

How to manage retrenchments in turbulent times

During the lockdown period from May to June 2020, the Commission for Conciliation, Mediation and Arbitration (CCMA) received 28,000 retrenchment cases. In August, it revealed that it had received 190 large-scale retrenchment referrals and 1,307 small-scale retrenchment referrals in that month alone. While we can expect these numbers to drop with the easing of lockdown regulations, it is imperative that organisations clearly understand the retrenchment procedure and how to ensure both employee and business are protected.



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While the numbers may be slowly dropping as the lockdown eases, it is important that organisations have a clear understanding of the regulations that come with retrenchment and how to ensure that both employee and business are protected. According to Nicol Myburgh, Head: CRS Technologies HCM Business Unit, there are a lot of considerations that go with retrenchment and a Section 189 dismissal, and it is critical that these are carried out in accordance with the letter of the law.

“It is a very difficult time for business – the lockdown has exacerbated an already fragile economy and many companies are struggling and going into retrenchment procedures,” he explains. “However, retrenchment is complex and there are pitfalls that need to be avoided so as to not end up falling foul of the CCMA and the law.”

The role of the CCMA is to mediate the process of retrenchment and ensure it is done fairly and correctly. The role of the business is to ensure that the paperwork and regulations are adhered to so that employees are taken care of correctly. Companies have to know how to undertake this process properly, clearly outlining the financial reasons and issues that have brought them to this point.

“Companies need to know the ins and outs of retrenchment regulations and paperwork,” says Myburgh. “Retrenchments are 99% procedural, so if you miss a step or do something wrong, you are immediately procedurally unfair and the CCMA will grant an arbitration award to the employee.”



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Jonathan Goldberg 9 Nov 2020



The first step the business needs to take is to issue a Section 189 letter that informs employees that you’re embarking on a retrenchment process. There are 21 items that have to be covered in this letter and if even one is missing, you’re putting your business at risk.

Once you’ve released the letter, you can then set a date for consultations and this is when you will need to discuss the retrenchment process with employees, and sometimes unions. Any discussions and negotiations have to be put in writing, otherwise you are opening yourself up to complications. Once these processes have been completed, you will need to make specific payments at a specific time, and you have to provide people with very clear deadlines and notice periods.

It’s a little-known fact that the principle of 'last in, first out' is not one that the business is forced to adhere to. Many companies believe that they’re locked in to this method and have to get rid of the last people they hired. This is not true. There are different methods for retrenchment that do not involve you having to dismiss your top performers. You can manage this process by working with a consultant who can help you identify the best route through the retrenchment process and help you manage morale, paperwork and procedure as carefully as possible.

“As much as it’s an extra cost at a time when costs are tight, it’s worth getting a consultant to help you go through retrenchment processes so you are completely aligned with the law,” concludes Myburgh. “If you’re not a specialist, it can be daunting to follow each employee case and ensure that every box is correctly ticked and that both business and employees are protected. A specialist will not only support you in getting the paperwork right, but will help you manage your people and processes correctly.”

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