

大成 DENTONS

HAMILTON HARRISON
& MATHEWS

120 Years of Legal Excellence in Kenya

Anniversary
Edition



Employee Resignation

Resignation is one of the various ways recognised in the Kenyan labour laws by which an employment contract can come to an end.

Pursuant to Sections 35 and 36 of the Employment Act, 2007, parties to an employment contract can terminate the contract through the prescribed notice period or payment of salary in lieu of the notice. A person intending to resign from employment therefore needs to give their employer notice of the resignation and thereafter serve the notice period or in the alternative pay the employer in lieu of notice and the resignation will take effect.

The Employment and Labour Relations Court (the Court) has settled the position that the act of resignation from employment is a unilateral act and as such it does not require the consent of the employer. An employer has no authority to reject a notice of resignation by an employee. Rejecting the resignation is tantamount to subjecting the employee to servitude which contravenes Article 30 of the Constitution of Kenya, 2010. Doing so may expose employers to potential claims by employees.

An employer is bound to accept an employee's resignation even in instances where such employee is evading disciplinary action. An employee is free to resign from employment at any time when undergoing disciplinary action. However, it is important to note that the Court has distinguished

the consequence of immediate resignation and resignation by notice pending a disciplinary process. If an employee's resignation is not immediate, that is, he is serving the notice period, the employer retains the jurisdiction to discipline the employee during the pendency of the notice period.



Lorna Mainnah
Partner, Nairobi



Maureen Kirui
Associate, Nairobi

Rejecting
the resignation
is tantamount to
subjecting the
employee to
servitude ...

ABOUT DENTONS

Dentons is designed to be different. As the world's largest global law firm with 20,000 professionals in over 200 locations in more than 80 countries, we can help you grow, protect, operate and finance your business. Our polycentric and purpose-driven approach, together with our commitment to inclusion, diversity, equity and ESG, ensures we challenge the status quo to stay focused on what matters most to you.

www.dentons.com

© 2023 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see dentons.com for Legal Notices.