



LEGAL & INDUSTRY UPDATE – FEBRUARY 2026

In this publication we look at:

- The withdrawal of the S34A Basic Conditions of Employment Act exemption regarding retirement fund contributions
- Pension Funds Adjudicator case where the Deputy Pension Funds Adjudicator rules against an administrator for failing to trace a beneficiary, leading to depletion of the fund benefit by administration fees.

THE WITHDRAWAL OF THE S34A BASIC CONDITIONS OF EMPLOYMENT ACT EXEMPTION REGARDING RETIREMENT FUND CONTRIBUTIONS

On 13 January 2026, the Minister of Employment and Labour withdrew a 2003 variation notice. This notice had exempted employers and employees from section 34A of the Basic Conditions of Employment Act, 1997 (BCEA) regarding retirement fund contributions under the Pension Funds Act, 1956 (PFA). For roughly 12 years, compliance relied solely on PFA enforcement. The withdrawal now activates BCEA oversight as well.

KEY IMPLICATIONS

While seemingly minor, this change exposes non-compliant employers to dual regulatory enforcement. Failure to remit contributions promptly - or at all - invites liability under both statutes, heightening risks for businesses.

NOTE THE DIFFERENCE IN CONTRIBUTION PAYMENT DEADLINE

Section 34A of the BCEA governs payments to benefit funds, including retirement funds, in two cases: (i) employee deductions from remuneration, due within seven days of deduction; and (ii) employer contributions not from remuneration, due within seven days of the contribution period's end.

In contrast, section 13A of the PFA mandates that all contributions (employee and employer) must reach the fund within seven days after month-end. For employee deductions early in the month, the BCEA imposes an earlier deadline than the PFA's month-end requirement. Employer contributions now align closely under both pieces of legislation. Courts interpret overlapping laws harmoniously, allowing compliance with the stricter timeline first, followed by month-end payment.

Important note:

In terms of the withdrawal of this exemption in the BCEA, retirement fund contributions deducted from employees' remuneration must be paid to the fund within 7 days from the date of deduction.

PFA LIABILITY

Section 13A(8) of the PFA imposes personal liability for the late payment of contributions / submission of the data schedules on those who are in charge of contribution payments. This could be every director who is regularly involved in the management of the employer's overall financial affairs. Funds must request the details of such person at the employer and if this is not provided all directors are liable for arrears and penalty interest. Non-compliance is a criminal offence under section 37 of the PFA, with penalties up to a fine of R10 million, 10 years' imprisonment, or both. As of March 2025, over 15,000 employers breached this requirement, with 5,000 publicly named for substantial arrears.

BCEA ENFORCEMENT

The Department of Employment and Labour (DoEL) aims to curb violations via labour inspectors, who may secure undertakings, issue compliance orders with fines (R300–R1,500 per employee), or enforce via arbitration. Though fines are modest, they apply swiftly alongside PFA measures.

RECOMMENDED ACTIONS

Amid DoEL's focus on serial offenders, employers should:

- Avoid premature deductions.
- Align processes to the earliest deadline.
- Schedule deductions near month-end, pay within seven days.
- Ensure timely remittances and records.
- Prepare inspection protocols and staff training.

Employers must act swiftly to harmonize their payroll processes with the stricter BCEA timelines, mitigating dual enforcement risks and safeguarding against severe PFA penalties in this newly intensified regulatory landscape.

PENSION FUNDS ADJUDICATOR RULES THAT ADMINISTRATOR LIABLE FOR FAILING TO TRACE BENEFICIARY

In December 2025, a pension fund administrator was ruled against by the Deputy Pension Funds Adjudicator for failing to adequately trace a retirement fund beneficiary, resulting in the depletion of the benefit due by administrative fees. This resulted in financial loss to the beneficiary.

THE FACTS OF THE CASE

- The administrator received a transferred benefit value but did not use available, cost-effective tracing methods (e.g., R30 fee).
- Breached fund rule 27.1.3, mandating the board to take *all reasonable steps* to trace members or beneficiaries proactively.
- Allowed monthly administration fees to erode the full benefit amount (R1,069.51), leaving nothing payable.

RULING AND REMEDIES

- The Deputy Pension Funds Adjudicator stated that the administrator's failure to attempt to trace the member, caused the loss, as tracing would have enabled timely notification and payment of the claim.
- He ordered repayment of the full depleted amount (R1,069.51) plus interest to the beneficiary.
- Dismissed complaints against the receiving fund, verifying proper contribution remittances under section 13A and correct withdrawal benefit payment.

IMPLICATIONS FOR ADMINISTRATORS

It is vital that retirement fund administrators prioritise proactive tracing duties. Non-compliance with this risks personal liability, financial restitution and reputational damage. In summary, retirement funds must balance admin fees against legal obligations to preserve unclaimed benefits.