



**INTEGRATING MENTAL HEALTH PROTECTIONS INTO KENYA'S
EMPLOYMENT LAW: A COMPARATIVE ANALYSIS WITH AUSTRALIA**

Submitted in partial fulfilment of the requirements for the Bachelor of Laws
Degree, Strathmore University Law School



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MARCH 2025

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ACKNOWLEDGEMENT

I express my deepest gratitude to God for His guidance, the gift of health, and the strength to complete this research.

I sincerely appreciate my supervisor, Ms. Janet Njambi, for her invaluable guidance, support, and insightful contributions throughout this research journey. Her expertise and encouragement have been instrumental in shaping this work.

I am also profoundly grateful to my parents, siblings and friends for their unwavering love, support, and encouragement, which have strengthened me throughout this process.



DECLARATION

I, OMARIBA JULIANA NYANG'ATE, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works referred to are accordingly acknowledged.

Signed: 

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Abstract

Workplace mental health is emerging as a critical dimension of labour rights, yet Kenya's employment law remains insufficiently equipped to address the psychosocial risks confronting workers. Although the Constitution of Kenya guarantees the right to health and fair labour practices, these protections are not meaningfully realised under statutes such as the Employment Act 2007, Occupational Safety and Health Act 2007, and the Mental Health Act 2019, which fail to recognise mental health as a core workplace concern. This legal gap contributes to increased inequality, absenteeism, presenteeism, and diminished productivity—particularly in high-pressure work environments.

This dissertation employs doctrinal and comparative methodologies to critically analyse Kenya's legal framework in light of Australia's progressive approach. It examines how Australia's Work Health and Safety Act 2011 and Fair Work Act 2009 embed enforceable protections for psychological health, including employer duties, mental health risk management, and support mechanisms such as Mental Health First Aid and Employee Assistance Programs. The study also draws on leading case law, such as *Roussety v. Castricum Brothers Pty Ltd*, to demonstrate how enforceable legal duties can prevent workplace-related psychological harm.

Based on this analysis, the research proposes targeted reforms to Kenya's labour law regime. It recommends amending the Employment Act and Occupational Safety and Health Act to include mental health as a legally protected aspect of workplace safety. These reforms are supported by a phased implementation strategy involving mandatory workplace mental health policies, binding Codes of Practice, and a national training framework. Ultimately, the study asserts that workplace mental health must be treated as a legal obligation rather than a discretionary policy choice, essential to building an inclusive, resilient, and rights-based labour system in Kenya.

List of Abbreviations

ACHPR – African Charter on Human and Peoples’ Rights

ALGEE – Approach, Listen, Give Support, Encourage Professional Help (Mental Health First Aid model)

COVID – Coronavirus Disease

FW – Fair Work Act (Australia)

FWC – Fair Work Commission (Australia)

HR – Human Resources

ILO – International Labour Organization

LDA – Lunatics Detention Act (Gambia case reference)

MHFA – Mental Health First Aid

OHS – Occupational Health and Safety

OSH – Occupational Safety and Health

OSHA – Occupational Safety and Health Act (Kenya)

PCBU – Person Conducting a Business or Undertaking (Australia)

RTW – Return-to-Work (workplace mental health recovery plan)

SDG – Sustainable Development Goals

UK – United Kingdom

VSC – Victorian Supreme Court (Australia)

WAP – Wellbeing Action Plan

WHO – World Health Organization



WHS – Work Health and Safety (Australia)

List of Legal Instruments

African Charter on Human and Peoples' Rights (ACHPR)

Constitution of Kenya (2010)

Employment Act (2007)

Fair Work Act (2009) [Australia]

Mental Health Act (2019)

Occupational Safety and Health Act (2007)

Work Health and Safety Act (2011) [Australia]

WHO Comprehensive Mental Health Action Plan (2013–2030)

ILO Occupational Safety and Health Convention No. 155

Model Code of Practice: Managing Psychosocial Hazards at Work [Australia]

The Employment (Amendment) Bill (2022)

Workplace Mental Wellness Guidelines (2023) [Kenya]

List of Cases

Purohit and Moore v. The Gambia (2003)

Peter Wambugu Kariuki v. Kenya Agricultural Research Institute

Mathew Okwanda v. Minister of Health and Medical Services

Roussety v. Castricum Brothers Pty Ltd [2016] VSC 466

1 CHAPTER 1: INTRODUCTION/BACKGROUND

Despite the growing recognition of mental health as a crucial component of overall well-being, workplace frameworks in Kenya and globally still largely overlook it. While physical health standards are firmly established in labour protections, mental health does not receive the same level of attention, even though it significantly impacts employee productivity, retention, and organisational resilience. This dissertation proposes recognising mental health as a core labour right and an essential social protection measure vital to Kenya's Employment Act. Achieving parity for mental health with physical health would involve comprehensive reforms to ensure that all employees have access to mental health resources, such as mandatory counselling services and even the introduction of mental health leave, within the employee rights framework.

Recognising mental health as a labour right means employers must prevent harmful practices and actively foster psychologically supportive work environments. Furthermore, treating mental health as a social protection priority guarantees employees access to necessary services. This study advocates reframing mental health as a labour and social protection right, fostering a workplace culture in Kenya that values comprehensive employee well-being.

Mental health challenges are increasingly prevalent in Kenya, with nearly 4.4% of the population affected by depression and other mental disorders.¹ Broader societal trends, including economic pressures and demanding work environments, exacerbate stress, anxiety, and burnout. Yet, workplace protections in Kenya largely overlook this critical health aspect. In the absence of formal mental health support, employees experiencing psychological distress face higher absenteeism rates, approximately 5% more and increased presenteeism, resulting in considerable productivity losses and underscoring the critical need for workplace mental health protections.²

¹ Ministry of Health, *Kenya Mental Health Policy 2015-2030*, 20.

² Melisa Bubonya, Deborah A. Cobb-Clark, and Mark Wooden, *Mental Health and Productivity at Work: Does What You Do Matter?*, 2016, *Labor: Personnel Economics eJournal*.

Kenya's Employment Act is the primary legal framework for protecting worker welfare. Addresses a range of employee rights and employer responsibilities, including fair treatment, protection against unlawful termination, and workplace safety measures.³ However, the Act has no provisions for mental health support, leaving employees exposed to various workplace stressors that affect their mental well-being. This legal lacuna in the Employment Act highlights the need to incorporate provisions that protect employees' mental health to promote holistic employee welfare.

Workplaces can both contribute to stress and act as sites for mental health interventions. Globally, mental health conditions are estimated to cost economies over \$1 trillion in lost productivity annually due to presenteeism and absenteeism.⁴ Studies suggest that workplace mental health support can alleviate these losses, improve retention, and foster a more motivated workforce.⁵ These impacts are especially significant in Kenya, where socioeconomic pressures strain the labour market. Further research has also underscored the fact that loss of productivity owing to mental health problems can be exacerbated by organisational cultures that are unsupportive of the psychological distress employees may encounter, reinforcing formal mental health provisions.⁶

The COVID-19 pandemic highlighted the need to integrate mental health support into labour policies. Temporary initiatives such as online counselling emerged during the pandemic, but few were institutionalised into long-term policies. This experience underscored the importance of sustained mental health support for workforce resilience.⁷

Additionally, mental health challenges are not solely workplace-induced but also result from broader societal factors, including economic instability and healthcare access.⁸ Addressing these issues in a social protection framework would allow for policies such as subsidised access to

³ Kenya Employment Act, 2007.

⁴ Stephen Bevan and Cary L. Cooper, *The Healthy Workforce: Enhancing Wellbeing and Productivity in the Workers of the Future* (Emerald Publishing Limited, 15 November 2021) 24-28.

⁵ Stephen Bevan and Cary L. Cooper, *The Healthy Workforce: Enhancing Wellbeing and Productivity in the Workers of the Future* (Emerald Publishing Limited, 15 November 2021) 24-28.

⁶ Naslund JA and Kousoulis AA, 'Prioritizing the Mental Health and Well-Being of Healthcare Workers' *Frontiers in Public Health* 9 (2021) 6-8.

⁷ Gentilini U, *Social Protection and Jobs Responses to COVID-19* (2022) World Bank <https://openknowledge.worldbank.org/handle/10986/33635> on 3rd November 2024.

⁸ Galea S, Merchant RM, and Lurie N, 'The Mental Health Consequences of COVID-19 and Physical Distancing: The Need for Prevention and Early Intervention' *JAMA Internal Medicine* 180(6) (2020) 817-818.

therapy, mental health leave, and structured support during mental health crises. Some developed countries have recognised the societal benefits of such policies, fostering a healthier workforce.⁹

International frameworks, such as the International Labour Organization, have defined "decent work" as encompassing a safe and healthy environment, including physical and mental well-being.

¹⁰Aligning Kenya's labour protections with such standards would enhance protections for Kenyan workers. Beyond improving individual productivity, mental health protections have public health implications, as untreated mental health issues increase disability rates and healthcare costs.¹¹ Integrating mental health into Kenya's labour framework could alleviate these challenges, benefiting individuals and society.

1.1 Problem statement

Despite the growing awareness of the importance of mental health for overall well-being, Kenya's Employment Act lacks explicit provisions for mental health support. While the Act does protect workers' rights and safety—ensuring fair treatment and protection from unfair dismissal—there are no specific guidelines addressing mental health issues. This omission creates a gap in protections for employees who experience mental health challenges.

Without established mental health guidelines, workers are more susceptible to stress at work, which can exacerbate mental health problems. This situation can lead to increased sick days, decreased productivity, and a higher risk of burnout. Highlighting the urgent need to incorporate mental health support into the Employment Act to ensure a comprehensive approach to employee well-being. By advocating for this integration, the paper aims to highlight mental health as a critical component of workplace rights and advocate for legal reforms that promote a supportive environment for employees' physical and psychological well-being.

1.2 Research objectives

1. To critically evaluate Kenya's existing legal and policy frameworks relating to mental health, including the Employment Act and related guidelines, to identify gaps in protecting

⁹ Estrin and Chisholm, *Time for Mental Health to Come Out of the Shadows*, 21.

¹⁰ Reich M, *Decent Work and the Sustainable Development Goals* (2020) International Labour Organization <https://www.ilo.org/topics/decent-work> on 3rd November.

¹¹ Bevan S, 'Economic impact of mental health on work productivity' 57 *Journal of Occupational and Environmental Medicine* 5, 2015, 495-501.

employees' mental health and assess their alignment with international standards ratified by Kenya.

2. To compare Kenya's approach to workplace mental health with Australia's legal and policy frameworks, which are recognised for their robust protections, to identify effective mechanisms that can inform the development of mental health protections in Kenya.
3. To identify and adapt key minimum standards from Australia's workplace mental health framework to develop an ideal model for integrating mental health protections into Kenya's labour laws, tailored to its unique socioeconomic and cultural needs.

1.3 Research Questions

1. What gaps exist in Kenya's legal and policy frameworks regarding employee mental health protections, and how do these gaps align with international standards ratified by Kenya?
2. How does Australia's legal and policy framework for workplace mental health function, and what lessons can be drawn from its approach to enhance Kenya's labour laws?
3. What minimum standards are essential in developing mental health protections, and how can key elements from Australia's framework be adapted to establish an ideal model for

1.4 Hypothesis

Incorporating mental health protections into Kenya's Employment Act as a mandated labour right and social protection will enhance employee well-being, boost productivity, and decrease turnover rates. Furthermore, these protections will align Kenya with international standards, fostering a healthier workforce and improving public health outcomes by reducing the societal costs associated with untreated mental health issues.

1.5 Justification of the study

The need for this study stems from a growing recognition that mental health is an essential component of the physical health of every employee in the workplace. However, this issue remains unaddressed, mainly within Kenya's Employment Act. Numerous studies have demonstrated the significant impact of mental health on productivity, employee retention, and overall societal well-being. Despite these findings, there is a considerable legislative gap regarding mental health protections in Kenya.

