

# RETIREMENT FUNDING- OBLIGATIONS OF THE EMPLOYER



# SEXUAL HARASSMENT IN THE WORKPLACE



## Legal Services Legal Awareness

AUG -  
SEPT 2016

PREPARED BY: PHOLA NGUBANE

## RETIREMENT FUNDING – OBLIGATIONS OF THE EMPLOYER

Prepared by: **Phola Ngubane**

### Requirements when paying contributions to a pension or provident fund?

Section 13A of the Pension Funds Act 24 of 1956 (the Act) deals with pension and provident fund contributions. All contribution regardless of whether they are member or employer contributions must be paid by the 7<sup>th</sup> of the month, following the month contributions are due. The employer must also submit a reconciliation schedule of all contributions so that the fund may allocate the contribution to the members' records.

### Personal liability for contributions to a pension or provident fund

As from 28 February 2014, the Act states that the following shall be held personally liable for compliance with s13A and ensuring contributions are paid:

'(a) if an employer is a company, every director who is regularly involved in the

management of the company's overall financial affairs;

(b) if an employer is a close corporation registered under the Close Corporations Act [69 of 1984], every member who controls or is regularly involved in the management of the close corporation's overall financial affairs; and

(c) in respect of any other employer of any legal status or description that has not already been referred to in paragraphs (a) and (b), every person in accordance with whose directions or instructions the governing body or structure of the employer acts or who controls or who is regularly involved in the management of the employer's overall financial affairs.'

Failure by the employer to comply with s13A, all directors, members or persons who are part of the governing body of the employer shall be personally liable.

### Penalties for non-compliance

The latest amendment of the Act has made contravention a criminal offence.

Any person found to have contravened or failing to comply with s13A of the Act

may be found guilty of an offence and liable on conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years,

## UPDATE: EMPLOYMENT LAW

### SEXUAL HARASSMENT IN THE WORKPLACE

*In the case of PE vs Ikwezi Municipality and Another [2016] 7 BLLR 723 (ECG), an employee was sexually abused by her superior during working hour. The complainant claimed to be experiencing post-traumatic stress disorder due to the sexual harassment and eventually she resigned. The complainant instituted a claim for damages against the perpetrator and the employer*

*The employer admitted to the legal duty to protect the complainant's rights and alleged that it had taken reasonable steps to protect the complainant. The perpetrator was required to attend a disciplinary inquiry and whilst the outcome was pending the perpetrator and complainant worked in different sites. The perpetrator was found guilty and issued with a final written warning and two-week suspension without pay.*

*The employer claimed that it was bound by the chairperson in the disciplinary proceedings and had to allow the perpetrator to return to work after the suspension*

*The court held employer could not simply accept the chairperson's sanction but could have taken the sanction on review. The perpetrator was liable for complainant's damages to extent she could prove she suffered harm as a result of his actions.*

*The court considered vicarious liability where the working relationship was there is an unequal balance of power between the complainant and the perpetrator. According to Pickering J, where an employee is placed in a position of trust, the employer needs to ensure that the employee is capable of trust and subsequently employer should be vicariously liable if that persons abuses the trust. The court held the employer and perpetrator jointly and severally liable for damages that the complainant may prove were caused as a result of the sexual harassment.*

## SOCIAL MEDIA

### WORKSHOP

Presented by:

VERLIE OOSTHUIZEN  
(SHEPSTONE & WYLIE)

**DATE: 24.10.2016**

**TIME: 9:00am**

**VENUE: LEGAL  
SERVICES**

**BOARDROOM,  
Westville Campus**

**WESTVILLE  
CAMPUS.**

## STUDENT SERVICES DIVISION LEGAL SERVICES

### WHAT DO WE DO?

1. Administrative responsibility to handle and process all disciplinary reports which are provided by Risk Management Services (RMS).
2. Process Student Disciplinary Matters in applicable Disciplinary Tribunals (RMS investigation, service of process and charges)
3. Consult with relevant stakeholders on application of Student Discipline and Rules (Student Discipline Consultative Forum)
4. Propose and finalise Student Disciplinary Rules and procedure in Student Discipline Rules Committee
5. Apply Alternative Dispute Resolution in student discipline matters where it is appropriate
6. Provide legal advice on student discipline related matters to Departments within the University
7. Attend to Personnel (HR) requirements associated with abovementioned appointments and remuneration
8. Advising Chair of Council on Appeals to Council Appeals Committee

Student Disciplinary Records of the following :

- a. Admissions of Guilt signed by students in their academic departments in line with Rule 15.1;
- b. those signed in the Proctors office in line with Rule 15.6 of the student Discipline Rules;
- c. all other matters (Student Discipline Court;
- d. and Residence Tribunal matters.

9.

Educate on legislative/law amendment application and effect to enable compliance

10.

Investigations for Student Discipline.

All student discipline related matters are to be reported to **RMS** except academic related matters which have to be reported **DIRECTLY** to SDS in accordance with **RULE 11**

## LATEST EVENTS:

### CONTRACTS MANAGEMENT WORKSHOP

**PRESENTED BY PHOLA NGUBANE & RENDRA PHALAD**

Library Boardroom

Westville Campus

Date : 28.09.2016 @ 10h00

For queries contact Slie

(031) 260 3580

### LEGAL SERVICES INTERDEPENDENCY MEETING

Seminar Room 5 – Govan Mbeki

Westville Campus

Date : 20.10.2016 @ 10h00

For queries contact Slie

(031) 260 3580