



BEST PRACTICE GUIDE

TEMPORARY RELIEF FROM MAKING PAYMENT OF RETIREMENT FUND CONTRIBUTIONS AND RISK PREMIUMS

**MAY
2020**

NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

P.O. BOX 1775, SAXONWOLD, 2132 | 14A JELlicoe AVENUE, ROSEBANK 2196
+27(0) 11 328 4200 | WWW.NEDLAC.ORG.ZA



This guide comprises six sections: introduction, the identified best practices, the law related to occupational retirement funds, relief options, frequently asked questions and additional matter including pension backed home loans and taxation.

CONTENTS

PAGE

Section 1:	Introduction	2
Section 2	Identified Best Practices	3
Section 3:	The Law	4
Section 4:	Options on The Payment of Contributions Due to Financial Distress Caused by the Covid-19 Pandemic	5
	Option 1: No Change to Contribution Rate	6
	Option 2: Reduced Pensionable Salaries	6
	Option 3: Temporary Absence	7
	Option 4: Reduced Contribution for a Specified Period	8
	Option 5: Stop Contribution for a Specified Period	9
	Option 6: Deferment of Contributions for a Specified Period	10
	Option 7: Terminate Participation in the Fund	11
Section 5:	Frequently Asked Questions	12
Section 6:	Additional Considerations	14
	1. Pension Backed Home Loans	14
	2. Taxation and Retirement Benefits	14
	2.1 Taxation and Retirement Benefits	14
Appendix		15



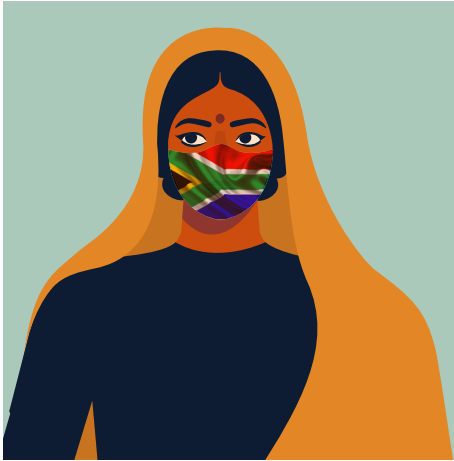
STATEMENT

This best practice guide is not a standard or regulation, and it creates no new legal obligations, nor does it change any existing retirement fund standard or regulation. The guide is, informational in content, and is intended to assist employers, fund members, employees and their representatives to effectively implement relief measures in respect of the payment of retirement fund contributions.



SECTION 1: INTRODUCTION

SAVING FOR RETIREMENT is one of the most important goals for everyone, these savings represent deferred wage of employees. Saving early and as often as possible is the key to securing a decent and sustainable income during retirement.



COVID-19 temporarily disrupted some employers and employees' ability to contribute towards retirement savings due to financial distress. Therefore, the Financial Services Conduct Authority (FSCA) issued a communication that retirement funds may make rule amendments to accommodate agreements between employer and employees to provide temporary relief from making payment of contributions, where there is proof that the employer is in financial distress.

The purpose of this Best Practice Guide: Temporary Relief from Making Payment of Retirement Fund Contributions and Risk Premiums, is to assist employers, fund members and employees who are unable to pay the full, partial or any contributions to retirement funds to:

- Make smart choices to lessen the impact on their lives and livelihoods;
- Facilitate consensus seeking solutions where possible between employers and representative trade unions or bargaining councils, where they exist;
- Achieve the best possible outcomes for all stakeholders.



The retirement industry is regulated to ensure that even the most vulnerable beneficiaries are protected. Occupational retirement arrangements form an important part of employees' remuneration. The direct link between employment and membership of occupational retirement funds are underpinned by the role that employment agreements play in the contributions paid and received from these funds.

