

Retrenchment of Agricultural Workers in Zimbabwe

Introduction

1. This short Memorandum is prepared in order to assist employers in the Agricultural Industry to understand the rules and regulations relating to the retrenchment of employees in the Agricultural Industry. It sets out below the theoretical position with footnotes in red highlighting the practical considerations.
2. It should be noted that retrenchment is a last resort and considerable efforts should be made to explore alternatives to retrenchment; for example placing workers on short time or instituting shift systems etc. Workers should also be kept fully informed of, and consulted in, the prospect of Retrenchment¹. For more details on this point see section 12D of the Labour Act [Chapter 28:01] (hereinafter referred to as “the Labour Act” or “the Act”).

Retrenchment in terms of Section 12C of the Act as read with SI 323 of 1993

3. The first option for retrenchment discussed is Retrenchment in terms of section 12C of the Labour Act as read with Statutory Instrument 323 of 1993. The procedure is set out hereunder and is relevant for the retrenchment of 5 or more workers. In cases where less than 5 workers are retrenched this procedure need not be followed and the employer is free to agree on the terms and conditions of retrenchment with the employees concerned without involving any other parties.
4. The first point is that an employer need only retrench those workers whose contract of employment is without limit of time i.e. permanent workers².
5. Once an employer decides that retrenchment of 5 or more workers is necessary, a notice of intention to retrench the workers must be sent by the employer to either the Works Council for the enterprise concerned (this is a council made up of equal representatives from the workers

¹ In practice workers will immediately agitate for a payment of a package in terms of SI 6 of 2002 once they are aware that the employer will no longer be continuing farming. It is not uncommon for workers to hold equipment and livestock to ransom. This can be extremely traumatic where livestock requires special feeding and/or milking. Contingencies should be made prior to announcing a closure of the farm. Prior and proactive engagement of GAPWUZ, the NEC and the ZRP is also advisable to manage any potential violence and disruptions.

² For employees who hold fixed term contracts the best course of action for the employer is to advise the employee that the fixed term contract will not be renewed. Likewise seasonal workers should not have their annual contracts. (A seasonal worker is a worker who is employed for less than 8 consecutive months in a 12 month period).

committee and the management of the enterprise in terms of section 25A of the Labour Act) or, if there is no Works Council, the National Employment Council for the Agricultural Industry in Zimbabwe (“the NEC”). The notice should contain the following information:

- a. The name of all workers proposed to be retrenched, together with details of their grades, occupations and wages.
- b. Details of the workforce including reasons why some workers have been chosen for retrenchment and others not.
- c. The length of service of each worker proposed to be retrenched.
- d. Details of dependants of each worker proposed to be retrenched.
- e. The proposed Retrenchment package if any for each worker retrenched.
- f. Any measures implemented or considered to avoid retrenchment and reasons why other alternatives were rejected.
- g. Prospects of each worker proposed for retrenchment finding alternative employment.

A copy of this notice must also be sent to the Retrenchment Board (see section 12C (1) (c) of the Act)

6. After receiving the Notice, the Works Council or the NEC as the case may be must within one month attempt to mediate an agreement between the employer and the workers as to the terms and conditions of the retrenchment. If the NEC or Works Council as the case may be secures the agreement it must send a written notice to this effect to the employer and send a copy of that notice to the Retrenchment Board.
7. Formal written notice of 3 months (or 3 months’ salary in lieu of notice) must be given to the workers after the NEC has secured agreement.
8. If after one month the Works Council or the NEC as the case may be fails to secure an agreement between the employee and the workers then it must refer the matter together with all the relevant documents to the Retrenchment Board.
9. Thereafter the Retrenchment Board³ has 14 days in which to make recommendations to the Minister of Labour and Social Welfare as to whether or not the retrenchment should be allowed and the terms and conditions of the retrenchment.

³ Recent precedent indicates that matters taken to the Retrenchment Board invariably go against the employers interests. It is advisable to settle the matter before the issues gets to the Retrenchment Board.

10. There is no set formula for the calculation of a complete retrenchment package for workers retrenched in terms of Section 12C of the Labour Act⁴. The employer must pay all wages and cash in lieu of leave together with a gratuity calculated in terms of section 23 of SI 323 of 1993. These payments do not form part of the Retrenchment package (see section 13 (1a) of the Act). The gratuities payable are due to employees who worked for 8 or more completed years of continuous service between the 1st of January 1978 and the 30th of September 1994. They are calculated by multiplying the appropriate percentage of the current monthly wage by the number of completed years of continuous service, as set out in the table below⁵:

<u>Length of Service (Completed Years of Continuous Service)</u>	<u>Percentage of monthly wage</u>
8	10
9	11
10	12
11	13
12	14
13	15
14	16
15	17
16	18

Retrenchment in terms of SI 6 of 2002

11. The second option for retrenchment is in terms of Statutory Instrument 6 of 2002 (herein after referred to as “SI 6”). This applies to those farmers’ whose land has been compulsorily acquired in terms of the Land Acquisition Act [Chapter 20:10] and it has therefore become necessary to retrench their workers.

⁴ In reality, the employer cannot escape without paying anything. Recent precedent bears this out. Notwithstanding the absence of a set formula, in practice Trade Unions rely on the formula set out in Statutory Instrument 6 of 2002 - Labour Relations (Terminal Benefits and Entitlements of Agricultural Employees Affected by Compulsory Acquisition) Regulations, 2002. The Trade Unions generally claim a percentage of the package which they negotiate for which can be prejudicial to both employer and employee. In light of this it is submitted that the employer should be proactive in these cases and make an offer to the workers which is sustainable. If Trade Unions are involved it is important to proactively engage with them early on preferably at their offices.

⁵ In practice the total amount payable to the longest serving employee during this period equates to approximately one month’s salary.

12. It should be noted that SI 6 applies “Notwithstanding any other Statutory Instrument, arrangement or agreement to the contrary”.

13. Since SI 6 applies to Retrenchments as a result of compulsorily acquired land, it follows that once workers have been paid in terms of SI 6 there is no obligation on employers to again pay out the same workers in terms of SI 6. Land can only be acquired once⁶.

14. The table below sets out the amounts payable to each worker in terms of SI 6 (see section 3 of SI 6):

(a) Severance Pay	3 months salary
(b) Wages in Lieu of Notice	3 months salary
(c) An added amount	2 months salary for each completed year of continuous service
(d) A relocation allowance	1 month salary
(e) Any Gratuity payable in terms of section 23 of SI 323 of 1993	See paragraph 10 and the table above
(f) Cash in lieu of vacation leave	Only applicable to leave accrued in the year in which the termination of the employment contract occurs.

15. The above terminal benefits and entitlements may be deducted from any compensation payable to the employer in terms of section 29C of the Land Acquisition Act [Chapter 20:10]⁷.

⁶ Even so, the fact that Trade Unions rely on the formula set out in SI 6 to calculate retrenchment packages means that in effect an employer who paid off his or her work force in terms of SI 6 in 2002 is at real risk of a *de facto* repeat of the SI 6 package. However this time it will be calculated from the date of the first SI 6 payout but the amounts may nonetheless be substantial.

⁷ This provides relief to those farmers who cannot sustain the substantial retrenchment package set out in SI 6. Because of this in certain cases farmers have preferred to rely on SI 6 as opposed to standard retrenchment procedures set out in Section 12C of the Act