This study aims to fill this gap by advocating for recognising mental health as both a labour right and a social protection right by international standards.

The findings of this study will directly benefit policymakers, legislators in parliament, and employer organisations by offering recommendations for incorporating mental health protection into the Employment Act. For policymakers and legislators, the results will provide a strong rationale for reforming Kenya's labour laws to align with international standards, thus supporting worker welfare and promoting economic stability. Employers, especially in high-stress sectors such as healthcare, can utilise this study to create workplace mental health strategies that enhance productivity, reduce employee turnover, and cultivate a healthier work culture.

Additionally, researchers studying labour rights and mental health will find this study valuable for advancing discussions on mental health protections in developing countries, providing a foundational framework for future research and policy analysis.

1.6 Theoretical framework

The study employs two theoretical frameworks: Social Contract Theory and Stakeholder Theory. These theories provide a comprehensive foundation for examining the ethical and practical imperatives of integrating mental health protections into the Kenyan labour framework. They justify the study's focus on legislative reform by framing mental health as an ethical obligation and a stakeholder concern that impacts organisational success.

Social Contract Theory forms the ethical foundation of this study. It was initially proposed by philosophers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. It posits that individuals consent to form societies and accept specific rules in exchange for the protection and benefits of governing structures. This theory has been widely applied in contemporary contexts to justify state obligations in upholding citizen welfare, including ensuring safe and equitable working conditions.¹² It argues that the government must protect the populace's rights and well-being, including the mental health of its workforce, in exchange for their adherence to laws and social norms.

Applied to this study, Social Contract Theory supports the argument that the Kenyan government, through its Employment Act, must protect employees' mental health just as it does their physical health. Mental health is increasingly recognised as essential to overall well-being and productivity,

¹² Cudd, A. (2018). Social contract theory. In E. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy*.

making it a logical extension of state responsibility under the social contract.¹³ By framing mental health protections as a government responsibility, Social Contract Theory justifies legal reform to bridge the gap in the Employment Act. It aligns the state's ethical obligation to align labour laws with the evolving needs of the workforce, ensuring a just and balanced society.

Edward Freeman's Stakeholder Theory, developed in the 1980s, complements Social Contract Theory by providing an organisational perspective on the importance of mental health protections. This theory asserts that organisations must consider the interests and well-being of all parties affected by their actions, not just shareholders or owners.¹⁴ Extensively applied in corporate governance and social responsibility studies, Stakeholder theory emphasises the ethical and practical need to balance diverse stakeholder interests, including those of employees who are integral to organisational success.

In the context of this study, Stakeholder Theory frames employees as primary stakeholders whose mental well-being directly impacts productivity, workplace culture, and organisational sustainability. According to this theory, employers and policymakers have a duty to support employee mental health, recognising that neglecting this aspect can lead to higher turnover, absenteeism, and reduced productivity.¹⁵ By applying Stakeholder Theory, this study positions mental health protections as ethical obligations and beneficial investments for employers and society. Implementing mental health protections aligns with the interests of key stakeholders—employees, businesses, and the government—creating a more supportive, productive, and sustainable workforce.

Social Contract Theory and Stakeholder Theory provide a robust foundation for this study. Social Contract Theory focuses on the state's role in upholding mental health as a labour right. In contrast, Stakeholder Theory addresses the organisational responsibility of employers to support employee well-being. This integrated approach underscores the dual roles of the state and employers in addressing workplace mental health. It highlights how important it is for organisations and policymakers to work together to develop a more supportive, productive and equitable workforce.

¹³ Daly, M. (2020). Mental health is a public health issue. *Public Health Reviews*.

¹⁴ Freeman, E. (1984). *Strategic management: A stakeholder approach*. Pitman Publishing Inc.

¹⁵ Burchell, B., Sehnbruch, K., Piasna, A., & Agloni, N. (2014). The quality of employment and decent work: Definitions, methodologies, and ongoing debates. *Cambridge Journal of Economics*, 38(2), 459–477.

The study supports that adding mental health issues to Kenya's Employment Act is crucial for creating a fair, resilient, and productive workforce by drawing on these theoretical stances to support the proposed legal amendments.

1.7 Literature review

1.7.1 Mental Health in the Workplace

Mental health in the workplace has become a critical focus in recent years due to its impact on both employee well-being and organisational performance. Research highlights the increasing prevalence of mental health issues in workplaces globally. Stress, burnout, and anxiety are frequently cited as the most common challenges employees face.¹⁶ Naslund et al. note that high-pressure work environments exacerbate these issues, especially in industries with long working hours and demanding workloads.¹⁷ This trend worsened during the COVID-19 pandemic, as uncertainty and isolation significantly heightened stress levels in many workplaces.

The organisational environment plays a crucial role in shaping employee mental health. Toxic work cultures, poor communication, and a lack of support systems significantly contribute to workplace stress. Celestin and Vanitha argue that supportive workplace policies, including access to mental health resources and flexible work arrangements, are critical in reducing stress and promoting well-being.¹⁸ They align with Graf et al.'s findings, which note that organisational psychological safety fosters resilience and job satisfaction.¹⁹

Organisations also face substantial economic costs due to mental health-related absenteeism and presenteeism. Beckmann et al. estimate these losses in billions annually, urging organisations to view mental health as a strategic priority. They emphasise that investments in mental health

¹⁶ Naslund JA, Ndulue OI, Chukka A, *Burnout and mental distress among community health workers in low- and middle-income countries: A scoping review of studies during the COVID-19 pandemic*, Global Health Journal, 2024, DOI:10.1016/j.glohj.2024.04.005.

¹⁷ Naslund et al., "Burnout and mental distress among community health workers."

¹⁸ Celestin M, Vanitha N, *From burnout to balance: Rethinking employee well-being in a post-pandemic world*, ResearchGate, 2024, [Link](#).

¹⁹ Graf M, Chung S, Land N, *The burden of mental health on caregiver productivity: A survey study in the United States, United Kingdom, and Germany*, Elsevier, 2024, DOI:10.1016/j.jcan.2024.06.020.

initiatives result in higher employee engagement, lower turnover rates, and enhanced overall performance.²⁰

Despite these insights, stigma remains a significant barrier to implementing effective mental health interventions in workplaces. Employees often hesitate to disclose mental health challenges due to fear of discrimination or career repercussions. Colizzi et al. highlight organisational leaders' need to combat stigma through active training and policy changes, creating an inclusive environment where employees feel safe seeking help.²¹

1.7.2 Socioeconomic Impacts of Workplace Mental Health

Mental health challenges significantly reduce employee productivity due to absenteeism and presenteeism. For example, Nashwan and Joy (2024) report that in developing economies, untreated mental health issues result in a 10-20% decline in workplace productivity. This impact is particularly severe in industries that rely heavily on high employee engagement.²²

The economic burden of workplace mental health extends to increased healthcare costs. Graf et al. (2024) estimate that organisations in developed countries spend billions annually to address employee mental health crises.²³ These expenses emphasise the urgent need for preventive measures at the workplace level to relieve pressure on national healthcare systems.

The broader societal effects of workplace mental health issues include higher unemployment rates and strained social protection systems. Yuh et al. (2024) identify a correlation between workplace stress and long-term unemployment, noting that this cycle perpetuates socioeconomic disparities.

²⁰ Beckmann J, Kellmann M, Pauleit S, *Creating urban and workplace environments for recovery and well-being: A concluding summary*, Taylor & Francis, 2024, [DOI:10.4324/9781003435471-15](https://doi.org/10.4324/9781003435471-15).

²¹ Colizzi M, Comacchio C, Garzitto M, Napoli G, *Is a no-restraint policy associated with increased aggression towards healthcare professionals among inpatient psychiatric units? A retrospective analysis*, Nursing Reports, 2024, [DOI:10.3390/nursrep2024.13.4.276](https://doi.org/10.3390/nursrep2024.13.4.276).

²² Nashwan AJ, Joy GV, *Nurses' mental health: implications of a recent case for developing and emerging economies*, Academia Mental Health and Well-Being, ResearchGate, 2024, [Link](#)

²³ Graf M, Chung S, Land N, *The burden of mental health on caregiver productivity: A survey study in the United States, United Kingdom, and Germany*, Elsevier, 2024, DOI:10.1016/j.jcan.2024.06.020.

Policies that promote mental health awareness and intervention could help break this cycle and enhance societal resilience.²⁴

Investing in workplace mental health yields significant economic benefits. Dalal et al. (2024) argue that organisations can expect a \$4 return in improved productivity and reduced turnover for every dollar spent on mental health resources.²⁵ This return on investment highlights the potential for organisations to create sustainable and profitable work environments by proactively addressing mental health.

1.7.3 Cultural and Organizational Factors Influencing Mental Health

Cultural stigma remains one of the most significant barriers to addressing mental health issues in the workplace. Willging et al. (2024) highlight that cultural contexts deeply influence perceptions of mental health, often discouraging employees from seeking support. This dynamic exacerbates workplace stress and negatively impacts organisational cohesion.²⁶

Organisational culture and leadership are crucial in promoting or undermining mental health at work. Cunningham (2024) identifies that supportive leadership fosters a culture of psychological safety, which is essential for mental well-being. Conversely, toxic organisational climates, characterised by poor communication and hierarchical pressures, are linked to increased mental health challenges among employees.²⁷

Proactive organisational practices, such as implementing mental health policies and providing access to counselling services, can significantly alleviate mental health challenges. Alkilani and Loosemore (2024) emphasise that fostering positive work environments through mental health

²⁴ Yuh C, Yoon S, Song K, *Mental health status profiles of dentists in South Korea: A latent profile analysis approach*, Psychiatry, PMC, 2024, [Link](#).

²⁵ Dalal N, Chambwe C, Maila B, *Reimagining community mental health: adapting interventions for culturally rich, low-resource settings*, The Lancet Psychiatry, 2024, [Link](#).

²⁶ Willging CE, Shattuck D, *School-Based Health Centers Addressing Health Equity for LGBTQ+ Patients (SBHCs HELP): Protocol for a Stepped-Wedge Trial to Implement Innovations*, BMC Health Services Research, 2024, DOI:10.1186/s12913-024-11785-4.

²⁷ Cunningham CJL, *Building a Culture for Total Organizational Health in a Higher Education Environment*, Scholar UTC, 2024, [Link](#).

education and flexible work arrangements enhances employee satisfaction and organisational productivity.²⁸

Broader socioeconomic and cultural factors also shape organisational approaches to mental health. Mpoha (2024) argues that workplace environments reflect broader societal attitudes toward mental health, which can either promote inclusivity or perpetuate exclusionary practices. These attitudes often influence organisational priorities and resource allocation for mental health initiatives.²⁹

While Extensive research has been conducted on workplace mental health, most studies focus on high-income countries that have established frameworks to address mental health challenges. This leaves a significant gap in our understanding of the socio-economic and cultural complexities faced by low- and middle-income countries (LMICs) like Kenya. Current literature insufficiently explores the integration of mental health as a labour right within legal frameworks, especially in environments where stigma, resource constraints, and limited legal protections worsen workplace mental health issues. Additionally, there is a lack of actionable recommendations tailored to the unique needs of Kenya's labour market, leaving policymakers and employers without clear strategies to address these challenges effectively.

This study aims to fill these gaps by advocating for the explicit recognition of mental health as a labour right within Kenya's Employment Act, thereby creating a legislative framework that aligns with international standards, such as the ILO conventions. This research enriches the limited knowledge on workplace mental health in low- and middle-income countries (LMICs) by linking global best practices to Kenya's socio-economic and cultural realities. It provides actionable, context-specific recommendations designed to promote fair workplace practices and establish a foundation for transformative legal and policy reforms. Its focus on legislative reform and localised analysis makes it a vital resource for policymakers, employers, and researchers working to create a healthier, more inclusive workforce.

