



WEEKLY LABOUR BULLETIN

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RETRENCHMENT

INTRODUCTION

In terms of the Labour Act [Chapter 28:01] to retrench means terminate the employee's employment for the purpose of:

1. reducing expenditure or costs,
2. adapting to technological change,
3. reorganising the undertaking in which the employee is employed, or for similar reasons, and
4. includes the termination of employment on account of the closure of the enterprise in which the employee is employed.

It is therefore very important to know how to go about the retrenchment process to ensure that the farmer/employer is compliant and not dragged to court. The process or procedure of retrenchment is provided for in section 12 C of the Labour Act. The following are the steps one needs to take to properly conduct retrenchment.

PROCEDURE OF RETRENCHMENT

NOTICE OF INTENTION

The employer must give a 14-day written notice containing a list of employees they wish to retrench and the reasons why they intend to retrench, which should align with the definition of retrenchment. This notice must be given to the employees, to the works council if there is a works council at the farm and if there is none, to the National Employment Council. However, all notices must be referred to the Retrenchment Board.

RETRENCHMENT PACKAGE

S.I 191 of 2024 stipulates the minimum retrenchment package for every employee who has been retrenched. The minimum retrenchment package has been pegged at one month's salary or wages for every year of service as an employee or the equivalent, a lesser proportion of (one month's salary or wages for a lesser period of service) or simply put, the package is prorated for periods less than a full year and shall be paid as compensation for loss of employment.

It is possible for an employer to pay above the stipulated minimum package if they wish and are able to do so. If an agreement is reached between the employer and the employees, the employer must serve the agreed terms in

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writing to the NEC and the Retrenchment Board within the notice period or shortly thereafter. Once the Board issues a notification certificate, the agreement gains legal weight.

However, if an agreement is not reached, the employer must inform the NEC and the Retrenchment Board that the minimum retrenchment package will be paid and provide details of all retrenched employees. The Board has a statutory role in overseeing this phase and issuing a notification certificate of compliance. If the employer fails to notify within the prescribed period, employees or their representatives can pursue enforcement under Sections 12C (6) and (7) of the Labour Act.

Failure to comply with the retrenchment procedure will make the retrenchment invalid and the employer liable to litigation.

EXEMPTION FROM PAYING THE MINIMUM RETRENCHMENT PACKAGE.

As stated earlier, there are several reasons why an employer would want to retrench, which include going out of business, and in this instance, the employer will sometimes not be in a financial position to be able to pay the minimum package. If this is the case, the Labour Act in section 12 C (9) allows the employer to write to the employment council and Retrenchment Board seeking to be exempted from paying the minimum retrenchment package to which the council should respond and give a determination within 14 days of receipt of the application and if there is no response, the request is deemed to have been granted. However, proof must be provided by the employer as to why they are not able to pay the minimum retrenchment package, and it should not be less than 25% of the minimum retrenchment package.

SPECIAL MEASURES TO AVOID RETRENCHMENT.

Though there may be a myriad of reasons for the employer to want to retrench some employees, the Labour Act in section 12D, provides ways in which an employer may avoid retrenching the employees altogether. This section provides that an employer may propose ways to avoid retrenchment like placing the employees on short-time work (see also section 9 of S.I 41 of 2022); or instituting a system of shifts. The purpose is to ensure retrenchment is a last resort, not the first option.

The employer must consult the employees with whom they would have kept in the loop on the goings in the company that might entail the retrenchment of any employees through the works council or workers committee. If the employees agree that the employer must approach the Employment



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Council for approval of the agreement. Once approved, the agreement shall have effect despite any other provisions, such as the collective bargaining agreement.

If the agreement is rejected, the employer is allowed to resubmit an amended agreement guided by any recommendations by the employment council or Retrenchment Board.

When shift-work or short-time work has been approved, the employees shall be paid the hourly equivalent of their weekly or monthly wage for the hours they have worked which shall not be less than 60% of their normal weekly or monthly wage. The days or time when one will not be at work will be regarded as compulsory leave, and it shall not be deemed to interrupt continuity of employment. Section 9 of S.I 41 of 2022 stipulates that employees should not be put on short time for a period not exceeding 12 months

CONCLUSION

Retrenchment is a statutory process; it cannot be used as a loophole to terminate employees without due consultation and notice. It is also important to note that retrenchment applies only to employees on a contract without limit. While this newsletter tried to summarise as much as possible, the Labour Act and section 9 of SI 41 of 2022 provide in detail the steps that must be followed in the retrenchment process. It is always important to adhere to these steps. Where one is not sure, it is better to consult than to embark on a journey into the wilderness of illegality.

Disclaimer: This article is issued to serve as a general guide to farmers and does not substitute legal advice that may be required to address a particular situation with peculiar circumstances.