

What happens if contributions are not paid to the fund within seven days of the end of the month?

Section 13A of the Pension Funds Act, which deals with the payment of contributions to pension funds, has been amended and the revised section 13A was published in the Government Gazette on the 2nd of April 2001. The revised section 13A requires employers to pay over fund contributions to administrators within seven days of the end of the month for which they are due. Accompanying the contributions (or within 15 days of month-end) must be an Initial Contribution Statement which will contain specific information, e.g. the fund's name and registration number, employer's details and each member's details regarding the contribution deducted and paid over.

Thereafter a Subsequent Contribution Statement must be supplied which will contain the same information as mentioned above or a reconciliation with the statement of the previous period showing, for example, changes in membership or member emoluments, etc.

A contact person at the administrator will report to the Principal Officer or the fund's monitoring person, who will monitor this compliance for the fund, within 15 days of the seven day period if the contributions have not been received in full or where there is a discrepancy of more than 2.5% of the total contributions payable for that period.

The Principal Officer or the fund's monitoring person will then have to submit a written report to the fund's trustees within seven days of receipt of the report of the employer's failure to furnish the fund with the Initial Contribution Statement and the Subsequent Contribution Statement and to pay the contributions to the administrator within the prescribed seven day period.

The trustees must then inform the members of the fund as well as the Registrar of Pension Funds. If this failure to pay the full contributions continue for 90 days, the Principal Officer or the monitoring person must report the matter in detail, within 14 days of the expiration of the 90 day period, to the Registrar of Pension Funds.

The Registrar has the discretion to inform the Commissioner for the South African Revenue Service of any non-compliance with section 13A of the Pension Funds Act.

To make matters worse, compound interest will be payable on late payments or unpaid amounts of contributions at the maximum rate that is applicable. The interest will constitute investment income for the fund. In addition, the employer and/or the trustees may be subject to administrative penalties.

Where employees are required to make contributions, non-payment of such contributions is considered a criminal offence and reportable to an Enforcement unit of the FSB.

Section 13A further provides that if the employer wishes to amend the rules of the fund to reduce, suspend or discontinue contributions, it cannot do so with retrospective effect and it will still be liable for the contributions before the date the resolution was taken to amend the rules.