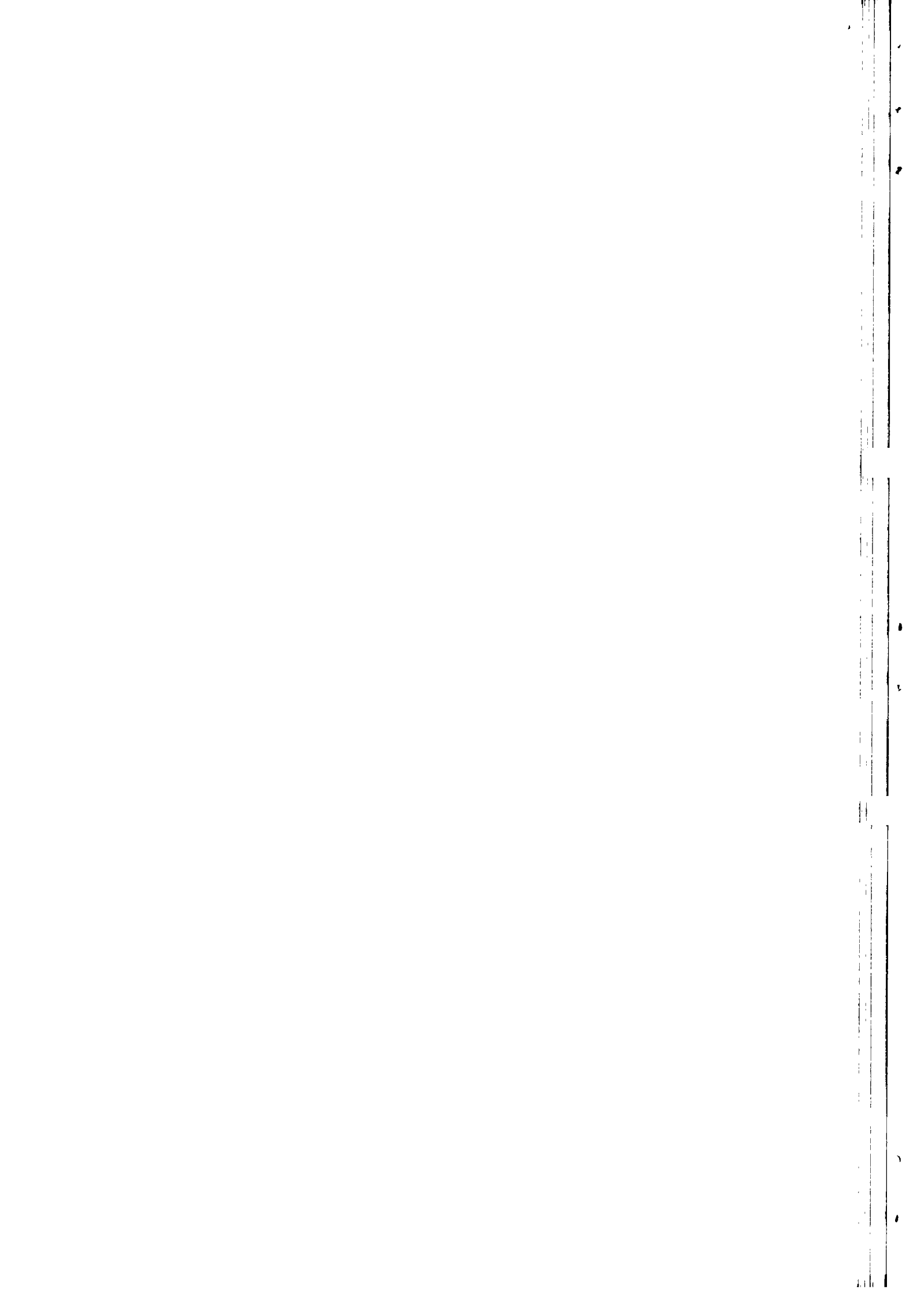
1. **Emergency situations:** If there is an emergency at the workplace or if an urgent situation arises that requires immediate attention, employers may need to contact employees regardless of the time.
2. **Critical business needs:** In some industries or roles, there may be critical business needs that require employees to be available outside of regular working hours, such as in certain positions that involve managing or overseeing crucial processes or operations.
3. **Time-sensitive projects or deadlines:** Employers may need to contact employees outside of work hours if there are time-sensitive projects or deadlines that require immediate attention or completion.
4. **On-call duty:** Some job roles, especially in fields like healthcare, IT, or emergency services, require employees to be on-call and available to respond to work-related issues or emergencies outside of regular working hours.
5. **Flexible work arrangements:** In cases where employees have agreed to flexible work arrangements, employers may contact them outside of standard work hours to discuss work-related matters or to accommodate their flexible schedules.
6. **Prior agreement or consent:** If the employee has consented to being contacted outside of work hours or if it is explicitly stated in the employment contract, the employer may have the right to contact the employee during these times.

