



# Legal Questions Arising from the Directive for Fresh Vetting of Public Officers

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On June 1, 2018, the President proclaimed fresh vetting of public officers. On 4th June 2018, and in accordance with the President's proclamation, the Public Service Commission directed that the first batch of officers to undergo the vetting are the heads of procurement and accounting units in state corporations, ministries, departments and agencies. In addition to being sent on a 30-day compulsory leave, the officers would be required to submit personal information including information relating to their income, businesses, business associates, their tax returns bank statements and even details of their social media accounts. The officers would also be required not to leave the county without authorization from the Public Service Commission. From the directive, the questions likely to arise include:

## Under what circumstances can an employee be sent on compulsory leave?

Compulsory leave is administrative leave, imposed on the Employee pending investigation of employment offences and disciplinary action. On 6th June 2018, the Justice Onesmus Makau suspended the orders to send the officials on compulsory leave until a petition challenging the directive is heard on June 13, 2018. The Employment Act 2007 has no provisions on compulsory leave. However, courts have previously held that for an employee to be suspended, the employer has to do so in a reasonable manner. It would be unreasonable for an employer to issue a blanket suspension, even in ministries where the officers are not suspected of any misconduct.

## To what extent does the right of privacy apply to public officers?

Under Article 31, every person has the right not to have information relating to their family or private affairs unnecessarily required or revealed; or the privacy of their communications infringed. This right is not absolute but its application is less stringent when it comes to public officers? In my view, the distinction ought to be made between official information, which relates to the public officer's work and personal information, which may not necessarily relate to the officer's work. For instance, information on social media accounts may not be relevant in determining the credibility of a public officer, unless such an officer is under investigation. The presumption is that a public officer has agreed to have certain personal information revealed for the sake of transparency and public interest. However, applying this rule to private citizens who are related or associated with the public officer may pose a challenge. This is because such private citizens have not opened themselves to public scrutiny.



## Can an employer confine an employee to the country?

Every person has the right to leave Kenya. In criminal proceedings, a person could be ordered not to leave the country if it is shown that he is a flight risk. There is no legal basis for an employer to ask an employee not to leave the country, if the said employee is rightly doing so.