
BASIC GUIDELINES ON RETRENCHMENT PROCEDURES FOR EMPLOYERS EMPLOYING LESS THAN 50 EMPLOYEES

INTRODUCTION

Retrenchment is the process by which staff is reduced to cull redundant employees and reduce the wage bill. The Labour Relations Act¹, permits employers to dismiss employees for operational requirements. These are defined as requirements based on economic, technological, structural or similar needs of the Employer. Economic reasons are those that relate to the financial management of the enterprise. Technological reasons refer to the introduction of new technology which effects work relationships either by making existing jobs redundant or by requiring employees to adapt to the technology or consequential restructuring of the workplace. Structural reasons relate to the redundancy of posts consequent to a restructuring of the Employer's enterprise.

REQUIRED RETRENCHMENT PROCEDURES

1) CONSULTATION

Like all dismissals retrenchments must be both procedurally and substantively fair. Section 189 of the Labour Relations Act requires all consulting parties to reach consensus on the various matters specified.

1.1) WHEN MUST CONSULTATION COMMENCE

The Labour Relations Act requires that consultation must take place when the employer contemplates retrenchment.

1.2) WHO MUST YOU CONSULT WITH

Section 189 (1) of the LRA provides that, before retrenching, employers must consult any person whom the employer is required to consult in terms of the collective agreement. If there is no collective agreement, meetings should be held individually with all Employees that could be affected by the retrenchment. If the employee is a member of the union, the Union must also be consulted.

¹ Act 66 of 1995

1.3) **WHAT MUST THE CONSULTATION BE ABOUT**

Section 189 (2) of the Labour Relations Act provides that the consulting parties must attempt to reach consensus on the following matters:

- Avoiding the dismissal;
- Appropriate measures to minimize the dismissals;
- Measures to change the timing of the dismissals;
- Appropriate measures to mitigate the effects of retrenchment;
- The method for selecting the employees to be dismissed;
- Severance Pay.

2) **NOTIFICATION OF RETRENCHMENT**

Section 189 (3) of the LRA requires the employer to disclose in writing to the employees or their unions all relevant information including but not limited to:

- The reasons for the Retrenchment;
- Alternatives considered and the reasons why they were rejected;
- The number of Employees likely to be affected;
- Proposed method of selection;
- Severance pay;
- Assistance that the employer will be offering;
- Possibility of future re- employment.

3) **OPPORTUNITY FOR FEEDBACK**

The employer must allow the other party to make presentations.

4) **CRITERIA FOR SELECTION**

Section 189 (7) of the LRA provides that employers may select employees to be retrenched according to the criteria they have agreed upon by the consulting parties. If no criteria have been agreed upon that the selection must be fair and objective, the LIFO ('last in' – 'first out') principal is often applied but is not the only principal.

5) **NOTICES OF TERMINATION**

Notices are given to the Employees who are to be retrenched after the consultation process has been completed.

6) **SEVERANCE PAY**

Employees are entitled to severance pay only if they are retrenched for operational requirements. The requirements regarding severance pay are set out in section 41 of the BCEA². Section 41 provides that an employer must pay an employee dismissed for operational requirements “severance pay equal to at least one week’s remuneration for each completed year of service with that employer.

7) **PAYMENTS**

The employer must pay the retrenched employee the following payments:

- Severance pay;
- Any outstanding leave to be paid out; and
- Notice pay.

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² Basic Conditions Of Employment ACT, 75 of 1997