

SIMEKA

Retirement Fund Update

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Financial Service Board (FSB): Legislation and circulars

1. Draft Notice on appointment of board members in terms of section 7A of the Pension Funds Act

The Financial Services Laws General Amendment Act, 2013, has amended section 7A of the Pension Funds Act with effect from 28 February 2014 by, among others, inserting subsection (1A) which provides as follows:

“(1A) The composition of the board shall at all times comply with the requirements of the rules of the fund and any vacancy on such board shall be filled within such period as prescribed.”

In terms of the draft Notice the Registrar intends to prescribe that any vacancy on a board of trustees must be filled within 90 days from the date on which the position became vacant.

In a draft explanatory memorandum (to the draft Notice) the Registrar states that the draft Notice is aimed at ensuring that section 7(1A) is implemented in the most practical and effective way. Therefore the proposal is that, if a person’s membership of a fund’s board ends as a result of -

- his or her resignation from office;
- his or her removal from office, whether by the Registrar or the board of the fund; or
- the expiry of his or her term of office,

the vacancy that arises as a result must be filled in the manner as directed by the fund’s rules within a maximum period of 90 days after the date on which it became vacant.

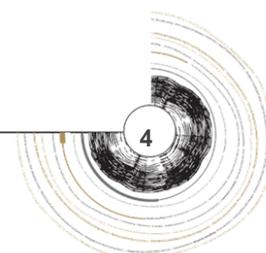
According to the Registrar the 90 day period must not be applied as a norm, but funds must replace a member of the board within a reasonable period (not longer than 90 days) to ensure that the efficient and effective governance of the fund is not impaired.

Observation: *Replacing an elected member representative trustee within 90 days can be problematic. We recommend that the election process (authorised by the fund’s rules) be structured in such a way that those with the most votes are elected as the new member representative trustees and those that follow are elected as alternates or potential alternates. The alternate with the most votes can replace a trustee who is no longer available to serve, and the said potential alternate can then replace such alternate. We find that the most cost effective and efficient boards consist of 6 trustees, three member elected and 3 employer nominated with one alternate on each side standing in when any one of the member or employer representative trustees cannot attend. As such an election list of 6 member elected persons appear appropriate as it will deliver 3 serving trustees, 1 alternate and another 2 potential alternates.*

2. Information Circular 3/2015: Unclaimed retirement fund benefits

In this Circular the FSB announced that it will host a media roundtable with media representatives on unclaimed benefits on 19 August 2015. The objective was to seek the assistance of the media in making members and other beneficiaries aware of their rights with regard to unclaimed benefits that may be due to them. On 20 August 2015, a day after the media roundtable, the FSB issued a press release, the main message of which was that funds should do more to trace and pay their beneficiaries. According to the press release, the Deputy Registrar of Pension Funds, Rosemary Hunter, made the following points at the media roundtable:

- Retirement funds must take all reasonable steps to trace and pay their members and beneficiaries whose benefits remain unclaimed.
- The primary purpose of funds is to pay benefits to their members and they must therefore find ways to trace and pay these beneficiaries, both local and foreign.
- It is estimated that at least 3.5 million people are owed about R20 billion in benefits that remain unclaimed.
- Funds should insist that employers supply them with up-to-date contact information, including ID numbers, cell phone numbers, etc.
- Funds must also consider the use of social media as a means for advertising unclaimed benefits or for tracing beneficiaries.
- Potential beneficiaries should be wary of intermediaries who offered to help them claim their benefits, often charging an exorbitant fee. Only intermediaries authorised by the funds concerned may perform this function – in which case it is the fund that must pay for the service, not the members.
- The FSB assists members or beneficiaries in trying to trace benefits or shares of allocated surpluses they believe to be due to them if they provide sufficient information. The FSB does this by liaising with the funds and/or their administrator and does not charge a fee for this service.
- If the money still remains unclaimed, the fund is required to retain its liability for that unclaimed benefit or, in certain circumstances, to transfer that liability to a special purpose unclaimed benefit fund.
- According to the Deputy Registrar: *“Most administrators derive more income from the administration of the business of a fund relating to contributory members than that relating to unclaimed benefits. If, however, liabilities for unclaimed benefits, and assets of equivalent value, are transferred to an unclaimed benefit fund over which the administrator has effective control, it may be able to ensure that financial services providers related to it, such as asset managers, derive significant income from the provision of services to the unclaimed benefit fund provided that that fund retains those assets rather than disposes of them by tracing and paying those entitled to the unclaimed benefits for which the assets have been held by the fund.”*



