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strikes and their effect on pension benefits

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strikes

- the Constitution and the LRA
  - employees are entitled to strike
  - the employer's obligations under the employment contract continue to subsist, despite the strike
  - however, the LRA provides that an employer is not obliged to remunerate an employee for services that the employee does not render during a protected strike

pension obligations

- section 13A of the PFA
  - employer shall pay the following in full to a fund:
    - any contribution which is to be deducted from a member's remuneration
    - any contribution for which the employer is liable
  - the payments must be within the fund accounts within 7 days of the end of the month within which the contribution is payable

the rules

- whether an employer will have to continue paying contributions would largely depend on the rules of the pension fund in which it participates and, specifically the definition of “remuneration”
- essentially two broad possibilities:
  - rules provide that % must be deducted from monies actually paid or entitled to; or
  - rules provide that employer must pay % of basic/monthly/TCTC remuneration.
- in the first instance there is no difficulty
- In the second instance the employer may have to pay, irrespective of what money was actually earned

what is the payment

- In the second instance, what is the payment?
  - payment as agent
  - loan
  - employers obligation

agency

- person acting on behalf of another
  - in the pension context would be where the rules provide that the employer is paying contributions obo of the employee
  - in terms of the law of agency the agent (employer) would have a right of recovery against the principal (employee)
  - however, would have to comply with the LRA on deductions from employee remuneration

loan

- could not be loan unless you have the agreement of the employee
- however, if employee agrees to an advance on remuneration in order to pay contributions, what are the implications?
  - should not fall under the national credit act as it is strongly arguable that it is not an arms length transaction

employer’s obligation

- what if the rules are drafted in such a way as to make the payment the obligation of the employer?
  - possible enrichment action?
  - temporary absence?
  - rules should be drafted to avoid this eventuality

thank you

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