

A decorative graphic in the top left corner consisting of several overlapping, stylized arrow shapes pointing to the right. The arrows are in shades of grey and red.

Legal update

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Changes to the Pension Funds Act: “Whistle-blowing” protection

Summary

The Financial Services Laws General Amendment Act No. 45 of 2013 was published in Government Gazette No. 37237 on 16 January 2014. It amends the Pension Funds Act by extending the application of the Protected Disclosures Act to disclosures made by officers of a fund. The effective date of the Act has not yet been promulgated.

Current position

The Pension Funds Act imposes a “whistle blowing” obligation on the principal officer and auditor of a fund. This means that principal officers and auditors have a legal duty to inform the registrar of any matter relating to the affairs of the fund that may seriously prejudice the financial soundness of the fund or its members.

The Act does not specify how these disclosures should be made nor does it provide expressly for the protection of the person making the disclosure.

Position once the Amendment Act comes into effect

The “whistle-blowing” obligation is extended to trustees, valuers, deputy principal officers and employees of the fund or administrator. A disclosure by any one of these parties will automatically be regarded as a protected disclosure.

What is a “disclosure”?

A disclosure is any information communicated to the registrar regarding any conduct of a pension fund, an administrator, trustee, principal officer, deputy principal officer, valuator or employee of the fund or administrator, made by any of these parties, which related to the business of the fund and which may prejudice the fund or its members.

Under the Protected Disclosures Act, any information disclosed by an employee for unlawful or irregular conduct of their employer or fellow employees is considered a protected disclosure. The person making such a disclosure is protected from any occupational detriment or victimisation that they may suffer as a result of making the disclosure.

The amendment to the Pension Funds Act extends the application of the Protected Disclosures Act to disclosures made by a trustee, principal officer, deputy principal officer, auditor, valuator and any other employee of the fund or administrator.

A disclosure by any one of these parties will be considered a protected disclosure and the party making the disclosure will be protected in terms of the Protected Disclosures Act.

The amendment also imposes an obligation on the registrar to establish a process for the submission and protection of disclosures.

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Impact on FundsAtWork

FundsAtWork will ensure that the principal officer, deputy principal officer, auditor, valuator and every employee of Momentum Employee Benefits are aware of their legal duty to inform the registrar, in the manner prescribed, of any matter relating to the management or administration of the FundsAtWork Umbrella and Preservation Funds, which in their opinion may prejudice the financial stability of the Funds or their members.

Natasha Marhye
Legal Adviser
Momentum Employee Benefits – FundsAtWork