- In order to claim a benefit, a claimant should first establish the retirement fund that he/she belonged to or, if he or she is claiming a share of the lump sum payable on the death of a deceased member, the fund that the deceased member belonged to. The next step would be to contact the retirement fund or its administrator to claim the benefit. For that purpose the claimant will need to provide proof of identity and evidence of his or her membership of the fund or status as a dependant of the deceased member at the time of his or her death. This evidence could be in the form of payslips, benefit statements, or correspondence. If there is a benefit payable to the claimant, he or she will be asked to comply with the procedures set by the fund for the processing of claims. For example, the claimant may need to complete a form and submit documents such as certified copies of his or her identity document, bank statement and proof of address.
- Typically, tracing is not a core function or focus of benefit administrators and as such the administrators may not also have the resources or expertise to perform this function. As a result, there are specialised tracing agents whose sole focus is to locate beneficiaries. However, it is the responsibility of the board of a fund to ensure that efforts or mechanisms are in place to trace beneficiaries. This would include considering all possible and cost effective mechanisms before deciding to contract a tracing agent or transfer the benefit to an unclaimed benefit fund. They must also exercise close supervision over the conduct of their tracing agents.
- Although the Registrar does not object to the representation of members and beneficiaries by authorised financial services providers or attorneys, the Registrar wants to help to protect members and beneficiaries by spreading the message that they are entitled to submit their claims for free and funds must assist them to do so without charge. Likewise, if the Registrar is needed to help put members and beneficiaries in touch with the right people representing the funds concerned, the Registrar will do so without charge.
- If an individual intends to act as the agent of the member/former member/beneficiary, such an individual must provide proof in the form of an affidavit signed by this person in which it is confirmed that the member/former member/beneficiary has been informed that:
 - (a) He or she is entitled to:
 - Contact the fund or its administrator or, if he or she cannot do so, the FSB, directly and without charge;
 - He or she is entitled to claim the benefit to which he or she is entitled without charge, but he or she nonetheless wants to the assistance of the intermediary and is willing to pay for that assistance on terms specified in the affidavit; and
 - (b) He or she has been given proof that the intermediary is an authorised financial services provider in terms of FAIS or a practicing attorney and a member of a Law Society with statutory disciplinary powers over him or her; and
 - (c) He or she has been given the contact details of the FSB's call centre and the FAIS Ombud or Law Society to which he or she can refer complaints about the conduct of the intermediary or attorney if necessary.

Observation: *The Simeka master protocol on Unpaid and Unclaimed benefits deals effectively with the concerns raised by the registrar. It is important that funds have a process in place that will ensure that members are traced and their benefits paid to them.*

3. Draft Notice on appointment of a valuator

The proposed format in which a fund must notify the Registrar of the appointment of a valuator (within 30 days of the appointment), is contained in an annexure to the draft notice. Unlike the previous format, details of the termination of the appointment preceding the appointment of a replacement valuator will have to be provided. The revised format will enable the Registrar to verify that the time periods prescribed in the Notice have been complied with. The revised draft Notice requires that a fund must appoint another valuator within 90 days from the date of termination of the appointment of its previous valuator.

