



WEEKLY LABOUR BULLETIN

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LEGAL REQUIREMENTS WHEN TERMINATING EMPLOYMENT

INTRODUCTION

Employment termination is one of the most sensitive aspects of labour management. Failure to follow the correct procedures can result in costly disputes, compensation claims, and damage to labour relations. Employers should therefore ensure that all terminations comply with the Labour Act, S.I 41 of 2022 (Principal CBA), and contractual obligations.

LAWFUL METHODS OF TERMINATION

Employment may be terminated through one of the following lawful means:

- Mutual agreement between employer and employee – This is where the employer and the employee agree to terminate the contract of employment, and they agree on the terminal benefits to be paid. (see section 12 (4a) (a) of the Labour Act). The agreement should be reduced in writing.
- Resignation by the employee – This is when the employee resigns from their job for their own reasons (see section 12 (4a) of the Labour Act)
- Expiry of a fixed-term contract, seasonal contract or casual contract. – A fixed-term contract, seasonal contract and casual contract have an end date. When this end date is reached, the contract ends, and the employment relationship is terminated unless it is renewed. In these types of contracts, employers should ensure to include a clause which stipulates that employees should not expect to be engaged permanently or to have their contract renewed; any renewal is at the discretion of the employer.
- Retirement – this is when the employee reaches the retirement age (see section 12 (4a) of the Labour Act), which for the agriculture industry is 60 years according to section 25 of S.I 41 of 2022.
- Dismissal following a disciplinary process – If an employee commits misconduct which warrants dismissal, this is another way of terminating the contract of employment.
- Retrenchment or business closure – Restructuring or closure of a business can result in another means of terminating the contract of employment, which is retrenchment, and the proper procedure must be followed (see section 12C of the Labour Act).
- Death of the employee – If an employee dies, the contract of employment terminates, and their terminal benefits must be paid to their estate.

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Employers should avoid terminating employment outside these recognised methods. If one is not sure, seeking guidance will help avoid costly consequences.

THE IMPORTANCE OF DUE PROCESS

MISCONDUCT

Where misconduct is alleged, an employee must be afforded procedural fairness. This includes:

- Being informed of the allegations.
- Being given an opportunity to respond.
- Having the matter heard through the appropriate disciplinary procedure.
- Receiving a reasoned outcome.

Failure to follow the prescribed disciplinary process will render the dismissal unfair, even where misconduct has occurred. Refer to the labour bulletin on the Disciplinary procedure for more information.

FIXED-TERM CONTRACTS

Many agricultural employers engage workers on fixed-term contracts. Such contracts generally terminate automatically upon expiry. However, employers must remain mindful of the capping regulations applicable within their sub-sector, which may result in employees acquiring permanent status after a prescribed period of continuous service. Refer to the bulletin on Capping off for more information.

RETRENCHMENT AND BUSINESS CLOSURE

Where an employer intends to reduce staff due to operational requirements or cease operations altogether, the retrenchment provisions of the Labour Act must be followed. Employers should seek guidance before embarking on retrenchment exercises to ensure compliance with statutory requirements. Refer to the bulletin on retrenchment for more information

TERMINAL BENEFITS

Upon termination, employers should ensure that all monies due to the employee are calculated and paid promptly. These may include:

- Outstanding wages or salaries.
- Accrued leave pay.
- Retrenchment/compensation for loss of employment package.
- Any agreed separation package.



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Proper records should be maintained to avoid future disputes.

CHECKLIST FOR EMPLOYERS

Before terminating employment, ask:

- ✓ Is the reason for termination lawful?
- ✓ Have the correct procedures been followed?
- ✓ Have all relevant documents been completed?
- ✓ Have terminal benefits been calculated correctly?
- ✓ Does the termination comply with the Labour Act and applicable CBA?

CONCLUSION

Termination of a contract of employment should follow the proper channels, and the farmer should ensure that these channels are followed. Any termination must be recorded, and records must be kept for future reference and to avoid any disputes.

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.

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