

# Uncertainty about pension contributions of striking workers

According to Rebecca Jansch, an attorney at pan-African law firm Bowman Gilfillan, South African companies are in a legislative bind over uncertainty around whether they are legally compelled to maintain pension contributions on behalf of striking workers.



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"The gap between two key pieces of legislation on this issue has been brought into focus by the recent wave of strikes in the mining, metal and engineering industries," says Jansch.

The Labour Relations Act allows employers to discontinue the payment of salaries to striking workers during protected strikes.

However, the Pension Funds Act does not provide for a suspension of pension fund contributions in a situation like a strike where workers are not being paid, despite remaining employed.

## Serious consequences

There are serious legal consequences when a company stops paying pension fund contributions without having a legitimate basis for non-payment, she says. The company would be subject to penalty interest on late payments, and the directors of the company can be held financially and criminally liable for outstanding contributions in their personal capacity.

There are also serious financial consequences for the members of the pension fund. "The loss of contributions reduces their retirement benefit; they may lose their group risk cover; and the non-payment of salaries could cause them to default on their home loans, prompting banks to call upon guarantees provided by the pension fund.

"In order to bridge the legislative gap, pension fund rules should make explicit provision for the legitimate suspension of

contributions during strikes and other applicable scenarios. Where the rule is correctly drafted, the aforementioned undesirable consequences can be averted," says Jansch.

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