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Insights

Employer Obligations and Responsibilities under the New Pensions Act

In our previous publications we outlined the employer's primary responsibility under the Pensions Act ("The Act"); a fiduciary responsibility requiring them to appoint capable trustees to ensure the proper management and administration of employee pension schemes.

In addition to the initial requirements to sponsor a pension scheme for your employees and appoint trustees, you are also expected to perform certain functions, and provide certain services to your employees on an on-going basis. It is important that you do not lose sight of these employer obligations as non-compliance attracts penalties from the Pension Regulator.

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In this issue, we discuss these additional responsibilities the Act has placed on employers.

Pay mandatory contributions

The Act mandates employers to calculate employees' pensionable salaries correctly and pay the corresponding mandatory contributions within fourteen days from the end of the month for which the salary was paid. As an employer, you need to ensure that you have accurately computed the contribution made on behalf of your employees, consisting of the 13% of the workers' salary you contribute on their behalf, and the 5.5% deducted directly from the employees' salary.

Of the 18.5% total pension contribution, 13.5% is paid to the first tier mandatory basic national social security scheme (Tier 1); the remaining 5% to the second tier mandatory occupational pension scheme which is managed by your appointed trustee (Tier 2). Since January 2010, you should have been making payments to the Tier 1 and Tier 2 schemes although both amounts have been paid to SSNIT.

Once the Act is fully implemented, you will be expected to make the Tier 2 payments to the custodian appointed by your trustee. Failure to make the contribution within the fourteen day window will result in a penalty of 3% per month on the amount in arrears. Continued infraction of the law could result in significant additional fines and jail terms.

We advise all employers to endeavour to avoid these penalties by correctly calculating contributions and making their submissions on time.

Provide support for personal pension contributions

The Act allows employees to join any personal pension scheme of their choice. If your employees choose to join a personal pension scheme, you are required as an employer to provide administrative and accounting services that will enable them to make their contributions. Appropriate deductions should be made from their monthly salaries, and the contributions paid to the appropriate scheme within fourteen days of the end of the month. For all contributions made by the employee, it is important that you do not mix payroll deductions with your business funds; contributed funds should be held in trust until they are transferred to the benefit of the trustee.

Provide remittance statements to the trustee

After paying the contributions of your employees to SSNIT and the approved custodian, you are required to provide your trustee with monthly remittance statements containing the following details for all your employees.

- The relevant income for your employees for the contributory period
- The amount of the mandatory 13% employer contribution
- The amount of the mandatory 5.5% deduction from the employee

If you sponsor a Tier 3 provident fund for your employees, your remittance statement should also contain the following information:

- The amount of the voluntary contribution deducted from the employee's salary
- The amount of the voluntary contribution you made on the employee's behalf.

Provide monthly pay records to scheme members

After making payments on behalf of your employees you are required to provide pay records to them not later than seven working days after the payment. The pay record should include the following information:

- The relevant income on which contributions were calculated for the month
- The amount contributed by the employer as part of the mandatory contribution
- The amount deducted from the employees' salary
- The amount contributed by the employer in respect of the employee's voluntary contribution (if any)
- The amount deducted from the employees' salary in lieu of voluntary contributions (if any)
- The date on which payment was made to the relevant scheme(s)

Keep records

Employers are required to keep records for each of their employees which include the total amounts paid in respect of the employee, the breakdown of these totals and the date on which these payments were made.

Additional required employment information are the name and correspondence address of employees, as well as the dates on which their respective employments began. If employees gave a notice authorizing voluntary deductions, you should keep this notice too.

This information should be kept for at least six months following the cessation of employment. Finally, you must also ensure that the information that feeds the remittance statement provided to the trustee is kept for every employee for at least seven years after the date of the remittance statement.

Respond to inquiries

Employers have an obligation to reply in writing to all inquiries received from employees regarding

Fulfilling these requirements is essential as compliance will enable the employer avoid penalties.

pension contributions within fourteen days of receiving the inquiry.

Give notice to trustee

Employers are to notify trustees in writing when any of the following events occur:

- Addition of new employees
- Changes to the business' contact information
- Changes to an employee's contact information
- Changes to the date of payment of employees' salaries
- Changes in the employer's name on the scheme participation certificate issued by the Pensions Authority.

Summary

Though selecting a trustee structure is an important decision every employer must make, there are equally essential duties you, as an employer, should carry out. Bear in mind, that you cannot treat your duties under the Act lightly especially with the establishment of the National Pensions Regulatory Authority.

This Authority has been mandated to ensure that employers and pensions service providers abide by the Act and associated regulations governing the new pensions regime. As you seek to comply with these new laws and regulations and to provide your employees with a good chance of retirement comfort, we believe that selecting the right trustee, combined with a conscious effort on your part will significantly improve your chances of success.

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