However, it is important for employers to respect employees' personal time and maintain a healthy work-life balance. Employers should establish clear communication protocols and guidelines to ensure that employees are not unduly burdened or pressured to work outside of their regular hours without reasonable cause. Additionally, employers should be mindful of labor laws and regulations that may govern the terms of contact with employees during non-working hours.

ii. Use of Communication Tools:

When implementing any of these electronic devices, it's important to establish clear communication guidelines and policies to respect employees' personal time and privacy. Encourage a healthy work-life balance and set expectations regarding communication outside of regular working hours to prevent burnout and promote employee well-being.

There are various electronic devices that employers can use to communicate with their employees during out-of-work hours. However, it's crucial to prioritize the privacy and personal time of employees when considering these options. Here are some appropriate electronic devices commonly used for this purpose:

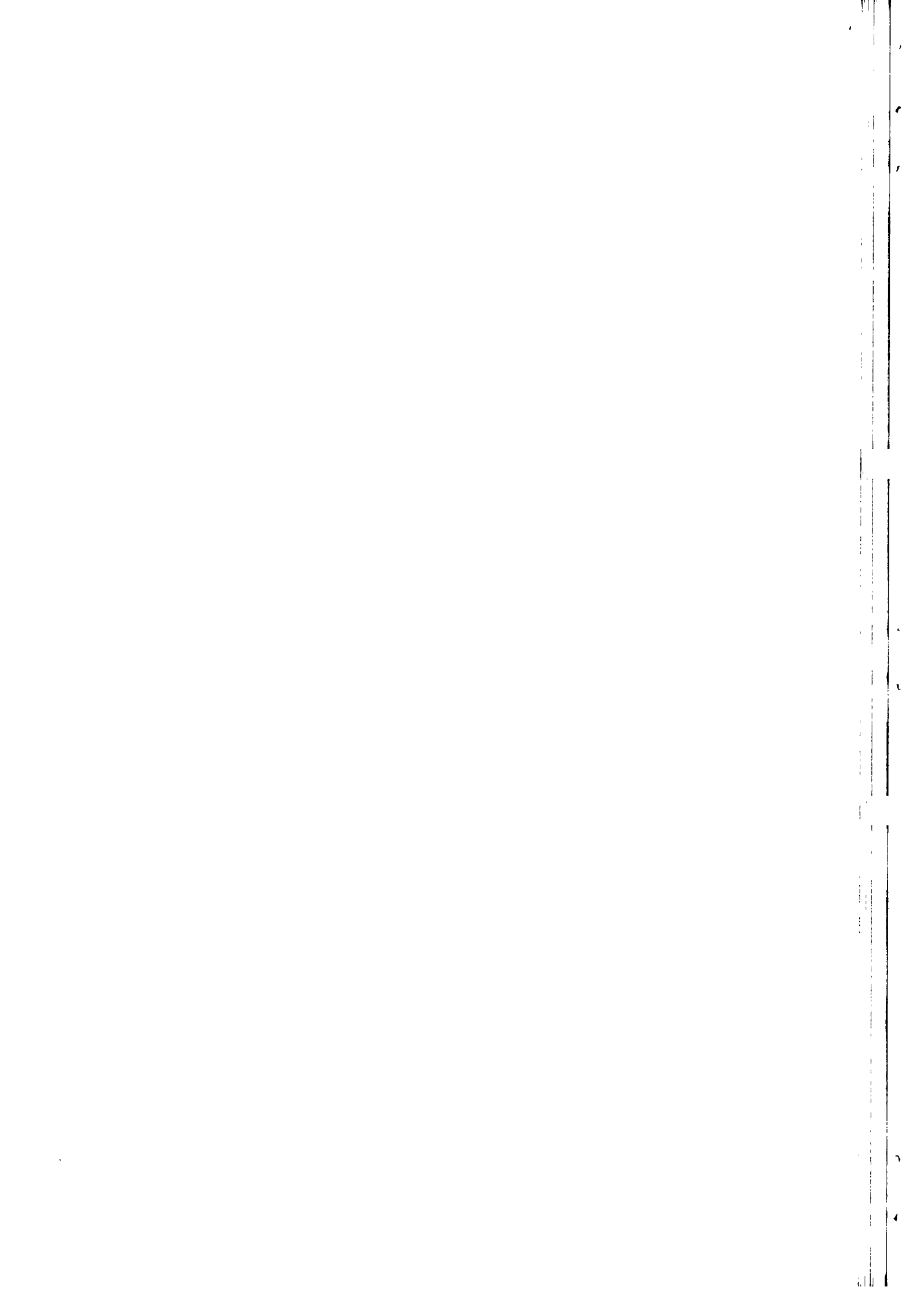


1. **Work Phones:** Providing institution-issued mobile phones solely for work-related communication can help maintain a boundary between work and personal life. Employers can utilize messaging apps and email on these devices to communicate with employees.
2. **Secure Messaging Apps:** Encourage the use of secure messaging apps, such as Slack, Microsoft Teams, or Signal, to maintain a professional channel for communication. These platforms often offer options for creating separate workspaces for different teams and projects.
3. **Company Email:** Utilize institution email accounts for official communication, ensuring that all employees have access to work-related emails on their personal devices. Encourage employees to use email filters and rules to prioritize work-related emails during specific hours.
4. **Virtual Private Networks (VPNs):** If employees need to access sensitive information from remote locations, employers can provide access through VPNs. This ensures secure communication and protects sensitive data from unauthorized access.
5. **Collaboration Tools:** Employers can utilize collaboration tools such as Google Workspace, Microsoft 365, or other project management software to facilitate communication, document sharing, and task management among team members.
6. **Video Conferencing Platforms:** Platforms like Zoom, Microsoft Teams, or Google Meet can be used for virtual meetings and conferences, allowing employers to communicate important information to employees effectively, regardless of their location.
7. **Employee Portals or Intranet:** Establishing an internal website or portal for employees can centralize communication and provide access to company resources, policies, and announcements. This can be a useful platform for distributing important information during out-of-work hours.

iii. Circumstances under which the right to disconnect may be waived

The "right to disconnect" refers to the ability of employees to disconnect from work-related communications and electronic devices outside of their regular working hours. While the right to disconnect is increasingly being recognized in various jurisdictions as an essential labor protection measure, there may be circumstances under which this right could be waived. These circumstances may include:

1. **Emergency situations:** In cases of emergencies or critical situations where the employee's input or response is urgently required, the right to disconnect may be temporarily waived. This could include situations such as natural disasters, accidents, or other unforeseen events that require immediate action or decision-making from the employee.
2. **Voluntary agreement:** In some instances, employees may voluntarily agree to waive their right to disconnect, particularly if there is a specific project or situation that necessitates ongoing communication and engagement outside of regular working hours. This agreement should be made without any coercion or pressure from the employer.



