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Legal Services Newsletter | Regsdienste Nuusbrief

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**CORRECT PROCEDURE REGARDING
RETRENCHMENT**

CCMA Retrenchment

<https://www.ccma.org.za/Services/Individual-Employee-Employer/Dealing-with-Retrenchment>

**KORREKTE PROSES AANGAANDE
AFLEGGINGS**

KVBA Afleggings

<https://www.ccma.org.za/Services/Individual-Employee-Employer/Dealing-with-Retrenchment>

CONSULTATION

A consultation must take place as soon as the employer contemplates retrenchment.

The consultation must take place –

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

When consulting with the affected parties 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);
- minimizing the number of dismissals;
- the timing of dismissals;
- ways to lessen the effects of the retrenchment;

KONSULTASIE

'n Konsultasie moet plaasvind sodra die werkgewer afleggings oorweeg.

Die konsultasie moet plaasvind –

- met 'n werkplek forum; of
- met 'n geregistreerde vakbond wie se lede waarskynlik beïnvloed sal word; of
- met die werknemer/s wie waarskynlik beïnvloed sal word.

Wanneer daar met die geaffekteerde partye gekonsulteer word moet daar 'n poging aangewend word om konsensus te beruik op –

- die vermyding van ontslag (voorbeelde kan insluit aangepaste werksure, eliminerings van tydelike arbeid, eliminerings van oortyd werk, aanbieding van vroeë aftrede);
- minimalisering van die hoeveelheid afleggings;
- die tydsberekening van afleggings;
- wyse om die effek van die aflegging te versag;

- the method for selecting the employees to be dismissed; and
- severance pay.

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

- die metode wat gebruik sal word om die werknemers te identifiseer vir aflegging;
- skeidings pakkette.

Die werkgewer moet die ander party tot die konsultasie 'n geleentheid gee om voorleggings te maak wat oorweeg moet word en waarop gereageer moet word.

CRITERIA FOR SELECTION

KRITERIA VIR IDENTIFISERING

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. These are but a few of the consideration that can be contemplated, but as stated above **criteria must be fair and objective**.

Indien daar nie 'n ooreenkoms bereik kan word rakende die identifisering nie, **moet die kriteria wat gevolglik gebruik word billik en objektief wees**. Die LIFO (laaste in eerste uit) beginsel word dikwels toegepas, maar is nie die enigste oorweging nie. Werknemers met sleutel vaardighede mag dalk behou word en 'n swak prestasie rekord mag in ag geneem word. Hierdie is maar 'n paar van die oorwegings wat gekontempleer kan word, maar soos bo genoem **moet die kriteria wat gebruik word billik en objektief wees**.

PAYMENTS

BETALINGS

Where applicable 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

Waar van toepassing moet die volgende betalings gedoen word –

- Skeidingspakket

Werknemers moet ten minste een week se vergoeding vir elke voltooide jaar en voortgesette jaar van diens ontvang. ('Vergoeding' sluit in die basiese salaris, enige betalings in guns en diskresionêre betalings verwant aan werksure of prestasie).

Waar 'n werknemer onredelik 'n aanbod van alternatiewe indiensneming weier sal hy/sy nie geregtig wees op 'n skeidingspakket nie.

- Uitstaande verlof moet uitbetaal word
- Kennisgewing betaling

Indien diens vir minder as ses maande geduur het – een week kennis; indien die diens meer as ses maande was maar minder as een jaar – twee weke kennis en vier weke kennis vir enige diens langer as 'n jaar. Plaaswerkers en huishulpe moet vier weke se kennis betaal word indien hul langer as ses maande diens gelewer het. Die werkgewer mag werknemers verplig om diens te lewer in die

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| <p>work/not to work during the notice period.</p> <ul style="list-style-type: none"> • Other <p>Depending on the employment contract, the following may be relevant — pro rata payment of bonus, pension and provident fund. If relevant, ensure that the blue card is issued.</p> | <p>kennis tydperk of nie.</p> <ul style="list-style-type: none"> • Ander <p>Afhangend van die dienskontrak kan die volgende van toepassing wees – pro rata betalings van ’n bonus, pensioen en voorsorgfonds. Indien van toepassing, verseker dat ’n blou kaart uitgereik word.</p> |
| <p>DISCLOSING INFORMATION IN WRITING</p> | <p>BEKENDMAKING VAN INLIGTING OP SKRIF</p> |
| <p>When retrenchment is unavoidable the employer has to disclose all relevant information in writing, including the-</p> <ul style="list-style-type: none"> • reasons for retrenchment (e.g. lack of funds or restructuring); • 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. | <p>Waar afleggings onvermydelik is moet die werkgewer alle relevante inligting op skrif bekend maak, insluitende-</p> <ul style="list-style-type: none"> • redes vir die aflegging (bv. tekort aan fondse of herstrukturering); • alternatiewe wat oorweeg is en hoekom hul afgekeer is; • die aantal werknemers wat waarskynlik geaffekteer sal wees en hul werk kategorieë; • voorgestelde metode van seleksie; • tydraamwerk; • voorgestelde skeidingspakket; • bystand wat die werkgewer sal aanbied (dit kan aftyd vir werknemers wees om onderhoude by te woon insluit, as ook vroeë vrystelling indien ’n ander aanstelling bekom word, verwysings briewe, en sielkundige berading); en • die moontlikheid van toekomstige indiensneming. |
| <p>A document containing the information above is sometimes referred to as a Section 189 Notice.</p> | <p><i>’n Dokument wat bostaande inligting bevat word dikwels na verwys as ’n Artikel 189 Kennisgewing.</i></p> |
| <p>The process in Section 189 must be distinguished from the process in Section 189A.</p> <p>Section 189A applies to employers employing more than 50 employees if the employer intends retrenching:</p> <ul style="list-style-type: none"> • 10 or more employees, if the employer employs 50 – 200 employees; • 20 or more employees, if the employer employs 201 – 300 employees; ... etc. <p>Section 189A is a more formalized procedure that includes the use of a facilitator and is meant to be used for larger groups of interested parties or</p> | <p>Die proses in Artikel 189 moet onderskei word van die proses in Artikel 189A.</p> <p>Artikel 189A is van toepassing op werkgewers wat meer as 50 werknemers in diens het en van plan is om afleggings te doen van:</p> <ul style="list-style-type: none"> • 10 of meer werknemers, indien die werkgewer tussen 50 – 200 werknemers het; • 20 of meer werknemers, indien die werkgewer tussen 201 – 300 werknemers het; ... ens. <p>Artikel 189A is ’n meer formele proses waar, onder andere, die gebruik van ’n fasiliteerder ingesluit word. Dit is bedoel vir groter groepe belanghebbende partye of medium na groot</p> |

medium to large businesses.

besighede.

RELEVANT LEGISLATION

RELEVANTE WETGEWING

Labour Relations Act, s189

Basic Conditions of Employment Act, s35, s37 and s41

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WE WOULD LIKE TO HEAR FROM YOU #BecauseWeCare

The graphic features a dark blue background with a network of glowing blue nodes and lines. Six circular icons are arranged in a hexagonal pattern, each containing a contact method: a headset for the phone number 012 023 1333, the Instagram logo for the handle saouteachers, a speech bubble for SMS with the number 071 456 4375, the Facebook logo for SAOU Nasionaal/National, the WhatsApp logo for the number 016 127 1921, and an envelope for the email address saou@saou.co.za. The SAOU logo is on the left, and the text 'WE WOULD LIKE TO HEAR FROM YOU #BecauseWeCare' is at the bottom. A yellow bar is at the very bottom.