CM ADVOCATES LLP



Workplace Wellness as a Legal and Governance Imperative

As organizations mark the International Wellness Day on 15th April, workplace wellness is increasingly moving beyond a human resources concern into a legal and governance priority.

For businesses operating in today's environment, employee wellbeing is an essential component of compliance, risk management and sustainable performance.

Traditionally, wellness initiatives were framed around productivity and employee satisfaction. Today, however, they are tied to legal obligations and organisational accountability.

The legal foundation of workplace wellness in Kenya

The Law places a clear duty on employers to safeguard employee wellbeing. The Occupational Safety and Health Act (Cap. 236A) requires employers to ensure the safety, health and welfare of employees at work.

Crucially, the concept of "health" is evolving. It now extends beyond physical safety to include mental and psychological wellbeing, an area that is gaining increasing legal and policy recognition.

In this regard, the Mental Health Act(Cap, 248) provides a statutory framework for the recognition, treatment and protection of persons with mental health conditions.

While traditionally viewed through a healthcare lens, its principles are increasingly relevant in the workplace, particularly in reinforcing dignity and the need for appropriate support structures.

This framework is further reinforced by the National Guidelines on Workplace Mental Wellness(2023), which provide practical direction to employers on promoting mental wellbeing, preventing workplace-related mental health risks and responding appropriately to mental health challenges among employees.

Mental health and emerging judicial direction

This shift is no longer theoretical. Kenyan courts are actively shaping employer obligations in this space. A recent decision by the Employment and Labour Relations Court in AWW (Suing as Next Friend and Mother of GWW) v Central Bank of Kenya [2024] KEELRC 13585 (KLR) places mental health within the scope of enforceable employer duties.

The Court held that failing to accommodate an employee's known mental health condition amounted to indirect discrimination and procedural unfairness. This decision raises the bar for employer responsibility.

It makes clear that employers must move beyond passive awareness of mental health issues and take active steps to address them. In practical terms, employers are now expected to:

- Make reasonable accommodations for employees with mental health conditions;
- Investigate mental incapacity before making disciplinary or termination decisions; and
- Ensure that internal processes are fair and responsive to an employee's mental state.

Failure to meet these standards exposes organizations to claims of discrimination, unfair termination and breach of statutory duty.



Author



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