²⁸Alkilani S, Loosemore M, *The Employability of Skilled Female Migrants in the Australian Construction Industry*, Smart and Sustainable Built Environment, 2024, DOI:10.1108/SASBE-06-2024-0243.

²⁹Mpoha C, *Impact of Workplace Environment on Employee Job Satisfaction in Zambia*, American Journal of Psychology, 2024, [Link](#).

1.8 Research Methodology

This paper adopts a doctrinal research methodology, which applies a desk-based approach to the critical review of Kenya's legal and policy frameworks on protecting employees' mental health. This involves thoroughly reviewing primary legal sources, including Kenya's Employment Act of 2007, the statutory laws and ratified international conventions, such as the ILO Occupational Safety and Health Convention, No. 155. It also reviews secondary information sources, such as academic literature, reports from organisations like the WHO and ILO, and comparative analyses from jurisdictions with increased mental health protections, including the UK. These have been used as a guide to identify gaps, ambiguities, and enforcement challenges in Kenya.

The research, therefore, seeks to interrogate the adequacy, clarity, and effectiveness of the existing frameworks for addressing mental health as an emerging workplace issue and further propose actionable reforms. The paper discusses how these frameworks can best be adapted to Kenya's socio-economic and cultural contexts by leveraging global lessons from standards and best practices. This doctrinal methodology allows a systematic assessment of legal and policy provisions with recommendations for integrating mental health as a core labour and social protection right within Kenya's Employment Act.

1.9 Chapter Breakdown

Chapter 1 introduces the study by providing background information on workplace mental health in Kenya, outlining the research problem, objectives, questions, and hypothesis. It justifies the study's significance, presents the theoretical framework guiding the analysis, and reviews relevant literature to identify existing gaps. The research methodology is briefly discussed, highlighting the approach taken to examine legal frameworks and international best practices. Finally, the chapter outlines the dissertation's structure, summarising each subsequent chapter's focus.

Chapter 2 reviews the laws and policies in Kenya concerning workplace mental health, with a specific focus on the Employment Act and its supporting guidelines. It evaluates the clarity, enforceability, and scope of these laws in meeting the mental health needs of employees. Additionally, it examines the compliance of these frameworks with international standards that Kenya has agreed to, such as ILO conventions and WHO guidelines, identifying any gaps or areas of non-compliance. This review provides insight into the current state of workplace mental health protections in Kenya and sets the foundation for the comparative analysis in the following chapter.

Chapter 3 compares Kenya's approach to workplace mental health with that of Australia, a jurisdiction recognised for its robust legal protections and best practices. It analyses Australia's various laws, policies, and systems, including employer obligations, workplace training programs, and psychosocial risk management frameworks. The chapter highlights key differences and identifies best practices that have proven effective in the Australian framework. Examining these examples suggests potential improvements in Kenya's approach to workplace mental health.

Chapter 4 proposes a comprehensive and tailored framework to integrate mental health protections into Kenya's labour laws. Drawing on the comparisons made in Chapter 3, it identifies essential minimum standards from Australia. It adapts these standards to reflect Kenya's unique socioeconomic and cultural challenges while ensuring feasibility and efficiency. Specific recommendations will be made regarding legislative reforms, establishing institutional structures, and developing workplace policy frameworks that promote an enabling work environment and the principle of equality. The chapter will also discuss strategies for implementation, potential challenges, and practical solutions to ensure the successful adoption of these recommendations.

Chapter 5 is the final chapter, providing recommendations and conclusions from the study. It summarises key findings from the previous chapters and offers actionable recommendations for reforming Kenya's labour laws to incorporate mental health protections. The chapter discusses practical steps for implementation, including stakeholder engagement, public awareness efforts, and capacity-building programs. Additionally, it reflects on the study's contribution to broader discussions on workplace mental health issues, suggesting directions for future research. The concluding chapter synthesises the study's aims, findings, and implications.

2 CHAPTER 2: MENTAL HEALTH IN THE WORKPLACE: A LEGAL ANALYSIS OF KENYA'S FRAMEWORK

2.1 Introduction

Good mental health is a fundamental aspect of workers' well-being. However, the current legal framework in Kenya has not effectively addressed this issue. The Employment Act of 2007 and other related laws lack explicit provisions for mental health protection, leaving employees vulnerable to workplace stressors and psychological harm. This gap necessitates an in-depth analysis of Kenya's employment laws to identify its weaknesses and propose necessary changes to align with modern workplace realities.

This chapter reviews the primary legislation that regulates employment in Kenya. Relevant statutes include the Employment Act, the Occupational Safety and Health Act, and the Mental Health Act. It discusses the suitability of these Acts in addressing mental health needs at work. Additionally, this chapter evaluates the Kenyan legal framework's compliance with international standards set by organisations such as WHO.

2.2 Legal Framework

2.2.1 The Constitution of Kenya (CoK, 2010)

The Constitution of Kenya (2010) establishes a comprehensive framework for human rights and protections, serving as the supreme law and the foundation for all other rules and policies. Its provisions on labour rights, health, and equality offer a broad interpretation that can encompass

mental health protections in the workplace. However, such an interpretation has not been fully realised due to a lack of specific enabling legislation and judicial precedent.³⁰

Article 41 guarantees every individual the right to fair labour practices, which is intended to ensure fair and humane working conditions.³¹ Judicial interpretations of this article, such as in *Peter Wambugu Kariuki v Kenya Agricultural Research Institute*, have emphasised that fair labour practices include a wide range of elements, from essential fair treatment and collective representation to policies supporting diverse employee needs, such as family responsibilities and inclusivity for persons with disabilities.³²

This interpretation suggests that fair labour practices encompass workplace conditions promoting physical and mental well-being. However, the courts have not directly extended these principles to mental health protections. The absence of such a focus means that the mental health dimension remains underexplored, even though it is critical to fostering fairness and dignity at work. As a result, employers are left without clear legal obligations to address workplace environments that may harm employees' mental health.

Article 43(1)(a) establishes the right to the highest attainable standard of health, which includes mental health, according to international standards.³³ The World Health Organization (WHO) defines health as “a state of complete physical, mental, and social well-being,” highlighting that mental health is integral to the constitutional promise of health rights.³⁴

In the workplace, this could imply that employers are required through employer obligations to provide mental health support systems, such as counselling services, and to recognise mental health as a component of employee wellness programs.³⁵ Despite this potential, the right to health under Article 43 has not been effectively translated into policies or regulations that specifically address workplace mental health.

³⁰ Ebuenyi, I. D., Regeer, B. J., Nthenge, M., Nardodkar, R., Waltz, M., & Bunders-Aelen, J. F. G. (2019). Legal and policy provisions for reasonable accommodation in employment of persons with mental disability in East Africa: A review. *International Journal of Law and Psychiatry*, 64, 99-105.

³¹ Article 41, Constitution of Kenya (2010).

³² *Peter Wambugu Kariuki & 16 others v Kenya Agricultural Research Institute [2013] eKLR*.

³³ Article 43(1), Constitution of Kenya (2010).

³⁴ World Health Organization, *Constitution of the World Health Organization*, 1948.

³⁵ WHO, *Mental health at work policy brief*, 14.

Additionally, Kenyan courts, such as in the case of *Mathew Okwanda v Minister of Health and Medical Services*, have interpreted this article as imposing a progressive obligation on the state to improve health standards and address socio-economic inequalities.³⁶ The courts have highlighted the importance of health as a fundamental right linked to human dignity and socio-economic development. However, while these interpretations affirm the state's responsibility to enhance health protections, they do not establish concrete legal obligations for employers regarding mental health in the workplace.

The lack of explicit legislation leaves employees without clear protections to ensure their mental well-being. While the Constitution provides a broad framework for health and labour rights, the absence of specific laws addressing mental health in the workplace creates a gap in implementation. Without explicit legal provisions, employers are not obligated to adopt measures that support employees' mental well-being, leaving workplace mental health largely unregulated.

The Constitution plays a crucial role in ensuring worker well-being by providing broad principles that support the integration of mental health protections in the workplace. However, despite its robust rights-based foundation, a significant gap exists due to the absence of specific provisions in laws to implement these rights effectively. To address this issue, Parliament must enact legislation that explicitly defines employer responsibilities, establishes mental health standards, and ensures compliance, transforming constitutional principles into enforceable workplace protections.

2.2.2 The Employment Act 2007

The Employment Act is the primary statute governing labour relations in Kenya. It plays a crucial role in establishing essential rights and obligations for employers. However, it fails to address workplace mental health issues adequately.³⁷

Section 6 of the Act deals with sexual harassment in the workplace and establishes important protections by requiring employers to implement measures to prevent such behaviour. This protection is crucial for employees, as it helps ensure a workplace free from actions that could cause emotional and psychological distress. While Section 6 provides significant safeguards, its

³⁶ *Mathew Okwanda v Minister of Health and Medical Services & 3 others* [2013] eKLR.

³⁷ Preamble, Employment Act, Cap. 226.

coverage does not address the broader mental health issues, such as workplace stress, burnout, and anxiety, that are increasingly relevant in today's modern workplaces.³⁸

Section 34 requires employers to provide medical attention to employees who become ill while working.³⁹ However, this provision is narrowly focused on physical health and neglects the mental health component of employees, which is equally essential for productivity. The exclusion of mental health considerations reflects an outdated perspective on health issues. Mental health challenges such as stress and depression are prevalent today, yet they are not acknowledged in this section.⁴⁰

A holistic reading of the Employment Act reveals that its primary focus is to declare and define employees' fundamental rights while establishing minimum employment standards. This includes ensuring physical safety, regulating working hours, fair wages, and working conditions.⁴¹ However, mental health remains unaddressed within these provisions, leaving employees vulnerable to workplace stressors without adequate legal safeguards.

Despite these shortcomings, developments indicate progress. The Employment (Amendment) Bill 2022, currently under consideration by the Kenyan Senate, proposes introducing the "right to disconnect," allowing employees to opt out of work-related communications outside regular working hours, including weekends.⁴² The rationale behind this Bill is to address the harmful effects of overwork and constant connectivity, which can lead to stress, burnout, and deterioration of mental health.⁴³ By formalising the "right to disconnect," this amendment seeks to create boundaries that protect employees' mental health, aligning with global trends towards better work-life balance.⁴⁴ While this amendment represents a step in the right direction, it remains limited in scope. It does not address broader mental health issues, such as workplace bullying or the lack of

³⁸ Section 6, Employment Act (No. 11 of 2007).

³⁹ Section 34, Employment Act (No. 11 of 2007).

⁴⁰ Kiima D and Jenkins R, "Mental health policy in Kenya—An integrated approach to scaling up equitable care for poor populations," *International Journal of Mental Health Systems*, 2010, 15.

⁴¹ Employment Act (No. 11 of 2007).

⁴² Section 27A, Employment (Amendment) Bill, 2022.

⁴³ Memorandum of Objects and Reasons, *Employment (Amendment) Bill, 2022*, Kenya Gazette Supplement No. 198, Senate Bills No. 11, 30 November 2022.

⁴⁴ Memorandum of Objects and Reasons, *Employment (Amendment) Bill, 2022*, Kenya Gazette Supplement No. 198, Senate Bills No. 11, 30 November 2022.

support for employees facing mental health challenges. If passed, the bill could serve as a foundation for more comprehensive reforms to the Employment Act, resulting in an improved framework for managing mental health in the workplace.

The 2023 Workplace Mental Wellness Guidelines also represent a progressive approach to mental health in professional environments in Kenya. They provide a framework for reducing stigma, raising awareness, and supporting workplaces through specific, actionable strategies. For instance, the guidelines encourage employers to implement Workplace Mental Wellness Programs, including mental health assessments, training for managers and staff, and counselling services.⁴⁵ Additionally, the framework recommends developing anti-bullying and anti-harassment policies and integrating mental health into the organisational culture.⁴⁶

These guidelines aim to foster an inclusive and supportive culture within organisations by normalising discussions about mental health. However, since compliance with these guidelines is voluntary, their enforceability is limited, diminishing their potential impact. A critical step toward improving workplace mental health in Kenya is transitioning from voluntary guidelines to mandatory policies that hold organisations accountable for creating environments conducive to physical and psychological well-being.

