



RETIREMENT FUND CONTRIBUTIONS: RECENT COURT RULING

Section 13A of the Pension Funds Act imposes a statutory obligation on employers to pay the retirement fund contributions they deduct from employees in terms of the fund's rules.

There are two parts to the monthly contribution process:

- The actual contributions due and payable to the fund, and
- The supporting information schedule that accompanies the deposit into the fund's bank account. (In terms of Conduct Standard 1 of 2022: Requirements related to the payment of pension fund contributions).

The company has 7 days from month end to pay the contributions into the fund's bank account, in other words, February's contributions must be paid over to the fund by 7 March, at the latest. If contributions are received later than the 7th, then late payment interest is due. (The date from which late payment interest is calculated is viewed by the FSCA as starting on the day after they were due – in other words, late payment interest is calculated from the 8th.)

The implementation of the two-pot retirement system in September 2024, spotlighted the seriousness of arrear

contributions - given that several members could not access their full savings pot entitlements because their employers had not paid over fund contributions. In fact, as at November 2024, 7 770 employers in the public and private sectors had been reported for failing to make timely pension contributions, with 36% of these cases occurring in the private security sector. The latest data indicated that the total arrear contributions amount to R5.2 billion.

WHO IS LIABLE FOR THESE CONTRIBUTIONS?

What many employers don't know is that Section 13A(8) of the Act stipulates that when the employer fails to pay the contributions, the individuals directly involved in managing the entity's financial affairs shall be held personally liable for payment of the contributions, for example, the board of directors or the members of a CC.

In Section 13A(9) the Act requires that every retirement fund must request, in writing, the employer to advise of any person (or persons) who are so personally liable in terms of subsection (8). If the employer doesn't provide this information, then all the directors or members of a CC "shall be personally liable".

WHAT THEN CONSTITUTES BEING “DIRECTLY INVOLVED IN MANAGING THE ENTITY’S FINANCIAL AFFAIRS”?

In January 2025, the High Court of the Western Cape ruled on this in the matter of *Engineering Industries Pension Fund and Another v Installair (Pty) Ltd and Others (1633/2023) [2025] ZAWCHC 8*.

In this case the second respondent argued that she could not be held personally liable for the outstanding contributions because, although listed as a director, she “*was not involved in the affairs of the employer and an order should not be granted against her*”.

In his ruling, the Judge found that this assertion could not stand. In summary, he commented that she was a director of the company and had to accept the responsibilities that come with it. He also pointed to the fact that she is listed as a director on the Second Respondent's own CIPRO search.

Further, the Judge commented: “*I would be failing in my constitutional duty if an order is not granted to the vulnerable groups. I reiterate, my attention is drawn to an article in the media and to the high interest in withdrawal claims from the two-pot retirement system which has exposed the failure of employers to pay pension contributions/s to funds who administer these contributions as envisaged under these unfortunate circumstances.*”

There is no denying it, directors have clear personal liability when it comes to failure to pay over retirement fund contributions. Whether a company has its own standalone fund or participates in an umbrella fund, those who manage the financial affairs of the business need to make sure that the legal requirements are adhered to, or face personal liability.