

Retrenchment and Covid-19

INTRODUCTION

On 01 June 2020, IOL reported more than 28 000 cases referred to the CCMA by employees who have either been retrenched or dismissed.

One of the unintended consequences of the continued implementation of Covid-19 Regulations is the financial strain that countless employers/business owners are faced with.

Such a strain may lead employers to consider the possibility of restructuring their business. This includes the possibility of retrenchments.

Section 189 of the Labour Regulations Act continues to regulate/govern the procedure to be followed for a fair and lawful retrenchment.

WHAT IS RETRENCHMENT?

This is a form of dismissal due to no fault on the part of the employee. Some of the employers are of the view that retrenching an employee is as simple as issuing a notice of termination of employment based on operational grounds.

Section 189 of the Labour Relations Act provides that employers may dismiss employees for operational requirements.

These are defined as requirements based on:

- Economic
- Technological
- Structural or similar needs of the employer
- Retrenchment Procedure

The continued existence of covid-19 does not mean that employers are entitled to short cuts and non-compliance with the provisions of the law.

Instead, non-compliance may lead to negative outcomes should the matter be referred to a tribunal such as the CCMA or Bargaining Council.

Section 189 and 189A regulate and spell out the procedure to be followed. The

differences between the two clauses relate to the number of employees (active) employed by the company when it is considering retrenchments.

Section 189A applies when employees in a specific company/business are more than 50.

Retrenchment should be considered as a last resort.

The government has urged employers to make use of measures and benefits put in place to relieve their economic situation through the Unemployment Insurance Fund and the Temporary Employees Relief Scheme.

The employer must give a fair reason for deciding to retrench and must also follow a fair procedure—failing which, the retrenchment may be considered unfair.

The Labour Relations Act requires the employer to, amongst others, follow the procedure as outlined below:

The employer must consult with the employees who are likely to be affected

- The employer must issue a written notice inviting employees to consent and disclose necessary information.
- Consider alternatives by the employees as well as grounds on which such alternatives cannot be considered.
- Agree on the selection criteria of the affected employees.
- After exhausting such a process, the employer may make its decision to retrench and issue notices to affected employees.

In terms of Section 189A, either party can ask for a Facilitator and such a Facilitator can be from the CCMA or any other independent body.

It also spells out the time frames applicable to be complied with.

SEVERANCE PAY

Note that employees are entitled to severance pay of a minimum of one week's pay for each year completed. This is only a minimum, and if the company policy provides for more, it should be followed.

If the employees are not happy or feel that they were unfairly treated, they can

refer the matter to the CCMA. Such a dispute must be referred within 30 days.

If the dispute remains unresolved, it can be referred to the Labour Court.

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