



**MINISTRY OF HEALTH**



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# **USER GUIDE ON EMPLOYEE RELATIONS FOR THE HEALTH SECTOR IN KENYA**

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*Towards a cohesive workforce for quality service delivery*

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June 2016

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## Foreword

The employee relations landscape in Kenya is informed by *Article 41* of the Constitution of Kenya 2010, which grants every person the right to fair labour practices, including fair remuneration, reasonable working conditions, and the right to subscribe to and participate in trade union activities. *Article 24(1)* of the Constitution further sets out that the enjoyment of rights and fundamental freedoms by any person should not prejudice the rights and fundamental freedoms of others.

Health service provision falls within the “essential services” category. Section 81 (1) of the *Labour Relations Act, 2007*, defines essential service as, “A service the interruption of which would endanger the life of a person or health of the population or any part of the population.” Section 78(1) of the *Labour Relations Act, 2007*, states that no person should take part in a strike or lockout if the employee and employer were engaged in an essential service. Section 81(3) provides that there shall be no strike or lockout for an essential service, and Section 81(4) provides that any trade dispute in a service listed as essential shall be adjudicated upon by the Industrial Court.

Since the promulgation of the Constitution in 2010, health workers in the public service have, on several occasions, participated in industrial action. The escalation of unrest amongst health workers in many counties, which often causes disruption of health services, is to blame for needless loss of lives. The Ministry of Health is committed to stemming escalating unrest in the health sector, as well as cultivating cordial relations amongst health workers, unions, and the health sector leaders. The development of user guide on employee relations for the health sector in Kenya is a critical step towards meeting this commitment. The user guide aligns with the Labour Laws and the Constitution of Kenya 2010, and seek amicable resolution of health workers’ concerns and disputes, providing opportunity for dialogue at all avenues.

The user guide supports the County Health Departments’ mandate to provide high quality health services to the public, and recognize that effective management of health workers is a critical ingredient to health sector planning, service delivery, and ultimately, national health outcomes.

The health sector, through this user guide, has boldly taken on the task of devising long-term strategies for addressing constraints to human resources development and management so as to address the causes of unrest and improve health service delivery. This user guide proposes a series of interlinked strategies to promote industrial harmony and improve the quality and efficiency of service delivery to the public and improve key health indicators.

While acknowledging existing human resource challenges, the Ministry of Health and County Health Departments are committed to providing effective leadership to facilitate the implementation of this user guide to ensure consistent availability of health workers at service delivery points.

We recognise that successful implementation of the user guide requires concerted effort and commitment of a wide range of county stakeholders including the County Public Service Management Department, the County Public Service Board, the Finance Department, the County HR Department and the Committee of Health of the County Assembly. In this regard, the Ministry of Health and the County Health Departments will continue to provide stewardship in implementing these user guide, which constitute a significant addition to our HRH interventions, especially as the devolution of human resources in the health sector takes shape in the country.

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Republic of Kenya**



Signed



Date

## Definition of Terms

**Commission:** Refers to the Public Service Commission

**Conciliation:** The process where a commissioner meets with parties in a dispute and explores ways to settle it by agreement

**Mediation:** Voluntary, non-binding dispute resolution process in which a neutral third party helps the parties reach a negotiated settlement which, when reduced into writing and signed by all parties, becomes binding

**Negotiation:** The bargaining process between two or more parties seeking to discover a common ground and reach an agreement to settle a matter of mutual concern or resolve a conflict

## Acronyms

<b>ADR:</b>	Alternative Dispute Resolution
<b>CBA:</b>	Collective Bargaining Agreement
<b>HRH:</b>	Human Resource for Health
<b>HRM:</b>	Human Resource Management
<b>PSC:</b>	Public Service Commission



# CHAPTER 1

## CASE FOR DEVELOPMENT OF USER GUIDE ON EMPLOYEE RELATIONS

### The Health Sector Scenario after Devolution

The devolution of healthcare is anchored in the Constitution. However, the implementation of the function has had its own challenges. Whereas some of the challenges have been resolved, others continue to prevail as new ones emerge.

A World Vision Report titled *Study of Migration Patterns among Health Workforce since Devolution of Health Functions (2014)* identified a number of challenges in the health sector. The report cited political interference, policy gaps on attraction and retention of health workers and preference of health workers from own counties as challenges in the health sector. Another study by the World Vision conducted in 2014 to assess the terms and conditions of service for the health workers since devolution identified other challenges. These included unharmonised salaries and allowances, delayed salaries, non-remittance of health workers' statutory deductions, delayed promotions and re-designations, staff shortages and inadequate budgets.

