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LEGAL UPDATE 1/2010

TERMINATION OF SERVICE AND THE IMPACT ON DISABILITY BENEFITS

Momentum is often faced with the question of whether a disability income benefit claimant can continue to be a member of the employer's retirement fund if the employment relationship is terminated.

Termination of the service of a disabled person by an employer is governed by law. The employer needs to follow due process in order to terminate the employment contract. The Labour Relations Act, 1995, by means of its Code of Good Practice (Section 10 of Schedule 8), codifies a process relating to an employee's incapacity due to ill health or injury and gives the legal basis for the employment relationship to be terminated. Once the termination process has been followed and adaptation of duties or alternative employment is not possible, an employee's service may be terminated by giving notice in terms of the contract of employment.

Legislation does not prohibit employees who are in receipt of a disability income benefit and whose employment contracts have been terminated, to stay on as members of the fund, provided that the rules of the fund allow for this.

The General Rules of the FundsAtWork Umbrella Pension Fund and FundsAtWork Umbrella Provident Fund provide for a member who is in receipt of a disability income benefit to be deemed to remain in employment (for purposes of retirement) and remain a member of the fund until the earliest of their withdrawal or retirement or the last day of the month in which they become 65 years old. The member and the employer will therefore still be obliged to contribute to the fund at the prescribed contribution rates and the member will remain covered for other insurance benefits as long as the insurance premiums are paid until the member's service is terminated due to withdrawal or retirement or the member reaches the age of 65.

Momentum believes that employers should choose disability products wisely, taking cognizance of the future needs of both the employer and the employee. This will prevent the need to simply terminate the employment contract when an employee is admitted as a disability income claimant as to do so will mean that the employee will not be eligible for the group insurance and other benefits offered by the fund until the employee's retirement date. Momentum offers a variety of group disability products which the employer can choose from in accordance with their benefit requirements and the wellbeing of their employees.

The following group disability products are available:

- FlexiCovers permanent and total disability (PTD)

A lump sum is paid to the member if they are totally and permanently disabled in terms of the disability policy.

The member's membership of the fund will cease on receipt of a PTD benefit.

This type of benefit is ideally suited to the employer who intends to terminate the employment contract of an employee immediately after the employee becomes permanently disabled and to provide the employee with a lump sum benefit.

- FlexiCovers permanent health insurance (PHI)

A monthly income benefit is paid if the member is disabled in terms of the disability policy.

The monthly income benefit is payable until the member is no longer disabled (as assessed by Momentum), retires, dies, reaches the termination date as specified in the policy or lives outside South Africa for more than 12 consecutive months (unless a prior arrangement is made with Momentum).

A member who is in receipt of a PHI benefit is deemed to remain in employment and will remain a member of the fund until the earliest of their withdrawal, retirement or the last day of the month in which they become 65 years old.

This type of benefit is ideally suited to an employer who wants to provide the employee with a monthly income benefit. The PHI benefit is usually paid as a reduced percentage of salary in order to encourage the employee to return to work.

- FlexiCovers disability income benefit (DIB)

An initial monthly income benefit is paid for 12 months from the date of disability. The initial benefit could either be a partial or total disability benefit in terms of the disability policy. After the initial 12 month period either a partial disability benefit or a total disability benefit is paid in terms of the disability policy.

The monthly income benefit is paid until the member is no longer disabled (as assessed by Momentum), retires, dies, reaches the termination date as specified in the policy, lives outside South Africa for more than 12 consecutive months (unless a prior arrangement is made with Momentum) or fails to reasonably comply with treatment for the rehabilitation they have agreed to undergo as the DIB benefit includes a comprehensive disability and rehabilitation service.

A member who is in receipt of a DIB benefit is deemed to remain in employment and will remain a member of the fund until the earliest of their withdrawal, retirement or the last day of the month in which they become 65 years old.

This type of benefit is ideally suited to an employer who wants to provide the employee with a monthly income benefit and a rehabilitation programme. The DIB benefit is usually paid as a percentage of salary and includes a comprehensive disability and rehabilitation service in order to encourage the employee to return to work.

- FlexiCovers capital income provider benefit (CIP)

FlexiCovers capital income provider is a combination of a monthly income and a lump sum benefit. When a member becomes disabled, a monthly income is paid over an initial 24 month period in terms of the disability policy. The income benefit is discontinued after the initial period. A lump sum benefit is paid if the member is then found to be totally and permanently disabled in terms of the disability policy.

The member is deemed to remain in employment and will remain a member of the fund during the initial 24 month period. The member's membership of the fund will cease on receipt of the lump sum benefit.

This type of benefit is ideally suited to an employer who wants to maintain the employment relationship with the employee for a 24 month period after the employee is disabled in order to allow the employee an opportunity to recover and return to work. If the employee does not recover, they will receive a lump sum benefit and the employer will thereafter terminate the employment relationship.

Employers are therefore encouraged to reconsider the appropriateness of their disability products to ensure that they have covered their employees under a product which is in line with their employee benefit requirements.

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