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Understanding Kenya's Labour Laws and Employment Regulations

Overview

Kenya is an ever-growing economic country, as it is the economic, financial, and transport hub of East Africa. Kenya's economy is placed 65th worldwide in terms of nominal Gross Domestic Product (GDP) and is set to climb higher as the country progresses in its economic journey. The Agriculture, Manufacturing and Transport sectors are Kenya's largest industries. The Agriculture sector accounts for 35.2% of the country's GDP, while the Transport and Manufacturing sectors contribute 17.43% and 14.93%, respectively.

Top 10 Sectors to Invest In

1. Agriculture
2. Manufacturing
3. Education
4. Energy
5. Health
6. Transport
7. Real Estate
8. Finance
9. Water Supply
10. Tourism

Basic Country Facts



Capital
Nairobi



Population
54,990,000



Currency
Kenyan Shilling (KES)



GDP per Capita
USD 1643.57 (as of 2021)

Kenya's Labour Law

The Constitution

- Freedom from discrimination (Art.27)
- Freedom of association (Art.36)
- Right of fair labour practices (Art.41)
- Protection from slavery, servitude and forced labour (Art.30)
- Provides for Employment and Labour Relation Court [Art.162(2) (a)]

The Employment Act, 2007

- General principles of employment (forced labour, discrimination and sexual harassment)
- Legal Provisions that relate to the rights and duties of employers and employees
- Basic conditions of employment (Provisions relating to Employment Contracts)
- Termination of Employment

The Employment and Labour Relation Court Act, 2011

- Establishes the Employment and Labour Relations Court ("ELRC")
- ELRC is given exclusive original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2)
- ELRC gives power to make orders in the exercise of its jurisdiction

The Labour Relations Act, 2007

- Act that consolidates the law relating to trade unions and trade disputes

The Labour Institutions Act, 2007

- Committee of Inquiry (appointed by the minister to inquire into any matter connected with or relevant to any trade dispute(s) in general)
- The National Labour Board (advise the Minister on all matters concerning employment and labour)
- Labour Administration and Inspection (Labour Officers, Employment Officers and Medical Officers)
- Wages Council (to advise the minister on the remuneration and other conditions of employment of any category of employees in any sector)

Occupational Safety and Health Act, 2007

- Provides safety and welfare of employees and all personnel lawfully present at workplaces

The Common Law

- Developed judicial decisions and considerations on the interpretation of contractual provisions and statutory provisions

Employment Regulation

Conditions of Employment

- Act provides that after 3 months a casual employment automatically converts to a contract of service with monthly payment.
- Section 26 requires every employee to be given at least one day of rest for every seven of work. Under section 28, every employee is entitled to a paid leave of 21 workdays after every one year of service. The Act also provides for maternity leave and sick leaves.
- Section 31 mandates an employer to provide reasonable housing accommodation to employees or, in the alternative, pay the employees a sufficient sum to be used for obtaining housing accommodation.
- An employer is also mandated to ensure there is a sufficient supply of water at the place of work.

Employment and Labour Relations Court “ELRC”

- Established by Article 162 (2) of the Constitution and the Employment and Labour Relations Court Act.
- Equivalent to the High Court.
- High Court has no jurisdiction to deal with any of the matters under the exclusive jurisdiction of the ELRC – disputes between employer and employee.
- Has the jurisdiction to enforce labour rights in Article 41 and jurisdiction to interpret the Constitution and fundamental rights and freedom.

Trade Unions

- Employer is obliged to recognise a trade union for the purposes of collective bargaining.

Contents of the Employment Contract

Statutory Minimum	
<ul style="list-style-type: none">• Name, age, permanent address and sex of the employee• Name of employer• Job description of employment• Date of commencement of employment	<ul style="list-style-type: none">• Form and duration of contract• Place of work• Hours of work• The remuneration• Intervals at which remuneration is paid
Terms of Employment	
Employer Duties <ul style="list-style-type: none">• Duty to pay wages• Duty to indemnify the employee• Duty to take care of the employee’s safety and working conditions	Employee Duties <ul style="list-style-type: none">• Duty to give personal service• Duty to obey reasonable orders• Duty of reasonable care and indemnity secret profits• Duty of confidentiality