The draft revised Notice requires that valuers must be covered under a policy of insurance for professional indemnity. However an independent valuator (sole practitioner) may apply to the Registrar to be exempted from this requirement, stating the reasons why he/she is not covered and enclosing a letter in which the board of the fund consents to the valuator not being covered by professional indemnity insurance.

The draft revised notice will require the board to certify that they are not aware of any grounds that may impact on the fitness and propriety of the valuator. This replaces the previous requirement that the board is satisfied that no grounds exist that suggests that the valuator is not fit and proper to act as such.

Observation: *The draft does not state the level of the cover required. It is good to see that the position of actuaries working on their own (as sole proprietors) are recognised and that they can be exempted from the enormous cost of PI and Fidelity cover. It will however be a brave board of trustees who engage in such an arrangement knowing that the current fund insurance policies available in the market will not cover any loss caused by such a valuator.*

4. Draft Information Circular on prescribed training of trustees

Section 7A of the Pension Funds Act, was also amended (with effect from 28 February 2014) by the insertion of a new subsection (3) which provides as follows:

“(3)(a) A board member appointed or elected in accordance with subsection (1), must attain such levels of skills and training as may be prescribed by the registrar by notice in the Gazette, within six months from the date of the board member’s appointment. (b) A board member must retain the prescribed levels of skills and training referred to in paragraph (a), throughout that board member’s term of appointment.”

According to the draft Circular the purpose for which the Registrar has been given the power to prescribe standards relating to the knowledge and skill of members of the boards of funds is to improve the governance of retirement funds, not to replace elected or appointed board members with “professional” board members.

The Registrar recognises that the sound governance of a fund requires that the trustees together must have appropriate knowledge and skills in regard to the fund’s affairs. It is not necessary for the sound governance of a fund that each trustee must have the same knowledge and skills in regard to each of these matters.

Nonetheless, to ensure that a board is not over-dependent on the knowledge and skills of only one or a few trustees when making decisions in regard to a specific matter, each trustee should have not less than the minimum levels of knowledge and skills so that he or she may properly engage in discussions on the matter before the board makes its decisions in regard to all matters of substantial importance to the fund and its members.

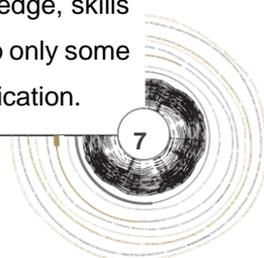
After consultations with industry stakeholders the Registrar has decided that it would not be appropriate for him at this stage to exercise his power to prescribe the minimum skills and training of trustees. These matters can only be prescribed once there is an objective measure against which the knowledge and skills of a board member may be assessed by an independent assessor recognised by the Registrar.

The Registrar has decided that such an objective measure would best be provided by a special purpose occupational qualification accredited by the South African Qualifications Authority (SAQA) on the recommendation of the Quality Council for Trades and Occupations (QCTO) and set at NQF level 5.

It has been agreed between the Registrar and the QCTO that the FSB will be the development quality partner (DQP) with responsibility for co-ordinating and funding the qualification development process; developing an “occupational profile” on which the proposed new trustee qualification would be based; designing a qualifications verification process; and developing curricula for training modules for specific subjects to be canvassed in prescribed trustee training.

In its capacity as DQP, the FSB has prepared six draft training modules, as well as draft knowledge, “practical skills” and “work experience” modules.

The Registrar intends to conduct further consultations in regard to the proposed qualification and training standards before the proposal is submitted by the QCTO to SAQA for its consideration. Provided that SAQA approves the proposed new qualification before then, the Registrar expects that he will be in a position to prescribe at least some standards in regard to the knowledge, skills and training of trustees by the end of 2015. These prescribed standards may be limited to only some elements of the proposed requirements for the achievement of the proposed new qualification.



