



FEBRUARY 2024 – KENYA

SOCIAL HEALTH INSURANCE FUND (SHIF) and AFFORDABLE HOUSING LEVY

It is important that employers note the following:

High Court rulings affecting contributions to SHIF and the Affordable Housing Levy

Social Health Insurance to proceed

Following the halting of the implementation of the SHIF in November 2023, the Court of Appeal lifted the order on 19 January 2024, allowing the government to move forward with implementing the Universal Health Coverage (UHC) rules.

The UHC plan is supported by four health Acts. Our CRS [News Flash](#) of 16 November 2023 contains more information on the UHC plan.

One of the Acts, namely the Social Health Insurance Act, 2023 which repeals the National Health Insurance Fund (NHIF), established three funds. One of the funds relevant to employers and employees is the SHIF.

SHIF contributions are outlined in a draft of the Social Health Insurance (General) Regulations. These are:

- Households whose income is received from salaried employment will be required to pay a monthly contribution at a rate of 2.75% of the gross income of the household.
- Employers will be required to deduct the contribution of a salaried employee and submit the contribution to the authority by the ninth of each month.
- Households whose income is not received from salaried income will have to pay an annual contribution at a rate of 2.75% of the proportion of household income, determined through the means of testing by the Social Health Authority.
- In both cases, the minimum amount payable will be KES 300.

The Ministry of Health plans to launch the new SHIF in March 2024. The Ministry states that appropriate procedures will be followed to ensure that individual registration begins in March 2024 and contributions are made in the same month after approval of the Act's regulations.

Until the SHIF regulations are gazetted and put into effect, employers must continue to withhold and remit contributions in accordance with the prior NHIF regulations.

To view the draft Social Health Insurance (General) Regulations, 2023, follow the [link](#).

Affordable Housing Levy (AHL) halted

On 26 June 2023 the Employment Act was amended through the Finance Act, 2023 to introduce an affordable housing levy (AHL) to provide for a monthly levy payable by the employer and

employee at 1.5%, as opposed to 3.0% per month of an employee’s salary. The Kenya Revenue Authority (KRA) commenced collection of the AHL from salaried workers on 1 July 2023.

However, in November 2023, the Kenyan High Court ruled that the housing levy was unlawful due to the absence of a comprehensive legislative framework, which is against the Constitution. The Kenyan government responded by filing an appeal with the Court of Appeal, requesting permission to keep collecting the fee. This means that the Kenyan High Court's ruling that the levy was unlawful remains in effect.

A chronological timeline related to the AHL:

26 June 2023	10 July 2023	28 July 2023	28 November 2023	4 January 2024	26 January 2024
The President assents to the Finance Act, 2023	The High Court temporarily suspend the implementation of the Finance Act, 2023	The High Court order is lifted by the Court of Appeal. The Finance Act, 2023 is implemented, effective 1 July 2023	Multiple constitutional petitions are filed at the High Court, stating that the AHL, as framed in the Finance Act, 2023, is unconstitutional	The Court of Appeal grants the government permission to continue collecting the levy while deliberating whether to uphold or extend the order	The Court of Appeal rejects the government's request to continue collecting the levy until the hearing and determination of the substantive appeal

A notification alerting employers not to deduct the AFL was also released by the Federation of Kenya Employers.

To view the notice, follow the [link](#).

CRS will continue to monitor developments in this matter and keep you informed of any changes or updates.

Contact our legislation team on info@crs.co.za if you require any additional information.

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