Employee Rights

- Basic minimum conditions of employment (subject to any other written law, court order, CBA, or written contract that provides better conditions)
- **Hours of work:** 1 rest day in a week
- **Annual leave:** 21 days with full pay
- **Maternity leave:** 90 days with full pay
- **Paternity leave:** 14 days with full pay
- **Sick leave:** 7 days with full pay and thereafter, 7 days with half pay per year, subject to notification
- Housing
- Water
- Food (where agreed in the contract)
- Medical attention

Type of Employment Contract in Kenya

Four Types of Contracts

Four types of Contracts under which you can employ someone:

- A contract for an unspecified period (permanent)
- A contract for a specified period (fixed)
- A Contract for a specific task (consultancy)
- A contract for casual employment

The employer must provide a written employment contract stating the main terms of employment **within two months** after the start of employment according to the Employment Act Section 10.

Employment Particulars to include in the Employment Contract

- | | |
|---|---|
| <ul style="list-style-type: none">• Name, age, permanent address and sex of employee• Name of employer• Date of commencement of employment• Job description of employment• Interval at which remuneration is paid | <ul style="list-style-type: none">• Form and duration of contract• Place of work• Hours of work• Remuneration, rate and method of calculation and details of any benefits• Any other prescribed matter [section 10 (1) (2)] |
|---|---|

Oral Contracts

- Oral contracts are permissible in Kenya.
- However, an employee must be supplied with a written statement of particulars containing the terms listed above. It is okay to enter a contract of employment because should there be any legal proceedings, the burden of proving or disproving an alleged term of employment falls on the employer [Section 10 (7)].
- If an employer fails to produce a contract of employment or written statement of particulars, they will then fail to prove any term contained therein, and the dispute might be decided against them.
- A written statement of particulars or employment contract will only be given if the employee has worked for three months or more.

Types of Leaves in Kenya

Leave Entitlement

According to Kenya's employment act, employees are entitled to **four types of leaves**.

Annual Leave	<ul style="list-style-type: none">Employees are entitled to a minimum of 21 days of leave after working for 12 consecutive months with full pay.The law allows the employer to subdivide annual leave days and have the employee take leave at different intervals as long as employee agrees.Any balance leave days are to be taken within 18 months from their earned date.
Sick Leave	<ul style="list-style-type: none">After working for 2 consecutive months, employees are entitled to 7 days of sick leave with full pay and, thereafter, 7 days of sick leave with half pay for each period of 12 consecutive months of service.Employees are required to notify the employer of their absence and provide a medical certificate signed by a licensed medical practitioner to their employer.
Maternity Leave	<ul style="list-style-type: none">Female employees are entitled to 3 months of maternity leave with full pay, provided that she gives her employer 7 days' notice specifying the start date of leave and the date of return to work.The employee has the right to resume her previous working position or other suitable jobs with equitable terms and conditions to the position she held before.
Paternity Leave	<ul style="list-style-type: none">Male employees are entitled to 14 calendar days of paternity leave, ideally to be taken at the same time as the spouse upon her childbirth.It is only applicable when the legal wife registered on the employment record bears a child.The employee should notify the employer his intention to take leave within a reasonable time.

Other Types of Leave

The following leaves are available in some organisation but are not mandatory under Kenya's governing labour law:

- Study Leave
- Compassionate Leave
- Sabbatical Leave
- Leave of Absence
- Special Leave

Public Holidays

Kenya observes **12 paid public holidays**:

Public Holiday	Date
New Year's Day	1 January 2022
Good Friday	15 April 2022
Easter Monday	18 April 2022
Labour Day	2 May 2022
Eid al-Fitr	2-3 May 2022
Madaraka Day	1 June 2022
Eid ai-Adha	9-10 July 2022
Hudmua Day	10 October 2022
Mashujaa Day	20 October 2022
Jamhuri Day	12 December 2022
Christmas Day	25 December 2022
Utamaduni Day	26 December 2022

Termination and Dismissal

Forms of Termination

- Effluxion of time
- Termination by notice
- Mutual separation
- Summary dismissal (Section 44 of the Employment Act)
- Redundancy (Section 40 of the Employment Act)
- Constructive Dismissal

Process of Dismissal

Under Section 41 of the Employment Act, Notification and hearing before termination on grounds of misconduct, the grounds for dismissal are as follows:

- Gross Misconduct
- Physical Incapacity
- Poor Performance

The employers must explain why they are considering terminating the employee and give the employee the right to a representative during this explanation. The employer must hear and consider any representations made by the employee on the grounds of misconduct or poor performance together with those of the employee's representative.

