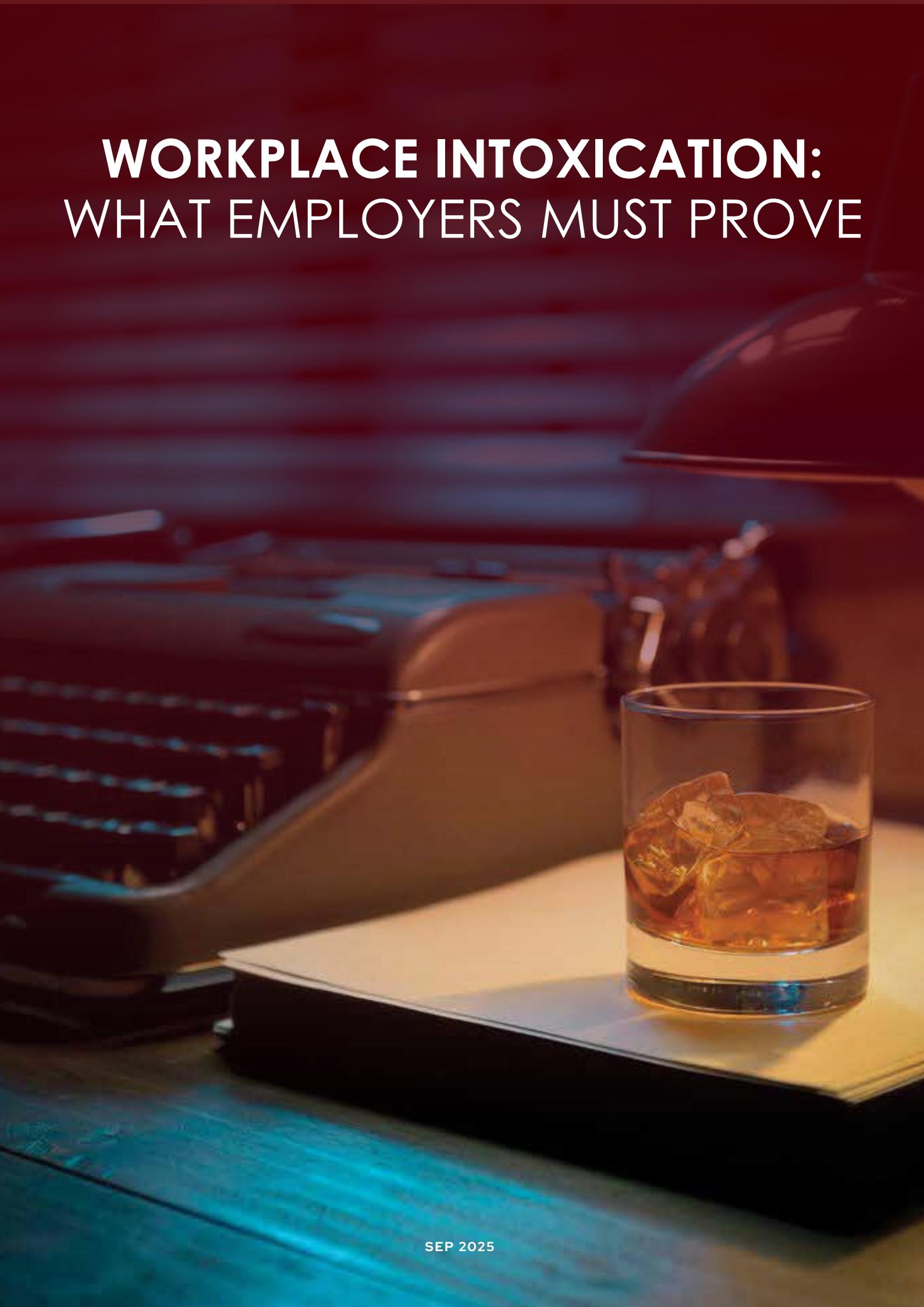


WORKPLACE INTOXICATION: WHAT EMPLOYERS MUST PROVE

A photograph of a workspace. In the foreground, a clear glass filled with whisky and ice cubes sits on a stack of papers. Behind it, a portion of a keyboard and a smartphone are visible. The background is dark and out of focus.

Before ringing the bell on an employee's employment, remember, catching an employee with an alcoholic drink on duty doesn't automatically mean an end to their job. Ingesting alcohol at work, while serious, is not in itself sufficient grounds for termination. The law requires more than just the presence of a buzz. It demands proof that the employee was actually impaired and unable or unwilling to perform their duties.

In **Chirchir v Avsi Foundation [2025] KEELRC 2287 (KLR)**, the Employment and Labour Relations Court at Nairobi ruled that the termination of the Claimant's employment was wrongful and unfair. The Respondent had terminated the Claimant's contract for alleged intoxication at work, which the claimant denied. The Court found that the Respondent failed to provide sufficient evidence to prove the claimant was drunk, citing inconsistencies in witness testimonies and a lack of scientific evidence. Furthermore, the Court held that the Respondent violated the Claimant's right to a fair hearing by:

- a) not providing a formal notice to show cause;
- b) sending a "blind invite" for what turned out to be a disciplinary hearing; and
- c) not informing her of her right to have a fellow employee present.

KEY POINTERS FOR EMPLOYERS:

- An employer must have a valid reason and follow a fair procedure before terminating an employee's contract;
- The burden of demonstrating a valid reason for termination rests with the employer;
- When alleging a serious infraction like intoxication at work, an employer must provide cogent evidence, which may include scientific proof like alcohol test results;
- The employer should consider effecting a workplace drug and alcohol policy that not only prohibits alcohol consumption at work, but also prescribes the procedure for administration of alcohol tests in instances where there is a suspicion of intoxication at the workplace;
- The employer must issue a formal, written notice to show cause to the employee, detailing the accusations against them, and giving them an opportunity to respond before holding a disciplinary hearing
- A disciplinary hearing invitation must explicitly state the purpose of the meeting so the employee can prepare their defense;
- Employees should be informed of their right to have a fellow employee of their choice accompany them to a disciplinary hearing;
- Disciplinary hearing minutes should be signed by the employee to validate the content therein, otherwise the Court will have a difficult time believing that they are a true representation of what transpired at the hearing;
- An employee should be given the opportunity to appeal the disciplinary decision; and
- General and exemplary damages are not recoverable in breach of contract cases, as a general rule.

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