The Registrar states that to assist trustees to acquire appropriate knowledge of the principles of sound fund governance and governance policies and practices designed to ensure compliance with those principles, the FSB has created the Trustee Toolkit, a free on-line training course available at www.trusteetoolkit.co.za. The course includes tutorials, practical guidelines, case studies and assessments and access to online support. Once the new qualification for trustees has been registered by SAQA, the Trustee Toolkit will be submitted for assessment with a view to having it accredited as training material for the governance components of the qualification.

Observation: *When the new requirements are published we will adjust our master trustee training protocol as may be required for the consideration of boards of trustees. Until then we believe that the current master provides an appropriate level of minimum training for trustees. All new trustees are required to study and workshop the fund's rules, benefit structure, forms, documents and procedures - preferably before they take office - but at least within three months of taking office. New trustees are required to complete the FSB's Trustee Toolkit as part of the new trustee training requirements. All trustees must attend a workshop on general trustees training (within 6 months) and those who sit on the investment committee or the allocation of death benefits committee are required to attend an appropriate course.*

Arguably the most important trustees training workshop is offered by your contracted benefit consultant in the context of the Simeka Governance Assurance Approach. In these sessions your benefit consultant will workshop the fund governance and risk management plan and all the other components that make up the Governance Assurance Approach. When all the indicators identified in the approach are positive, it provides the most comfort South African trustees can have that their fund is properly governed.

5. Revised draft Notice on Financial Soundness

In terms of section 18(1) of the Pension Funds Act, read with the definition of "actuarial surplus" in section 1(1), for funds that are not valuation exempt:

- a valuation basis; and
- conditions for financial soundness,

may be prescribed by the Registrar by notice on the website of the FSB (www.fsb.co.za).

The Registrar may also direct a fund that is not in a sound financial condition to submit a scheme setting out the arrangements that have been made, or which it intends to make, to bring the fund into a financially sound condition within such period, and subject to such conditions, as determined by the Registrar.

The Registrar intends to prescribe the criteria for financial soundness and the valuation basis in terms of which financial soundness is determined as well as particulars relevant to a scheme of arrangement, as set out in a Schedule to the draft Notice.

The funding level of a fund will be determined on two bases:

- A risk premium approach which may include an equity risk premium not exceeding 3% p.a.; and
- A risk free approach based on market yields of government bonds.

Financial soundness requires a funding level of at least 100% on the risk premium approach which takes account of the assumed additional return to be earned on growth assets e.g. equities.

A fund may however only apportion surplus in terms of section 15C of the PFA to the extent that the surplus exceeds a 100% funding level on the more conservative risk free approach.

Such Schedule contains requirements regarding:

- Prescribed valuation basis;
- Financial Soundness Criteria;
- Scheme of arrangement to bring fund in financially sound condition; and
- Format and submission of a scheme of arrangement.

Observation: *We support the requirement that a fund may only apportion surplus after fully funding a solvency reserve, as represented by the additional amount required to fund the liabilities on the risk free approach.*

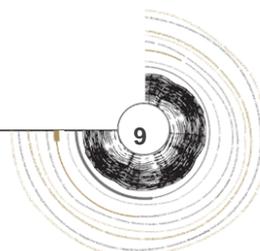
6. FSB levies

The FSB levies for the period from 1 April 2015 to 31 March 2016 were announced in Board Notice 101 of 2015. Among others these include the following:

6.1 Levy on retirement funds

The levy on any registered retirement fund (including preservation funds but excluding retirement annuity funds) is the lesser of:

- (a) R1 138, plus an additional amount of R12,45 per member of the fund and in respect of every other person who receives regular periodic payments from the fund (excluding a person whose benefit remained unclaimed or who is a beneficiary in a beneficiary fund); or
- (b) R2 411 731.



6.2 Levy on fund administrators

R6 718, 68, plus an additional amount of R523, 78 per fund referred to in 4.1 that is under the administration of the administrator, as well as an amount of R0, 64 per member and in respect of every other person who receives regular periodic payments from the fund (excluding any person whose benefit in the fund remained unclaimed or a beneficiary in a beneficiary fund).