During the current COVID-19 pandemic the best possible outcome would be that employees' income and benefits are unaffected. However, due to the national lockdown some employers have been forced to suspend operations. The consequential loss of operating income has been recognised as a problem by government and other NEDLAC social partners and calls for a social compact to protect retirement fund members' benefits. Reputation management is crucial during this time to ensure that all stakeholders build and maintain trust in each other and the retirement sector as a whole. Collective action based on best practices are most likely the best tools available in achieving this outcome. Numerous measures have been put in place to assist employers where income and cash flow has been impacted.



Occupational retirement funds implement the agreements reached between employers and employees as far as retirement and related benefits are concerned. The board of trustees of occupational retirement funds need to ensure that they comply with all legal requirements at all times. It goes without saying that the same applies to employers and workers. It is in light of this that all engagements need to be of a bona fide nature.

SECTION 2: IDENTIFIED BEST PRACTICES

1. Understands the options available where temporary changes to retirement contributions and risk benefits need to be made due to financial distress.
2. Seek consensus with employee/workers' representatives and other stakeholders as far as possible on any changes to retirement contributions and risk benefits.
3. Continue to adhere to and honour collective bargaining agreements and communication with representative unions where applicable.
4. Clearly communicate any temporary changes to retirement contributions and risk benefits to employees and representative unions where applicable.
5. Ensure that the changes required are communicated to the fund and its administrator and the Regulator (FSCA).
6. Changes to fund benefits can only be made if the rules of the fund allow for these changes or once a rule amendment to accommodate the changes have been registered and approved by the FSCA. The rule amendment approved by the board of trustees must be submitted to the FSCA on an urgent basis to avoid any prejudice to members,
7. Monitor and review the temporary changes, as and when the situation requires it. Adherence to the best practice process as set out in points 1 to 6 above is encouraged.
8. These arrangements are for a limited period and linked directly to the COVID-19 pandemic, at present this is for a three-month period which may change as the impact of the pandemic becomes clearer.



“ Failing to adhere to the timelines could result in both a fine and/ or imprisonment for the persons responsible for making the retirement fund contributions. Over and above this there is also interest added to contributions paid after the deadline”.



SECTION 3: THE LAW

THE FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA) has recognised the potential impact of the COVID-19 pandemic on the South African economy and how this may impact on an employer’s ability to pay contributions to pension and provident funds. For this reason, the FSCA has issued a communication on the payment of contributions during this time and provided guidance on the options available to employers who need to review the contributions paid to the retirement fund in which they participate. A copy of FSCA Communication 11 of 2020 (RF) is attached for your information.

Section 13A of the Pension Funds Act: Sets Deadline for Employers to Pay Pension and Provident Fund Contributions

The Pension Funds Act (the Act) sets out when contributions need to be paid by employers. The timeline set for payment are not negotiable and are expressly recorded in section 13A of the Act. There is a further obligation on employers to also provide information related to the contribution payments.

Contributions and investment returns, minus risk premiums and costs of administration, form the basis of member benefits and solvency of a fund. Where contributions are not paid on time or the fund is unable to allocate contributions because there is not enough information to do this, member benefits could be negatively affected.

It is for this reason that laws have been developed to protect member rights. In addition to the deadlines, each employer also needs to appoint a person who is responsible for ensuring that retirement fund contributions are paid within the set time limits.

Failing to adhere to the timelines could result in both a fine and /or imprisonment for the persons responsible for making the retirement fund contributions. Over and above this there is also interest added to contributions paid after the deadline.

It is for this reason that the rules need to make provision for the suspension of contributions. In the next section we set out the options that could be available to employers and which employees/members should be aware of.



SECTION 4: OPTIONS ON THE PAYMENT OF CONTRIBUTIONS DUE TO FINANCIAL DISTRESS CAUSED BY THE COVID-19 PANDEMIC

The following relief measures may be considered during the COVID 19 period where employers are in financial distress.

