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WORKPLACE LEAVE IN KENYA

Introduction

In Kenya, the Employment Act, 2007 (the **Act**) imposes certain basic minimum terms and conditions that an employment contract should contain. Such terms and conditions include annual leave, sick leave, maternity leave and paternity leave. An employer's failure to comply with the basic minimum requirements of leave set out under the Act constitutes an offence for which an employer may be liable to a minimum fine of Kenya Shillings 50,000 (USD 500) and/or imprisonment of up to three (3) months.

Annual leave

An employee is entitled to at least twenty one (21) working days annual leave, with full pay, after every twelve (12) consecutive months of service. Although the leave can be taken in parts, an employer must allow an employee to take at least two (2) uninterrupted working weeks. The statutory annual leave entitlement is additional to all public holidays, weekly rest days and any side leave, whether fixed by law or agreement, in respect of which an employee is not required to work. In workplaces where unions are recognised, enhanced pay rates are likely to be negotiated in return for working on a public holiday or rest day.

Employers in Kenya are required to use an 'accruals' system which means that employees are entitled to one and three quarters (1.75) days of leave with full pay for each completed month of service with their entitlement increasing at the start of each month. As regards carrying forward any annual leave days not taken in any year, the position under the Act is that these should be taken not later than eighteen (18) months from end of the leave earning period; however this can be varied in an employment contract.

Where the contract provides for more leave days than the statutory minimum of twenty one (21), the employer and employee are required to agree on how to utilize the remaining leave days.

Maternity and Paternity Leave

A female employee is entitled to three (3) months maternity leave with full pay and is also entitled to return to the same job she held before going on maternity leave; or a reasonably suitable job on terms and conditions equal to those that would have applied had she not been on maternity leave.

In addition to the statutory maternity leave, there has been an increase in the number of employers offering additional maternity leave (subject to various terms and conditions provided under their respective policies) as a benefit to their female employees.

Maternity leave is an additional benefit to annual leave. A male employee is also entitled to two (2) weeks' paternity leave with full pay.

The Act is silent on whether a female employee would still be entitled to maternity leave in the following instances:

- miscarriages;
- stillbirths;
- adoptions (*however, the Employment Amendment Bill, 2019 proposes to introduce a pre-adoption leave period from the date of placement of the child. If the draft law is passed, a female employee would be entitled to three months' pre-adoption leave with full pay while a male employee would be entitled to two weeks pre-adoption leave with full pay*);

Sick Leave

Under the Act, an employee is entitled to a minimum sick leave period of seven (7) days with full pay and thereafter seven (7) days with half pay. This applies in each period of twelve (12) consecutive months of service, subject to medical proof of incapacity to work signed by a duly qualified medical practitioner or a person acting on the practitioner's behalf. An employee is required to give prior notice in writing of their sickness however, notice requirements may vary based on a company's leave policy.

The Act does not provide for a "carry forward" requirement for sick leave or maternity/paternity leave.

Additional Leave Benefits

In addition to the minimum statutory leave requirements, some employers in Kenya provide other additional workplace leave benefits, examples of which are set out below.

(i) Study leave

This is a period of training, preparation for/undertaking an examination given to an employee taking on a professional course or other advanced studies.

(ii) Compassionate leave

Compassionate leave is given to bereaved employees after the loss of a close relative. Under the Regulation of Wages Order, an employee desiring to take leave on compassionate grounds shall by prior arrangement with the employer, be granted such leave up to his earned leave entitlement and the leave taken shall be subsequently set off against his annual leave. An employee may also be granted five days compassionate leave without pay in any one year in addition to any leave days granted by an employer as mentioned in this paragraph.

(iii) Sabbatical

A sabbatical is a period granted to an employee to further their studies or travel for various reasons including medical, family or personal reasons. A sabbatical may be paid or unpaid depending on a specific employer's policies.

The above additional benefits are generally subject to certain terms and conditions including eligibility, maximum number of days that an employee will be entitled to, processes of applying for such leave (including notice periods and proof of studies/reasons for the sabbatical etc.), an employer's discretion to allow or reject such application and payment during such leave.

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