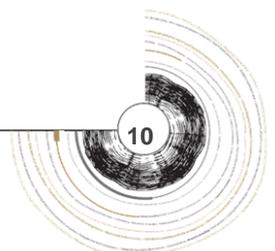
6.3 Levy for Pension Funds Adjudicator

The levy for any registered retirement fund is R4, 39 per member and any other person who receives regular periodic payments from such fund (excluding any person whose benefit in the fund remained unclaimed).

Observation: Based on our calculations the cost per member per annum in respect of FSB and Adjudicator levies is R28 for members in a 100 member fund, almost R18 for members in a 1 000 member fund and reduces to just under R17 rand for members in a 100 000 member fund such as an umbrella fund. The cost of the FSB levy on administrators adds around R1 per member per annum to the administration fee of a large umbrella fund. The 2015 FSB levies went up by around 4% for the smaller funds and by around 7% for the larger funds. The FSB is on record to encourage the consolidation of smaller funds into umbrella funds. It is therefore not clear why smaller funds were granted the lesser increases.

Impact of FSB Levies on retirement funds

Number of members	2014			2015		
	100	1 000	100 000	100	1 000	100 000
FSB Levy	2 301,00	12 768,00	1 164 138,00	2 383,00	13 588,00	1 246 138,00
Adjudicator Levy	411,00	4 110,00	411 000,00	439,00	4 390,00	439 000,00
Total	2 712,00	16 878,00	1 575 138,00	2 822,00	17 978,00	1 685 138,00
Cost pmpa	27,12	16,88	15,75	28,22	17,98	16,85
Levy increase				4,1%	6,5%	7,0%



7. Draft regulations on default investment, preservation and annuity strategies, 2015

The draft regulations circulated for comment on 22 July 2014, will require all retirement funds to operate in a set of default policies that are in the long-term interests of members. These default policies include -

Default investment strategy

All retirement funds, must have in place a simple, cost-effective and transparent default investment strategy into which the retirement savings of members that do not make any investment choice should be invested.

Default annuity strategy

All retirement funds, will be required to have in place a default annuity strategy.

Default preservation strategy

All retirement funds into which members are enrolled as a condition of employment (pension and provident funds) are required to have a default preservation strategy.

Observation: A link to the Simeka comment on the draft regulations is provided in the covering email.

South African Revenue Services (SARS): Legislation and circulars

8. National Treasury Budget Vote Speech

The following statements made by the Finance Minister in his speech of 7 May 2015 are of interest to the retirement fund industry:

“As indicated in the February budget speech, the interdepartmental work on social security reform will shortly be published. Our work on financial aspects of national health insurance is also ready for publication. These are important and challenging areas of social and fiscal policy, in which we look forward to active engagement with Parliamentary committees.”

“The 2015 Budget Speech reiterated National Treasury’s commitment to continue with retirement reforms to ensure that workers are saving enough and get good value for their savings. We repeat our message that workers, especially government employees, should not panic and prematurely resign to access their savings. Their savings remain theirs and under the stewardship of trustees.”

9. Draft Taxation Laws Amendment Bill

The proposed Bill, published for comment on 22 July 2015, seeks to refine some of the changes to taxation relating to the retirement fund industry that were made with the adoption of the Taxation Laws Amendment Act of 2013

1 March 2016 was confirmed as the date on which the tax treatment of different types of retirement vehicles will be harmonised (T-Day)

The Government Employees Pension Fund is included in the definition of a pension fund. The T-Day amendments will apply to municipal funds and state funds, but the Government Employees Pension Funds is still excluded.

