



GIVE TO GAIN: ADVANCING SAFE AND EQUITABLE WORKPLACES FOR WOMEN

This year's theme "**Give to Gain**" captures a powerful truth in modern employment practice: organisations that invest in fairness, dignity and equality gain stronger and more sustainable workplaces.

Kenya's legal framework, particularly Articles 27 and 41 of the Constitution of Kenya 2010 and the Employment Act 2007, recognises the need to safeguard women in employment through several provisions on maternity leave, appointments and selection criteria, protection from unfair dismissal and prevention of sexual harassment.

These protections are not merely statutory requirements but are also important pillars for inclusive economic participation.

Where employers actively promote equality in recruitment, reasonable and conducive workplace conditions and career advancement, they unlock the full potential of their workforce.

In doing so, they embody the principle that giving opportunity and protection ultimately yields institutional growth and resilience.

Key areas within the employment sphere

a) Maternity and familial leave

A critical area where this principle applies is maternity protection and familial leave. **Section 29(1)** of the *Employment Act* provides that "a female employee shall be entitled to three months maternity leave with full pay."

The courts have repeatedly emphasised that pregnancy or maternity leave must never form the basis of discrimination or adverse employment decisions.

In **GMV v Bank of Africa Kenya Ltd (Cause 1227 of 2011)**, the court affirmed that maternity leave is a statutory right that must not prejudice an employee's employment status.



More recently, in **Nyabuto v Goodman Agencies Limited (Employment and Labour Relations Appeal E127 of 2022)**, the court held that termination of employment on account of pregnancy constitutes discrimination and amounts to unfair dismissal under the Employment Act and the Constitution.

Similarly, in **Mbugua v Zakhem Construction (Kenya) Limited (Cause 2106 of 2016)**, it was held that an employer who dismisses an employee because of pregnancy or fails to justify termination commits unlawful discrimination and unfair termination.

These decisions reinforce the idea that protecting maternity rights helps retain skilled employees and fosters workplace loyalty. Employers who give support at such critical moments ultimately gain stability and long-term talent retention. Maternity leave should be the standard three months. Employers may also support their employees with familial leave days to care for their loved ones in case of emergencies in order to boost productivities.



b) Fairness in recruitment, appointments and promotions (career progression)

Fairness in recruitment, applications and appointments is equally central to women's advancement in employment. Section 5 of the Employment Act emphasises the need for non-discrimination during employment and equality of opportunities to all.

Structural barriers and unconscious bias can still influence hiring decisions or limit career progression. Kenyan courts have increasingly underscored the importance of transparent and lawful employment practices.

In **VMK v CUEA [2013] KEELRC 86 (KLR)**, a senior female employee succeeded on unfair termination and discriminatory treatment suit including demotion and victimisation, leading to large compensation for unequal and unfair treatment.

The decision reflects the judiciary's insistence that employers must exercise their managerial discretion within the framework of fairness and accountability.

Merit-based recruitment and promotion systems not only enhance compliance with labour law but also broaden organisational leadership pipelines. By giving equal opportunity at the point of entry and advancement, organisations gain diverse perspectives and stronger institutional capacity.



c) Safe work environment

A safe workplace is another essential element of meaningful participation for women. **Section 6 of the Employment Act** requires employers with twenty or more employees to adopt and implement policies addressing sexual harassment.

This statutory duty recognises that harassment undermines dignity, equality and professional advancement. The courts have reinforced this obligation in recent decisions.

In **MM v Eurocity Hospital Kisumu & another (Cause E007 of 2024)**, the court found that persistent sexual harassment created an intolerable work environment that amounted to constructive dismissal.

Similarly, in **Viloko v Cuisine & another (Employment and Labour Relations Petition E017 of 2025)**, the court held employers accountable for failing to address harassment complaints and protect employees.

These decisions highlight the importance of proactive policies, reporting mechanisms and prompt investigations.

Organisations that give priority to dignity and safety gain trust, productivity and stronger workplace culture.

Conclusion

Ultimately, the advancement of women in employment reflects the broader principle that fairness strengthens institutions.

Employers who respect maternity rights, ensure equitable recruitment and appointments, address harassment and follow lawful dismissal procedures reduce disputes while fostering employee confidence.

The courts continue to affirm that violations of dignity and equality will attract legal consequences. Legal practitioners therefore play an important role in guiding organisations toward policies that balance compliance with strategic workforce management.

When employers give attention to fairness, inclusion and respect in the workplace, they gain loyal employees, stronger reputations and sustainable growth.

In this way, the principle of “**Give to Gain**” becomes not just this year’s IWD’s theme, but a practical framework for building equitable and resilient workplaces.

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