4 Steps to Prepare for Kenya's Proposed "Right to Disconnect" Law

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Kenya has taken a significant step in addressing the balance between work and personal life by introducing a "right to disconnect" law. The Employment (Amendment) Bill 2022, which is pending before the Kenyan Senate, would give employees the right to disconnect from work-related electronic communications such as e-mails and text messages outside of their regular working hours – including weekends and public holidays. What are the four steps your business should consider to prepare for this new law if you operate in Kenya?

Key Provisions of the Bill

Besides giving employees the right to prevent their employers from receiving work-related communications outside of work hours, employers would be prohibited from taking adverse actions against employees for exercising their rights should this law take effect. This means that employees should not face any repercussions for not responding to work-related communications outside of their usual working hours. The 2022 Bill also emphasizes the need for employers to raise awareness and provide training to employees on the importance of work-life balance and the "right to disconnect."

The 2022 Bill is a renewal of the Employment (Amendment) Bill 2021. The 2021 Bill, which first introduced the idea of the right to disconnect for employees in Kenya, lapsed due to the shortened parliamentary timetable which came as a result of the general elections of August 2022. The only difference between the two is that the 2022 Bill proposes a tighter restriction on permissible emergency contacts during off-hours: under the 2022 draft, employers may only make off-hours contact with an employee to the extent necessary to address a work-related emergency falling within that employee's responsibility.

Background on the Right to Disconnect

Kenya is not the first nation to push for employees' right to disconnect. As the digital transformation of the workplace continues to gain momentum, especially in light of the remote and flexible working arrangements adopted during the COVID-19 pandemic, many workers around the world feel that the boundaries between work and personal life have blurred – and lawmakers are responding to provide them with escape hatches.

In 2016, for example, France was the first EU nation to enact a law encompassing the "right to disconnect," and other countries around the world have followed suit. Laws setting forth the "right to disconnect" all possess similar objectives: to combat work-related stress and burnout, to ensure respect for employees' time away from work, and to adapt to the evolving landscape of working in the digital age.

However, while many have praised these moves as progressive and necessary, there has been considerable opposition to these laws as well. For example, opponents to such laws argue that the "right to disconnect" could hinder the flexibility that digital tools offer. This is particularly relevant for roles that require communication across different time zones or jobs that traditionally have non-standard hours.

There is also a concern that employers might prefer hiring candidates without familial obligations, as they might be perceived as more available after hours, even if the "right to disconnect" is in place. Similarly, some employees may choose to exercise the "right to disconnect" while others may not. This may lead to rising tensions in the workplace, as employees who choose not to exercise the right will be regarded more favorably than employees who do.

Moreover, some believe that a "right to disconnect" would reduce the competitiveness of companies on the global stage, especially against companies operating in countries without such regulations. This is especially important in Kenya, as national leadership has made significant efforts for years to attract and grow foreign investment in the country so as to develop the declining national economy. Critics fear that the "right to disconnect" will disincentivize foreign investors from partnering with domestic firms as business capabilities would primarily be limited to certain durations within each workday.

Implications for Employers and Your 4-Step Guide for Compliance

Should the 2022 Bill pass, employers in Kenya will need to review and potentially adjust their current policies, or draft new ones, ensuring that they reflect the "right to disconnect" principles. It will be vital for employers to clearly communicate these policies to their employees and train managerial staff to respect and abide by the rules.

There may also be a need to re-evaluate employee workload and performance expectations, ensuring that employees can realistically complete their tasks within standard working hours. Additionally, companies will need to implement mechanisms to monitor compliance with the "right to disconnect" and address any violations appropriately.

- **Engage Stakeholders:** Involve both management and employees in the process of formulating and implementing the "right to disconnect" policy.
- **Educate and Train:** Regularly educate and train all staff members, ensuring they understand the importance and boundaries of the "right to disconnect."

- **Implement Technology Solutions:** Consider using technological tools to manage after-work communications, such as setting up email schedules or using notification settings to respect non-working hours.
- **Review and Revise:** Continuously monitor the effectiveness of the policy and be open to making necessary adjustments based on feedback and changing circumstances.

The introduction of the “right to disconnect” in Kenya represents a progressive step towards ensuring the well-being of employees in the digital age. It recognizes the challenges of an increasingly connected world and seeks to establish boundaries that promote work-life balance. Employers should act proactively to understand the implications of this Bill and take necessary measures to ensure compliance.

Conclusion

We will continue to monitor the potential “right to disconnect” of employees in Kenya or other regions of the world and provide updates as warranted. If your company operates in Kenya, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our International Practice Group for additional information. Make sure you are signed up for Fisher Phillips’ Insight System to receive the most up-to-date information directly to your inbox.

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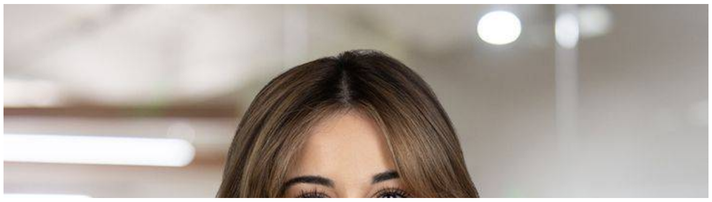

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