The Bill also closes the loophole to avoid estate duty though contributions that did not qualify for a tax deduction to retirement funds

Observation: *T-Day: At this stage National Treasury is still hopeful that T-Day will be implemented on 1 March 2016. The industry requested National Treasury to postpone implementation by a year if they do not have certainty by the end of August. The biggest single loss will be the increased deductibility of contributions (27.5% of greater of remuneration or taxable income) for most South Africans (those who will be limited to R350 000 pa excluded) and the introduction of flexible contributions. Any member will be entitled to a deduction of up to 27.5%, subject to the R350 000 cap - as long as the fund rules allow for additional voluntary contributions.*

A link to the Simeka comment on the draft Bill is provided in the covering email.

10. Summary: Taxation of group insurance premiums and benefits:

10.1 Death cover

Where the lives of employees of an employer are insured on a group basis, this is normally done via a pension/provident fund and/or via a group life insurance policy issued to the employer.

Approved risk benefits: If the cover is provided under a tax-approved pension/provident fund, this is typically referred to as “approved” cover

Unapproved risk benefits: If the cover is provided under a separate group life insurance policy, it is typically referred to as “unapproved” cover.

The main differences between approved and unapproved cover are highlighted in the table below:

Implications of approved vs. unapproved death cover

	Approved cover (under retirement fund)	Unapproved cover (not under retirement fund)
Employer contributions/premiums	Tax deductible, subject to maximum total deduction of 20% of remuneration	Tax deductible for employer but taxed as fringe benefit in the hands of employee
Employee contributions/premiums	Tax deductible if made to a pension fund, subject to maximum total deduction of 7,5% of remuneration	Not tax deductible (see Note below this table)
Lump sum benefits	0 – R500 000 tax free R500 001 – R700 000 taxed at 18% R700 001 – R1 050 000 taxed at 27% R1 050 001 and more taxed at 36%	Full benefit tax free
Beneficiaries	Lump sum benefits must be divided between dependants and/or nominees by fund trustees in accordance with sec 37C of Pension Funds Act	Payment depends on insurance policy wording agreed with insurer e.g. <ul style="list-style-type: none"> • Pay to nominee or, if no nomination, to deceased estate; or • Pay to dependants and/or nominees in proportions determined by employer (or committee appointed by employer)
Estate duty	Both lump sum and pensions exempt from estate duty	Lump sum subject to estate duty

Note: Premiums to an unapproved insurance policy for the benefit of employees or their dependants/nominees must be treated as follows –

- If in terms of the employment contract the employer is liable to pay the premiums, these must be taxed in the hands of the employee as a fringe benefit;
- If in terms of the employment contract the employee is liable to pay the premiums, such premiums must be deducted from the after-tax salary of the employee.

10.2 Disability benefits

PHI: Temporary disability insurance, also known as PHI, may not be provided under a retirement fund.

Lump Sum Disability: Permanent disability cover, provided as an accelerated death benefit, may be provided under a retirement fund. Such benefit is taxed as a retirement benefit.

Alternatively the cover may be provided under an unapproved group life insurance scheme, in which case the tax treatment of premiums and lump sum benefits is the same as indicated in the table in paragraph 10.1 above in respect of unapproved death cover.

Since 1 March 2015 the tax treatment of premiums to a temporary disability (PHI) policy and premiums to unapproved group life insurance is the same, i.e.as follows:

- If in terms of the employment contract the employer is liable to pay the premiums, these must be taxed in the hands of the employee as a fringe benefit;
- If in terms of the employment contract the employee is liable to pay the premiums, such premiums must be deducted from the after-tax salary of the employee.

As from 1 March 2015 there is no longer any tax deduction for employees in respect of premiums to a PHI policy. However as from this date any PHI benefits are no longer taxable.

