

GENDER EQUALITY AND THE WORKPLACE: WHAT EMPLOYERS MUST KNOW

International Women's Day is an opportunity not only to celebrate the achievements of women, but also to reflect on the progress made in ensuring equality in the workplace.

In Kenya, gender equality is not merely a social aspiration but is firmly embedded in the country's constitutional and statutory framework. Employers therefore play a critical role in ensuring that workplaces are inclusive, safe and compliant with the law.

This article highlights the key legal obligations that employers should understand in promoting gender equality and protecting women in the workplace, drawing on Kenya's constitutional provisions, employment legislation and recent judicial developments.

1. Constitutional and Statutory Protection Against Discrimination

The foundation of gender equality in Kenya lies in the Constitution of Kenya, 2010, which prohibits discrimination on the basis of sex, gender, pregnancy or marital status.

These protections extend into employment relationships through the Employment Act, 2007, which specifically prohibits discrimination in hiring, remuneration, training, promotion and termination.

Employers are therefore required to ensure that employment decisions are based on objective criteria such as qualifications, performance and experience rather than gender related considerations.

Failure to comply with the law may expose employers to claims of discrimination, resulting in financial liability, reinstatement orders and significant reputational risk.

Employers should regularly audit their policies to identify and eliminate potential disparities.

2. Equal Pay and Fair Opportunities for Advancement

Gender pay gaps and unequal access to career advancement remain persistent workplace challenges across all sectors. Under Kenyan law, employers must ensure equal remuneration for work of equal value. This means that employees performing substantially similar duties should receive comparable pay and benefits regardless of gender.

The Burden of Justification

Where an employee demonstrates a pay disparity between colleagues performing equivalent work, the burden shifts to the employer to demonstrate a legitimate and non-discriminatory explanation for the difference. Employers must be able to produce clear and documented evidence to support any claimed justification.

Equal Access to Advancement

Beyond pay, employers must ensure that promotion and professional development opportunities are accessible on a non-discriminatory basis. Transparent promotion criteria, objective performance assessments and well-documented human resource procedures are critical tools for maintaining fairness.

Employers are encouraged to periodically evaluate their compensation structures and promotion frameworks to identify and address potential disparities proactively.

3. Workplace Vulnerabilities and Protections Afforded to Women

Women may face particular vulnerabilities in the workplace including pregnancy related discrimination and underrepresentation in leadership positions. Kenyan law recognises these vulnerabilities and places a duty on employers to maintain fair, respectful and safe working environments.

Employers should therefore implement clear workplace equality policies that address the following:

- Non-discrimination in recruitment and all employment practices
- Gender-sensitive workplace policies, including provisions for flexible working.
- Equal access to training and leadership development opportunities.
- Safe, confidential and accessible reporting mechanisms for workplace concerns.

A proactive approach not only ensures legal compliance but also strengthens organisational culture, improves staff retention and enhances the organisation’s reputation as an employer of choice.



4. Maternity Rights and Family Protection

Maternity protection is a critical component of workplace equality and remains one of the most common sources of employment disputes. Under the Employment Act, 2007, female employees are entitled to three months of fully paid maternity leave. During this period and from the time the employer is notified of the pregnancy, the employer must not terminate the employee's contract on the basis of pregnancy or the exercise of maternity leave rights.

Key Maternity Protections

- Entitlement to three months of fully paid maternity leave under the Employment Act, 2007.
- Protection against dismissal. Terminating an employee because of pregnancy is automatically unfair and constitutes direct discrimination.
- Right to return. Employees are entitled to return to their substantive position or an equivalent role on no less favourable terms, following maternity leave.

Beyond the Legal Minimum

Forward-thinking employers increasingly complement these statutory protections with supportive policies such as flexible working arrangements and parental leave frameworks. Such measures promote work-life balance and support women's long-term career participation.

5. Preventing and Addressing Workplace Harassment

Sexual harassment remains one of the most serious threats to workplace equality and one of the most underreported. Kenyan law requires employers with twenty or more employees to establish a sexual harassment policy. That policy must clearly set out:

- What constitutes sexual harassment
- The reporting procedures available to affected employees
- The disciplinary consequences for perpetrators
- Protections afforded to complainants against retaliation



The Duty to Prevent

A growing trend in employment jurisprudence imposes a positive duty on employers to take proactive steps to prevent harassment, rather than simply responding to complaints after the fact. Effective compliance includes:

- A clear, comprehensive and regularly reviewed anti-harassment policy communicated to all staff.
- Mandatory training for all employees and enhanced training for managers and HR professionals, on recognising, preventing and responding to harassment.
- A confidential and accessible reporting mechanism, including provision for anonymous reports.
- A robust, fair, timely and independent investigation procedure.
- Strict prohibition of retaliation against employees who report misconduct in good faith.

6. Emerging Lessons from Kenyan Employment Case Law

Kenyan courts have increasingly reinforced workplace protections for women and their decisions carry important lessons for employers. In **Mbae v Bean Interactive Limited [2026] KEELRC 616 (KLR)**, the court held that an employer had unfairly terminated and discriminated against an employee after placing her on a Performance Improvement Plan (PIP) shortly after she disclosed her pregnancy. The court noted that no prior performance concerns had been raised and that the PIP was introduced only three days after the disclosure, which raised doubts about the employer's justification. As the employer failed to demonstrate that the action was unrelated to the pregnancy, the court found the termination unfair and discriminatory, awarding the employee compensation for unfair termination and **Kshs. 3,000,000 in damages for discrimination.**

The Importance of HR Procedure and Documentation

Judicial decisions have repeatedly highlighted the critical importance of proper HR procedures, documentation and internal grievance mechanisms in resolving employment disputes.



Conclusion:

Equality as Culture, Not Compliance

Gender equality in the workplace is both a legal requirement and a cornerstone of sustainable business practice. Employers who actively promote inclusive policies, protect maternity rights, prevent harassment and ensure equal opportunities are not only complying with the law but are building stronger, more resilient and more innovative organisations.

As we mark International Women's Day 2026, organisations across Kenya are encouraged to view gender equality not merely as a compliance obligation but as an opportunity to cultivate workplaces where every employee can thrive and contribute meaningfully.

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Disclaimer:
This article provides a general overview of gender equality obligations under Kenyan employment law and is intended for informational purposes only. It does not constitute legal advice.