RULING ON THE IMPLEMENTATION OF THE NSSF ACT AND THE IMPLICATION ON EMPLOYERS

PRESS STATEMENT

This is an update on the proposed implementation of the NSSF Act 2013 following the recent Court of Appeal ruling that reversed the previous ruling of the Employment and Labour Relations Court and declared it null and void.

1. The Federation of Kenya Employers(FKE) has over the years worked hand in hand with the government to implement robust and progressive initiatives to improve the lives of Kenyans. However, FKE calls for caution in instances where far-reaching proposals are made which have negative impact on the capacity and stability of enterprises which form the backbone of Kenya's economy.

2. Employers still hold the view that Pension is an employer-employee issue and touches on benefits that fall within the provisions of the employment contract . Therefore, the Employment and Labour Relations Court has the jurisdiction to determine the issues arising out of this employment issue. This includes the interpretation and declaration on the constitutionality of a statute that regulates Pension benefit and other terms and conditions of employment .

3. In our view, the issue whether the new NSSF Act 2013 satisfied the constitutional threshold of public participation before being enacted into law has not been adequately addressed. This is a fundamental aspect that makes it difficult for employer to support the push to have the law implemented as it is. Social dialogue plays a critical role in the Labour sector and failure to honour it brings disharmony in labor relations in workplaces.

4. Employers appeal to the Government to kick start a social dialogue mechanism for smooth transition from the old Act to the New Act given the far-reaching nature of the changes.

5. Employers had concerns with the NSSF Act 2013 that needed to be addressed. Some of these are;
    a. ***whether the deductions would be effected on basic pay or total emoluments, a 6% deduction effected on an employee's pensionable earnings is a huge amount of statutory deductions if implemented on the total earnings. The Act does not stipulate whether the contributions will be deducted as a percentage of the total wages or on basic pay as is the norm***

with statutory deductions . The confusion may lead to more disputes being filed in Court in light of Section 26 of the Employment Act which provides that better terms shall apply in all cases of calculating terminal benefits.

a. ***Furthermore, this has a direct implication on existing clauses on gratuity or any other employment benefits. It should be made easy for employers with superior Private Pension Schemes*** **to opt out.**

6. The increase in pension contributions will be an expensive undertaking to both employers and employees as it has a direct financial impact on payroll costs and on the employees' take-home pay. We therefore propose a phased-out approach. Otherwise, the proposed scheme runs the risk of destabilizing the very beneficiaries it intended to assist and jeopardizing private pension schemes.

7. Before the Act is implemented, we urge that meaningful stakeholder engagement sessions be held so that both workers and employers have ample time to adjust their budgets to accommodate the sharp increases on their retirement savings. We need to consider the tough economic situation the country is currently facing when the real challenge facing many Kenyans is how to put bread on the table.

FOR & ON BEHALF OF FEDERATION OF KENYA EMPLOYERS