

THE DEPARTMENT OF EMPLOYMENT AND LABOUR

Date: 27th March 2026

By email: unathiramabulana@labour.gov.za

Dear Ms. Ramabulana

RE: WITHDRAWAL OF EXEMPTION: APPLICABILITY OF SECTION 34A OF THE BASIC CONDITIONS OF EMPLOYMENT ACT, 1997 TO BENEFIT FUND CONTRIBUTIONS

Purpose of these written submissions

1. On 13 January 2026, the Minister of Employment and Labour officially withdrew the variation notice published in Government Gazette No. 25846 of 24 December 2003 (**“the Minister’s decision”**), which previously excluded the application of section 34A of the Basic Conditions of Employment Act, 1997 (**“BCEA”**) to employers and employees in respect of the payment of contributions to any benefit fund (as defined in the BCEA) regulated under the Pension Funds Act, 1956 (**“PFA”**).
2. It is understood that this decision was prompted by the disclosure by many funds, particularly within the security sector and within municipalities, that employers had not been paying contributions and so the savings withdrawal benefit in terms of the Two-Pot Retirement System was less than it should have been or non-existent.
3. The Minister’s decision has nevertheless raised several practical challenges and uncertainties for many participating employers with regards to aligning their administrative payroll operations for various employees’ contracts of employment in accordance with the statutory provisions of both the BCEA and the PFA, which are not in alignment, and the associated risks of incurring statutory penalties under the BCEA even if compliant with the PFA.
4. These written submissions are submitted by this firm, a legal practice and specialist within the pension fund industry in South Africa, in response to the Minister’s withdrawal decision and to bring several highlighted concerns to the Minister’s attention.

The practical effect of the Minister's withdrawal decision

5. Section 34A of the BCEA regulates the timing of contribution payments to a benefit fund 'as defined' (including pension, provident, retirement, medical aid or similar funds). This statutory provision provides that:

- 5.1 If an employer deducts an amount from an employee's remuneration for payment to a retirement fund, then that amount must be paid over to the retirement fund within seven days of the deduction.

- 5.2 If the contribution is an employer obligation that is not deducted from an employee's remuneration, then the contribution must be paid to the retirement fund within seven days of the end of the period in respect of which the contribution is made.

- 5.3 These obligations do not affect any requirement under the rules of a benefit fund to make payment within a shorter period.

6. This prescribed timeline of contributions payments notably differs from section 13A(3) of the PFA which requires both employee and employer contributions due in terms of a retirement fund's rules to be paid into the retirement fund's bank account or received by the retirement fund not later than seven days after the end of the month for which the contribution is payable.

7. Upon a reading of both statutory provisions, it is clear that the BCEA imposes a shorter deadline than the PFA with regards to employee remuneration deductions – i.e. payment within seven days after the actual deduction compared to payment within seven days after the end of the month. As an example, if an employee is paid on the 25th of a month (which is the common practice), under the BCEA the contribution must be paid no later than by the 2nd of the following month (assuming the previous month has thirty days) under the BCEA, but by the 7th of the month under the PFA.

8. Practically, this statutory conflict raises several administrative payroll issues for a participating employer which has employees contracted on both a weekly-wage and monthly salary basis:

- 8.1 Administering deductions on a weekly payroll basis (four times a month) creates more administration with a greater risk of error, and also increases the administration costs of the fund, which costs are payable ultimately by the members.

- 8.2 Furthermore, it is common for funds to provide an insured risk benefit for death and/or disability for which a monthly premium is payable (even for weekly paid employees) to the

insurer. Although the proportionate cost of that would be deducted from the weekly paid salary, to require that this proportionate deduction be paid weekly creates additional unnecessary and costly administration for both the employer and the fund.

8.3 The same issue arises in respect of the costs of the fund which are typically part of the employer's contribution, and which are calculated on a monthly basis by the fund even if proportionately deducted in the weekly paid remuneration.

9. More significantly, it must be highlighted that an employer's obligation in terms of section 13A(2)(b) of the PFA is to submit the contribution information schedule not later than 15 days after the end of the month in respect of which the contribution payment was made remains unaffected by the withdrawal of the exemption. This applied to members who are paid on a weekly and monthly basis.
10. This means that funds still have until the 15th day after the end of the month to conduct a reconciliation of the members' contributions; it is only after this reconciliation that the contributions are allocated to the retirement savings of members of defined contribution funds (which is by far the more common type of fund).
11. This means that even if an employer complies with the prescribed timeline in section 34A of the BCEA and the employees' contributions are paid over within a shorter deadline, they cannot reap the investment benefit of those contributions until the fund allocates the contributions to the member's retirement savings which, as mentioned, is only required by statute to be by the 15th day after the end of the month. There is therefore no advantage to the member for the early payment as now required by section 34A of the BCEA.

Legal consequences for statutory non-compliance:

12. Notwithstanding the higher administrative burden and statutory delay in the allocation of member contributions as mentioned above, the applicability of section 34A of the BCEA to benefit funds also has the unfortunate effect that a dual enforcement regime is now applicable to employers under both the PFA and the BCEA.
13. In terms of the PFA, late or non-payment of contributions constitutes an offence in terms of section 37(1)(c) read with section 13A, which is punishable by a fine of up to R10 million, imprisonment for up to 10 years, or both. Directors and senior management can be held personally liable under section 13A(8). In addition, the FSCA's enforcement powers under the Financial Sector Regulation Act are applicable.

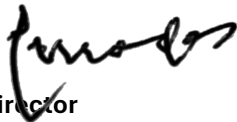
14. In terms of the BCEA, Labour Inspectors may investigate, demand proof of payment/contribution schedules, issue compliance orders with section 34A and impose administrative penalties as prescribed.
15. This dual enforcement regime means that employers who fail to pay contributions timeously may face concurrent action from both Labour Inspectors and the FSCA, with potentially overlapping penalties. This poses significant risks to many employers who have a strong record of compliance with the PFA but now fall short in terms of the BCEA. On any view it is not desirable for a conflicting contribution deadline to exist.

Conclusion

16. In summary, the Minister's decision has the effect of creating additional costs for weekly paid employees and the potential for errors to be made, whilst conferring no benefit to members because earlier contributions in terms of the BCEA by or in respect of them will not be invested earlier.
17. Whilst the assistance of the Department of Labour in enforcing compliance with employers' contribution obligation is greatly to be welcomed, it would be far more preferable that the compliance requirement was in terms of the PFA provisions only, for the reasons listed above.

Yours faithfully

JWT MORT



Director

JONATHAN MORT INC.