2.2.3 The Occupational Safety and Health Act 2007

The Occupational Safety and Health Act (2007), commonly called OSHA, is an Act of Parliament designed to ensure workers' safety, health, and welfare and the welfare of all persons lawfully present at workplaces.⁴⁷ While the Act addresses physical health risks, it fails to address mental health issues adequately, demonstrating a limited approach to workplace safety.

Section 6 of the Act requires employers to ensure the health, safety, and welfare of all employees as far as reasonably practicable.⁴⁸ Although "health" broadly encompasses physical and mental well-being, implementing this requirement often focuses on physical health measures.⁴⁹

⁴⁵ Ministry of Health, *Workplace Mental Wellness Guideline 2023*, 2023, pg 25.

⁴⁶ Ministry of Health, *Workplace Mental Wellness Guideline 2023*, pg18.

⁴⁷ Preamble, *Occupational Safety and Health Act (No. 15 of 2007)*.

⁴⁸ Section 6, *Occupational Safety and Health Act (No. 15 of 2007)*.

⁴⁹ World Health Organization, *Constitution of the World Health Organization*, 1948.

This is particularly problematic because the Act's primary objective is to ensure workers' health and welfare comprehensively.⁵⁰ By not including explicit mental health protections, OSHA fails to address the realities of modern workplaces, where mental health challenges such as stress, anxiety, and burnout are increasingly common.⁵¹ Therefore, expanding its provisions to include explicit mental health protections is essential to align the Act with its foundational goals and ensure comprehensive occupational health.

2.2.4 The Mental Health Act (2019)

The Mental Health Act 2019 (Cap. 248, Revised 2023) provides a crucial legal framework for promoting, protecting, and managing mental health in Kenya.⁵² While it outlines protections critical to individuals with mental illnesses and guarantees their rights, the Act does not address workplace mental health. Section 3A guarantees the right to the "highest attainable standard of mental health services," but this provision does not explicitly extend to the workplace.⁵³

The Act clearly outlines the roles of the National Government and County Governments under Sections 2C and 2D, respectively. The National Government is tasked with formulating national policies, allocating resources, and administering specialised mental health facilities, such as the Mathari National Teaching and Referral Hospital.⁵⁴ It also supports community-based care and funds training for health professionals. Conversely, County Governments are responsible for providing community-level mental health services, integrating mental health into primary healthcare, and collecting data to inform policy adjustments.⁵⁵ A study on governance approaches in mental health emphasises the critical coordination needed between these two levels of government to ensure effective service delivery and resource allocation.⁵⁶ While these roles are essential, the Act does not mandate the public health system to extend its oversight to the private sector or workplaces, creating a significant gap in addressing workplace mental health.

⁵⁰ Preamble, *Occupational Safety and Health Act (No. 15 of 2007)*.

⁵¹ Kiima D and Jenkins R, "Mental health policy in Kenya—An integrated approach to scaling up equitable care for poor populations," *International Journal of Mental Health Systems*, 2010, 15.

⁵² Preamble, *Mental Health Act (Cap. 248, Revised 2023)*.

⁵³ Section 3A, *Mental Health Act (Cap. 248, Revised 2023)*.

⁵⁴ Section 2C, *Mental Health Act (Cap. 248, Revised 2023)*.

⁵⁵ Section 2D, *Mental Health Act (Cap. 248, Revised 2023)*.

⁵⁶ S Kiilu et al., "Effective Governance Approaches in the Management of Mental Health within the Public Sector of Kenya: A Literature Review," *Journal of Frontiers in Healthcare and Community Studies*, 2024.

This gap underscores a significant shortcoming in the current regulatory framework, which fails to establish minimum standards for mental health protection in the workplace. As it stands, employers are not obligated to address their employees' mental health issues, leaving workers susceptible to workplace stressors and psychological harm. While the Act guarantees access to community-level care, it does not extend these obligations to employers, even though workplaces are a critical environment where adults spend a considerable portion of their lives.⁵⁷

It is essential to address this gap, but it is also vital to avoid over-regulating the private sector. Excessive requirements may disproportionately burden smaller organisations and lead to resistance or non-compliance. Nevertheless, the absence of clear minimum standards perpetuates the neglect of workplace mental health. A more balanced approach, emphasising shared responsibility between the public and private sectors, could encourage employers to proactively engage with mental health concerns without placing undue strain on businesses. Achieving this requires coordination across existing legislation to create a cohesive framework prioritising mental health while fostering economic growth.⁵⁸

In summary, while the Mental Health Act 2019 provides a robust foundation for addressing mental health in Kenya, its silence on workplace mental health creates a critical gap. By omitting this crucial area, the Act leaves employees vulnerable to workplace stressors and fails to recognise the workplace as a vital setting for mental health intervention. Strengthening this framework through cohesive legal and policy measures will ensure a more inclusive approach to mental health care in Kenya.

2.3 International Frameworks

While Kenyan legislation does not comprehensively address all mental health and welfare aspects, international frameworks provide significant guidance. Key among these are the African Charter on Human and Peoples' Rights (ACHPR) and the WHO Comprehensive Mental Health Action Plan (2013–2030). Although the WHO Action Plan is not legally binding, it offers valuable guidelines for shaping mental health policies. As a signatory to these international instruments, Kenya is encouraged to align its domestic policies and laws with their principles.

⁵⁷ Kenya Ministry of Health, *Kenya Mental Health Policy 2015–2030*, 12-15.

⁵⁸ World Health Organization, *WHO Comprehensive Mental Health Action Plan 2013–2030*, 2013.

2.3.1 African Charter on Human and Peoples' Rights (ACHPR)

The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981 and effective since 1986, is a landmark treaty promoting and protecting the rights of African individuals and peoples. The ACHPR adopts a holistic approach to human rights by integrating civil, political, economic, social, and cultural rights. It emphasises the interconnectedness of these rights, showcasing provisions designed to protect human dignity, equality, and welfare rooted in African values of community and social harmony. Notably, the Charter contains both collective and individual rights.⁵⁹

Two critical provisions relevant to mental health are Article 16 and Article 15. Article 16 establishes that everyone has the right to enjoy the highest possible physical and psychological health, implying that all necessary measures must be taken to ensure this health. It mandates that states guarantee healthcare.⁶⁰ Article 15, on the other hand, provides the right to work under equitable and satisfactory conditions, including provisions that implicitly support mental well-being through fair treatment and safe work environments.⁶¹

The African Commission on Human and Peoples' Rights provided critical insights into the scope of Article 16 in the case of *Purohit and Moore v. The Gambia* (2003). This case addressed the conditions of detention for patients in a psychiatric hospital and the inadequacies of the legislative framework governing mental health in The Gambia. The applicants contested the outdated Lunatics Detention Act (LDA), which lacked provisions for the review and protection of the dignity and welfare of mentally ill individuals.⁶² They argued that this legislative gap violated several provisions of the African Charter on Human and Peoples' Rights (ACHPR), including Article 16.

The Commission found that the deplorable conditions of the psychiatric institution, compounded by the absence of mental health legislation to address systemic issues, violated Article 16. The Commission affirmed that the right to health encompasses mental health and that states are obligated to ensure proper treatment, humane conditions, and the protection of the dignity of mentally ill individuals. It also highlighted the necessity of special measures to address the

⁵⁹ African Union, *African Charter on Human and Peoples' Rights*, 1981.

⁶⁰ Article 16, *African Charter on Human and Peoples' Rights*, 1981.

⁶¹ Article 15, *African Charter on Human and Peoples' Rights*, 1981.

⁶² *Purohit and Moore v The Gambia*, ACmHPR Comm No 241/01, para 1-8.

vulnerabilities of people with mental health disorders, in line with Article 18(4), which mandates special provisions for the elderly and disabled.⁶³

Furthermore, the Commission stressed the indivisibility of human rights under the Charter, emphasising that the right to mental health is intrinsically linked to other fundamental rights, such as dignity (Article 5) and equality (Articles 2 and 3).⁶⁴ The decision underscored the need for robust legislative and institutional frameworks to protect mental health. It urged states to adopt progressive measures to fulfil these obligations despite resource limitations.⁶⁵

The interpretation of Article 16 of the ACHPR has been a strong catalyst for recognising mental health as part of the right to health. The African Commission's ruling in *Purohit and Moore v. The Gambia* confirmed that access to mental health services is integral to the right to health. It reiterated the responsibility of states to provide adequate protection for the dignity and welfare of individuals suffering from mental disorders. Durojaye (2021) notes that the African Commission has played a crucial role in integrating mental health into the broader understanding of the right to health in Africa. The Commission has advocated for legislative and institutional reforms that address systemic issues, ensuring the protection of rights for vulnerable populations, including individuals with mental health conditions.⁶⁶

Despite the strong framework established by the ACHPR, many of its provisions on mental health remain inadequately implemented in several countries, including Kenya. While Kenya has ratified the Charter and incorporated its provisions into domestic law, the absence of explicit protections for workplace mental health reflects a critical shortfall. This inadequacy undermines the realisation of mental health as an integral part of the right to health, as envisaged under Article 16 of the ACHPR.

2.3.2 WHO Comprehensive Mental Health Action Plan (2013–2030)

The WHO Comprehensive Mental Health Action Plan 2013–2030 has significant implications for member states, including Kenya. While it is not legally binding, Kenya's status as a WHO member underscores its commitment to aligning national policies and practices with the principles and

⁶³ *Purohit and Moore v The Gambia*, ACmHPR, para 77-83.

⁶⁴ *Purohit and Moore v The Gambia*, ACmHPR, para 42-49.

⁶⁵ *Purohit and Moore v The Gambia*, ACmHPR, para 84.

⁶⁶ Durojaye E, *An Analysis of the Contribution of the African Human Rights System to the Understanding of the Right to Health* (2021) *African Human Rights Law Journal*, pp. 775-776.

strategies outlined in the plan. This indicates Kenya's dedication to global health priorities and its role in advancing the WHO's agenda on mental health.

The Action Plan provides an overall framework to address mental health challenges through better governance, increased awareness, and service integration. One of its key focus areas is the workplace, which is recognised as a central environment for mental health interventions. Since more than 60% of the world's population is employed, the workplace environment plays a crucial role in either supporting or undermining mental health. The plan emphasises the importance of stress management programs and employer initiatives to reduce psychosocial risks as essential measures.⁶⁷

The plan's recommendations are based on evidence-based practices and strongly emphasise integrating mental health into Occupational Safety and Health (OSH) systems.⁶⁸ Although the plan is non-binding, it aligns with international frameworks, including the ILO Conventions on OSH and the Sustainable Development Goals (SDG 3 and SDG 8), which gives it normative significance.⁶⁹

Initiatives like the Mental Health Act (2019) in Kenya have laid a strong foundation for implementing this plan. However, no specific workplace requirements are currently outlined. Existing employment laws, such as the Employment Act (2007), do not include provisions for mental health programs or mechanisms to address workplace stress, creating a significant gap in the operationalisation of the WHO recommendations.⁷⁰ While one could argue that the plan's non-binding nature makes it less enforceable, this does not diminish its value as a guiding document.

The plan emphasises the need for cross-sectoral cooperation and the collective responsibility of governments, employers, and civil society to create a safe and inclusive work environment. This requires strong leadership, investment, and compliance mechanisms.⁷¹ Historically, the plan represents a shift in perspective, recognising mental health as essential to workplace productivity and safety. The WHO's call for prevention, protection, and promotion strategies provides Kenyan policymakers with a valuable template, particularly in efforts to combat stigma, raise awareness,

⁶⁷ World Health Organization, *WHO Comprehensive Mental Health Action Plan 2013–2030*, 3.

⁶⁸ World Health Organization, *WHO Comprehensive Mental Health Action Plan*, 8.