OPTION 1: NO CHANGE TO CONTRIBUTION RATES

OPTION 1	EXPLANATION / DESCRIPTION	ACTION REQUIRED
Continue with No Change to Contribution Rate	Continue with No Change to Contribution Rate.	Continue with normal monthly processes.

OPTION 2: REDUCE PENSIONABLE SALARIES

OPTION 2	EXPLANATION / DESCRIPTION	ACTION REQUIRED
Reduce Pensionable Salaries	<p>a) Reduce pensionable salaries in consultation with representative unions through collective bargaining where employees work reduced hours and earn reduced salaries based on the hours worked.</p> <p>b) Any employer without representative unions or collective bargaining structures can reduce pensionable salaries where employees work reduced hours and earn reduced salaries based on the hours worked in terms of the employment contract.</p> <p>c) In terms of the applicable labour legislation there can be no unilateral amendments to employment contracts or collective agreements.</p> <p>d) Employers must, where possible, continue to pay full risk benefit premiums based on salary prior to adjustment.</p> <p>e) Employers must, where possible, continue to pay fund expenses.</p>	<p>a) The employer must provide proof that it is in distress as a result of the Covid-19 pandemic.</p> <p>b) The payment to the fund will be reduced retirement contribution (due to the reduced pensionable salary) plus the payment for the full risk premiums based on salary prior to adjustment and fund expenses.</p> <p>c) Employers must follow agreed upon consultative processes as set in the collective agreements.</p> <p>d) Employers must in line with collective agreement, where applicable, inform employees of the reasons for the changes, the nature of the changes and the period for which the changes will apply.</p> <p>e) It would be prudent for rules to be amended so as to only permit the reduction in intervals of lockdown plus three months, that is, requiring on going consideration by the trustees of the existence of financial hardship.</p> <p>f) Where the risk benefit salary is to be decreased as a result of the decreased or nil contribution this must be specifically communicated to members due regard to any collective agreements where applicable.</p> <p>g) Risk benefits provided outside of the retirement fund are to continue unless otherwise agreed with employees.</p> <p>h) The employer contribution schedule must be updated to show the reduced pensionable salaries and show the risk salary separately.</p> <p>i) Employers must provide Funds with copies of members communications due regard to any collective agreements where applicable.</p>

OPTION 3: TEMPORARY ABSENCE

OPTION 3	EXPLANATION / DESCRIPTION	ACTION REQUIRED
Temporary Absence	<ul style="list-style-type: none"> a) Suspend Contributions where employees are temporarily absent from work. b) Retirement contributions can be suspended for a period as set out in the rules. c) In terms of the applicable labour legislation there can be no unilateral amendments to employment contracts or collective agreements. d) Employers must, where possible, continue to pay full risk benefit premiums based on salary prior to adjustment. e) Employers must, where possible, continue to pay fund expenses. 	<ul style="list-style-type: none"> a) The employer must provide proof that it is in distress as a result of the Covid-19 pandemic. b) Contributions to the fund will be suspended as set out in the rules. c) Continue the payment of the full risk premiums based on salary prior to adjustment and fund expenses. d) Employers must follow agreed upon consultative processes as set in the collective agreements. e) Employers must in line with collective agreement, where applicable, inform employees of the reasons for the changes, the nature of the changes and the period for which the changes will apply. f) It would be prudent for rules to be amended so as to only permit the reduction in intervals of lockdown plus three months, that is, requiring on going consideration by the trustees of the existence of financial hardship. g) Where the risk benefit salary is to be decreased as a result of the decreased or nil contribution this must be specifically communicated to members due regard to any collective agreements where applicable. h) Risk benefits provided outside of the retirement fund are to continue unless otherwise agreed with employees. i) The employer contribution schedule must be updated to show the non-payment of contributions and show the risk salary separately. j) Employers must provide Funds with copies of members communications due regard to any collective agreements where applicable.

