

Our Reference : D PRETORIUS
 Your Reference : V BUTT / R CHICHAKLI
 Date : 16 APRIL, 1998



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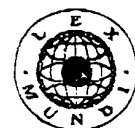
Dear Sirs

RE RETRENCHMENT PROCEDURES

1. We refer to the writer's telephone conversation with your Mr Chichakli on 15 April 1998.
2. As discussed, set out below is the procedure required to be followed in terms of s189 of the Labour Relations Act, 1995 ("the LRA") when an employer contemplates having to retrench employees.
3. The LRA permits employers to dismiss employees for "operational requirements" which are defined by the LRA as "requirements based on economic, technological, structural or similar needs".
4. The LRA, as well as our case law, requires a process of consultation before an employer makes a decision to terminate an employee's services on the basis of operational requirements.
5. "Consult" in terms of the LRA means "consult with a view to reaching consensus". This does not mean that an employer is required to reach consensus but it must attempt to do so. Employers are obliged to consult on:
 - 5.1 ways to avoid retrenchment;
 - 5.2 ways to minimise the number of retrenchments;



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- 5.3 ways to change the timing of retrenchments;
- 5.4 ways to mitigate the adverse effects of the retrenchment;
- 5.5 selection criteria (these have to be objective);
- 5.6 severance pay.
6. One of the most important aspects of our retrenchment law is that an employer should not present a *fait accompli* to employees, that is, an employer should not make a decision to retrench before the consultation process has been completed. The duty to consult therefore arises when an employer has identified or contemplates the possible need for retrenchment and before a final decision to retrench is reached. Consultation requires more than merely affording an employee the opportunity to comment or express an opinion on a decision already made. It is a fundamental requirement that employees play a role in the decision-making process and their input is essential.
7. In order to make the consultation process meaningful, s189(3) of the LRA obliges an employer, before embarking on a retrenchment exercise and consulting on the issues outlined in paragraph 5 above, to disclose to the trade union (if any) and/or all potentially affected employees, in writing, all relevant information, including inter alia-
- the reasons for the proposed retrenchments,
 - the alternatives that the employer considered before proposing the retrenchments and the reasons for rejecting each of those alternatives,
 - the number of employees likely to be affected and the job categories in which they are employed,
 - the proposed method for selecting which employees to retrench,
 - the time when, or period during which, the dismissals are likely to take effect,
 - the severance pay proposed,

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- any assistance that the employer proposes to offer to the employees likely to be retrenched, and
 - the possibility of the future re-employment of the employees who are retrenched.
8. During the consultation process, an employer is obliged to consider and respond to the representations made by potentially affected employees and, if the employer does not agree with them, the employer must state the reasons for disagreeing.
 9. Only once the company has made a bona fide attempt to reach consensus on the matters set out in clause 5 above and the consultation process has been completed, should the company make a final decision on whether to retrench or not.
 10. The LRA requires that an employee be paid a minimum of 1 week's remuneration, that is, cost to company and not simply salary, per year of service as severance pay.
 11. We would strongly advise you to comply with the requirements of the LRA, as set out above. Failure to do so may result in the retrenched workers obtaining reinstatement and/or compensation orders (up to a maximum of one years remuneration against) you.
 12. As requested, a copy of a draft letter (as contemplated in paragraph 7 above) addressed to your employees follows this message.

Please ascertain whether the contents of the letter are correct.

We trust that this will be of assistance to you. Please do not hesitate to contact us should you have any queries.

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Yours faithfully



BOWMAN GILFILLAN HAYMAN GODFREY INC.
DANIEL PRETORIUS