⁶⁹ World Health Organization, *WHO Comprehensive Mental Health Action Plan*, 7.

⁷⁰ World Health Organization, *WHO Comprehensive Mental Health Action Plan*, 16.

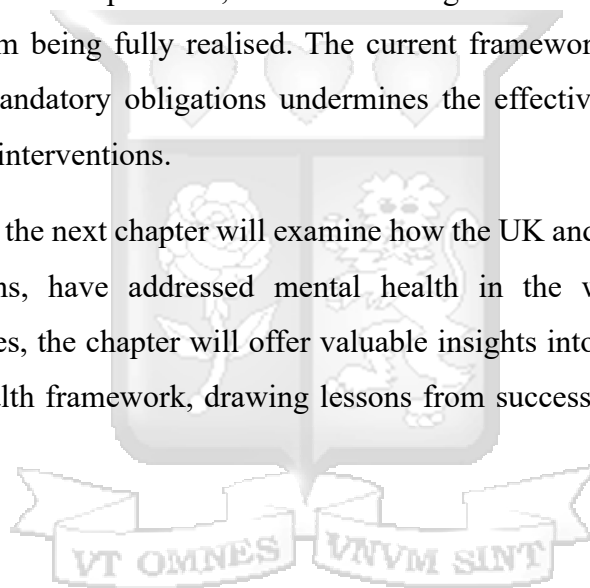
⁷¹ World Health Organization, *WHO Comprehensive Mental Health Action Plan*, 10.

and enhance compliance mechanisms. Global cost analyses highlight that failing to act risks perpetuating workplace inequalities and diminishing productivity.⁷²

2.4 Conclusion

In conclusion, while international frameworks such as the WHO Comprehensive Mental Health Action Plan (2013–2030) and the African Charter on Human and Peoples' Rights (ACHPR) provide a solid foundation for addressing mental health in the workplace, Kenya's legal approach remains inadequate. The absence of explicit, enforceable provisions for mental health in employment laws leaves a significant gap in safeguarding workers from psychosocial risks such as stress, bullying, and harassment. Although Kenya's Constitution recognises fundamental rights related to health and fair labour practices, the lack of integration into specific workplace laws prevents these rights from being fully realised. The current framework's reliance on voluntary guidelines rather than mandatory obligations undermines the effectiveness and consistency of workplace mental health interventions.

Building on this analysis, the next chapter will examine how the UK and Australia, with advanced mental health protections, have addressed mental health in the workplace. By exploring international best practices, the chapter will offer valuable insights into how Kenya can enhance its workplace mental health framework, drawing lessons from successful legal reforms in other countries.



⁷² World Health Organization, *WHO Comprehensive Mental Health Action Plan*, 5-8.

3 CHAPTER 3: COMPARATIVE ANALYSIS OF WORKPLACE MENTAL HEALTH FRAMEWORK IN AUSTRALIA

3.1 Introduction

The previous chapter revealed significant gaps in the legal and policy frameworks concerning workplace mental health protection in Kenya. While the Constitution of Kenya 2010 establishes a foundation for worker welfare, these rights have not been translated into employment-specific law. Specifically, key statutes like the Employment Act and the Occupational and Health Act fail to address mental health protections explicitly. Additionally, the current framework falls short of aligning with international standards, such as the African Charter on Human and Peoples' Rights.

This chapter compares Kenya's workplace mental health framework with Australia's. This country is recognised for its comprehensive legal protections and supportive policies regarding workplace mental health. By examining this jurisdiction, the chapter aims to identify best practices and lessons that may guide the development of an adapted framework for incorporating mental health protection into Kenya's labour laws.

3.2 Australia's Legal Framework for Workplace Mental Health

Australia's legal framework for workplace mental health represents significant progress in integrating psychological health into its labour framework. As a common law jurisdiction, Australia shares legal design similarities with Kenya, making it a relevant and practical comparator. Unlike Kenya, where workplace mental health remains largely unregulated, Australia has systematically embedded mental health protections into its broader employment and occupational safety framework. This structured approach establishes clear employer obligations, ensures enforceable legal standards, and aligns with international best practices.

3.2.1 Work Health and Safety Act 2011

The Work Health and Safety Act 2011 (WHS Act) is the foundation of Australia's workplace health and safety framework. Enacted to establish a unified national system, it replaced the previously fragmented state-based occupational health and safety (OHS) laws.⁷³

One of the Act's significant features is its explicit inclusion of psychological health within its definition of "health,"⁷⁴ thereby ensuring that mental well-being is a core component of workplace safety obligations.

Under Section 19, a Person Conducting a Business or Undertaking (PCBU) must ensure, as far as is reasonably practicable, the health and safety of workers while they are at work.⁷⁵ This duty extends beyond physical safety to include psychosocial risks, obligating employers to identify, assess, and manage mental health hazards in the workplace.⁷⁶

In contrast, Kenya's Employment Act (2007) and Occupational Safety and Health Act (2007) lack explicit recognition of mental health as a workplace safety concern. While the WHS Act establishes clear legal obligations for addressing psychosocial risks, the absence of similar statutory provisions in Kenya results in unclear employer responsibilities. The legal clarity provided by the WHS Act has strengthened compliance and accountability in Australia, a gap that Kenya's legal framework currently fails to address.

To ensure compliance with mental health obligations, Sections 17 and 18 of the WHS Act further mandate a structured risk management approach.⁷⁷ Section 17 stipulates that employers must eliminate risks to health and safety to the greatest extent possible. If complete elimination is not feasible, they must take steps to minimise those risks as much as possible. Section 18 provides further clarity, indicating that determining what is "reasonably practicable" involves evaluating several factors, including the likelihood and severity of harm, the knowledge of risks and the available mitigation methods, the suitability of controls, and the costs associated with implementing those measures.⁷⁸ This structured risk assessment approach is notably absent in

⁷³ section 3, Work Health and Safety Act 2011 (Cth).

⁷⁴ section 4, Work Health and Safety Act 2011 (Cth).

⁷⁵ section 19, Work Health and Safety Act 2011 (Cth).

⁷⁶ Safe Work Australia, 'Duties of a PCBU,' Safe Work Australia, <https://www.safeworkaustralia.gov.au/law-and-regulation/duties-under-whs-laws/duties-pcbu>—link on 10 February 2025.

⁷⁷ Safe Work Australia, *Preventing Psychological Injury Under Work Health and Safety Laws*, 2014, p. 3-7.

⁷⁸ Section 18, *Work Health and Safety Act 2011 (Cth)*.

Kenya's labour laws. Workplace mental health protections remain undefined, leading to inconsistent employer responsibilities. Implementing a similarly structured duty of care could bridge this gap by introducing legal clarity on mental health obligations.

The importance of these legal duties has been reinforced in case law, particularly in *Roussety v Castricum Brothers Pty Ltd* [2016] VSC 466. In this case, the Supreme Court of Victoria ruled that an employer's failure to manage workplace stress and excessive workload led to foreseeable psychiatric injury. The plaintiff, Joseph Roussety, was subjected to long working hours, high-pressure responsibilities, and a lack of managerial support, which ultimately resulted in significant depression. Despite raising complaints about work stress and excessive workload, the employer failed to implement reasonable control measures, such as reducing hours, increasing staff, or providing mental health support programs. The court found that the employer had breached their duty of care, reinforcing that failure to comply with workplace mental health obligations can result in legal liability.⁷⁹

The *Roussety* ruling underscores the importance of employer accountability in managing psychosocial risks. In Australia, clear legal duties enable employees to seek legal redress for mental health-related workplace hazards. However, employees facing similar issues in Kenya have limited legal protections due to the absence of statutory obligations regarding mental health in employment laws. Establishing clear legal duties of care—modelled after Australia's WHS Act—could help address these gaps by legally mandating workplace mental health protections in Kenya.

3.2.2 Practical Implementation Through Codes of Practice

Enforcement of the WHS Act relies on collaboration between national and state-level regulators. These institutions are critical in monitoring employer practices, enforcing laws, and educating workplaces on best practices for managing psychosocial risks. Safe Work Australia is the primary policy-making body responsible for developing Model WHS Laws and guidance materials. While Safe Work Australia does not enforce laws directly, it provides essential resources, including Model Codes of Practice that address workplace mental health, research on psychosocial hazards and their impacts on workplace safety, and educational toolkits for businesses and workers.⁸⁰

⁷⁹ *Roussety v Castricum Brothers Pty Ltd* [2016] VSC 466.

⁸⁰ Safe Work Australia, *Guide to the Model WHS Act*, December 2019, 6.

Codes of Practice serve as practical guides for businesses to help them comply with the WHS Act. While not legally binding, they can be used in court as evidence to determine whether an employer has met their obligations. These Codes provide employers with detailed steps to manage psychosocial risks effectively.⁸¹

The Model Code of Practice: Managing Psychosocial Hazards at Work is an essential regulatory guide that helps businesses address psychological health risks in the workplace. Developed by Safe Work Australia, it provides transparent methodologies for identifying, assessing, and controlling psychosocial hazards. These hazards include high job demands, workplace bullying, poor organisational justice, and exposure to traumatic events. The Code outlines structured risk management strategies and emphasises employer responsibilities to eliminate or minimise these risks through proactive measures. It recommends implementing workplace policies to manage stress, providing Employee Assistance Programs (EAPs), adjusting workloads, and fostering a safe organisational culture. By following these guidelines, Person Conducting a Business or Undertaking (PCBUs) can improve workplace safety, reduce absenteeism, and enhance employee well-being.⁸²

The Guide for Preventing and Responding to Workplace Bullying is a vital resource for managing and mitigating bullying risks in the workplace. Published by Safe Work Australia, this guide offers a comprehensive framework for identifying, preventing, and addressing workplace bullying through proactive strategies and structured response mechanisms. This guide defines workplace bullying as repeated and unreasonable behaviour directed at a worker or group of workers, creating a risk to health and safety. It outlines the key responsibilities of PCBUs in preventing bullying, such as promoting a positive workplace culture, establishing reporting mechanisms, and ensuring early intervention. The guide also provides clear procedural steps for handling complaints, conducting investigations, and implementing corrective measures to prevent recurrence.⁸³ By embedding psychological safety into workplace policies, these Codes ensure that mental health

⁸¹ Babar Mughal, 'What's Code of Practice? Everything You Need to Know,' Occupational Health and Safety Blog, 28 September 2024—[What's Code Of Practice? Everything You Need To Know](#).

⁸² Safe Work Australia, *The Model Code of Practice: Managing Psychosocial Hazards at Work*, Safe Work Australia, 2022, 1-30.

⁸³ Safe Work Australia, *The Guide for Preventing and Responding to Workplace Bullying*, Safe Work Australia, 2016, 1-30.

considerations are not treated as optional but as fundamental components of a safe work environment.

Australia's approach to workplace mental health management is structured through legally recognised Codes of Practice that provide clear guidance on mitigating psychosocial risks. These Codes, while not legally binding, serve as authoritative standards that influence employer responsibilities and regulatory enforcement. In contrast, Kenya's framework relies on voluntary guidelines, which, while valuable, do not mandate compliance or provide a structured approach to implementation. This difference highlights the varying levels of regulatory oversight in workplace mental health, with Australia taking a more proactive stance while Kenya's approach remains largely discretionary. Strengthening workplace mental health policies in Kenya would require a more structured framework to ensure consistency in addressing psychosocial risks.

3.2.3 The Fair Work Act 2009 and Workplace Bullying Protections

The Fair Work Act 2009 (Cth) (FW Act) is Australia's primary employment relations legislation,⁸⁴ Complementing the Work Health and Safety Act 2011 (WHS Act) by focusing on fair treatment, employment protections, and dispute resolution.

