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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2017

NAIROBI, 30th March, 2017

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THE EMPLOYMENT (AMENDMENT) BILL, 2017

A Bill for

AN ACT of Parliament to amend the Employment Act, and for connected purposes—

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Employment (Amendment) Act, 2017.

2. The Employment Act, 2007 is amended in section 29 by—

(a) inserting the words “and an option of an additional three months maternity leave without pay” immediately after the word “three” appearing in subsection (1); and

(b) inserting the words “or the optional additional three months maternity leave” immediately after the words “maternity leave “appearing in the proviso to subsection (3).
MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Employment Act, No.11 of 2007 to make provision for an option to extend maternity leave by an additional three months maternity leave for women in employment. Recommendation 191 to the International Labour Organization Maternity Protection Convention at Article 4 recommends maternity leave for a period of at least eighteen weeks. The current provision is three months maternity leave therefore an extension of three months maternity leave will be in conformity with international best practices. Further other than promotion of maternal health, one of the main arguments for maternity leave is to enable a mother effectively breastfeed an infant and pass the necessary nutrients for that child to thrive. The World Health Organization recommends that infants should be exclusively breastfed for six months and this amendment will aid working women achieve that goal.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill seeks to amend section 29 of the Employment Act to provide for the extension of maternity leave for a period of three months without pay.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Statement on how the Bill concerns county governments

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 16th March, 2017.

KINOTI GATOBU,
Member of Parliament.
Section 29 of the Employment Act which it is proposed to amend—

Maternity leave.

29. (1) A female employee shall be entitled to three months maternity leave with full pay.

(2) On expiry of a female employee’s maternity leave as provided in subsections (1) and (3), the female employee shall have the right to return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.

(3) Where—

(a) the maternity leave has been extended with the consent of the employer; or

(b) immediately on expiry of maternity leave before resuming her duties a female employee proceeds on sick leave or with the consent of the employer on annual leave; compassionate leave; or any other leave, the three months maternity leave under subsection (1) shall be deemed to expire on the last day of such extended leave.

(4) A female employee shall only be entitled to the rights mentioned in subsections (1), (2) and (3) if she gives not less than seven days notice in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave on a specific date and to return to work thereafter.

(5) The notice referred to in subsection (4) shall be in writing.

(6) A female employee who seeks to exercise any of the rights mentioned in this section shall, if required by the employer, produce a certificate as to her medical condition from a qualified medical practitioner or midwife.

(7) No female employee shall forfeit her annual leave entitlement under section 28 on account of having taken her maternity leave.

(8) A male employee shall be entitled to two weeks paternity leave with full pay.