OPTION 4: REDUCE CONTRIBUTIONS FOR A SPECIFIED PERIOD

OPTION 4	EXPLANATION / DESCRIPTION	ACTION REQUIRED
<p>Reduce Contributions for a Specified Period</p>	<p>a) Reduce employer and/ or employee retirement contributions for a period. This allows the employer and members collectively to reduce contributions to a level that is more affordable.</p> <p>b) In terms of the applicable labour legislation there can be no unilateral amendments to employment contracts or collective agreements.</p> <p>c) Employers must, where possible, continue to pay full risk benefit premiums based on salary prior to adjustment.</p> <p>d) Employers must, where possible, continue to pay fund expenses. The employer must provide proof that it is in distress as a result of the Covid-19 pandemic.</p> <p>e) Contributions to the fund will be reduced for a specific period as set out in the rules.</p> <p>f) Continue the payment of the full risk premiums based on salary prior to adjustment and fund expenses.</p>	<p>a) The employer must provide proof that it is in distress as a result of the Covid-19 pandemic.</p> <p>b) Contributions to the fund will be reduced for a specific period as set out in the rules.</p> <p>c) Continue the payment of the full risk premiums based on salary prior to adjustment and fund expenses.</p> <p>d) Employers must follow agreed upon consultative processes as set in the collective agreements.</p> <p>e) Employers must in line with collective agreement, where applicable, inform employees of the reasons for the changes, the nature of the changes and the period for which the changes will apply.</p> <p>f) It would be prudent for rules to be amended so as to only permit the reduction in intervals of lockdown plus three months, that is, requiring on going consideration by the trustees of the existence of financial hardship.</p> <p>g) Where the risk benefit salary is to be decreased as a result of the decreased or nil contribution this must be specifically communicated to members due regard to any collective agreements where applicable.</p> <p>h) Risk benefits provided outside of the retirement fund are to continue unless otherwise agreed with employees.</p> <p>i) The employer contribution schedule must be updated to show the reduced contributions payments and show the risk salary separately.</p> <p>j) Employers must provide Funds with copies of members communications due regard to any collective agreements where applicable.</p>

OPTION 5: STOP CONTRIBUTIONS FOR A SPECIFIED PERIOD

OPTION 5	EXPLANATION / DESCRIPTION	ACTION REQUIRED
<p>Stop Contributions for a Specified Period</p>	<ul style="list-style-type: none"> a) Stop future employer and/ or member contributions for a maximum period specified in the rules. This will allow for a break in the payment of the contributions for a period as agreed with the fund, no contributions, interest or penalties to be paid at the end of the period. b) In terms of the applicable labour legislation there can be no unilateral amendments to employment contracts or collective agreements. c) Employers must, where possible, continue to pay full risk benefit premiums based on salary prior to adjustment. d) Employers must, where possible, continue to pay fund expenses. 	<ul style="list-style-type: none"> a) The employer must provide proof that it is in distress as a result of the Covid-19 pandemic. b) Contributions to the fund will be stopped for a specific period as set out in the rules. c) Continue the payment of the full risk premiums based on salary prior to adjustment and fund expenses. d) Employers must follow agreed upon consultative processes as set in the collective agreements. e) Employers must in line with collective agreement, where applicable, inform employees of the reasons for the changes, the nature of the changes and the period for which the changes will apply. f) It would be prudent for rules to be amended so as to only permit the reduction in intervals during the National State of Disaster plus three months, that is, requiring on going consideration by the trustees of the existence of financial hardship. g) Where the risk benefit salary is to be decreased as a result of the decreased or nil contribution this must be specifically communicated to members due regard to any collective agreements where applicable. h) Risk benefits provided outside of the retirement fund are to continue unless otherwise agreed with employees. i) The employer contribution schedule must be updated to show the members for which the contributions have been stopped and show the risk salary separately. j) Employers must provide Funds with copies of members communications due regard to any collective agreements where applicable.