The Fair Work Amendment Act 2013 introduced legal protections against workplace bullying, allowing employees to seek "stop bullying" orders from the Fair Work Commission (FWC). Under Section 789FD (1), bullying occurs when an individual or group repeatedly behaves unreasonably towards a worker, creating a risk to health and safety. If the FWC determines that bullying is happening, it can issue legally binding corrective orders, though no financial compensation is awarded for past harm.⁸⁵

The anti-bullying provisions under the Fair Work Act represent a significant step toward recognising psychosocial safety as a core workplace right, reinforcing that psychological well-being is just as important as physical safety. This framework establishes clear employer responsibilities in preventing workplace intimidation and bullying, ensuring that mental health is treated as a fundamental aspect of employment protections. It demonstrates how employment laws can directly address psychological harm, providing legal mechanisms to protect mental health.

⁸⁴ Preamble., Fair Work Act 2009 (Cth).

⁸⁵ Fair Work Commission, *Stop Bullying Benchbook* (2023) 34.

3.3 Best Practices in Australia's Workplace Mental Health Framework

Australia has made significant strides in integrating psychological well-being into its workplace health and safety laws and regulatory mechanisms. Recognising that mental health is not solely an individual concern but also an employer's legal responsibility, Australian frameworks mandate the creation of psychologically safe workplaces. These obligations are embedded within national workplace health and safety legislation, supported by industry guidelines that offer structured approaches to managing psychosocial risks.

A key framework guiding these efforts is the National Guidance Material on Work-Related Psychological Health and Safety, which offers a structured approach to managing psychosocial risks through prevention, early intervention, and recovery support.⁸⁶ Preventive measures focus on job design, workplace communication, and risk assessment to mitigate mental health hazards before they escalate.⁸⁷ Early intervention ensures that employees experiencing work-related stress receive appropriate adjustments and mental health support, while recovery strategies promote return-to-work (RTW) plans that accommodate psychological well-being.⁸⁸

Among the most effective interventions are Employee Assistance Programs (EAPs), which provide confidential counselling for employees facing personal and work-related challenges. These programs significantly benefit smaller businesses, offering cost-effective mental health support. Research indicates that organisations investing in these programs see tangible benefits, including reduced absenteeism and improved productivity. Economic analyses reveal that every dollar spent on mental health initiatives yields, on average, a \$2.30 return through decreased absenteeism and staff turnover.⁸⁹

Another effective tool is the Wellbeing Action Plan (WAP). These plans are customised to address specific stressors that employees encounter, particularly those with pre-existing mental health conditions. WAPs involve identifying stressors, tailoring interventions, and encouraging employee

⁸⁶ Safe Work Australia, *Work-Related Psychological Health and Safety: A Systematic Approach to Meeting Your Duties*, Safe Work Australia, 2019, pp. 5–8.

⁸⁷ Safe Work Australia, *Work-Related Psychological Health and Safety: A Systematic Approach to Meeting Your Duties*, Safe Work Australia, 2019, pp. 5–8.

⁸⁸ Safe Work Australia, *Work-Related Psychological Health and Safety*, 5–8.

⁸⁹ Nebbs S et al., 'Examining Integrated Approaches to Workplace Mental Health,' *International Journal of Environmental Research and Public Health*, 20(2), 2023, p. 14.

participation to ensure that strategies are relevant and practical. Regular reviews of these plans allow organisations to adapt to changing circumstances, helping to retain staff and enhance overall employee satisfaction.⁹⁰

Australia's workplace mental health framework offers a model that Kenya can adapt to address its regulatory gaps. While Kenya's approach is mainly unregulated, Australia incorporates psychological well-being into workplace policies through clear employer obligations and national guidance. Programs like Employee Assistance Programs (EAPs) and Wellbeing Action Plans (WAPs) illustrate the benefits of proactive mental health strategies in reducing absenteeism and boosting productivity.

3.3.1 Mental Health First Aid (MHFA) Training

Mental Health First Aid (MHFA) is a structured training program developed in Australia in 2000 by Betty Kitchener and Professor Tony Jorm. It was designed to improve mental health literacy and equip individuals with skills to identify and support colleagues experiencing mental health crises. The program emerged in response to national health surveys revealing that Australians had limited knowledge about mental illnesses and often delayed seeking professional help due to stigma and misconceptions. By introducing MHFA, the aim was to create a framework similar to traditional first aid training for mental health, ensuring that individuals could recognise signs of distress and provide appropriate initial support before professional intervention became necessary.⁹¹

Implementing MHFA in Australian workplaces has fostered a psychologically safe work environment. Employers and government agencies have widely adopted the program, integrating it into organisational mental health policies and employee assistance initiatives. The Australian government actively endorses MHFA training as part of broader workplace mental health strategies, recognising that workplaces play a critical role in early identification and intervention for mental health issues.⁹² Many organisations, particularly in high-stress industries such as

⁹⁰ Safe Work Australia, *Workplace Mental Health and Employee Retention Strategies*, Safe Work Australia, 2021, pp. 16–18.

⁹¹ Kitchener B, Jorm A, *Mental health first aid training in a workplace setting: A randomized controlled trial*, BMC Psychiatry, 4(23), 2004, 3-5.

⁹² Jorm A, Kitchener B, Kanowski L, Kelly C, *Mental health first aid training for members of the public*, Int J Clin Health Psychol, 7(1), 2007, 142.

healthcare, emergency response, and finance, have mandated MHFA training for managerial staff and HR professionals to enhance their ability to support employees facing mental health challenges.⁹³

The structure of MHFA training is designed to provide employees with practical and evidence-based skills. One of its core components is the ALGEE action plan, which offers a step-by-step guide on assisting a colleague in distress. The steps include approaching the person and assessing their condition, listening non-judgmentally, giving reassurance and information, encouraging them to seek professional help, and fostering self-help strategies to aid recovery.⁹⁴ These principles are reinforced through case studies and role-playing exercises to ensure participants can apply them effectively in workplace settings.

Studies on MHFA training outcomes in Australian workplaces show that employees who completed the program demonstrated a 60% increase in their ability to recognise and appropriately respond to mental health issues among colleagues.⁹⁵ Additionally, workplaces implementing MHFA programs reported reduced mental health-related absenteeism by 20-25%, highlighting the program's effectiveness in addressing workplace mental health concerns early.⁹⁶

In Kenya, workplace mental health literacy remains low, and many managers and HR professionals lack the necessary skills to recognise early signs of mental distress among employees. This knowledge gap contributes to delayed interventions, increased absenteeism, and decreased productivity.

Given Kenya's evolving workplace mental health challenges, MHFA provides a viable model that could be adapted to the country's specific workforce needs. By incorporating MHFA training into Kenya's labour policies, particularly as part of employer mental health obligations, workplaces can create more supportive environments where employees feel empowered to seek help without fear of stigma.

⁹³ Bovopoulos N, *Development of mental health first aid for workplaces*, PhD thesis, University of Melbourne, 2019, 45-50.

⁹⁴ Morgan A, Ross A, Reavley N, *Systematic review and meta-analysis of Mental Health First Aid training*, PLOS ONE, 13(5), 2018, 10.

⁹⁵ Morgan A et al, *Systematic review and meta-analysis of MHFA training*, PLOS ONE, 13(5), 2018, 12.

⁹⁶ Bovopoulos N, *Development of mental health first aid for workplaces*, 2019, 57.

Kenya could modify the MHFA model to address local workplace dynamics to ensure effective implementation. This adaptation should include:

- Developing culturally relevant mental health training materials,
- Ensuring accessibility for small and medium-sized enterprises (SMEs) by offering low-cost training programs and
- Incorporating MHFA training as a mandatory requirement for HR professionals and managers in high-stress industries.

Integrating MHFA into Kenya's workplace mental health framework would align with global best practices while addressing a significant workplace mental health management gap. Establishing a national workplace mental health training initiative—similar to Australia's MHFA—would empower employees and employers with the skills to create mentally healthy workplaces, reducing the economic and social costs associated with untreated mental health issues.

3.4 Key Differences and Lessons for Kenya

3.4.1 Explicit Legal Recognition of Workplace Mental Health

One of the fundamental differences between Australia and Kenya is the legal recognition of mental health as part of workplace safety. Australia's Work Health and Safety Act 2011 (WHS Act) defines health to include both physical and psychological well-being, making mental health hazards such as stress, bullying, and job insecurity enforceable workplace risks.

Kenya's labour laws lack an equivalent provision. The Employment Act (2007) and the Occupational Safety and Health Act (2007) do not explicitly define mental health within workplace safety, leaving it as a discretionary concern rather than a legal obligation. This results in inconsistent employer practices, with some organisations implementing workplace mental health policies while others ignore them entirely. Establishing statutory recognition of workplace mental health would provide legal clarity, ensuring employers address mental health risks as part of their occupational health and safety responsibilities.

3.4.2 Mandatory Employer Responsibilities for Psychosocial Risk Management

In Australia, employers are legally required to identify, assess, and control psychosocial risks as part of their workplace safety obligations. Sections 17 and 18 of the WHS Act place a duty of care on employers to mitigate risks associated with mental health hazards, such as high workloads, job insecurity, and exposure to workplace violence.

In contrast, Kenya's labour laws do not impose specific obligations on employers to manage psychosocial risks. While there are general occupational safety provisions, they primarily focus on physical hazards, leaving mental health protections undefined and unenforceable. The absence of structured risk management requirements means employer policies often overlook work-related stress, burnout, and psychological harm. Introducing mandatory workplace mental health risk assessments and clear employer responsibilities for managing psychosocial hazards would ensure a proactive approach to workplace mental health, similar to Australia's model.

3.4.3 Workplace Mental Health Support Mechanisms

Australia has established comprehensive support programs such as Employee Assistance Programs (EAPs) and Wellbeing Action Plans (WAPs). These initiatives ensure employees can access counselling, stress management tools, and workplace accommodations. In contrast, Kenya faces challenges in this area, as access to workplace counselling and structured interventions is largely lacking. Smaller businesses in Kenya, in particular, often do not have the resources or awareness to implement such programs voluntarily, leaving employees with limited options for mental health support. Introducing programs like EAPs and workplace mental health accommodations could improve accessibility to psychological support, reduce absenteeism, and enhance employee retention and productivity.

3.4.4 Workplace Bullying and Harassment Protections

The Fair Work Act 2009 (Cth) introduced anti-bullying provisions, allowing employees to seek "stop bullying" orders through the Fair Work Commission (FWC). This provides a legal mechanism for preventing psychological harm before it escalates. Kenya's Employment Act (2007) lacks a specialised anti-bullying framework, leaving workers with no preventive legal recourse against workplace harassment. Without a structured legal process, Kenyan workers may

suffer prolonged exposure to bullying, increasing the risk of stress-related illnesses, anxiety, and depression.

3.4.5 Mental Health Training as a Workplace Standard

Australia's Mental Health First Aid (MHFA) program is a global benchmark for workplace mental health literacy and intervention. It ensures that managers, HR professionals, and employees can identify early signs of psychological distress, provide immediate support, and refer affected individuals to professional care. Kenya does not have a nationally standardised mental health training framework, leading to low awareness and delayed intervention in workplace mental health crises.

Developing a national workplace mental health training program modelled after MHFA would equip employees and employers with practical skills to recognise and address mental health issues, fostering a proactive workplace culture.

3.5 Conclusion

Australia's workplace mental health framework demonstrates that legal clarity, employer accountability, and proactive intervention strategies are critical to ensuring worker psychological well-being. Integrating mental health into employment laws, risk management policies, and national training initiatives has established a comprehensive system of protection that balances legal mandates with workplace support mechanisms.

Kenya's current labour framework lacks the legal precision, structured employer responsibilities, and proactive intervention measures in Australia's model. The absence of statutory mental health protections results in ad-hoc employer approaches, where some organisations provide mental health support while others offer no structured workplace interventions at all. Mental health remains a secondary concern in Kenyan workplaces without precise enforcement mechanisms, affecting employee well-being, productivity, and job satisfaction.

