

SMALL-SCALE RETRENCHMENTS



INTRODUCTION

Retrenchment is a dismissal based on the employer's operational requirements. Operational requirements means requirements based on the economic, technological, structural or similar needs of the employer. This could be for a number of reasons such as, that the employers' debts now exceed its income or because employee positions have become redundant as a result of new technology or due to a merger with another business.

CORRECT PROCEDURE

Consultation must take place as soon as the employer contemplates retrenchment. Consultation must take place (in the following order of priority) –

- with a workplace forum or if there is no workplace forum;
- with a registered trade union whose members are likely to be affected or where there is no workplace forum or trade union; or
- with the employee/s likely to be affected by the proposed dismissals.

An attempt must be made to reach consensus on appropriate measures to –

- avoid the dismissals (examples could include adjusting working hours, eliminating temporary labour, eliminating overtime, offering early retirement);
- minimise the number of dismissals;
- to change the timing of the dismissals;
- ways to lessen the effects of the retrenchment;
- the employer and the other consulting party must also try to reach consensus on the method for selecting the employees to be dismissed; and
- severance pay for dismissed employees.

DISCLOSING INFORMATION IN WRITING

An employer has to disclose relevant information in writing to the consulting party, including the –

- reasons for retrenchment;
- alternatives considered and why they were rejected;
- number of employees likely to be affected and their job categories;

- proposed method of selection;
- the time or period when dismissals are likely to occur;
- severance pay proposed;
- assistance that the employer will be offering (examples could include offering employees time off to attend interviews, early release should a new job be found, issuing letters of reference, psychological counselling);
- possibility of future re-employment;
- the number of employees employed by the employer; and
- the number of employees that the employer has dismissed for reasons based on its operational requirements in the preceding 12 months.

OPPORTUNITY FOR FEEDBACK

The employer must give the other consulting party an opportunity to make presentations that must be considered and be responded to.

CRITERIA FOR SELECTION

If no agreement is reached on the criteria for selection, the criteria must be fair and objective. The LIFO (last in first out) principle is often applied, but is not the only consideration. Staff with key skills may be retained and a poor performance record may be taken into consideration.

PAYMENTS OF SEVERANCE PACKAGE

The following payments need to be made –

- Severance pay:
 - Employees should be paid at least one week's remuneration for each completed and continued year of service. ('Remuneration' includes basic salary, payment in kind and discretionary payments related to working hours or performance).
 - Should an employee *unreasonably* refuse the employer's offer of alternative employment with that employer or any other employer he/she will not be entitled to a severance package.
- Outstanding leave to be paid out.

- Notice pay: (where applicable)
 - If employed for less than six months – one week's notice; if employed for more than six months but not more than one year – two weeks' notice and if employed for more than a year – four weeks' notice.
 - Domestic and farm workers, who have been employed for more than six months, must receive four weeks' notice. The employer may require employees to work/not to work during the notice period.
- Other
 - Depending on the employment contract, the following *may* be relevant — *pro rata* payment of bonus, pension and provident fund.
- Ensure that the UI19 form (for unemployment insurance) previously referred to as the 'blue card', together with the certificate of service are issued.
- Voluntary retrenchment: Also when parties voluntarily agree to a retrenchment, it must be made clear in the termination letter that this retrenchment happened as a consequence of a s 189 procedure.

DISPUTE RESOLUTION

- The employee can refer a dispute to the CCMA if,
 - The employer followed a consultation procedure that applied to that employee only,
 - The employer's operational requirements lead to the dismissal of that employee only,
 - The employer employs less than 10 employees, irrespective of the number of employees who are dismissed.

RELEVANT LEGISLATION

- Labour Relations Act 66 of 1995 as amended, s189
- Basic Conditions of Employment Act 75 of 1997 as amended, s35, s37, s41 and s42.