CM ADVOCATES LLP




# Safeguarding Employee Rights in the Workplace

Across Kenya, workplaces are increasingly being shaped by digital systems. Employers now rely on remote working platforms, biometric attendance tools, automated payroll software, digital surveillance systems and app-based labour models.

These developments have enhanced efficiency and created new commercial opportunities. However, they have also raised legal questions relating to privacy, fair labour practices, working time, termination, discrimination, and procedural fairness.

Although technology continues to evolve rapidly, the fundamental principles of the labour laws in Kenya remain constant. Innovation does not displace legal responsibility.

As Kenya marks the Labour Day on 1 May, it is an opportune moment to reflect on how the existing labour laws apply to the modern workplace and how employee rights can be safeguarded in an increasingly digital economy.

## The foundation of fair labour practices in the digital age

The starting point in considering employee rights within a digital workplace is Article 41 of the Constitution of Kenya, 2010, which guarantees every worker the right to fair labour practices.

This constitutional protection is broad to apply to modern employment relationships, including those shaped by technology and digital systems.

Accordingly, the use of technology in the workplace must operate within these constitutional standards.

Digital tools cannot be used as a means of undermining employee rights. Whether decisions are made by a manager, through internal software or by an automated platform, the legal duty to act fairly remains with the employer.

This constitutional protection must be read alongside the statutory framework under the Employment Act, 2007("the Employment Act"). Section 2 of the Employment Act defines an employee as a person employed for wages or salary and includes an apprentice and indentured learner.

This definition covers various contemporary working arrangements where a contract of service exists, including digitally managed employment relationships.

Having established that labour protections extend to the digital workplace, the key issue pegs on how these rights are affected in practice. In many workplaces, technology directly intersects with labour law through surveillance, data collection, performance management, and disciplinary processes.

## Employee surveillance and the right to privacy

Many employers now deploy CCTV systems, biometric access controls, email monitoring and productivity-tracking software.

While employers have legitimate interests in security and operational control, workplace monitoring must be balanced against employee privacy rights.

Article 31 of the Constitution of Kenya, 2010 protects the right to privacy, while the Data Protection Act, 2019 ("the Data Protection Act") regulates the collection and processing of personal data, including biometric data and employee records.

Employers collecting fingerprints, facial scans, location data or communication records should ensure a lawful basis for processing; clear notice to employees; data minimization; secure storage; and use only for legitimate employment purposes.

Excessive or covert monitoring may expose employers to claims relating to the breach of the right to privacy.

## Technology and procedural fairness in termination

One of the growing trends in employment management is the use of automated evidence in disciplinary processes.

Employers may rely on system logs, CCTV footage, attendance records, email trails or digital audit reports when investigating allegations of misconduct.

While such evidence may be relevant, it does not remove the duty to comply with fair procedure. Sections 41, 43 and 45 of the Employment Act require that before termination on grounds of misconduct, poor performance or incapacity, an employee must be informed of the allegations, given an opportunity to respond and subjected to a substantively and procedurally fair process.

Accordingly, an employer cannot dismiss an employee merely because a system flagged irregular activity or software recorded low productivity.

Automated findings must still be tested through a lawful disciplinary process.

## Remote work and working time obligations

The Employment Act applies to all employees in Kenya, irrespective of whether work is performed in a traditional workplace or through digital platforms.

Employers remain responsible for complying with statutory obligations, including:

- Regulating working hours and ensuring compliance with the statutory limits on normal working time and overtime requirements;
- Ensuring employees are granted not less than twenty-one working days of leave with full pay annually;
- Ensuring that a female employee is granted three months maternity leave and a male employee is granted at least two weeks paternity leave;
- Maintaining safe and reasonable working conditions in accordance with the Employment Act and the Occupational Safety and Health Act, 2007;
- Ensuring lawful termination processes including fair hearing and valid reason requirements; and
- Upholding non-discrimination in employment practices in line with section 5 of the Employment Act and Article 27 of the Constitution of Kenya, 2010.

## Digital records and proof of employment rights

Modern businesses increasingly rely on electronic contracts, e-payslips, cloud HR files and digital leave records.

While these tools improve administration, employers must maintain accurate and accessible employment records.

Section 10 of the Employment Act requires employers to keep written particulars of employment, while section 74 requires records relating to employees, wages and terms of service.

Digital systems may modernize record-keeping, but they do not reduce statutory obligations. Records must remain accurate, retrievable and lawfully maintained.

## Equality and non-discrimination in technology use

Section 5 of the Employment Act prohibits discrimination in employment on various grounds.
practices in the workplace.

Where such systems produce outcomes that disadvantage certain groups, liability may arise even in the absence of intentional bias.

This may occur where:

- Systems are not accessible to persons with disabilities;
- Recruitment algorithms favour certain age groups;
- Language filters exclude qualified candidates; or
- Performance metrics disadvantage caregivers or remote workers.

These obligations reinforce that technological efficiency should not be achieved at the expense of equality or fair labour practices.

CM ADVOCATES LLP

## CONCLUSION

The future of work in Kenya will certainly be shaped by technology. However, while tools and systems evolve, the central concern of the law remains as the protection of human dignity in the workplace.

For employers in Kenya, the path forward is clear. Technology should be embraced and integrated into operations, but it must be implemented within the discipline of labour law and with full respect for employee rights.

## CONTACT US

At CM Advocates LLP, our Employment, Pensions & Rewards practice advises organizations on navigating the evolving intersection between technology and labour law. We support employers in managing workplace digitization, employee monitoring, remote work arrangements, data protection compliance and the lawful use of automated systems in employment decision-making.

For guidance on implementing legally sound workplace technologies or managing employment law risks arising from digital workplace systems, please contact our team at corporate.commercial@cmadvocates.com or the contributor below.

## AUTHOR

**Mercy Chore**
**Associate Advocate**
**Email:** mchore@cmadvocates.com
**CM Advocates LLP**



Disclaimer: This publication is for informational purposes only and does not constitute legal advice. For tailored legal support, please consult our team.