

Legal update 3 of 2023:

Provision of monthly minimum membership information in terms of section 13A of the Pension Funds Act



1. The FundsAtWork Umbrella Funds (the Funds) must be able to effectively communicate to all their members and to pay benefits without any undue delay. To do this, all participating employers must comply with section 13A of the Pension Funds Act (the Act) and provide the Funds with certain minimum information in their monthly contribution statements, within a prescribed period.
2. Participating employers must provide this minimum information for their employees who are members of the Funds. If they fail to do so, the employer will be in contravention of section 13A:
 - full name
 - date when they became a member of the Funds
 - date of birth
 - SA identity number or passport number and country of origin of passport
 - employee number or industry number (if the employer participates in a specific industry)
 - member number
 - annual fund salary
 - percentage and amount of contributions paid for the member to the Funds
 - split between the member and employer contribution
 - details of any additional voluntary contributions paid on behalf of the member
 - income tax number
 - postal address and residential address
 - contact number, including cellphone number, if available, and email address, if available. If an employer has not yet captured a member's email address and cellphone number on their payroll system, but for example on another system, the information is considered as available and must be provided to the Funds.
3. If an employer does not provide a completed contribution statement that matches the contribution payment for that month, the Funds will not process the contribution payment because they cannot assume which members' details are correct and whose are not. This will result in a delay in investing the members' contributions and the processing of any benefit payments to them. If a member suffers any loss because of this delay, the employer could be held liable.
4. In the 2022 Financial Services Tribunal (FST) hearing of *Creda Communication (Pty) Ltd versus the Pension Funds Adjudicator, GTC Group Pension Fund and Others*, the member submitted that the delay in the processing and payment of his benefit by his pension fund resulted in a substantial loss in his retirement savings. The GTC Group Pension Fund submitted that although they received a claim form for the member's withdrawal benefit, the process to begin the payment of the claim could only start after they received the correct and completed contribution data from the employer. The FST held that the employer had a legal duty to provide the GTC Group Pension Fund with not only the minimum information as required in section 13A of the Act, but to also provide accurate and relevant information, so that the fund could fulfil its duty to members, such as the payment of benefits. The FST concluded that the employer's conduct was wrongful and fell short of its legal duty.

5. Employer declaration and responsible person mandate

5.1 From 20 February 2023, each monthly contribution statement must include an employer declaration that confirms:

- all the minimum information required in terms of section 13A of the Act is included on the contribution statement;
- the minimum information of all the employees who are members of the Funds and whose information is available is included; and
- the contribution statement is complete.

5.2 If the employer does not provide the monthly employer declaration with the contribution statement, it will result in a material reportable contravention of section 13A, which means that the Funds will be legally required to report the employer to the Financial Sector Conduct Authority (FSCA).

5.3 The employer declaration will not be a separate form that the employer must sign but will be included in the monthly contribution statement.

5.4 If section 13A of the Act is strictly interpreted, it seems that only the employer's responsible person(s) can make this declaration. As many employers appoint their financial adviser, payroll provider or HR person to complete and submit their monthly contribution statements, that person will in our view, also be able to make the declaration on behalf of the responsible person(s) if a formal mandate is in place. All employers must provide the Funds with a formal mandate signed by their responsible person(s). Please **click here** for the mandate that the responsible person(s) must sign. Even though this function is delegated, the ultimate responsibility and liability for non-compliance with section 13A remains with the employer's responsible person(s). Please **read legal update 2 of 2023** for information on the identity and role of the employer's responsible person(s).

6. The employer's monthly contribution statement should ideally be submitted to the Funds at the same time as their monthly contribution is paid into the Funds' bank account, ie on or before the 7th of the month. Section 13A of the Act allows for the contribution statement to be submitted to the Funds after payment of the monthly contribution to the Funds, but no later than the 15th of the month following the month for which the contribution statement is due. For example, the contribution statement for February must reach the Funds no later than 15 March. If the contribution statement does not reach the Funds by then, the employer will be in contravention of section 13A. If it takes the employer longer than 20 days to submit the contribution statement to the Funds, it is a material reportable contravention of section 13A of the Act, and the Funds will be legally obliged to report it to the FSCA.

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