

275 Kent Avenue
Ferndale
Randburg
2194
Tel: 0861664226
Fax: 011 369 7600
LRA2/6/6/1

CIRCULAR



Good to Great Together

CIRCULAR MEMO NO: 08/2016

DATED: 20 May 2016

TO ALL PARTICIPANTS IN THE MOTOR INDUSTRY

MIBCO is governed, in terms of its role and functions, by collective agreements which are negotiated between employee and employer parties within the Motor Industry. One such collective agreement is the Administrative Agreement which is of limited duration, covers amongst other things, the following:

1. The funding of MIBCO through a levy system by means of returns which is processed on a monthly basis;
2. The deduction and remittance by employers of retirement fund contributions by means of the returns process;
3. The payment of benefit fund contributions by employers by means of the returns process;
4. The deduction and remittance of trade union subscription fees by employers by means of the return process; and
5. The enforcement of collective agreements and disputes through the Dispute Resolution Centre (DRC).

Please be advised of the following two important notices:

1. EXPIRY OF THE ADMINISTRATIVE COLLECTIVE AGREEMENT

The Administrative Collective Agreement of MIBCO will expire on 31 May 2016.

In the meantime, the Minister of Labour is in the process of giving consideration to the extension of the Administrative Agreement however same will not be in place as from 1 June 2016. Employers will be able to continue with the payment of Council Levies and Union Subscriptions via the monthly returns system as the lapse in the Administrative Agreement is viewed as temporary.

To accommodate the ongoing submission of monthly returns, MIBCO presents the following recommendations regarding how the Council Levies and Union Subscription processes should be managed in the interim.

A. Where employers elect to exercise the option not to pay Council Levies and / or Union Subscriptions via MIBCO, the following should be observed:

I. Non-payment of the Council levies to MIBCO

- MIBCO has enhanced the monthly return system to allow for the **breakout** of the Council Levies.

II. Non-payment of the Union contributions through the MIBCO returns system

- MIBCO has also enhanced the monthly return system to allow for the **breakout** of the Union (NUMSA and MISA) contribution.

B. Employers electing to continue paying the Council levies and the Union contributions should continue to do so via the monthly returns system as per the standard processes.

In the event this option is selected, MIBCO will accept that the payments made have been done so with the consent of both the Employer and Employees, and will utilize the monies received for the day to day running of the Council in the provision of services to the Industry.

2. EXPIRY OF THE PROVIDENT FUND AGREEMENTS

Please be advised that the period of operation of the above-mentioned Agreements, for both the Auto Workers Provident Fund and Motor Industry Provident Fund expired on 31 March 2016. In the meantime, the Minister of Labour is in the process of giving consideration to the extension of the respective agreements; however such extension has not been in place as from 1 April 2016. The Council would like to urge Employers and Employees to continue contributing towards the respective Retirement Funds in order to ensure that they are not negatively impacted as a result of breaks in the contributions.

Your attention is further directed towards Rule 7 (11) (a) and Rule 7 (9) (a) of the Fund Rules that explicitly provide that in the instance of the Agreements expiring the Board of Trustees of the Funds shall continue to administer the Funds and therefore employers have an obligation to pay over contributions to comply with the legal obligations imposed by the Pension Funds Act and the rules of the two funds, which remain in force. The Funds have legal remedies to ensure that action can be taken against Employers and Employees who do not pay over contributions.

In addition to the above mentioned there are also other remedies available with specific reference to non-contribution.

- 1) Section 34 of the Basic Conditions of Employment Act 75 of 1997 as amended that deals with the payment of contributions to benefit funds;
- 2) Section 33 of the recently amended Labour Relations Act 66 of 1995 dealing with the enforcement of Collective Agreements by Bargaining Councils;
- 3) Section 13A of the Pension Funds Act criminalizing the non-payment of Pension Fund contributions;
- 4) Affected Employees also have the right to lodge complaints with the respective Boards of these Funds;
- 5) Affected Employees may also opt to lodge a complaint with the Pension Fund Adjudicator.

In view of the afore-mentioned and in harnessing sound and stable Employer and Employee relationships it is requested that both Employers and Employees continue contributing towards the funds whilst MIBCO is urgently rectifying the reinstatement of these two Provident Fund Agreements.

The Rules determine the contributions. Employers with employees who are members of the funds are advised, in terms of the rules of the funds and the provisions of the Pension Funds Act, and in their own interests and those of the members of the funds, to comply with their legal obligation to continue making the deductions and remit such contributions via MIBCO, through the standard return processes, in the usual way. MIBCO will, as usual, account to the respective funds.

We trust this clarifies the matter.

The General Secretary