

A QUICK GUIDE TO RETRENCHMENT

Category: Commercial Law

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Tougher economic times have led to more companies facing the unpleasant task of having to retrench staff. Here is a quick guide on what retrenchment really is.

Retrenchments are generally classified as “no fault” dismissals given that they arise from an employer’s situation and are not due to any fault or responsibility of an employee. The ultimate goal is for the employer to increase profits and reduce losses.

The most common reason for retrenchment is “operational requirements” which includes:

- Economic needs;
- Technological needs; and
- Structural needs.

As with all forms of dismissals, the employer must ensure that the retrenchment process must be a procedurally and substantively fair process.

Once an employer contemplates retrenchment, a consultation must take place between the employer and all affected parties. These consultations must be with the aim of coming to a consensus on matters such as finding appropriate measures to:

- avoid the dismissal;
- minimise the number of dismissals;
- change the timing of dismissals; and
- mitigate the effects of retrenchment.

Additionally, the method for selecting the employee/s to be dismissed and severance pay for the dismissed employee/s should be dealt with. The most common and usually most appropriate method on deciding which employees to retrench is last in first out (“LIFO”) subject to skills, qualifications and experience.

Employees’ who may be retrenched must be given written notice, disclosing all relevant information regarding the possible retrenchment. The employer must also give the employees a chance to make representations.

Once the consultation is complete, a notice of retrenchment will be given to the affected employee/s, which details, *inter alia*, leave pay, notice pay and severance pay which usually equates to one week wages for every year the employee has worked.

It is important to note that retrenchments can take anything from a couple of weeks to a couple of months. There are different rules that govern small and large scale retrenchments and it is always advisable to seek professional advice when faced with the prospects of retrenchment, whether you are an employer or an employee.