



Employment Law

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KENYA

- The history of NSSF contribution increases in Kenya since 2013



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The history of NSSF contribution increases in Kenya since 2013

The National Social Security Fund (NSSF) in Kenya has undergone a significant transformation following the assent to the National Social Security Fund Act, Chapter 258 of the Laws of Kenya (NSSF Act) on 24 December 2013, which came into force on 10 January 2014.

This landmark legislation represented a fundamental shift from the old flat-rate contribution system to a more robust earnings-based pension framework designed to improve retirement savings adequacy and align Kenya's pension system with global best practices.

The phased implementation of the NSSF Act, though marked by legal challenges and court battles, continues to reshape the financial landscape for millions of workers and employers in Kenya.

In this Alert, we unpack the history behind the NSSF rates and explain why they continue to change over time.

The pre-2013 regime

The NSSF was established in Kenya in 1965 as a crucial institution providing social security benefits to employees. Under the old regime, contributions were remarkably modest: employees were obligated to contribute a flat rate of KES 200 per month, with employers matching this contribution, resulting in a total of KES 400 in contributions per employee per month, regardless of the employee's salary. This flat-rate system meant that an employee earning KES 20,000 per month contributed the same amount as one earning KES 200,000. The majority of Kenyans contributing KES 200 per month would accumulate approximately KES 72,000 over 30 years of employment, an amount widely recognised as inadequate for meaningful retirement benefits.

The NSSF Act, 2013

Although the NSSF Act came into force in 2014, its practical implementation was significantly delayed by legal challenges and only commenced in earnest in February 2023 following the decision of the Court of Appeal of Kenya in *National Social Security Fund Board of Trustees v Kenya Tea Growers Association and 14 Others* [2023] KECA 80 (KLR), which upheld the NSSF Act and cleared the way for its implementation.

Key features of the NSSF Act

The NSSF Act introduced a more robust contribution system where employees contribute 6% of their pensionable earnings, with employers matching the same amount – creating a total contribution of 12% of pensionable earnings. The legislation established a two-tier contribution structure to replace the old flat-rate system:

1. Tier I Contributions apply to pensionable earnings up to the lower earnings limit (LEL). These contributions are paid directly to the NSSF.



- Tier II Contributions apply to earnings above the LEL up to the upper earnings limit (UEL). Employers have the option to direct Tier II contributions to a contracted-out scheme that they choose to participate in or establish, provided it meets the Reference Scheme Test requirements.

Understanding the two limits

The LEL is the base amount; every employee contributes 6% of their salary up to this amount directly to NSSF, with no exceptions. The UEL is the ceiling; earnings above this amount are disregarded entirely for NSSF purposes. The band between these two limits is the Tier II zone, and it is this band that widens each year under the phased implementation, driving the sharp rise in maximum contributions. For instance, under Year 4 rates, an employee earning KES 80,000 per month would pay Tier I contributions on the first KES 9,000 (KES 540) and Tier II contributions on the next KES 71,000 (KES 4,260), for a total employee deduction of KES 4,800, matched shilling for shilling by the employer. An

employee earning KES 150,000, by contrast, would hit the UEL ceiling at KES 108,000 and pay the maximum of KES 6,480, with everything above KES 108,000 attracting no further NSSF contributions.

The phased approach

Recognising the significant impact that such an increase would have on employees and employers, the NSSF Act provided for a gradual implementation over five phases spread out over a period of five years. The Third Schedule of the NSSF Act outlines this five-phase approach for progressively adjusting the mandatory contribution rates, with the LEL and UEL rising annually to gradually transition employees and employers into the new contribution structure.

The most significant movement has been in the UEL, which has expanded from KES 18,000 in the first year to KES 108,000 in Year 4, a sixfold increase. This widening of the Tier II band is what drives the sharp rise in maximum contributions.

We are currently in Year 4. The fifth and final phase will lock in the permanent structure of the LEL, tied to the gazetted average statutory

minimum monthly basic wage, and the UEL set at four times national average earnings. That final phase is not another incremental shock, it is the year the transition ends and the new normal begins.

What this means for employers

Increased staffing costs

From an employer's perspective, the changes lead to higher staffing costs as they must match employee contributions. For companies with large workforces, these increases may significantly affect annual payroll budgets. For example, an employer with 50 employees could face monthly contributions of approximately KES 324,000 and annual contributions of approximately KES 3,888,000.

Compliance obligations

Employers remain responsible for several compliance obligations under the NSSF system, including employee registration, accurate contribution deductions, timely remittance and proper record keeping. Failure to comply with statutory pension obligations may result in regulatory penalties, including fines and interest on late payments.

Option to contract out

The law allows employers to contract out of NSSF Tier II and redirect these contributions to approved private pension schemes, offering flexibility in managing retirement benefits for their workforce. This option is available provided the contracted-out scheme meets the Reference Scheme Test specified in the Fourth Schedule of the NSSF Act.

Many employers in Kenya have applied to opt out of remitting Tier II contributions to the NSSF over the past two years, reflecting a strategic shift in the private sector towards higher yields and more flexible investment management.



What this means for employees

The progressive increase in NSSF contributions has several implications for employees across different income brackets.

Impact on take-home pay

The immediate impact of increased NSSF contributions is a reduction in employees' net pay, which reduces their purchasing power.

Enhanced retirement benefits

Despite the short-term reduction in take-home pay, the reforms are designed to strengthen retirement savings, particularly for high-income earners. The expected increase in NSSF contributions will result in a rise in national savings rates and individual pension savings. Benefits available to members include retirement pension, invalidity pension, survivors' benefits, funeral grants and emigration benefits.

Tax benefits

NSSF contributions are tax-deductible expenses in the computation of taxes payable by employees, meaning contributions reduce taxable income and therefore the amount of PAYE owed. This partially offsets the impact of higher contributions on employees' finances.

Looking ahead

With the NSSF Act moving towards its final implementation phase, the balance between securing the future of Kenyan workers and maintaining a competitive business environment remains the primary challenge for policymakers. Increased contribution rates will improve long-term retirement benefits for employees but will have the immediate effect of reducing net pay and increasing employers' costs of employment.

The reforms represent a fundamental shift in Kenya's approach to social security, moving from a system that provided minimal retirement benefits to one designed to ensure adequate pension income for all workers. As the implementation continues, both employers and employees must remain informed about their obligations and rights under this evolving framework.

Conclusion

The journey of NSSF contribution increments in Kenya since 2013 represents one of the most significant reforms in the country's social security landscape. From a modest

flat rate of KES 200 per person to potential maximum contributions reaching KES 6,480 per party, the transformation reflects Kenya's commitment to building a more robust pension system aligned with international standards.

The phased implementation approach has helped ease the transition for both employers and employees, while the legal clarity provided by the Court of Appeal has cemented the foundation for full implementation. As Kenya enters the fourth year of this five-year transition, stakeholders must continue adapting to ensure compliance that will, over time, enhance retirement security.

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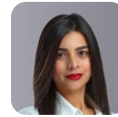
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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