

# Liberty Corporate

The roles and duties of an Employer Representative



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love, and you'll never  
need to work a day  
in your life.  
Confucius.*

# The roles and duties of an Employer Representative

## Late investment of contributions

Members of retirement funds expect that their contributions and those of their employers will be received and invested within a reasonable time. Unfortunately, this is not always the case.

From time to time, media articles highlight the devastating financial consequences on former employees and their dependants directly resulting from their employer not making these contributions as they should. The Registrar of Pension Funds has expressed concern on this point on more than one occasion and how it complicates (and increases the cost of) retirement fund administration.

## Legislative requirements

The Pension Funds Act contains provisions designed to protect members against an employer's oversight or fraudulent action. These are aimed at identification of non-payment of retirement fund contributions within a reasonable period of time. It also sets out the action to be taken to correct the situation and/or prevent it from getting worse.

## The Employer Representative

The rules of the Liberty Corporate sponsored umbrella fund contain the framework for regular monitoring of contributions payable by employers to retirement funds. This role is performed by the Employer Representative who is appointed to oversee the process and who is required to report any transgressions.

Responsibility for appointing the Employer Representative lies with the participating employer. The appointment is made as part of the setting up documentation for a new participant and subsequently the individual is often referred to as the authorised signatory of the employer.

*The Pension Funds Act contains provisions designed to protect members against an employer's oversight or fraudulent action*

# The roles and duties of an Employer Representative

## Key duties of the Employer Representative

In terms of the Liberty Corporate umbrella fund rules, the Employer Representative must ensure that the employer at all times complies with the Pension Funds Act and in particular:

- pays contributions into the banking account of the retirement fund administrator within 7 days of the end of the month to which the contributions relate; and
- provides the retirement fund administrator with minimum information (explained later in this booklet) relating to the contributions payable.

Where payments fall 90 or more days into arrears, the Employer Representative must advise the employer that they are legally obliged to:

- institute legal action against the employer;
- advise the Registrar of Pension Funds of the position; and
- alert the fund members.

## Additional duties of the Employer Representative

The Employer Representative is required to assist with the smooth operation of the retirement fund by:

- taking responsibility for ensuring the regular distribution of member benefit statements;
- ensuring all communication issued by the Management Board is understood by the employer and where appropriate, the membership;
- ensuring that an authorised person signed all new entrant data and member movement advices;
- assisting and following up with general member queries;
- vetting all claim documentation prior to submission to Liberty Corporate and assisting with information and documentation required to resolve a claim;
- checking the schedules provided by Liberty Corporate for correctness;
- signing off investment election and switch forms;
- providing all reasonable assistance in tracing and compiling evidence of dependants and beneficiaries in the event of a claim for death benefits;
- verifying with the employer, at least quarterly, that the member and employer data held on the administrator's records are accurate; and
- advising the administrator and members of the employer's intention to discontinue contributions.

## Specific requirements of Section 13A and Regulation 33

In the following paragraphs we have put the specific requirements of the Pension Funds Act into the context of an employer whose fund is administered by Liberty Corporate.

### Payment has to be made to Liberty Corporate's bank account within 7 days

An employer must pay any contribution deducted from a member's salary and/or paid by the employer on behalf of the member within 7 days from the end of the month for which payment was due. Payment must be made directly into Liberty Corporate's bank account.

### Accompanying documentation

Every payment has to be accompanied by sufficient information to enable proper identification of the:

- Retirement fund to which the payment relates;
- The current membership and their individual contributions;
- Period in respect of which payment is being made;
- Name and address of the employer or pay-point; and
- Contact person at the employer or pay-point.



## Supplementary documentation

Supplementary information has to be provided so that changes to previous statements can be reconciled. Included here would be:

- New members;
- Payment of additional voluntary contributions;
- Changes to pensionable earnings; and
- Corrections due to previous errors.

Specifically, in the case of new members, additional information has to be given:

- Full name;
- Date of birth;
- ID number or employer pay number;
- Date of commencement of membership;
- Pensionable earnings;
- Percentage or amount of contributions (split between the member and employer); and
- Any additional voluntary contributions.

If the required information does not actually accompany the payment, it has to be submitted to Liberty Corporate immediately when payment has been made.

## Monitoring the payment of contributions

After 22 days

Liberty Corporate's accounting person is required to inform the participant's Employer Representative within 22 days from the end of the month for which payment was due should any payment not have been made.

After 30 days

Thereafter, Liberty Corporate's accounting person must inform the Employer Representative within 30 days from the end of the month for which payment was due if:

- Any issue previously reported remains unresolved;
- The minimum information required has not been received;
- The payment and data cannot be reconciled; and/or
- Any outstanding payments have not been received within the 15 days allowed.

*... in the case of new members, additional information has to be given ...*

# The roles and duties of an Employer Representative

## After 37 days

Unless all these issues are resolved within the ensuing 7 days, the Employer Representative has to inform the board of management in writing of any non-payment or of issues that remain unresolved.

Should the Employer Representative fail to rectify matters, she/he is bound to inform the members of the position and simultaneously advise the board of management of the fund.

## After 90 days

If the position persists for 90 days in arrears, the Employer Representative has to report the matter in detail to the Attorney General, which means that the non-payment has become a criminal matter.

The report must comprise of:

- An affidavit from the Employer Representative; and
- A certificate from the Registrar of Companies providing details of directors of the company in default.

The report must also be submitted to the Commercial Branch of the South African Police Services, who will allocate a case number, possibly take further statements from the fund administrator or other parties involved and then forward the case file to the Public Prosecutor for assessment. At this stage the Registrar will be informed of the action taken.

## Consequences of non-payment

There are considerable downsides to the non-payment of contributions and/or failure to generally comply with the requirements imposed by legislation:

- Notification to the Registrar may result in the matter being reported to the Commissioner for the South African Revenue Service, who may take such action against the employer as is deemed fitting, including the removal of tax approval for the employer and inspection of the employer's records and premises.
- Compound interest accrues to any amount not paid into the retirement fund within 7 days from the end of the month for which payment is due. As per the Usury Act 73 of 1968, effective 17 September 2004, such a rate varies between 17% and 20%.

## Please note

- The interest rate charged changes from time to time in accordance with the changes in the interest rate reflected in the Usury Act.
- Except for transfers under sections 14, 28 and 29 of the Act, interest as described in the previous bullet point will be due on payments made after 60 days after a member's request to transfer a termination benefit to another approved fund.
- Conviction of an employer may result in a fine (R2 000 per offence) or imprisonment.
- A penalty of R50 per day could be incurred by

a monitoring person, employer, board members and responsible person for failure to submit data or reports, as the case may be.

## The Employer Representative plays a key role

So in summary, it is evident that the appointment of an Employer Representative could mean timely avoidance of many pitfalls surrounding the ongoing administration of a retirement fund. If you have a retirement fund administered by Liberty Corporate, check to ensure that you have an Employer Representative



# Disclaimer

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LIBERTY CORPORATE

25 Ameshoff street  
Braamfontein  
Johannesburg, 2000  
+27 11 408 2999  
[www.liberty.co.za](http://www.liberty.co.za)

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09-0000-0 <insert brochure reference number>