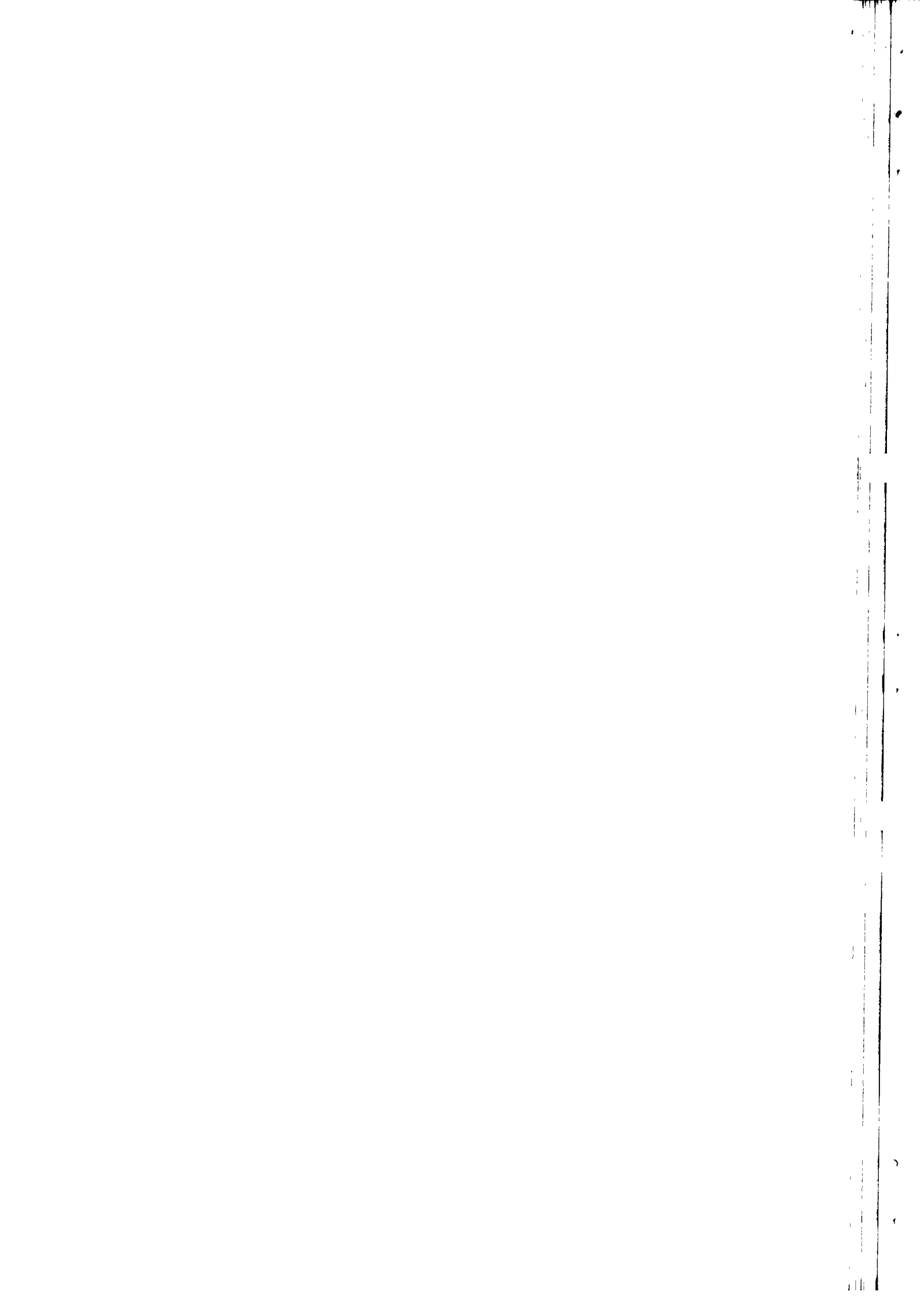
3. **Critical business needs:** When the nature of the job involves critical business operations that require employees to be available outside regular working hours, such as in certain roles within healthcare, security, or other essential services, the right to disconnect may be waived within reasonable limits to ensure the smooth functioning of these critical operations.
4. **Specific contractual obligations:** In some cases, certain job contracts or agreements may explicitly require employees to be available or remain accessible beyond their regular working hours. However, these contractual obligations should be clear and reasonable, and should not lead to the exploitation or overworking of employees.
5. **Short-term projects or deadlines:** During specific time-bound projects or deadlines, employees might agree to temporarily waive their right to disconnect to meet the project requirements. However, this should be a temporary measure and should not become a regular or ongoing practice that leads to chronic overwork or burnout.

It is important to note that any waiver of the right to disconnect should be voluntary, temporary, and clearly defined, and should not infringe upon the employees' overall well-being, work-life balance, or labor rights. Employers should ensure that employees are not coerced or pressured into waiving their right to disconnect and that any waivers are in accordance with relevant labor laws and regulations.

b. Compensation for employees who work during out-of-work hours

These can take various forms and may differ depending on the specific policies of the organization and the applicable labor laws. Here are some common types of compensation that employers may offer for work performed outside regular working hours:

1. **Overtime pay:** Many jurisdictions mandate the payment of additional compensation, often referred to as "overtime pay," for any work done beyond the standard work hours. The rate of overtime pay is typically higher than the regular hourly rate and is intended to provide financial compensation for employees who work extra hours.