OPTION 6: DEFERMENT OF CONTRIBUTIONS FOR A SPECIFIED PERIOD (DEFERRED CONTRIBUTION PAYMENTS)

OPTION 6	EXPLANATION / DESCRIPTION	ACTION REQUIRED
<p>Deferment of contribution for a specified period (deferred contribution payments)</p>	<p>a) Deferment of future employer and/ or member contributions for a maximum period specified in the rules. This will allow for a break in the payment and deferment of the contributions for a period as agreed with the fund.</p> <p>b) After the suspension period the outstanding contributions with interest is payable to the fund.</p> <p>c) In terms of the applicable labour legislation there can be no unilateral amendments to employment contracts or collective agreements.</p> <p>d) Employers must, where possible, continue to pay full risk benefit premiums based on salary prior to adjustment.</p> <p>e) Employers must, where possible, continue to pay fund expenses</p>	<p>a) The employer must provide proof that it is in distress as a result of the Covid-19 pandemic.</p> <p>b) Contributions to the fund will be deferred for a specific period as set out in the rules.</p> <p>c) After the suspension period the outstanding contributions with interest is payable to the fund.</p> <p>d) Continue the payment of the full risk premiums based on salary prior to adjustment and fund expenses.</p> <p>e) Employers must follow agreed upon consultative processes as set in the collective agreements.</p> <p>f) Employers must in line with collective agreement, where applicable, inform employees of the reasons for the changes, the nature of the changes and the period for which the changes will apply.</p> <p>g) It would be prudent for rules to be amended so as to only permit the reduction in intervals of lockdown plus three months, that is, requiring on going consideration by the trustees of the existence of financial hardship.</p> <p>h) Where the risk benefit salary is to be decreased as a result of the decreased or nil contribution this must be specifically communicated to members due regard to any collective agreements where applicable.</p> <p>i) Risk benefits provided outside of the retirement fund are to continue unless otherwise agreed with employees.</p> <p>j) The employer contribution schedule must be updated to show the deferred contributions and show the risk salary separately.</p> <p>k) Employers must provide Funds with copies of members communications due regard to any collective agreements where applicable.</p>

OPTION 7: TERMINATE PARTICIPATION IN THE FUND

OPTION 7	EXPLANATION / DESCRIPTION	ACTION REQUIRED
Terminate participation in the fund	<p>a) Terminate participation and no further contributions will be payable. A liquidation process will be required as set out in the rules of the fund and the law. The liquidation process is slow and access to benefits limited during the process.</p> <p>b) Retain the insured benefits provided as part of your benefit offering</p>	<p>a) Employer is required to provide the fund with a formal communication advising that it wishes to terminate participation in the fund and state the date from when this termination is effective, this can only be a future date. This must be done in consultation with trade unions recognized at that work place or workers representatives.</p> <p>b) The notice and subsequent termination will follow the process as set out in the rules and Act</p>