During a stakeholders' workshop to discuss employee relations in the health sector held in November 2015, participants – comprising representatives from the ministries of Health, Labor and Social Security and Services, county governments, trade unions, professional and regulatory bodies and development partners – spoke of challenges facing the health sector after devolution. The major concerns noted were inequitable distribution of health workers, deteriorating working conditions, loss of skilled and specialised manpower, unclear procedures for career progression and inadequate equipment and infrastructure in health facilities.

In addition, the unpreparedness of counties to manage devolved health functions, a demanding public, and deteriorating health service delivery led to public outcry on the quality of available health care. The following factors also affect employee relations and service delivery: Poor interpretation of guidelines governing staff seconded from the national government, understaffing, complexity of procedures for inter-county transfers, integration of services and functions of the defunct local

authorities and lack of standard organisational structures at the counties.

With the above scenario, a paradigm shift in the management of employee relations in the health sector is necessary. Implementation of job evaluation reports to guide remuneration, shift to performance-based rewards and sanctions and ability of the employer to pay would constitute a worthwhile considerations by health sector players. Other considerations, such as flexible work arrangements, pooling of specialists between counties, synergies between the Constitution and the Labour Laws, questions about the rights of the worker vis-a-vis the rights of the patient, individually-negotiated terms of service vis-a-vis group-negotiated terms and national Collective Bargaining Agreement (CBA) vis-a-vis County CBAs, call for dynamic approaches in managing employee relations in the health sector. The approaches will involve collaboration, partnerships, engagement, cooperation, participation, involvement and ownership by all players in the employment relations in the health sector.

### Need for the User Guide

The effects of poor employee relations in the health sector are adverse. Notable effects include strikes and boycotts by health workers, which directly affect health service delivery across all counties. Consequently, there is urgent need for guidelines specific to the health sector on how employee relations should be proactively managed to safeguard against the effects of poor relationships.

According to a World Vision Report on study of HRH and Labor Representation in Kenya, since the advent of devolution, there has been 26 strikes by health workers between 2011 and 2014.

Year	Number of strikes
2011	2
2012	5
2013	8
2014	11

*Source: World Vision Report 2014*

This has resulted in deaths, misery and suffering of Kenyan patients seeking services in public hospitals. Employee stress, apathy, mistrust and sour ties with their employer(s) – and among employees themselves – have affected

cohesion and team work. Mass resignations of some key personnel and confusion in the chain of command and reporting relationships have affected operations. As a result, health services have deteriorated and so has public trust – regarding the capacity of public health facilities to provide quality health services. This has created room for growth of illegal and unlicensed institutions purporting to offer affordable healthcare. Litigation in the sector has been on the rise as a result. Service delivery and public image of the health sector too is at stake.

Employee unrest can be avoided through cooperation and constructive engagement between players in the health sector at all levels of interaction – that is, national, county and facility levels. Consequently, an all-inclusive approach in managing employee relations is critical. The approach should be proactive, dynamic, consensus-oriented and sustainable as well as anchored in the Constitution. Relevant legislation, Public Service guidelines, sector-specific guidelines, county human resources guidelines, and approved administrative manuals and circulars are also necessary.

The Constitution, for instance, provides, under Chapter 4 (The Bill of Rights), for freedom of expression, access to information, freedom of association, fair remuneration, and participation in trade union activities. Under Chapter 13 (The Public Service), the Constitution provides for involvement of people in the process of policy making, fair competition and merit as the basis for appointments and promotions, the need for a representation of Kenya's diverse communities and the need to afford adequate and equal opportunities for appointment, training and advancement at all levels in the public service.

The Employment Act (2007), on the other hand, under Section 5, prohibits discrimination in employment, and, under Section 87, provides for dispute resolution between employers and employees. The whole of Part III of the Constitution is devoted to employment relationships. The Labour Relations Act (2007), under Section 4, gives employees the right to participate in forming trade unions as well as joining or leaving a trade union. The whole of Part VIII of the Act is devoted to dispute resolution as an alternative to court processes.

### **Expected Benefits of the User Guide**

1. Provide a proactive and more responsive approach towards managing employee relations in the health sector, thereby mitigating employment-related conflicts.
2. Build trust, goodwill and confidence amongst players in the sector.
3. Protect the image of the stakeholders in employment and the nation in general against negative publicity and against public perceptions of

lethargy and aloofness in the way national and county governments manage health workers.