2. **Compensatory time off:** Instead of or in addition to overtime pay, some employers may offer compensatory time off, commonly known as "comp time," to employees who work during out-of-work hours. This allows employees to take time off from work at a later date in exchange for the extra hours worked.
3. **Shift differentials:** Employees who work during evening, night, or weekend shifts may be entitled to receive a shift differential, which is an additional amount of pay to compensate for working during less desirable hours. This differential is meant to reflect the inconvenience or disruption to employees' personal lives due to working outside regular daytime hours.
4. **Bonuses:** Employers may offer bonuses or performance-based incentives to employees who consistently work during out-of-work hours or who exceed certain performance targets during these times. Bonuses can serve as additional motivation for employees to take on extra work outside regular hours.



5. **Flexible work arrangements:** In some cases, employees who work during out-of-work hours may have the option to avail themselves of flexible work arrangements, such as telecommuting or flexible scheduling, to balance their personal and professional commitments. While this might not necessarily constitute direct compensation, it can be a valuable benefit for employees seeking greater work-life balance.
6. **Additional benefits:** Some employers may offer additional benefits to employees who work during out-of-work hours, such as extended health insurance coverage, access to wellness programs, or subsidized meal plans during working hours.

It's important for employers to ensure that they comply with relevant labor laws and regulations pertaining to compensation for out-of-work hours. Clear communication about the compensation policies and transparent documentation of the extra hours worked are essential to maintain a healthy and productive work environment.

**Kind Regards,
Stephen K. Cheboi
National Chairman
Tel:0721843924 /0722450798**