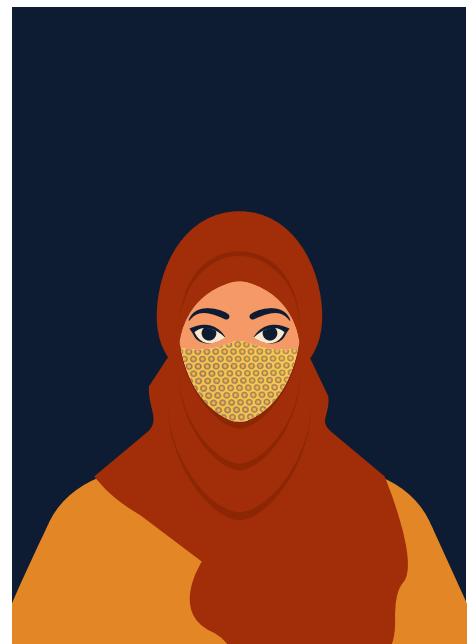
SECTION 5: FREQUENTLY ASKED QUESTIONS

QUESTION	ANSWER
Will the schemes allow for partial or nil contributions from both employers and employees?	<ul style="list-style-type: none"> • Please see the options discussed above.
What will be the maximum time period for such a contribution suspension?	<ul style="list-style-type: none"> • This will be determined by what the rules allow, a rule amendment may also be required. The period will be communicated as per the rules or rule amendment. • The period should be informed by the severity of the distress and/or outcome of any consultative processes. As a general rule the suspension period should be Lockdown plus three months. • Suspension periods are not be automatically exrtended and require a new application.
What will the impact be on risk benefits i.e. death, ill health or disability?	<ul style="list-style-type: none"> • Where insurance premiums are not paid the benefit will be terminated. For this reason, provision could be made as per the options discussed in optionsSections. • Employers must, where possible, continue to pay full risk benefit premiums. • It would be prudent for the risk benefit to remain, where possible, at the level immediately prior to the decreases in pensionable salary.
What will be the impact should employees be retrenched or retire during the contribution suspension?	<ul style="list-style-type: none"> • Normal rules apply and benefits will be payable as set out in the rules.
Will the FSCA approve all rule changes to allow for contribution suspensions and will there be an actuarial evaluation done to confirm the impact on the funds?	<ul style="list-style-type: none"> •The FSCA approves rule amendments where all requirements are met. There may be a requirement for an actuarial investigation as set out in the rules of the fund.
Will employers pay the contributions back to the Fund over a period of time and will there be interest involved?	<ul style="list-style-type: none"> • Where contributions are not paid and there is no rule allowing for this it would be a contravention of section 13A the Pension Funds Act. The law requires payment of the outstanding contributions plus interest. Failure to pay contributions could further lead to fines and imprisonment. • Also see suspension of contribution options.
Where employers fail to pay contributions all together what are the potential fines and penalties?	<ul style="list-style-type: none"> • Over and above the late payment interest payable to the fund, the person responsible for ensuring that the contributions are paid and schedules submitted may face a fine of up to R10 million and/or 10 years imprisonment (section 37(1)(a) of the Act).
Will the Funds communicate to individual members regarding changes to the payment of contributions and the criteria for granting such?	<ul style="list-style-type: none"> • Yes, funds are obliged to communicate these changes to their members through the employer with due regard to any collective agreements where applicable.

FAQS (continued)



QUESTION	ANSWER
How long after the rule change approved by the FSCA may the contribution suspension be implemented (during the period of application/ immediately upon approval/ notice period)?	<ul style="list-style-type: none"> • Upon approval of the rules and the approval of the application by the fund • The period should be informed by the severity of the distress and/or outcome of any consultative processes. As a general rule the suspension period should be lockdown plus three months
What are the criteria in terms of the Funds for employers in distress and will the Funds require proof thereof such as financial statements?	<ul style="list-style-type: none"> • The board of trustees in considering the application would need to act in the best interests of the fund and members, as such the board must ensure that the request is legitimately linked to financial hardship and the application is accompanied by information that is relevant to the decision to be made by the board, that is, proof to the satisfaction of the board that hardship exists. • It is prudent that the application is supported by representative trade unions where collective agreements exist.
Will such proof be shared with organised labour alternatively individual members of the Fund?	<ul style="list-style-type: none"> • It must be a requirement for such proof to be shared with trade unions to avoid non-compliance with the rules of the fund or creative distress/difficulties where it does not exist.
How will funds who are party to pension backed lending seek to ensure that members are protected in this time	<ul style="list-style-type: none"> • Funds must enter into discussions with home loan providers with a view to negotiating a reprieve for such members so as to protect members' benefits during this extraordinary time.
What evidence can an employer provide a retirement fund as proof of financial distress?	<ul style="list-style-type: none"> • Example of evidence are management account, bank statements, affidavit from auditors or accounts, proof of participation in COVID-19 relief programmes.