4. Reduce litigious, financially-draining and stressful legal processes.
5. Prevent suffering and misery of stakeholders (patients, health workers, general public) where disputes in the health sector arise.
6. Allow parties in the health sector to have greater control and flexibility over employee relations issues that arise.
7. Provide practical solutions tailored to meet the interests and needs of health workers and their employers.

### **Strategic Employment Relationships and Linkages**

The User Guide appreciates that multiple stakeholders exist in the employment relationship. Each stakeholder has a distinct role in the realisation of good employee relations and service delivery. Whereas the interests of different players may not necessarily be unilaterally similar, areas of convergence far outweigh areas of divergence. For example, all parties seek effective and efficient service delivery to the public (patients) and a conducive working environment for employees (health workers).

The two levels of government – national and county – have designated roles in the spirit of the Constitution. Health policy formulation, capacity building and technical assistance are the functions of the national government as outlined in the Fourth Schedule. The Intergovernmental Relations Act 2012 establishes a framework for consultation and co-operation between the national and county governments and among county governments, to provide mechanisms for the resolution of intergovernmental disputes, pursuant to Articles 6 and 189 of the Constitution. As such, there should be cooperation between the two levels as anticipated in the principles of devolution.

This calls for establishment of mechanisms that will foster regular engagement and consultation amongst relevant stakeholders. Other strategic partners in employee relations in the health sector are the Ministries of Labour, Social Security and Services, the National Treasury, the Public Service Commission (PSC), County Public Service boards, sector trade unions, respective professional and regulatory bodies and associations, and development partners. As these are parties with varying interests, conflict between them is inevitable.

## CHAPTER TWO

### GUIDING PRINCIPLES AND VALUES IN EMPLOYEE RELATIONS

#### The Law/Compliance

The tenets that guide employee relations in any sector revolve around two key pillars: the laws that provide regulatory framework for purposes of compliance and the values which the laws are set to instil in the parties.

Laws refer to the system of rules that a particular country or community recognises as regulating the actions of its members, and which may be enforced by the imposition of penalties. They are also regarded as having a binding force or effect.

#### The Constitution

The Constitution is the supreme law of the country from which other laws are subjected. The Constitution of Kenya, the Labor Laws, the National Government, the PSC and county government laws provide a framework against which employee relations are managed.

The Constitution of Kenya has outlined principles that govern labor relations in Kenya. These include:

- Chapter One of the Constitution of Kenya, 2010, which provides for the supremacy of the Constitution and the sovereignty of the people
- Chapter Two on 'The Republic of Kenya'
- Clause 10 on 'National Values and Principles of Governance'
- Chapter Four on 'Bill of Rights'
- Clause 27 on 'Equality and Freedom from Discrimination'
- Clause 28 on 'Human Dignity'
- Clause 33 on 'Freedom of Expression'
- Clause 35 on 'Access to Information'

- Clause 36 on 'Freedom of Association'
- Clause 41 on 'Labour Relations'
- Clause 43 on 'Economic and Social rights'
- Chapter 13 on 'The Public Service'
- Part 1 on 'Values and Principles of Public Service'
- Part 2 on 'Staff of County Governments'
- Chapter 15 on 'Commissions and Independent Offices' (e.g. 248 on the Salaries and Remuneration Commission)

### **Labor Laws**

- The Employment Act; 2007
- Labor Relations Act; 2007
- Works Injury and Benefits (WIBA) Act; 2007
- Occupational Health and Safety Act (OSHA)
- Any other applicable legislation

### **Public Service Commission Guidelines**

- County Public Service Human Resource Manual (May, 2013)
- Human Resource Development Policy for the Public Service (June, 2015)
- Guidelines for Mediation, Conciliation and Negotiation (September, 2014)

### **Ministry of Health Guidelines**

- Devolved HRM Policy Guidelines on Human Resources for Health (February, 2015)
- Health Sector Human Resource Strategy 2014 – 2018 (2014)

Others include respective county human resource policies and administration manuals and applicable circulars as may be released from time to time.

## **Values**

In scenarios where human beings relate in a work environment, compliance to legal requirements alone cannot build and sustain lasting relationships.

This is more difficult when conflicts emerge, hence, the need to embrace values or ideals suited to managing employee relations in the health sector. The values listed below will be useful:

- Integrity
- Transparency and openness
- Communication
- Fairness
- Winning trust and 'walking the talk'
- Responsiveness
- Accountability and good governance
- Commitment
- Consultation and involvement
- Mutuality
- Flexibility
- Pro-activeness
- Professionalism
- Constructive criticism
- Prudence in utilising resources

## CHAPTER THREE

### USER GUIDE FOR EFFECTIVE MANAGEMENT OF EMPLOYEE RELATIONS

The approaches provided in this section require goodwill, collaboration, partnership, continuous engagement, cooperation, participation involvement and ownership by all players within the employment relationship in the health sector.

