



WEEKLY LABOUR BULLETIN

**Commercial Farmers Union Bulletin #22
Part 4**



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COMMON PROCEDURAL MISTAKES THAT LEAD TO LABOUR DISPUTES: PART 4 - TERMINATION OF EMPLOYMENT

INTRODUCTION

The end of the employment relationship is another area where avoidable labour disputes arise. An employer may have a legitimate reason for ending employment but still face a dispute because the applicable termination requirements were not followed or because the employee's final entitlements were not properly dealt with.

In Part 3 of this series, we discussed disciplinary proceedings and the importance of following the prescribed procedure before imposing disciplinary penalties such as dismissal. This final part looks at what employers should consider when the employment relationship comes to an end, including termination requirements, terminal benefits, gratuity, and deductions.

FAILURE TO COMPLY WITH TERMINATION REQUIREMENTS

Employers should not assume that having a valid reason for ending employment is, by itself, sufficient. The termination of employment must comply with the requirements of the Labour Act and the applicable Code of Conduct in S.I 41 of 2022. The requirements will depend on the circumstances in which employment is terminated, which include:

- Resignation
- Misconduct
- Death
- Effluxion of a contract with an end date, e.g., fixed term or seasonal contract
- Mutual agreement
- Retrenchment
- Retirement
- Medical/physical incapacity

Where termination follows misconduct, the disciplinary procedure discussed in Part 3 of this series must be followed before dismissal is imposed. Employers should therefore establish the legal basis for the termination and ensure that the applicable procedure for each reason has been followed before bringing the employment relationship to an end.

FAILURE TO PROPERLY SETTLE TERMINAL BENEFITS

When employment ends, an employee is entitled to the wages and benefits due to them in terms of the law and applicable conditions of employment. Section 13 of the Labour Act provides for payment of wages and benefits due upon dismissal, termination, resignation, incapacity or death. These include, where applicable, benefits relating to outstanding vacation and notice periods, medical aid, social security, and pension. The Act requires such entitlements to be paid as soon as reasonably practicable after the employment relationship ends.

Employers should therefore ensure that final payments are properly calculated and that all applicable entitlements are taken into account. Where gratuity is applicable, it should also be paid in accordance with section 25 of S.I 41 of 2022. Failure to properly settle final entitlements can result in disputes even where the termination itself is not challenged.

MAKING UNLAWFUL DEDUCTIONS OR SETOFFS FROM FINAL PAYMENTS

Another common source of disputes is the making of deductions or setoffs from an employee's wages or final payment without a proper legal basis. For example, where an employee leaves employment without giving the required notice, an employer may be tempted to simply deduct or set off the value of the notice period from the employee's final payment.

Deductions or setoffs from remuneration are regulated by section 12 of S.I 41 of 2022 as read with section 12A (6) of the Labour Act and should not be made arbitrarily. The applicable provisions set out the circumstances in which deductions may be made and regulate the amount that may be deducted.

The fact that an employer believes an employee owes money does not, by itself, mean that the employer can deduct or offset that amount from the employee's final payment. Before making a deduction, employers should establish that there is a lawful basis for doing so.

FAILING TO KEEP A PROPER RECORD OF THE FINAL SETTLEMENT

A further practical mistake is failing to properly document how the employee's final payment was calculated. Employers should retain records showing:

- The date and reason for termination;
- Salary or wages due up to the termination date;

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- Outstanding leave or vacation pay, where applicable;
- Notice-related payments, where applicable;
- Gratuity, where applicable;
- Any lawful deductions; and
- The final amount paid to the employee.

Proper documentation provides evidence of what was paid and how the amount was calculated. This can be particularly important if the employee later alleges that benefits or wages were withheld.

BEFORE ENDING THE EMPLOYMENT RELATIONSHIP: A PRACTICAL CHECK

Before finalising a termination, employers should ask:

1. What is the legal basis for the termination?
2. Has the applicable termination or disciplinary procedure been followed?
3. What wages and benefits are due to the employee?
4. Is any gratuity payable?
5. Are there any outstanding leave or notice-related entitlements?
6. Is there a lawful basis for each proposed deduction?
7. Have the calculations and final payment been properly documented?

Taking the time to answer these questions can prevent disputes that could otherwise arise after the employee has left.

CONCLUSION

The lesson from this series on common mistakes that lead to labour disputes highlights that many labour disputes can be prevented by getting the basics right.

- **Part 1** – Establish the employment relationship correctly: Use the appropriate contract, issue written terms of employment, and comply with the requirements governing fixed-term contracts.
- **Part 2** – Manage the employment relationship properly: Keep accurate records, apply workplace rules consistently, and properly manage absenteeism.
- **Part 3** – Follow the disciplinary procedure: Properly formulate charges, allow employees to be heard and follow the applicable disciplinary process.
- **Part 4** – End the employment relationship lawfully: Follow the applicable termination requirements, properly settle final entitlements and ensure that any deductions have a lawful basis.





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A careful approach at each stage of the employment relationship can significantly reduce the likelihood of labour disputes. Employers are therefore encouraged to seek advice where there is uncertainty about the correct procedure or the employee's entitlements, as the circumstances of each case may require a different approach.

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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