By drawing from Australia's best practices and tailoring them to Kenya's socioeconomic and labour environment, Kenya can bridge the gap between policy and practical implementation, ensuring that mental health protections become an enforceable workplace standard rather than an optional initiative.

4 4.0 CHAPTER 4: INTEGRATING MENTAL HEALTH PROTECTIONS INTO KENYA’S LABOUR LAWS: A CONTEXTUAL ADAPTATION OF THE AUSTRALIAN MODEL

4.1 Introduction

The previous chapter analysed Australia’s workplace mental health framework, demonstrating how its legal system effectively integrates psychological health into occupational safety. Key legislative measures, such as the Work Health and Safety Act (2011) and the Fair Work Act (2009), establish clear employer responsibilities for psychosocial risk management, enforceable workplace mental health protections, and structured mechanisms to mitigate risks like excessive workload, bullying, and job insecurity. Furthermore, practical interventions such as Employee Assistance Programs (EAPs) and Mental Health First Aid (MHFA) training contribute to a comprehensive workplace mental health strategy.

This chapter focuses on adapting Australia's best practices to Kenya's labour laws. It explores how Kenya can integrate key elements of Australia’s framework—such as the legal recognition of mental health as a workplace concern, employer responsibilities for psychosocial risk management, and structured mental health policies—while ensuring these reforms align with Kenya’s existing legal and socio-economic context. Furthermore, it examines potential challenges in implementing these adaptations and proposes strategies to ensure sustainable and effective legal reforms.

4.2 Adapting Australia’s Legal Framework for Workplace Mental Health in Kenya

Kenya has increasingly recognised mental health as a public health priority, mainly through the Mental Health (Amendment) Act of 2022. This act acknowledges mental health as a component of general health and establishes obligations for national and county governments to promote mental well-being.⁹⁷ Despite this broader public health commitment, Kenya’s labour laws remain primarily silent on workplace-specific mental health protections.

As analysed in Chapter 2, Kenya lacks statutory requirements for psychosocial risk management, leaving mental health concerns unregulated at the workplace level. This regulatory gap reflects

⁹⁷ Preamble, Mental Health Act (Cap. 248, Revised 2023).

broader trends in many developing countries, where legal frameworks primarily focus on physical workplace hazards rather than psychological risks.⁹⁸

This section highlights two key areas of Australia's legal framework that Kenya should adopt: legal recognition of mental health as a workplace safety concern and employer responsibilities for managing psychosocial risks.

4.2.1 Legal Recognition of Mental Health as a Workplace Safety Concern

Australia has integrated mental health into its workplace safety framework through the Work Health and Safety Act 2011 (WHS Act), which explicitly defines "health" to include physical and psychological well-being.⁹⁹ Section 19 of the WHS Act further imposes a statutory duty of care on employers, requiring them to take reasonably practicable measures to ensure workers' health and safety.¹⁰⁰ This legal duty mandates employers to identify, assess, and mitigate psychosocial risks such as excessive workload, workplace bullying, and job insecurity. By embedding mental health within occupational safety laws, the Australian framework shifts the responsibility of ensuring psychological well-being onto employers, creating a clear, enforceable legal obligation.¹⁰¹

In contrast, Kenya's labour laws are primarily based on the traditional understanding of occupational health and safety, emphasising physical hazards while neglecting psychosocial risks.¹⁰² As noted in Chapter 2, neither the Employment Act (2007) nor the Occupational Safety and Health Act (2007) obliges employers to address psychosocial risks. This legal gap leaves mental health protections up to individual employers, resulting in inconsistent practices and a lack of enforceable accountability. Without statutory recognition, employees facing work-related mental health issues have limited legal options, and employers are not required to implement preventive measures. To improve this situation, Kenya's Occupational Safety and Health Act should be amended to recognise mental health as a workplace safety issue.

A crucial starting point for improving workplace mental health in Kenya would be redefining "health" in the Occupational Safety and Health Act (2007) to include psychological well-being.

⁹⁸ Chirico et al., "Psychosocial Risk Prevention in a Global Occupational Health Perspective," *International Journal of Environmental Research and Public Health*, 2019, 2470.

⁹⁹ section 4, Work Health and Safety Act 2011 (Cth).

¹⁰⁰ SafeWork NSW, *Managing Psychosocial Hazards at Work*, 10-16.

¹⁰¹ Safe Work Australia, 'New Model WHS Regulations and Code of Practice.'

¹⁰² Odawa, 'The Right to Reasonable Working Conditions' 25.

This change would establish a foundation for broader and enforceable workplace mental health protections. Additionally, the Employment Act of 2007 should be revised to include provisions for reasonable accommodations for employees facing mental health challenges, similar to the approach taken in Australia.

For example, Australia's Work Health and Safety Act (2011) and associated Codes of Practice require employers to modify job demands, restructure working hours, and implement support mechanisms—such as Employee Assistance Programs (EAPs)—to minimise psychosocial hazards.¹⁰³ These accommodations should be tailored to employees' specific risks, promoting a context-sensitive and preventative approach to mental health management.

Without these reforms, Kenya risks failing to uphold the constitutionally guaranteed right to the highest attainable standard of health, as outlined in Article 43 of the Constitution. As it stands, this right remains under-realized in the employment context. This gap ultimately undermines the effectiveness of Kenya's occupational health and safety framework, leaving workers inadequately protected from psychological harm.

4.2.2 Employer Responsibilities for Managing Psychosocial Risks

In Australia, employer responsibilities for workplace mental health are legally mandated under the *Work Health and Safety Act 2011* (WHS Act), with practical implementation guided by the Model Code of Practice: Managing Psychosocial Hazards at Work. This Code provides detailed guidance for employers to identify, assess, and manage psychosocial risks—such as work-related stress, bullying, job insecurity and exposure to traumatic events—ensuring that mental health is integral to workplace safety.¹⁰⁴ By explicitly recognising these hazards, the Australian framework ensures that mental health is not a secondary concern but an essential component of workplace safety. Employers who fail to implement adequate risk controls can face legal repercussions and civil liability claims from affected employees.¹⁰⁵ This legal structure enforces accountability and establishes a preventive, rather than reactive, approach to workplace mental health.

By contrast, Kenya's labour laws do not impose comprehensive legal duties on employers to manage psychosocial risks. *Admittedly*, some existing provisions, such as Section 6 of the

¹⁰³ SafeWork NSW, *Managing Psychosocial Hazards at Work*, 12.

¹⁰⁴ SafeWork NSW, *Managing Psychosocial Hazards at Work*, 11.

¹⁰⁵ *Roussety v Castricum Brothers Pty Ltd* [2016] VSC 466.

Employment Act (2007)—which addresses sexual harassment—acknowledge the emotional and psychological impact of certain workplace behaviours. However, these protections are narrowly focused and do not extend to broader psychosocial hazards such as excessive workloads, workplace stress, or burnout. The Employment Act (2007) and the Occupational Safety and Health Act (2007) primarily address physical workplace hazards, leaving mental health risks largely undefined and unenforceable.

As a result, employees experiencing psychological distress from workplace pressures often lack adequate legal protection, and employers are under no explicit statutory obligation to mitigate such risks. The absence of a structured legal duty means that workplace mental health interventions remain voluntary and inconsistent, varying widely across industries. For instance, Safaricom PLC has implemented mental wellness initiatives, including employee counselling services and mental health awareness campaigns, positioning itself as a leader in corporate mental health support.¹⁰⁶ However, such efforts are not industry-wide standards, and most employers, especially in small and medium enterprises, offer little to no mental health support.

To address this gap, Kenya should extend the duty of care in the Employment Act to include mental health, obligating employers to take reasonable steps to prevent work-related mental health risks. This duty should be aligned with existing employer obligations, reinforcing that psychological health warrants equal protection under labour laws. Establishing this obligation would enable employees to seek legal redress when exposed to preventable psychosocial hazards, strengthening employer accountability.

By embedding these employer responsibilities into law, Kenya can transition towards a preventive, rights-based approach to workplace mental health, shifting the burden of responsibility from employees to employers. This reform is essential for fostering psychologically safe work environments, ensuring that mental health protections are codified within the legal framework rather than being dependent on voluntary employer policies.

¹⁰⁶ Safaricom PLC, 'Our employees' Safaricom Sustainability Report 2019 https://www.safaricom.co.ke/sustainabilityreport_2019/stakeholder-engagement/our-employees/ on 24 March 2025.

4.3 Strengthening Kenya's Policy and Regulatory Structures for Workplace Mental Health

A comprehensive policy and regulatory framework is essential to effectively integrate mental health protections into Kenya's labour laws. While legal reforms establish employer obligations, policies provide practical guidance on implementing these obligations in the workplace. Australia has successfully incorporated mental health policies into its workplace framework through Codes of Practice and workplace mental health training, ensuring that legal protections translate into tangible improvements in workplace well-being.

This section outlines two key areas necessary for developing an effective workplace mental health policy framework for Kenya: Developing Mandatory Workplace Mental Health Policies and Establishing Workplace Mental Health Training Programs

4.3.1 Developing Mandatory Workplace Mental Health Policies

In Australia, workplace mental health policies are not discretionary but are supported by legal obligations under the *Model Code of Practice: Managing Psychosocial Hazards at Work*. This Code offers structured guidance for employers to identify, assess, and control psychosocial risks such as excessive workloads, bullying, and emotional stressors.¹⁰⁷ While the Code itself is not binding, it is enforceable through the regulatory system, as failure to comply may be used as evidence of breach in legal proceedings under the *Work Health and Safety Act 2011*.¹⁰⁸

The key institution overseeing workplace mental health compliance in Australia is Safe Work Australia, a national policy body responsible for developing model WHS laws and codes. Though it does not enforce laws directly, it sets the framework adopted and implemented by state and territory regulators, such as WorkSafe Victoria, SafeWork NSW, and WorkSafe Queensland.¹⁰⁹ These regulators conduct workplace inspections, issue improvement notices, and prosecute non-compliance, ensuring that mental health is not treated as an optional initiative but as a statutory obligation.¹¹⁰ The collaboration between Safe Work Australia and these enforcement bodies ensures national consistency and active regulatory oversight in mental health management.

By contrast, Kenya has no legal requirement for employers to develop or implement workplace mental health policies. As discussed in Chapter 3, this legal silence results in fragmented and

¹⁰⁷ Safe Work Australia, *Model Code of Practice: Managing Psychosocial Hazards at Work* 12.

¹⁰⁸ Mughal, 'What's code of practice?'

¹⁰⁹ Safe Work Australia, *Effectiveness of WHS Interventions by Regulators: A Literature Review*, April 2013, 39

¹¹⁰ Safe Work Australia, *Guide to the Model WHS Act*, 18.

inconsistent practices, exposing many employees to unaddressed psychosocial hazards. ¹¹¹While a few organisations have voluntarily embraced wellness programs, the lack of statutory policy guidance undermines enforceability and limits widespread adoption.

To bridge this gap, Kenya should consider adopting a phased approach led by the Ministry of Labour and Social Protection. Specifically, the Ministry—working through institutions such as the Directorate of Occupational Safety and Health Services (DOSHS)—could spearhead developing and enforcing a Workplace Mental Health Code of Practice. This institutional effort could:

- Provide clear implementation guidelines for employers on structuring workplace mental health policies.
- Outline risk assessment procedures aligned with psychosocial hazards relevant to Kenyan workplaces.
- Define specific employer responsibilities and minimum standards to promote psychological safety.
- Offer tailored recommendations for key sectors, such as education, healthcare, and manufacturing, recognising the different mental health pressures they face.

To ensure compliance, DOSHS inspectors could be trained to assess mental health indicators during routine occupational health audits and issue advisory or enforcement notices where necessary. Over time, collaboration between the Ministry of Labour, mental health professionals, and employer associations could ensure that the Code becomes an effective and enforceable standard.

In conclusion, as Australia’s regulatory institutions ensure consistent mental health policy implementation across jurisdictions, Kenya can establish a strong institutional framework that mandates mental health integration into occupational safety. This would create a consistent national standard, promote accountability, and align Kenya’s labour protections with international mental health benchmarks.