SECTION 6: ADDITIONAL CONSIDERATIONS

1. PENSION BACKED HOME LOANS

Employers, Funds and members must be cognisant of the impact of COVID-19 on retirement backed home loans. The non-payment of the home loan could result in members' benefits being at risk. A number of employees have accessed retirement backed home loans, the members who are subject to decreased remuneration or a nil remuneration may not be able to service such loans during the period of financial hardship. Funds must enter into discussions with home loan providers with a view to negotiating a reprieve for such members so as to protect members' benefits during this extraordinary time.

2. TAXATION AND RETIREMENT BENEFITS*

2.1 TAX BENEFITS OF CONTRIBUTIONS TO

RETIREMENT FUNDS

Generally, contributions to pension funds, provident funds or retirement annuity funds (retirement funds) are fully deductible by individuals (e.g. employees) but limited to the lesser of (i) R350 000; (ii) 27.5 percent of the higher of the individual's normal remuneration or taxable income; or (iii) the individual's normal taxable income without taxable capital gain.

Contributions to these retirement funds by an employer for the benefit of any employee or former employee in terms of the rules of the relevant fund are fully deductible, albeit that most approved rules limited the amount that may be contributed by an employer to retirement funds on behalf of employees. However, in certain circumstances contributions by an employer to a retirement fund for the benefit of employees may trigger a taxable fringe benefit liability.

2.2 POTENTIAL INCREASE IN PAYE PAYMENT DUE TO SUSPENSION OR REDUCTION CONTRIBUTIONS

Importantly, the deductible contributions made by an employee to a retirement fund may be taken into account in calculating the employees' tax (PAYE) to be withheld. This is unchanged for the employer.

Any suspension or reduction of contributions due to financial strain caused by the COVID-19 pandemic would, however, mean that the deductions available to employees for contributions to retirement funds will no longer be available, resulting in increased taxable income (remuneration), and therefore more PAYE for the period of the suspension. In other words, while the employees will derive a cash flow benefit from not having to make contributions to the retirement fund, their PAYE deductions will increase. However, there will still be a significant cash flow advantage for the employees in not having to make any contributions during the period of suspension.

When the suspension or reduction of contributions is lifted, employees may be required to make good on past contributions that were not paid. Provided this does not result in contributions by the employees exceeding the limits mentioned above, they will still be entitled to the relevant income tax deductions, and such contributions may be taken into account by employers in the determination of the employee's remuneration for PAYE purposes.

***SOURCE:**

<https://www.iol.co.za/business-report/opinion/COVID-19-pension-boards-may-assist-financially-distressed-employers-and-employees-46316923> and authors: Kirsten Eiser, Joon Chong, Des Kruger and Shane Johnson are attorneys at Webber Wentzel.

APPENDIX



FSCA COMMUNICATION 11 OF 2020 (RF)

COVID-19: SECTION 13A OF THE PENSION FUNDS ACT, 1956 AND FINANCIALLY DISTRESSED EMPLOYERS AND EMPLOYEES – SUBMISSION OF URGENT RULE AMENDMENTS

26 MARCH 2020

1. Purpose

- 1.1 The Financial Sector Conduct Authority (“Conduct Authority”) is mindful of employers and employees who are financially distressed in light of the unprecedented financial challenges that Covid-19 presents¹, which may impact employers’ and employees’ ability to comply with the full and/or any payment of contributions in terms of section 13A of the Pension Funds Act, 1956 (Act No. 24 of 1956) (“PF Act”).
- 1.2 In light hereof, the Authority wishes to draw boards of funds’ attention to apply the relevant rule/s to employers and members in order to alleviate the challenges that they are currently facing. In the event that funds² do not have relevant rules which make provision for financially distressed employers and/or employees, such funds are requested to submit such rule amendments urgently. This Communication on financially distressed employers and employees and the requirements of Section 13A requiring submission of urgent rule amendments is available to download from the Authority’s website: www.fsca.co.za.

