

THE IMPORTANCE OF FOLLOWING A FAIR PROCESS IN RETRENCHMENTS

In current news relating to GM motors leaving South Africa and the recent debacle concerning KPMG, this has led to both Company's carrying out retrenchments.

It is important for all Employers to understand what is expected of them when considering the retrenchment of employees and the process which should be followed in order to comply with the Labour laws in South Africa.

Retrenchments involve the process whereby employees are dismissed based on the Employers operational requirements and not through any fault of the employee. These operational requirements in terms of the Labour Relations Act (LRA) include the economic needs of an employer relates to the financial circumstances of the Company while technological reasons entail the use of machinery or new processes whereby the need for labour is reduced and lastly structural reasons involve changes made to the structure of how the Company conducts its business.

Employers are required to provide written notice to employees affected by the retrenchments and thereafter arrange a consultation. In terms of the above consultations there usually consists of an initial consultation followed up by the 2nd consultation, 3rd consultation and a final consultation.

Employers must then determine who the affected parties are such as a workplace forum or registered trade union and take into account any collective agreement which will indicate who the Employer should consult with. It is crucial to hold

these consultations in order for a fair process to be followed.

During the consultation process the written notices provided will be discussed which are the following: The reason for the proposed dismissal, alternatives to dismissal which the employer has considered, the number of employees effected, the selection criteria used such as Last in First Out (LIFO), when the retrenchments are to take effect and the severance package which the employee will receive along with any assistance the Company can provide as result of the retrenchment.

The Employer must also provide the number of employees currently employed and the total amount of employees who have been retrenched in the preceding 12 months. The Employer has a duty in terms of the LRA not to employ new staff within the following 6 (six) months of the proposed retrenchments, should a position become available after the 6 (six) month period, as the retrenched employees must be considered first. Employers should take note that should they not consider any of the retrenched employees for employment or employ someone else within that 6 (six) month period, this will be considered an unfair labour practice which will allow the retrenched employees to refer the matter to the CCMA.

In completion of the retrenchment process, a decision will be made to the effect that either there were alternatives to the retrenchments or that it was agreed that no alternatives were viable and the Employer had no other option other than to effect the retrenchments, whereby notice of retrenchment will be handed to the effected employees.