**Guideline 1: Recruitment, selection, placement, deployment and remuneration of healthcare personnel**

The provisions of the Constitution, County Public Service Human Resource Manual (May 2015) by the Public Service Commission of Kenya – Clauses B4 (Salaries and Remuneration); B6 (Recruitment); B7 (Matters to put into account during appointments and B26 (Non-discrimination) – together with Ministry of Health’s Devolved HRM Policy Guidelines on Human Resource for Health (February, 2015) shall apply. The recruitment, selection, placement and deployment shall be transparent, fair and equitable in accordance with the approved staffing norms and standards. The principle of cooperation and consultation between the two levels of government, the National Treasury, County Treasury and contracting donors and partners (where applicable) shall apply. Remuneration of healthcare human resource shall be transparent, fair, equitable, meritorious and in accordance with the approved respective schemes of service and or supporting policies and circulars.

**Guideline 2: Capacity building**

The health sector shall embrace continuous professional development of its employees to enhance their knowledge, skills, competencies and attitudes in accordance with the relevant applicable policies. Capacity building shall be



informed by regular training needs analysis, taking into consideration the national, county and facility needs, as well as individual professional development and inter-cadre needs.

**Guideline 3: Adherence to approved policies, guidelines and agreements (MoUs)**

All parties in the employment relationship shall adhere to and respect existing policies, guidelines and standard operating procedures. Agreements reached during conciliation and negotiations shall be adhered to without prejudice.

**Guideline 4: National and county government joint work councils and committees**

The national and county governments shall form joint work councils and committees comprising representatives of both workers and management in the health sector. The joint council shall meet at least once every quarter – and whenever need arises – to discuss issues of mutual interest and suggest solutions acceptable to all the parties involved. It shall also offer supportive and facilitative inspection. Resolutions of the meetings shall be adhered to by all parties.

**Guideline 5: Institution of transformational leadership development and governance programs**

The national and county governments shall set up leadership development and governance programs for all levels of leadership in the sector. The program should be aimed at growing transformational leaders that can inspire, motivate and manage talent, are open to criticism, given to consult, engage, communicate and build effective work teams, as well as mentor workers in their respective jurisdictions.

**Guideline 6: Stakeholder open forums**

Stakeholders in the employment relationship in the health sector shall hold an all-inclusive stake holders' open forum at least once each year to share experiences and discuss cross-cutting employee relations issues affecting the sector.

The forum shall be cascaded from the national to county and facility levels. It may be in form of workshops, conferences, meetings or any other approach as shall be approved by the respective convenor.

**Guideline 7: Suggestion boxes**

The national and county governments shall put in place suggestion boxes to facilitate gathering of opinions and feelings and suggested solutions to employee relations issues that arise. A structured mechanism for responding to the complaints and suggestions shall be put in place. This responsibility shall lie with the health management teams at national, county, sub-county and facility levels.

**Guideline 8: Annual employee satisfaction surveys**

National and county governments shall conduct annual employee satisfaction surveys at facility, sub-county, county and national levels. This will enable the management to proactively track and address employee concerns which would otherwise escalate into unnecessary conflicts. Survey results shall be disseminated to the employees and action plans developed and implemented by the health management teams at national, county, sub-county and facility levels.

**Guideline 9: Career progression guidelines**

National and county governments shall implement clear and dynamic career progression guidelines for each employee category, taking cognizance of existing public service guidelines, approved guidelines and emerging trends in human resource development and management.

**Guideline 10: Grievances and discipline-handling procedures and mechanisms**

National and county governments shall put in place amicable procedures and mechanisms for handling employee grievances and discipline. Key stakeholders should be engaged in drafting the procedures which shall then be communicated to all employees.

### **Guideline 11: Transparency and accountability**

Principles of transparency and accountability shall be applied on all matters affecting the health sector. This will build trust and create understanding even in moments of crisis.

### **Guideline 12: Communication**

National and county governments shall develop and implement an efficient and effective communication strategy to ensure all stakeholders are constantly updated on happenings in the health sector. Both levels of government, and the facility level, shall embrace open communication that runs from top-down, bottom-up, vertically and horizontally, and with clear feedback mechanisms. Communication must, therefore, be right, timely and simple. It must address the right audience, use the right media and language, and maintain the approved communication channels. It must also allow for feedback from whichever quarter and review bureaucratic chains of communication with a view to minimising effects of unhealthy grapevine.

