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Employer’s compliance responsibilities in terms of Section 13A and Regulation 33 of the Pension Funds Act 24 of 1956 (“the Act”)

The purpose of this note is to give a summary of the employer's compliance responsibilities in terms of section 13A and regulation 33 of the Act and to identify certain measures the employer can implement to ensure that it complies with the Act.

Section 13A of the Act provides that contributions, payable by an employer participating in a pension fund, must be paid to the fund or administrator within the period prescribed in the Act. The contribution rate will be prescribed in the rules of the fund or the special rules applicable to an employer participating in an umbrella fund such as the FundsAtWork Umbrella Provident and Pension Funds. In addition to this compliance duty, regulation 33 also requires an employer to submit certain prescribed minimum information regarding the contributions paid to the fund or administrator.

At the start of its participation in a retirement fund an employer should be informed of its compliance responsibilities in terms of the Act. It then becomes the employer’s duty to ensure compliance with section 13A(1) and regulation 33 of the Act. Any failure to comply with these compliance responsibilities will result in the employer being liable for any penalty imposed or fine in terms of the Act or any other relevant legislation. Momentum Group Limited is an approved benefit administrator for various pension funds. Momentum is also the administering insurer of the FundsAtWork Umbrella Funds. In the case of an underwritten fund such as the FundsAtWork Umbrella Funds the contributions must be deposited in the administering insurer’s bank account which is specifically operated for the fund.

When is contributions payable by the employer to the fund or administrator?

The contributions payable must reflect in the fund or administrator’s bank account by the latest on the 7th day following the end of the month for which contributions are due.

If a cheque or cash is delivered to the fund or administrator’s offices on the 7th day following the end of the month for which contributions are due, but after a time that it can be deposited in the bank account, it will be regarded as non-compliance with the Act. The contributions must be made timeously to ensure that the fund or administrator has sufficient time to deposit the contributions in its bank account.

Are there any consequences if an employer fails to pay contributions timeously and regularly?

Penalty interest payable in terms of the Act

An employer will be liable to pay penalty interest on the unpaid contributions. The Registrar of Pension Funds prescribes the rate at which the penalty interest payable should be calculated. The rate used to calculate the penalty interest dependents on whether the unpaid contributions are greater or less than R10 000.

The formulae are as follows:

Unpaid contributions not exceeding R10 000.00	Unpaid contributions exceeding R10 000.00
Repo rate + 1/3 thereof + 11% The penalty interest rate is capped at 23%	Repo rate + 1/3 thereof + 8% The penalty interest rate is capped at 20%

The penalty interest payable is calculated from the 1st day of the month following the period for which the contributions were payable until the date that it was received.

Example 1

Contribution month starts on 1 June 2011 and ends on 30 June 2011. The contributions for June 2011 is payable by 7 July 2011. However, the employer only deposited the contributions in the fund or administrator's bank account on 9 July 2011. The contributions were not received within the seven day period. The employer is liable for penalty interest.

The penalty interest will be calculated from 1 July 2011 to 9 July 2011.

The penalty interest payable represents investment return for the fund. The rules of the fund will determine how the penalty interest will be applied.

Administrative penalties imposed by the Enforcement Committee established in terms of the Financial Services Board Act 97 of 1990

The Registrar can refer an employer's failure to comply with its duties in terms of the Act to the Enforcement Committee. The Enforcement Committee may fine the employer for failing to comply with the Act. The fine, which is in addition to the penalty interest, will have to be paid to the Registrar.

Additional insurance benefits provided by the fund in terms of the rules

Certain specified approved insurance benefits (i.e. death and disability benefits) provided by the fund might be suspended because of non-payment of premiums. The cost for providing the insurance benefits is generally included in the contributions payable by the employer. The suspension of the cover might result in the insurer rejecting a claim if it occurred during the period where contributions have not been paid. The insurer's refusal to pay the insurance benefit might result in the fund not being in a position to pay the member a benefit which he might be entitled to in terms of the rules. This might lead to the member or beneficiary lodging a complaint with the Pension Funds Adjudicator.

When must late payment interest be paid to the fund or the administrator?

The interest is payable by no later than the end of the 2nd month following the month for which the contributions due was not paid.

Example

In the previous example, the penalty interest was calculated with reference to the contributions payable for June 2011. The penalty interest will be payable by the employer to the fund by the end of August 2011.

If the penalty interest is not paid after 2 months it will attract further interest until the date that it is paid.

When must the minimum information schedules be submitted to the fund or its administrator?

The minimum information schedules must accompany the payment of the contributions. If it does not then it must be submitted no later than 15 days after the end of the month for which contributions were paid. The Act stipulates the minimum information that should be submitted.

What are the consequences if the employer fails to submit the minimum information schedules timeously?

If the minimum information schedules are not submitted the fund's administrator will not be able to reconcile the data with the contributions received. This may delay the investment of the contributions and might result in the members not benefiting from the returns achieved by the selected investment portfolios.

How are days for purposes of section 13A and regulation 33 calculated?

All references to days are calendar days, which include weekends. However, when calculating a period prescribed in the Act the first day will be excluded and the last day included unless it falls on a Sunday or recognized public holiday, in which event the period will end on the next business day including a Saturday. The same will apply where the due date for the submission of the minimum information schedules falls on a Sunday or recognized public holiday.

Example

Contribution month starts on 1 June 2011 and ends 30 June 2011. The 7 day period for payment of the June 2011 contribution will end on 7 July 2011. Taking into account the method for calculating days, the last day of the previous month will be excluded meaning the counting for the 7 day period will commence from 1 July 2011 and end on 7 July 2011 because it does not fall on a Sunday or recognized public holiday. The result being that the contributions will have to be deposited in the fund or administrator's bank account by 7 July 2011.

The minimum information, if it does not accompany the payment, must be submitted to the administrator for the latest by 15 July 2011 because it does not fall on a Sunday or recognized public holiday.

If the due date for payment of the contributions happened to fall on a Sunday and provided the Monday is not a public holiday, the contributions will have to be deposited for the latest in the fund or administrator's bank account by Monday, 11 July 2011.

If the due date for submission of the minimum information schedules falls on a Sunday and the Monday happens to be a recognized public holiday, the schedules will only have to be submitted to the fund or administrator for the latest by Tuesday, 19 July 2011.

What are the responsibilities of the Board of Trustees if the employer fails to comply with its duties in terms of the Act?

The Board of Trustees must in terms of the Act:

1. Inform the affected members of the employer's failure to pay the contributions to the fund timeously and regularly;
2. Report the employer to the Registrar if the failure to pay contributions continues for 90 consecutive days and inform the Directorate of Public Prosecutions. The Registrar may, at its discretion, inform the South African Revenue Services; and
3. In terms of the rules of the FundsAtWork Umbrella Funds the Trustees may terminate an employer's participation in the fund if the employer has failed to pay contributions for 3 consecutive months.

What measures can the employer implement to ensure compliance with the Act?

1. Pay contributions to the fund by the 5th day of the end of the period for which it is due to ensure that the contributions is received in the fund or administrator's bank account by the 7th day after the period; and
2. Submit the minimum information schedules in the prescribed format to the fund or administrator at the same time when contributions are paid or by the 10th day after the end of the period for which contributions were paid.

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