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Employment Law ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

SOUTH AFRICA

The wage implications of an extra public holiday on 15 December 2023

Many South Africans spend a large part of December and January on leave celebrating the holidays with friends and family.

Four public holidays fall during December and January each year: 16 December is the Day of Reconciliation, 25 December is Christmas Day, 26 December is the Day of Goodwill and 1 January is New Year's Day. These are four out of 12 public holidays provided for by the Public Holidays Act 36 of 1994 (Public Holidays Act).

President Cyril Ramaphosa has declared an additional public holiday on Friday, 15 December 2023, in terms of section 2A of the Public Holidays Act. The following day, 16 December, which falls on a Saturday this year, is an existing public holiday.

If an employee works on a public holiday (including an additional public holiday that is declared), their employer must consider the provisions of the Basic Conditions of Employment Act 75 of 1997 when determining the amount to pay them. In particular, the employer must consider whether the public holiday

falls on a day on which the employee would ordinarily work. If the public holiday falls on a day on which the employee would ordinarily work and the employee works on that public holiday, then the employee is entitled to double their ordinary wage for the day or, if greater, the employee's ordinary wage for the day *"plus the amount earned by the employee for the time worked on that day"*. However, if the employee does not work on the public holiday which falls on a day the employee would ordinarily work, the employee is entitled to their ordinary wage for the day.

If the public holiday falls on a day on which the employee would not ordinarily work and the employee works on that public holiday, the employee is entitled to their ordinary wage for the day and *"the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method"*.

CDH's Employment Law practice



Employment 2023 Rankings

Employment Law practice is ranked in Tier 1.

CDH Kenya's Employment Law practice is ranked in Tier 3.

Leading Individuals:

Fiona Leppan | Aadil Patel

Recommended Lawyers:

Anli Bezuidenhout | Jose Jorge
Rizichi Kashero-Ondego | Gillian Lumb
Imraan Mahomed | Phetheni Nkuna
Hugo Pienaar | Thabang Rapuleng
Njeri Wagacha

KENYA

The Social Health Insurance Act and its implications

In a Gazette Notice on 21 November 2023, the Cabinet Secretary for Health designated 22 November 2023 as the commencement date of the Social Health Insurance Act, 2023 (SHIA). This act repeals the National Health Insurance Fund Act, 1989 (NHIF Act) to establish a framework for the management of social health insurance. Nonetheless, the High Court in a recent ruling suspended SHIA's implementation until February 2024 on grounds of lack of proper public participation.

SHIA's salient features include *inter alia* establishing the Social Health Authority (SHA) as the overarching regulatory body to register beneficiaries and manage funds established under the act. Subsequently, three new funds have been established under SHIA including the Primary Healthcare Fund (PHF), Social Health Insurance Fund (SHIF), and the Emergency, Chronic and Critical Illness Fund (ECCIF).

Every person resident in Kenya (including non-citizens who are granted lawful residence in Kenya) is obliged to apply for registration to the SHA within 90 days of the commencement of the Social Health Insurance (General) Regulations, 2023 (SHIA Regulations). An application for registration is to be made in the prescribed form and accompanied by a copy of the applicant's national identification documents. A contributor may list beneficiaries in the application at the time of

registration to enable the beneficiaries to access the benefits under their cover. Parents and guardians are also required to apply for registration of their child within 14 days of the child's birth.

People currently registered as members of the repealed NHIF Act are required to register afresh as members of the SHIF. Further, households with income from salaried employment are to pay a monthly statutory contribution to SHIF at a rate of 2,75% of the gross salary or wage of the household by the ninth day of each month. For instance, a household whose gross salary or wage is KES 100,000 will contribute KES 2,750 every month. For purposes of SHIF, a household is a social unit comprising of an eligible contributor, whether contributing by themselves or paid for, and their beneficiaries, or who share the same socio-economic needs associated with consumption and production.



KENYA

The Social Health Insurance Act and its implications

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On the other hand, households whose income is not derived from salaried employment will pay an annual contribution to SHIF at a rate of 2,75% of the proportion of household income determined through the means testing instrument under the SHIA Regulations. In terms of the means testing, the SHA will collect data from households for the purposes of conducting proxy means testing to estimate such households' income. This data will be based on various socio-economic aspects including housing characteristics, access to basic services, household composition and characteristics, and any other relevant socio-economic aspects.

