

**SPECIAL ISSUE**

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



REPUBLIC OF KENYA

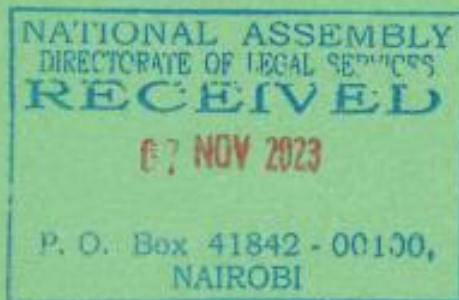
***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2023**

**NAIROBI, 12th October, 2023**

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**THE EMPLOYMENT (AMENDMENT) BILL, 2023****A Bill for****AN ACT of Parliament to amend the Employment Act, 2007 and for connected purposes.**

ENACTED by the Parliament of Kenya, as follows—

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

Short title.

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

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

Transfer of employees.

**15A (1)** In this section —

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

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

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

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

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

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

### **Statement on whether the Bill concerns County Governments**

The Bill does not concern county governments in terms of Article 110(1)(a) of the Constitution.

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

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

Dated the 2nd October, 2023.

**DIDMUS WEKESA BARASA,**  
*Member of Parliament.*

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

**15. Informing employees of their rights**

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