2. Background

- 2.1 On 15 March 2020, a National State of Disaster was declared in terms of the Disaster Management Act, 2002 (Act No. 57 of 2002) amid the spread of Covid-19 in South Africa. On 23 March 2020, President Ramaphosa announced a nationwide lockdown from 26 March 2020 to 16 April 2020, which will have an impact on many businesses, and consequently on employees.
- 2.2 The Conduct Authority is aware of the financial challenges that this Pandemic brings and certain employers’ and employees’ inability to pay and contribute their full or any section 13A contributions to their respective retirement funds as communicated by retirement fund industry bodies and administrators.
- 2.3 In order to address these concerns, the Authority has taken the decision to issue this Communication. This Communication therefore serves as guidance to funds to

¹ **Covid-19**” means the Novel Coronavirus (2019-nCov) which is an infectious disease caused by a virus, which emerged during 2019 and was declared a global pandemic by the World Health Organisation during the year 2020 that has previously not been scientifically identified in humans

² **“fund”** means a pension fund or provident fund, in each case as defined in the Income Tax Act, 1962 (Act No 58 of 1962).

assist employers who are unable to pay the full or any contributions on behalf of their employees to their retirement funds pursuant to section 13A of the PF Act.

3. Rules

- 3.1 Section 13A(3) provides that the full contributions payable to the fund in terms of the rules are payable by no later than seven days after the end of the month for which such contributions are due and payable.
- 3.2 Notwithstanding the provisions of section 13A of the Act, which obliges employers participating in funds to pay full contributions in respect of their employees/members of the fund within the stipulated time-frame, most funds have rules which make provision for temporary absence from work (with or without pay) or a break in service (in instances where employees are not working) and/or postponement of contribution payments and/or reduction of pensionable service (in respect of employees who are working reduced hours).
- 3.3 Following formal requests by employers for the suspension or reduction of contributions, the Boards of funds are required to consider such requests and apply the relevant rule/s given the particular circumstances of the employer.
- 3.4 Funds must attempt to ensure that full risk benefit premiums continue to be paid in full in respect of the affected employees/members in order to ensure that the fund risk benefits will continue to be provided.
- 3.5 In the event that funds do not have the rules outlined in paragraph 3.2 above, then funds should urgently submit relevant rule amendments to the Conduct Authority, following engagements with the employer to that effect.
- 3.6 To assist with the efficient registration of the rule, such rule amendment should also specify the effective date based on the agreement between the employer and fund. Given the current circumstances, funds will only receive a letter and an unstamped version of the rule amendment from the Conduct Authority. Funds will receive the stamped version of the rule amendment once business resumes as usual.
- 3.7 Please note that the rule amendments submitted should be limited to the rule amendments delineated above. No other rule amendments are to form part of this rule amendment submission. Such rules are to be submitted to the Conduct Authority as a matter of urgency.
- 3.8 Funds are required to keep a proper record of affected members of the fund, which they will be required to produce upon request by the Conduct Authority.

4. Member Communication

Funds are required to inform affected members of employers' requests to reduce or suspend contributions, and of proposed rule amendments pursuant thereto within 30 days of receipt of such request/decision.

5. Tax implications

The Conduct Authority has consulted with the South African Revenue Service (SARS) in respect of the tax implications for retirement funds in the event of the reduction or cessation of employer and member contributions by an employer or participating employer. SARS has advised that it will not jeopardise the income tax approval status of the retirement fund concerned.

6. Enquiries

For more information regarding this Communication contact the Retirement Funds Supervision Division of the Conduct Authority at fikile.mosoma@fsc.co.za.



OLANO MAKHUBELA
DIVISIONAL EXECUTIVE: RETIREMENT FUNDS SUPERVISION
FINANCIAL SECTOR CONDUCT AUTHORITY

BEST PRACTICE GUIDE

**TEMPORARY RELIEF FROM MAKING
PAYMENT OF RETIREMENT FUND
CONTRIBUTIONS AND RISK PREMIUMS**

**MAY
2020**