

Navigating the 2026 Kenyan Labour Landscape: Top Compliance Essentials for Employers

19th February 2026 - 3 min read



WAMAE ALLEN LLP
NATURAL CONSEQUENCE OF LAW AND REASONABLENESS

The Kenyan employment law environment has undergone a significant transformation leading into 2026. What was once a relatively straightforward adherence to the **Employment Act of 2007** has evolved into a complex web of constitutional rights, digital-era protections, and aggressive statutory shifts. For Human Resource managers and business owners, business as usual is no longer a viable legal strategy.

Below are the critical pillars of Kenyan employment law that every employer must master to mitigate risk and foster a productive workplace.

AUTHORS



Caxstone Phelix Kigata



Frankline Michael Otieno



Denis Mutugi



George Nadio

1. The New Era of Statutory Deductions

The most immediate challenge for HR departments in 2026 is the management of payroll. The transition from the old National Health Insurance Fund (NHIF) to the **Social Health Insurance Fund (SHIF)** is now fully operational, requiring a mandatory deduction of **2.75% of gross monthly income**.

Furthermore, as of February 2026, the **National Social Security Fund (NSSF)** has commenced its Year 4 implementation phase. This has seen a substantial hike in contributions:

- i. **Tier 1:** Contributions on earnings up to KSh 9,000.
- ii. **Tier 2:** Contributions on earnings between KSh 9,000 and the new upper limit of **KSh 108,000**

Based on the above, the maximum deduction from an employee has risen to **KSh 6,480**, which the employer must match, bringing the total monthly remittance to **KSh 12,960** per top-earning employee.

The Constitutional Validity of NSSF Deductions (Year 4 – 2026)

As at February 2026, the landscape of social security in Kenya has reached a critical and legally contentious juncture with the implementation of the Year 4 graduated NSSF rates. Under these new guidelines, the lower earnings limit has risen to KSh 9,000 and the upper earnings limit to KSh 108,000, resulting in a combined monthly employer-employee contribution of up to KSh 12,960 for high earners.

Despite this aggressive enforcement by the NSSF, the legal foundation for these deductions remains shrouded in a profound constitutional vacuum. This situation is the result of a protracted judicial battle that began in September 2022, when the Employment and Labour Relations Court (ELRC) declared the NSSF Act of 2013 unconstitutional, null, and void, citing its failure to involve the Senate and its illegal creation of a pension monopoly.

The subsequent legal history has created what many experts characterize as a legal lacuna or a gap in the law. Although the Court of Appeal briefly reinstated the Act in February 2023 by claiming the ELRC lacked the jurisdiction to determine the constitutionality of a statute, the Supreme Court’s landmark ruling in February 2024 fundamentally altered this trajectory. By setting aside the Court of Appeal’s judgment and affirming that the ELRC indeed possessed the jurisdiction to hear the case, the Supreme Court effectively removed the legal shield that was protecting the 2013 Act. Consequently, there is a compelling argument that the original ELRC judgment which invalidated the Act is now the operative position. In the absence of a fresh stay order or a final determination on the merits from the Court of Appeal following the remittal, the continued enforcement of the Act appears to be an exercise in administrative momentum rather than clear constitutional compliance.

NSSF’s current reliance on its February 2024 administrative notice, which suggested that the Supreme Court did not lift the previous appellate orders, is a highly questionable interpretation of judicial hierarchy. Legally, one cannot not lift a judgment that has been entirely set aside by a superior court; once the Court of Appeal’s ruling was nullified, the country technically reverted to the status quo established by the ELRC’s invalidation. Furthermore, the 2025 judicial precedent regarding unfair termination awards reinforces the idea that these deductions are strictly tied to active, legally recognized payroll service, yet NSSF continues to demand these contributions despite a standing (though challenged) declaration of unconstitutionality.

For members of the public and employers, the most prudent course of action is to perform these remittances Under Protest and Without Prejudice. This formal reservation of rights ensures that if the Court of Appeal eventually upholds the ELRC’s findings, these payments can be claimed as unjust enrichment by the Fund, potentially entitling the public to refunds or credits. Additionally, employers are encouraged to utilize the Retirement Benefits Authority’s (RBA) contracting out provisions to redirect Tier II contributions to private, better-managed schemes, thereby limiting the financial exposure to the NSSF during this period of extreme legal uncertainty.

Affordable Housing Levy

It is important to note that the **Affordable Housing Levy (1.5%)** remains a mandatory deduction, though it is now a deductible expense for PAYE purposes, providing slight tax relief for employees.

2. Procedural Fairness in Termination

Suffice, the Kenyan law does not recognize at-will employment. Every termination must be backed by both **substantive justification** and **procedural fairness**. Courts in 2026 are increasingly strict even if an employee is caught in gross misconduct, failing to follow the Right to be Heard can result in an award of up to 12 months' salary in compensation.

Recent 2025 ELRC rulings have emphasized that in cases of redundancy, employers must prove the position is truly superfluous. Simply citing restructuring without a revised organogram or board resolution is no longer sufficient defence.

- i. **The Disciplinary Hearing:** Employers must issue a Show Cause letter, allow the employee to be accompanied by a colleague or union representative, and provide an opportunity for a verbal defence.
- ii. **Redundancy:** This requires a 30-day notice to both the employee and the County Labour Officer, followed by a payment of severance at 15 days' salary for every year worked.

3. The Right to Disconnect and Remote Work

A landmark shift in 2026 is the integration of the **Right to Disconnect**. With the rise of remote and hybrid work, employees are no longer legally obligated to respond to work-related communications (emails, WhatsApp, or calls) outside of official working hours, unless it is a defined emergency.

HR Action

Managers must now draft specific Communication Policies that outline expectations for after-hours contact. Failure to respect this right can lead to constructive dismissal claims or demands for overtime pay.

4. Mandatory Professional Registration (IHRM)

As of **31st July, 2026**, a strict deadline has been set by the **Institute of Human Resource Management (IHRM)**. All HR practitioners in Kenya including foreign practitioners must be registered and licensed. Companies employing unlicensed HR managers face criminal liability and professional sanctions. This move aims to standardize the quality of labour management across the private and public sectors.

5. Disability Inclusion and Diversity

Current regulations now mandate that employers with **20 or more employees** must ensure that at least **5% of their workforce** consists of Persons with Disabilities (PwDs). Compliance involves not just hiring, but also providing reasonable accommodation, such as accessible workstations and specialized equipment.

6. Data Privacy in the Workplace

Under the **Data Protection Act**, HR departments are now considered Data Controllers. The collection of biometric clock-in data, medical records, and even next-of-kin details must be handled with high security. Employers must have a clear Data Retention Policy keeping files only as long as legally necessary and ensuring secure disposal thereafter.

Conclusion

Compliance in 2026 requires more than just a template contract. It demands a proactive approach to legislative updates and a commitment to the constitutional Right to Fair Labor Practices. For employers, the cost of a legal audit today is significantly lower than the cost of an Employment and Labour Relations Court (ELRC) settlement tomorrow.

[More Legal Updates](#)



RESPONSIVE. ACCURATE. INNOVATIVE. NEGOTIATORS.

WWW.WAMAEALLEN.COM