¹¹¹ Ministry of Health (Kenya), *National Guidelines on Workplace Mental Wellness*, 30.

4.3.2 Establishing Mental Health Training Programs

Beyond legal obligations, workplace training programs ensure employers, HR personnel, and employees understand mental health risks and their responsibilities. In Australia, Mental Health First Aid (MHFA) Training has been successfully integrated into workplace policies, equipping managers, HR professionals, and supervisors with the skills to identify and respond to mental health challenges.¹¹² Many businesses in Australia require MHFA training for managerial staff to ensure that employees have access to informed and supportive supervisors.¹¹³ This proactive approach enables early detection and intervention, reducing workplace stress, anxiety, and burnout risks. Importantly, MHFA also helps dismantle cultural stigma by encouraging open conversations and promoting mental health as a shared workplace responsibility. Its emphasis on empathy, non-judgmental listening, and normalising support-seeking behaviour makes it an effective tool in reshaping attitudes that treat mental illness as a personal weakness.

MHFA is widely adopted across both public and private sectors in Australia. It is delivered by certified private providers but supported through national policy frameworks and promoted by the Australian government as part of its workplace mental health strategy.¹¹⁴

In Kenya, mental health awareness remains low, and most employers lack formal training on recognising and addressing workplace mental health risks.¹¹⁵ Without proper education, workplace supervisors may fail to identify signs of employee distress, leading to delayed interventions and worsening mental health outcomes.

To address this, Kenya should establish a Workplace Mental Health Training Program, equipping employers and employees with the necessary skills to support workplace mental well-being. This program should cover essential areas such as identifying signs of stress and anxiety, providing immediate psychological support, and connecting employees to professional mental health resources. This program could be delivered by accredited private trainers or non-profit organisations. Still, it should be developed under the supervision of the Ministry of Labour and

¹¹² Bovopoulos N, *Development of mental health first aid for workplaces*, PhD thesis, University of Melbourne, 2019, 45-50.

¹¹³ Mental Health First Aid Australia, 'Workplaces - Mental Health First Aid Australia' Mental Health First Aid Australia, 2023 <https://www.mhfa.com.au/training-pathways/workplaces/> on 23 February 2025.

¹¹⁴ Mental Health First Aid Australia, 'Workplaces - Mental Health First Aid Australia' Mental Health First Aid Australia.

¹¹⁵ Kenya Mental Health Policy 2015-2030, Ministry of Health, 2015, 10.

Social Protection and the Directorate of Occupational Safety and Health Services (DOSHS) to ensure regulatory compliance, consistency, and effectiveness across sectors.

Additionally, HR professionals, managers, and workplace supervisors should be required to undergo mental health training to ensure widespread adoption. Employers should integrate mental health awareness training into professional development programs, providing continuous learning and support.

By making mental health training a standard workplace practice, Kenya can move beyond theoretical mental health policies and ensure practical, effective implementation, ultimately fostering healthier and more supportive work environments.

4.3.3 Challenges and Considerations for Implementation in Kenya

Integrating mental health protections into Kenya's employment laws presents significant opportunities to improve workplace well-being. However, the successful implementation of mental health policies will require overcoming multiple challenges, including economic feasibility, cultural perceptions of mental health, and legislative barriers. Understanding these challenges is essential for designing realistic and sustainable legal reforms that align with Kenya's labour market dynamics and socio-cultural environment.

4.4.1 Economic Feasibility and the Burden of Compliance

One of the primary concerns in implementing workplace mental health policies is the financial burden on employers, particularly small and medium-sized enterprises (SMEs). Many businesses in Kenya lack the resources to provide structured mental health programs, employee assistance schemes, or workplace counselling services. Studies indicate that cost-related concerns often discourage employers from investing in mental health interventions, even when evidence suggests that well-implemented mental health policies lead to increased productivity and reduced absenteeism.¹¹⁶

The financial challenge extends beyond employers. For the government, implementing and monitoring national mental health policy frameworks requires investment in regulatory oversight, public awareness campaigns, and training program subsidies. Employees, too, may face indirect

¹¹⁶ LK-D Le et al., 'Cost-Effectiveness Evidence of Mental Health Prevention and Promotion Interventions: A Systematic Review of Economic Evaluations' (2021) *PLOS Medicine*

costs, such as lost wages from untreated mental health conditions or lack of affordable care options. Without a coordinated, cost-conscious approach, these financial pressures could undermine the sustainability of mental health reform efforts.

To address this challenge, Kenya should adopt cost-sensitive implementation strategies, including phased enforcement: Large corporations should be required to comply immediately, while small businesses will receive a gradual compliance period to integrate mental health policies. Ensuring economically feasible compliance will encourage wider adoption of mental health protections without placing excessive financial strain on businesses.

4.4 Conclusion

This chapter has demonstrated that integrating workplace mental health protections into Kenya's labour laws requires a legally enforceable framework that adapts key minimum standards from Australia's model while addressing Kenya's socio-economic and cultural context.

Australia's Work Health and Safety Act (2011) and Fair Work Act (2009) provide a strong legal foundation for workplace mental health protections, particularly in recognising psychosocial risks, establishing employer responsibilities, and enforcing workplace mental health policies. By adopting these principles, Kenya can develop a comprehensive legal framework that ensures employer accountability, protects employees from workplace-induced mental health risks, and aligns Kenya's labour laws with international best practices.

However, successful implementation will require overcoming several challenges, including business financial constraints, cultural stigma surrounding mental health, and legislative hurdles. This chapter has proposed cost-sensitive enforcement mechanisms, awareness campaigns, stakeholder engagement, and phased policy implementation to address these issues. These measures will ensure that mental health protections are legally practical and practically feasible for businesses across all sectors.

Kenya can create a safer, healthier, and more productive work environment by establishing a Workplace Mental Health Code of Practice, introducing mandatory mental health training, and enforcing legal employer obligations. While legal reforms are crucial, their success will depend on collaborative efforts among government agencies, employers, and mental health professionals.

The next step is to refine legislative and policy recommendations, ensuring that workplace mental health protections are firmly embedded within Kenya's Employment Act and OSHA and that enforcement mechanisms are clearly defined and actionable. With strategic implementation, Kenya can establish a workplace mental health framework that is not only legally sound but also socially and economically sustainable.



5 CHAPTER 5: RECOMMENDATIONS AND CONCLUSIONS

5.1 Introduction

This dissertation has laid bare the silent crisis in Kenya's employment law: the systemic failure to protect workers from psychological harm. While Kenya's Constitution proclaims the right to health and fair labour practices, these guarantees remain aspirational for workers battling stress, burnout, bullying, and depression in the workplace. This research has demonstrated that workplace mental health is not a peripheral concern—it is a constitutional imperative, a human right, and a socio-economic necessity.

Australia's model offers a compelling benchmark: it legally defines psychological health as a workplace obligation, imposes enforceable employer duties, and embeds mental health support into workplace policy and practice. Drawing on this comparative analysis and adapting its lessons to Kenya's legal and socio-cultural context, this chapter presents actionable recommendations—bold in ambition yet grounded in Kenya's legal realities. The time for piecemeal, voluntary change is over. Kenya must legislate, institutionalise, and normalise mental health protection in employment law.

5.2 Summary of Key Findings

The key findings of this research are threefold:

1. **Legislative Gaps:** Kenya's Employment Act (2007) and the Occupational Safety and Health Act (2007) do not recognise psychological health as a workplace safety concern nor impose employer obligations to prevent or respond to mental health risks.
2. **Policy Deficiency:** Kenya lacks a mandatory, enforceable policy framework on workplace mental health. The existing Workplace Mental Wellness Guidelines (2023) are non-binding, resulting in inconsistent employer practices.
3. **Comparative Lessons:** Australia's legal framework offers critical guidance. Australia has mainstreamed mental health into workplace obligations through its Work Health and Safety Act 2011, Fair Work Act 2009, and Model Codes of Practice. It has also created institutional enforcement mechanisms and introduced preventive strategies such as Mental Health First Aid training and psychosocial risk management.

5.3 Recommendations

5.3.1 Legal Reforms: Codifying Mental Health as a Workplace Right

Kenya must urgently reform its labour legislation to recognise mental health as a legally enforceable workplace right. To achieve this, targeted amendments should be introduced to key statutes. First, the *Occupational Safety and Health Act (2007)* should be revised to explicitly define “health” as inclusive of psychological and emotional well-being. This would align national legislation with definitions by the World Health Organization (WHO) and international labour standards, thereby establishing a more holistic understanding of workplace health.

Secondly, the *Employment Act (2007)* should be amended to include a range of mental health protections. These would include the requirement for employers to make reasonable accommodations for employees experiencing mental illness, similar to provisions made for physical disabilities. The law should also introduce entitlements such as mental health leave and structured return-to-work plans for affected employees. Furthermore, a statutory duty of care should be created, obligating employers to proactively identify, assess, and mitigate psychosocial risks within the workplace. Collectively, these legal reforms would clarify employer obligations and provide employees with a clear legal foundation for seeking redress when exposed to preventable psychological harm.

5.3.2 Institutional and Policy Reforms: Building a National Mental Health Infrastructure for the Workplace

While legal reform is essential, it must be complemented by strong institutional frameworks and policy coherence. As such, the government should establish a *Workplace Mental Health Code of Practice* under the Ministry of Labour and Social Protection. This code, developed in consultation with stakeholders—including the Directorate of Occupational Safety and Health Services (DOSHS), mental health professionals, trade unions, and employer associations—would provide practical guidelines for promoting psychological well-being at work.

Compliance with the code should be mandatory and enforced through regular regulatory audits conducted by DOSHS to ensure effectiveness. Organisations that fail to comply should be subject to a tiered system of penalties, beginning with official warnings and escalating to monetary fines for serious or repeated breaches.

Recognising that different sectors face unique stressors, the government should develop sector-specific policy adaptations, particularly in high-pressure environments such as healthcare, education, security, and public service. Finally, to support employers—especially small and medium-sized enterprises (SMEs)—the state should facilitate public-private partnerships that promote the adoption of Employee Assistance Programs (EAPs). These initiatives would embed mental health protections into the daily regulatory expectations for employers across Kenya.

5.3.3 Training and Culture: Making Mental Health Literacy a Workplace Standard

Ensuring the realisation of workplace mental health rights also requires significant investment in human capital and cultural change. One critical intervention would be developing a *Mental Health First Aid (MHFA)* program tailored to Kenya's unique context and workforce demographics. This program should be mandatory for human resource professionals, line managers, and supervisors in medium to large organisations. Delivered in partnership with certified providers and regulated by the Ministry of Labour, such a program would equip workplace leaders with the tools to recognise and respond to mental health challenges effectively.

In the long term, mental health training should be embedded within tertiary institutions' occupational health and safety curricula and included as a requirement in professional certification programs. By making mental health literacy standards such as fire drills, first-aid kits, or safety boots, Kenya can foster a work culture where psychological safety is no longer perceived as a privilege but recognised as a fundamental standard of employment.

5.4 Conclusion

This dissertation began with the premise that workplace mental health is a right, not a luxury. While the Kenyan labour framework is progressive in many respects, it fails to live up to its constitutional promise by neglecting the psychological well-being of its workers. The price of this silence is steep—rising burnout, absenteeism, suicidality, and productivity loss. Yet, it is also preventable.

Australia has shown that legal reform, institutional clarity, and cultural change can create mentally healthy workplaces without compromising economic growth. Kenya must now show that it can lead by crafting legislation that reflects modern realities, holding employers accountable, and creating a national culture where psychological well-being is not hidden in the shadows but protected in the open.

In doing so, Kenya will not only safeguard its workers but also its future. The strength of a nation's economy, its institutions' resilience, and its people's dignity depend not just on how they work but also on how they are allowed to feel, recover, and thrive.

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