



labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA



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Basic Guide to Retrenchment

Employers must consider alternatives to retrenchment. Employers must consult all the relevant parties when considering worker retrenchment. If retrenchment is unavoidable, fair procedures must be followed.

Application

The Labour Relations Act applies to all employers, workers, trade unions and employers' organisations, but does not apply to -

- members of the:
 - National Defence Force;
 - National Intelligence Agency; or
 - South African Secret Service.

See

- Labour Relations Act

Applies to all workers and employers and aims to advance economic development, social justice, labour peace and the democracy of the workplace.

Consultation Procedure

When an employer considers retrenching workers because of operational needs, he must, in writing, consult -

- the people mentioned in the collective agreement; or
- workplace forum; and
- the registered trade union of affected workers; or
- if there is no trade union, the workers or their representatives.

The employer and the consulting parties must agree on:

- ways of -
 - avoiding or minimising retrenchments;
 - changing the timing of retrenchments;
 - reducing the effects of retrenchment;
- choosing which workers to retrench; and on
- severance pay.

Employers must give the consulting party written notice and information on:

- reasons for an intended retrenchment;
- why a specific retrenchment method was used;
- how many workers are employed;
- how many workers are to be retrenched;
- how many workers were retrenched in the previous 12 months;
- when retrenchments will take place;
- what assistance the employer intends to give retrenched workers; and
- possible re-employment.

An employer must allow a consulting party to respond to a retrenchment notice. If the employer disagrees with the response, he must state why. If the consulting party responds in writing, the employer must respond in writing.

Organisations with More Than 50 Workers

When an organisation has more than 50 workers, the minimum number of workers that may be retrenched is -

Total Number of Workers Employed Minimum Number of Workers Considered for Retrenchment

50 – 200	10
200 – 300	20
300 – 400	30
400 – 500	40
500 or more	50

If more than 50 workers are to be retrenched, then that number must be added to the number of workers retrenched in the previous 12 months. The total number must be equal to or more than the relevant number shown in the table above.

Disputes

If a dispute arises as a result of retrenchments,

- workers may strike;
- an employer may lock workers out; and
- the parties may agree to change the consultation or facilitation periods.

Facilitation

The Commission for Conciliation, Mediation and Arbitration (CCMA) must appoint a facilitator 15 days after a retrenchment notice if requested by -

- the employer; or
- most of the retrenched workers.

If a facilitator is appointed, and 60 days have elapsed since the date of the retrenchment notice -

- the employer may give notice to end the job contracts (see the Basic Guide to Termination);
- the registered trade union or the workers may give 48 hours' (or 7 days' for public servants) notice of a strike; or
- refer the dispute to the Labour Court.

If an employer gives notice before the above periods have elapsed, workers may give notice to strike.

If a facilitator is not appointed -

- a party may not refer a dispute to a council or the CCMA unless 30 days have elapsed from the date of giving notice.
- and once 48 hours or 7 days (for public servants) have elapsed,
 - the employer may give notice of retrenchment;
 - workers may give notice of a strike; or
 - workers may refer the dispute to the Labour Court.

If an employer gives notice of retrenchment before the above periods have elapsed, workers may give notice to strike.

Referral to Labour Court

If an employer's retrenchment procedure is unfair, a consulting party may apply to the Labour Court, within 30 days after the employer's notice, to order the employer to -

- comply with a fair procedure;
- prevent him from retrenching a worker; or
- re-employ a worker; or
- award compensation to a worker.

If a party has already referred a retrenchment dispute to the Labour Court, it may not give notice to strike.

If a party has already given notice to strike, that party may not refer the dispute to the Labour Court.

Secondary Strikes

14 days' written notice must be given for holding secondary strikes. During this period the dispute must be referred to the CCMA. After this period has elapsed, the workers have the right to strike.

Related Links

- [Basic Guide to Strikes, Lockouts and Picketing](#)

Workers have the right to strike and employers have the right to lock out workers under certain conditions.

- [Basic Guide to Termination](#)

The Basic Conditions of Employment Act stipulates the procedures for termination of an employment contract.

- [The Commission for Conciliation, Mediation and Arbitration \(CCMA\)](#)

Visit the website of the Commission for Conciliation, Mediation and Arbitration (CCMA)