### **Guideline 13: Flexibility and adaptive management**

All parties should allow for some level of 'give and take' for the sake of common good. This will be enhanced by embracing negotiation. National and county governments shall create a conducive environment to facilitate bargaining processes between two or more parties that seek to find common ground and reach an agreement or settle a matter of mutual concern, or resolve a conflict.

### **Guideline 14: Sharing information**

Management at all levels shall put in place mechanisms that promote timely sharing of information among all stakeholders.

### **Guideline 15: Managing impact of social media**

National and county governments should manage the impact of social media by mainstreaming use of social media in their health facilities. Social media may be used to share institutional vision and mission and to

communicate to health workers or unions, as the case may be, what is being done concerning given issues, among others.

**Guideline 16: Engagement with the media (electronic and print)**

National and county governments shall develop structured mechanisms for engaging with the media to build sound relationships. Both levels of government shall develop structured mechanisms for releasing information to the media.

**Guideline 17: Sensitivity and responsiveness to diversity in the health sector**

National and county governments shall put in place deliberate measures which recognise and speak to diversity in the health sector. Diversity may include but shall not be limited to gender, generational gaps, ethnicity, education and training, specialisation, religion and culture. Measures undertaken should be proactive and geared towards inclusion, cohesiveness, teamwork and optimal utilisation of human capital.

**Guideline 18: Professionalism**

Stakeholders at all levels shall make every effort to draw a line between self-interest, politics and professionalism in the management of the health sector at all times.

**Guideline 19: Participation and strategic partnerships**

National and county governments shall define levels of participation, partnership, consultative engagements and inclusivity between the national government and county governments, as well as unions and professional associations.

**Guidelines 20: Sensitization on HR policies, guidelines and circulars, and their application in the health sector human resource**

The Public Service Commission and County Public Service Boards, in collaboration with the Ministry of Health and county departments of health, shall ensure continuous sensitisation of employees on HR policy guidelines and circulars and their application in the health sector. Further, national and county governments shall strengthen translation and use of research findings by disseminating research findings to relevant stakeholders. Where applicable, action plans on the recommendations of HR-related research findings shall be developed and implemented.

## CHAPTER FOUR

### ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS

#### Background

Alternative Dispute Resolution (ADR) is any method of resolving disputes other than through litigation. It affords disputing parties an opportunity to create solutions that are uniquely tailored to address the issues at hand. The objective of an ADR process is to assist parties create a voluntary, functional, durable and mutually satisfactory agreement that all parties believe to be beneficial.

ADR can take three forms: mediation, conciliation and negotiation. The goal of these three mechanisms is to secure solutions that are voluntarily acceptable to both parties. Courts rarely overturn ADR decisions and awards if the disputing parties formed a valid contract to abide by since the solution is acceptable to both parties and entered freely. Chapter 10 of the Constitution, in Section 159, recommends reconciliation, mediation and arbitration as the alternative forms of dispute resolution.

#### Benefits of ADR

ADR saves parties lengthy and stressful court processes and legal costs on the employer and the employee. It builds trust and confidence amongst players in the employment relationship and allows parties to have greater control over the selection of the individual or panel that will decide their dispute. Moreover, the process is determined and controlled by the parties to the dispute and thus increases the speed of settlement of disputes. ADR enhances practical solutions tailored to meet the interests and needs of the health worker and the employer.

#### Choice of ADR Procedure

The Public Service Commission has developed guidelines for Mediation, Conciliation and Negotiation (GOK 2014). The guidelines provide that the ADR procedures shall apply to all human resources management-related disputes in the public service that can be resolved without litigation, and that provisions of the guidelines should, as far as possible, be applied to all disputes before any other recourse is considered. The existence of

the guidelines shall not in any way foreclose other methods of dispute resolution.

The choice of ADR procedure will be determined by the nature of the dispute, and more than one procedure may apply depending on the circumstances of the matter. However, according to the PSC guidelines, the following shall apply in addition to any other guideline as shall be given by the Commission from time to time:

1. Disputes involving unions and touching on terms and conditions of service may be determined through negotiations.
2. Disputes involving officers within a ministry or a state department and touching on allocation of work, deployment and transfers among others may be resolved through mediation.
3. Disputes between ministries, state departments or state organs and touching on responsibilities of ministries, state departments and state organs, among others, may be resolved through conciliation.

The guidelines provide procedures for appointment of mediators, conciliators, and the negotiation process. The role of the mediator and conciliator as well as how the process is conducted is quite detailed, as well as what should be done in the event that an agreement is not reached.

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