BusinessLIVE

Sunday Times Business Times

BUSINESS

Authorities take aim at pension pilferers

Authorities are targeting municipalities that deduct employee contributions but neglect to pay them to retirement funds

BL PREMIUM

23 MARCH 2025 - 09:12

Financial Sector Conduct Authority commissioner Unathi Kamlana. Picture: ALAISTER RUSSELL

The financial services regulator, with help from the auditor-general (AG), is going after municipalities and their officials who deduct pension contributions from their employees but fail to pay them over to the relevant retirement fund.

This could see affected municipalities lose their equitable share allocations and officials responsible for the deduction of monies not paid over to pension funds sanctioned in their personal capacities.

Controversy ensued when the two-pot retirement system kicked in in September last year as some municipal workers hoping to cash in on their savings found there was not enough money to withdraw because their employers had failed to pay over pension fund deductions.

The Mafube local municipality, along with its mayor, municipal manager and CFO, were taken to the Free State High Court by the Municipal Workers Retirement Fund over failure to transfer pension benefits.

"The municipality was ordered to pay R37.7m, with interest and costs," according to court documents. "Subsequently, the municipality's bank accounts were attached by the fund, while the sheriff executed the writ. Only R97,000 was available in the municipality's bank account, which was paid to the fund."

The order said that if the respondent did not want to comply, then the court must act to help the applicants secure their pension fund benefits.

Financial Sector Conduct Authority (FSCA) commissioner Unathi Kamlana told Business Times the watchdog was teaming up with other state institutions to monitor the smooth running of the two-pot retirement system.

"The first has been us engaging with Salga [the South African Local Government Association]. So, between Salga and the National Treasury, there's now a tentative agreement that the Treasury will not pay the equitable share whose arrear contributions are not up to date. So we have made progress there," Kamlana said.

Since the two-pot system began, the pension funds adjudicator has been urging vigilance when it comes to pension fund deductions. Kamlana said the Treasury and the FSCA were working together with the support of the AG to probe the state of councils where this challenge had emerged.

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- *Unathi Kamlana, Financial Sector Conduct Authority commissioner*

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Asked what the scale of the problem was in local government, Kamlana said: “It’s big.” He added: “The challenge has also been prevalent among other employers, including private security firms. We are really shining a light on the issue.”

The AG’s office confirmed that municipalities that deduct employees’ pension fund contributions and fail to pay them over to the relevant fund will have this as a red mark in their audit outcomes.

“The payment of pension fund contributions by municipalities forms part of our audit process. The failure to pay pension fund contributions within seven days after the end of the month is a contravention of section 13A (3)(a) (ii) of the Pension Funds Act.

“The AG’s office views this as noncompliance and is using its enforcement powers to address the harm caused by these contraventions, and will be reporting on it in the upcoming general report.”

Pension funds adjudicator Muvhango Lukhaimane told Business Times that employer compliance over the payment of pension fund contributions remained a challenge in sectors including the private security sector, which required more support from funds.

“The office of the pension funds adjudicator can only issue the orders that it does against employers to force them to honour their obligations. But the funds, through their boards of trustees, need to do more and much earlier as they are aware of the noncompliance,” Lukhaimane said.

She said within the industry itself there remained complexities in the compliance space. For instance, she said, occupational retirement funds, because of their compulsory nature, tend to provide more accurate statistics on contributions.

"The retail funds' statistics are hidden away within liquidations. Retail funds do not bother to enforce the payment of contributions in most instances; they have registered rules that would allow them to terminate the participation of the employer if contributions are not received for a period of 90 days."

Lukhaimane said retail funds do the bare minimum, sending out 30- to 90-day notice letters to employers for outstanding contributions. She said if the contributions remain outstanding after the notices, the retail funds typically terminate the participation of the employer, without implementing the enforcement process in the Pension Funds Act.

"If you consider the list from the FSCA and the fact that for the office of the pension funds adjudicator approximately 80% of the complaints we finalise concern in one way or another an employer having failed to pay contributions, then [the nonpayment of contributions] is quite prevalent. The statistics from our office have been like this long before Covid-19 and continue unabated."

Speaking at the FSCA conference in Johannesburg this week, Kamlana said that while the commencement of the two-pot retirement system was successful, the regulator was working with the government and the retirement fund industry to ensure funds not subject to two-pot withdrawals were preserved.

"We successfully launched the two-pot retirement system , which was really a response to general economic hardship and specific financial vulnerability of retirement fund members. The sector was very responsive to this reality, for which we want to commend the retirement industry.

"The point though is that the billions of rands of withdrawals represent a cost in terms of reduced future savings for retirement. As such, we must ensure that the compulsory preservation component of the reforms is locked in and not reversed so that, overall, the retirement system is not undermined by this short-term structural change."

In a regular industry update, Alexforbes head of best practice Vickie Lange said that since the start of the new tax year on March 1 they had observed a second wave of interest from retirement fund members — with more than 400,000 accessing their savings between September and February.

“With the start of the tax year, an initial four-day surge saw 33,000 withdrawal claims, sparking concerns that South Africans were dipping back into their savings pots at a rate similar to the first wave in September 2024,” Lange said.

“However, the daily volume of claims has since tapered off, with an additional 35,000 claims lodged over the past 14 days. To date, Alexforbes has successfully paid 55,000 claims within seven working days, while the remaining claims continue to progress through the claims cycle.”

In January, Sars received 2,664,279 applications for tax directives for withdrawals via the two-pot system, of which 2,403,379 were approved and funds released.