Redundancy (Section 40 of the Employment Act)

What constitutes a redundancy—the loss of employment, occupation, job or career:

- By involuntary means
- No fault of the employee
- Termination at the initiative of the employer

The Employer must demonstrate that the services of an employee are superfluous, not a result of an employee's performance, conduct, or actions.

The key aspects when considering the redundancy of roles are:

- The substance or rationale for the redundancies, and
- The process of effecting the decision

Redundancy Procedure

When an employer plans to undertake redundancy, they should follow the following:

- The employer must personally give out **one month's written notice to the affected employees** of the intended redundancy, explaining the reasons for, and the extent of the redundancy.
- Where the employee is a trade union member, the employer must also notify the concerned union of the intended redundancy.
- The employer must issue **one month's written notice to the labour officer** in charge of the area where the employee is employed.

Redundancy Package

Employees declared redundant have the right to the following:

- Salary for the period worked up to the date of termination
- Compensation in lieu of one month's notice
- Accrued leave paid in cash
- Severance pay—15 days for every completed year of service (if the employer has been paying NSSF for the employee, they are exempted from giving severance pay)
- Pension (as applicable under the Pension rules)

Unfair Dismissal

A termination of employment is deemed unfair if the employer fails to prove:

- The reason for termination is valid
- The reason for termination is fair—lack of capacity, incompatibility, poor conduct, based on the operational requirements of the employer
- The employee was terminated in accordance with a fair procedure
- The employer terminated the employee with justice and equity

Possible Consequence of Unfair Dismissal

- Compensation in lieu of one month's notice
- Wage due for the period the employee has worked
- Equivalent of a number of month's wages or salary not exceeding 12 months
- Reinstatement of the employee (in rare cases)
- Any payment made for unfair termination are subject to statutory deductions

Statutory Payroll Deductions

Statutory Deductions

The law requires employers to deduct a mandatory amount from an employee’s salary for tax and other payments by the following dates:

Deduction	Amount	Deadline
Pay As You Earn (PAYE)	Dependent on salary	9th of the following month
National Social Security Fund (NSSF)	Minimum 200 KES	15th of the following month
National Hospital Insurance Fund (NHIF)	Dependent on salary	9th of the following month
Higher Education Loans Board (HELB) - Optional	Varies	15th of the following month

Statutory Contributions

There are **three authorities** governing the payroll in Kenya that employers are expected to make contributions to:

- Kenya Revenue Authority (KRA)
- National Social Security Fund (NSSF)
- National Hospital Insurance Fund (NHIF)

Employer Contributions	Employee Contributions
<ul style="list-style-type: none">• NSSF 5% of the salary, with a minimum of 200 KES monthly• National Industrial Training Authority 50 KES per employee• WIBA Permanent Total Disability: Maximum compensation of 8 years or 96 months’ earnings Temporary Total Disability: Maximum compensation of 52 weeks’ earning	<ul style="list-style-type: none">• NSSF 5% of salary• NHIF 150–1,700 KES for employees earning more than 100,000 KES per month• Income Tax (PAYE) 10–30% of taxable pay

Income Tax

The individual income tax in Kenya, also known as PAYE, is computed as shown below:

Tax Bands	Annual	Monthly	Rates
On the first	288,000 KES	24,000 KES	10%
On the next	100,000 KES	8,333 KES	25%
On all income in excess of	388,000 KES	32,332 KES	30%
Personal Relief of 28,800 KES per annum (2,400 KES per month)			

Taxation for Non-residents

Non-residents are subjected to individual income tax at the same prevailing tax rates stated above on their income accrued in or derived from Kenya. However, they are not entitled to any personal relief.

Payroll Compliance in Kenya

- As an employer, you must understand and follow the rules listed above. Failing to do so can result in penalties and fines from Kenyan authorities.
- The Kenya Revenue Authority’s website lists several penalties for late filings, failure to file, and failure to take deductions. Offences vary in penalty amounts but tend to be between 5–10% of the amount due.

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Established in 2010 and headquartered in Singapore, BIPO is a global payroll and people solutions provider.

Our enterprise-ready **HR Management System** automates HR processes, simplifies workflows, and delivers actionable insights. Complemented by our **global payroll outsourcing** and **Employer of Record (EOR)** services, we support your global workforce needs through a network of 30+ offices, four R&D centres, and business partners in 100+ markets.

Connect with our experts today: hello@biposervice.com

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