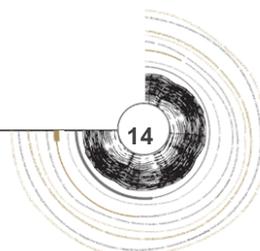
11. Finance Minister withdraws implementation of UIF proposal

In the 2015 Budget, the Minister proposed to reduce the remuneration threshold against which contributions to the UIF are calculated from the current monthly amount of R14 872 to R1 000, for a period of one year. The proposal was aimed at providing support to the economy by allowing workers and employers to keep and use for themselves R15 billion that would otherwise have gone to UIF. The UIF currently has an accumulated surplus of more than R72 billion, which is well in excess of annual expenditure on benefits.

According to a media statement issued on 30 April 2015 the Finance Minister has decided not to proceed with the implementation of the aforesaid proposal. This decision was taken after consultations at NEDLAC where the following concerns were raised:

- the need to implement the UIF Amendments Bill tabled in 2014, to extend benefits to workers who contribute towards the Fund;
- the need to speed up engagement over the broader social security reform process.

Observation: *We support the business as usual approach until the matter can be reviewed holistically and future contributions are reduced accordingly.*



Other news and developments

12. Revised draft Code of Good Practice on the Employment of Persons with Disabilities

The Minister of Labour on 12 June 2015 published for public comment a draft revised Code of Good Practice in terms of the Employment Equity Act on the Employment of Persons with Disabilities. The document is available at www.gpwonline.co.za.

The Code is a guide for employers and employees on promoting equal opportunities and fair treatment for persons with disabilities. Although failure to observe the Code does not, by itself, render a person liable in any proceeding, the courts and tribunals must consider it when they interpret and apply the Employment Equity Act.

12.1 The proposed changes

The main changes proposed to the Code are designed to give effect to the following new statement inserted in the foreword: *"Discrimination is a socially construed action and can thus be avoided by ensuring better knowledge, understanding and awareness about disabilities and the challenges encountered by persons with disabilities."*

Two definitions have been added to paragraph 5 of the Code to broaden the scope of disability related discrimination:

- Discrimination on the basis of disability means *"any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."*
- Persons with disabilities include *'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'*

12.2 The main principles retained

The draft Code retains the main principles of the current Code which among others include the following:

- Testing to determine the health status of an employee should only be carried out after an employer has established that the person is in fact competent to perform the essential job functions or duties and after a job offer has been made.
- An employer who provides or arranges for occupational insurance or other benefit plans (e.g. retirement funds and group life and disability income insurance schemes) directly

or through a separate benefit scheme or fund, must ensure that they do not unfairly discriminate against persons with disabilities. Employees with disabilities may not be refused membership of a benefit scheme only because they have a disability. Employees may be required to submit to medical examinations or tests before becoming members of such schemes, but the purpose of these examinations is to assess a person's suitability for membership of a benefit scheme and is not relevant to a person's capability to perform the inherent requirements of the job. Therefore an employer may not refuse to recruit, train, promote or otherwise prejudice any person only because that person has been refused membership of a benefit scheme.

- Employees who become disabled should, where reasonable, be re-integrated into work. The employer should consult the employee to assess if the disability can be reasonably accommodated. If an employee becomes disabled, the employer should maintain contact with the employee and, where reasonable, encourage early return-to-work. This may require vocational rehabilitation, transitional work programmes and, where appropriate, temporary or permanent flexible working time.
- If the employer is unable to retain such employee in employment, then the employer may terminate the employment relationship. When employees who have disabilities are dismissed for operational requirements, the employer should ensure that any selection criteria used do not either directly or indirectly unfairly discriminate against persons with disabilities.
- Employers who provide disability benefits must ensure that employees are appropriately advised before they apply for the benefits available and before resigning from employment because of a medical condition.

Observation: *Employers should be aware of their responsibility to avoid **unfair** discrimination against employees (or potential employees) on the basis of disability, irrespective whether the disability involves physical, mental, intellectual or sensory impairment. An employee with a disability may not be refused membership of the employer's retirement fund, although reasonable limitations may apply with regard to risk benefits.*

With recognition to the major contributions made by Anton Swanepoel and Sanlam Employee Benefits: Law Services

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