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Proposed Employee Right to Disconnect

Right to disconnect – Employment (Amendment) Bill, 2021

The Senate's Employment (Amendment) Bill, 2021 (the Amendment Bill) is set for its third reading in Parliament. It seeks to amend the Employment Act by providing employees with the right to disconnect from employers outside agreed working hours.

Some of the salient features under the Amendment Bill include:

- the development of a policy by an employer with more than 10 employees on the right to disconnect. The policy is to be developed in consultation with employees and trade unions and should provide for the following:
 - circumstances under which an employer may contact an employee during out of work hours;
 - use of electronic devices to send or receive information, messages or any digital work-related communication during out of work hours;
 - circumstances under which the right to disconnect may be waived; and
 - the nature of compensation for employees who work during out of work hours;
- the exemption from the right to disconnect of essential service providers set out in the Fourth Schedule to the Labour Relations Act and employees contacted during out of work hours by employers where such contact is to address an emergency.

The Bill defines out of work hours to mean hours other than the hours of work agreed upon between an employer and an employee in the contract of employment, while 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.

The Amendment Bill provides that a person who contravenes the above provisions commits an offence and is liable, on conviction, to a fine not exceeding KES 500,000 (approximately

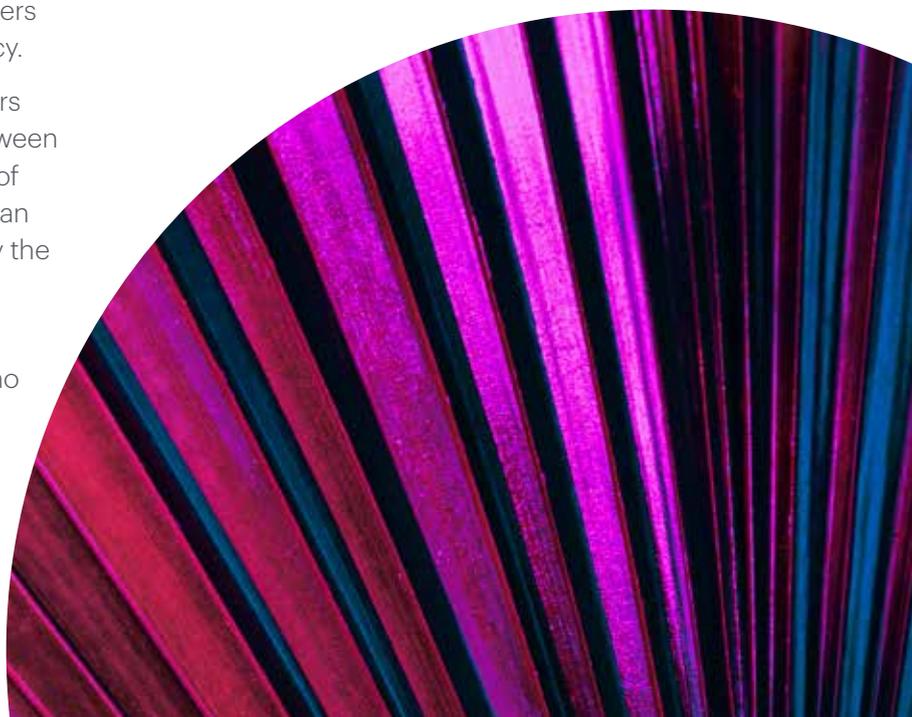
USD 5,000), imprisonment for a term not exceeding one year, or both.

The COVID-19 pandemic saw a shift to remote working and changed the dynamics of how businesses operate. The right to disconnect seeks to promote the attainment of a work-life balance.

Several jurisdictions including France, Italy and Spain have introduced legislation which grants employees the right not to respond to work-related communications after their core hours and prohibits them from being penalised for this. In Germany, changes have been implemented by companies rather than the law, with stakeholders of key German companies entering into negotiations about which policies to implement to ensure employees can disconnect. It is therefore unsurprising that Kenya seeks to join other countries in promoting a work-life balance.



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