

# RETRENCHMENT



## CORRECT PROCEDURE

Consultation must take place as soon as the employer contemplates retrenchment. Consultation must take place –

- ◆ with a workplace forum.
- ◆ with a registered trade union whose members are likely to be affected or
- ◆ with the employee/s likely to be affected.

An attempt must be made to reach consensus on —

- ◆ avoiding the dismissals (examples could include adjusting working hours, eliminating temporary labour, eliminating overtime, offering early retirement);
- ◆ minimising the number of dismissals;
- ◆ the timing of dismissals;
- ◆ ways to lessen the effects of the retrenchment;
- ◆ the method for selecting the employees to be dismissed; and
- ◆ severance pay.

## DISCLOSING INFORMATION IN WRITING

An employer has to disclose relevant information in writing, 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;

- ◆ timing;
- ◆ 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); and
- ◆ possibility of future re-employment.

## 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, 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

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 an offer of alternative employment he/she will not be entitled to a severance package.

- ◆ Outstanding leave to be paid out.
- ◆ Notice pay  
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. If relevant, ensure that blue card is issued.

## RELEVANT LEGISLATION

Labour Relations Act, s189

Basic Conditions of Employment Act, s35, s37 and s41