Employer contributions

All employers are required to deduct the contributions of salaried contributors and submit the contribution to the SHA by the ninth day of each month. When an

employer terminates the employment of a salaried contributor, the employer will be required to notify the SHA within 30 days and remit the final contribution of the employee. Conversely, empanelled healthcare providers or health facilities should lodge claims with the claims management office for the payment of healthcare services provided to the beneficiaries of the SHIF, after which the SHA then pays the claims lodged based on the prescribed tariffs.

SHIA exemplifies a landmark transformation in the Kenyan healthcare sector. The introduction of the PHF, SHIF and ECCIF will secure publicly funded primary healthcare, universal insurance, and equitable access to quality health services. Notwithstanding the foregoing, SHIA's suspension by the High Court means that its implementation will be delayed until the court case challenging its constitutionality is determined.

[Njeri Wagacha and Joseph Macharia](#)



Cliffe Dekker Hofmeyr

2023 RESULTS

Chambers Global 2014 - 2023
ranked our Employment Law practice in
Band 2: Employment.

Aadil Patel ranked by
Chambers Global 2015 - 2023
in Band 2: Employment.

Fiona Leppan ranked by
Chambers Global 2018 - 2023
in Band 2: Employment.

Imraan Mahomed ranked by
Chambers Global 2021 - 2023
in Band 2: Employment.

Hugo Pienaar ranked by
Chambers Global 2014 - 2023
in Band 2: Employment.

Gillian Lumb ranked by
Chambers Global 2020 - 2023
in Band 3: Employment.

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



Aadil Patel

Practice Head & Director:
Employment Law
Joint Sector Head:
Government & State-Owned Entities
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Anli Bezuidenhout

Director:
Employment Law
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Jose Jorge

Director:
Employment Law
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Fiona Leppan

Director:
Employment Law
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Gillian Lumb

Director:
Employment Law
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Imraan Mahomed

Director:
Employment Law
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com



Phetheni Nkuna

Director:
Employment Law
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com



Desmond Odhiambo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com



Hugo Pienaar

Sector Head:
Infrastructure, Transport & Logistics
Director: Employment Law
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Thabang Rapuleng

Counsel:
Employment Law
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Njeri Wagacha

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com



Mohsina Chenia

Executive Consultant:
Employment Law
T +27 (0)11 562 1299
E mohsina.chenia@cdhlegal.com



Jean Ewang

Consultant:
Employment Law
M +27 (0)73 909 1940
E jean.ewang@cdhlegal.com



Ebrahim Patelia

Legal Consultant:
Employment Law
T +27 (0)11 562 1000
E ebrahim.patel@cdhlegal.com



Nadeem Mahomed

Professional Support Lawyer:
Employment Law
T +27 (0)11 562 1936
E nadeem.mahomed@cdhlegal.com

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



Asma Cachalia

Senior Associate:
Employment Law
T +27 (0)11 562 1333
E asma.cachalia@cdhlegal.com



Christine Mugenyu

Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E christine.mugenyu@cdhlegal.com



Biron Madisa

Associate:
Employment Law
T +27 (0)11 562 1031
E biron.madisa@cdhlegal.com



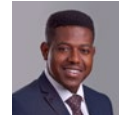
Rizichi Kashero-Ondego

Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E rizichi.kashero-ondego@cdhlegal.com



JJ van der Walt

Senior Associate:
Employment Law
T +27 (0)11 562 1289
E jj.vanderwalt@cdhlegal.com



Kgodisho Phashe

Associate:
Employment Law
T +27 (0)11 562 1086
E kgodisho.phashe@cdhlegal.com



Jordyne Löser

Senior Associate:
Employment Law
T +27 (0)11 562 1479
E jordyne.loser@cdhlegal.com



Malesale Letwaba

Associate:
Employment Law
T +27 (0)11 562 1710
E malesale.letwaba@cdhlegal.com



Taryn York

Associate:
Employment Law
T +27 (0)11 562 1732
E taryn.york@cdhlegal.com



Leila Moosa

Senior Associate:
Employment Law
T +27 (0)21 481 6318
E leila.moosa@cdhlegal.com



BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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