

GUIDELINES from HCSBC seminational

on RETRENCHMENT PROCEDURES

Retrenchment is based on the operational requirements of an Employer. It is based on economic, technological, structural or similar needs of the Employer. Economic reasons are those that relate to the financial management of the enterprise. Technological reasons refer to the introduction of new technology which affects work relationships either by making existing jobs redundant or by requiring employees to adapt to the technology or a consequential restructuring of the workplace. Structural reasons relate to the redundancy of posts consequent to a restructuring of the Employer's enterprise.

It is important to note the **DIFFERENCE** between **RETRENCHMENT** and **REDUNDANCY**.

'**RETRENCHMENT**' means both the collective and/or individual termination of employment where, due to operational requirements or economic factors, certain jobs are reduced.

'**REDUNDANCY**' refers to a situation where the "skill" required for a particular job becomes obsolete. In other words the job no longer exists.

The procedure that needs to be followed for a dismissal based on "operational requirements" is regulated in terms of Section 189 of the Labour Relations Act.

The severance pay to be paid out is regulated by HCSBC's MAIN Collective Agreement - Clause 20.

CHECKLIST

WHAT YOU must think about BEFORE you START RETRENCHMENT Procedures

- What do you want to achieve by retrenching?
- What is the best plan to get there?
- Does your plan tie in with what you want to achieve?
- Do you have the facts and figures to back you up?
- Are your facts and figures accurate and can you substantiate them if they are queried?
- How many employees do you envisage retrenching?
- How do you propose selecting employees for retrenchment and does your timing make business sense? Are you giving yourself enough time to consult properly?
- What do you propose paying as a retrenchment package? Have you worked out how much this would cost you?
- What other assistance would you be able to offer to retrenched employees?

REQUIRED RETRENCHMENT PROCEDURE/S

1. CONSULTATION

1.1 WHO MUST YOU CONSULT WITH?

Meetings should be held individually with all Employees that could be affected by the retrenchment, unless the Employees request collective meetings or are unionized. If the Employee is a member of a Union, the Union must also be consulted.

1.2 WHEN MUST THIS CONSULTATION TAKE PLACE?

This should take place as soon as the Employer contemplates retrenchment.

1.3 WHAT MUST THIS CONSULTATION BE ABOUT?

The parties are obliged to enter into meaningful interaction or joint consensus seeking process and to attempt to reach consensus on:

- 1.3.1 avoiding the dismissal (e.g could include adjusting working hours, eliminating temporary labour, eliminating overtime, offering early retirement or looking at a alternative position)**
- 1.3.2 minimizing the number of dismissals;**
- 1.3.3 the timing of the dismissals;**
- 1.3.4 ways to lessen the effects of the retrenchment;**
- 1.3.5 the method for selecting the Employees to be dismissed;**
- 1.3.6 Severance Pay** *(where Employees are offered alternative employment on substantially similar terms and conditions of employment, the Employer is NOT obliged to pay severance pay).*

2. NOTIFICATION OF RETRENCHMENT

When contemplating retrenchments, the Employer must issue letters to all Employees in the affected categories, advising them of the pending retrenchment and the date when consultations will commence. Decisions concerning retrenchment cannot be made prior to the consultative process taking place.

An Employer has to disclose relevant information in writing, including–

- The reasons for retrenchment;
- Alternatives considered and why those were rejected;
- The number of Employees likely to be affected and their job categories;
- Proposed method of selection;
- Timing ie the time when, or the period during which, the dismissals are likely to take effect;
- Severance Pay – according to the MAIN Collective Agreement - Clause 20 (as set out in point 6 BELOW);
- Assistance that the Employer will be offering (e.g offering Employees time off to attend interviews, early release should a new job be found, issuing letters of reference, psychological counseling, etc.);
- Possibility of future re-employment.

3. OPPURTUNITY FOR FEEDBACK

The Employer must give the other consulting party an opportunity to make presentations. Representations must be considered and responded to.

4. CRITERIA FOR SELECTION

If NO agreement is reached on the criteria for selection, criteria must be fair and objective. The LIFO ('last-in', 'first-out') principle is often applied, but is not the only consideration. A poor performance record or disciplinary record may also be taken into consideration.

Voluntary retrenchment offers must be considered initially during consultation before being offered to Employees.

5. NOTICES OF TERMINATION

Notices of termination of services are handed to those Employees who are to be retrenched once the consultation process has been completed and all Employees' counter proposals, questions and concerns have been addressed in writing.

The prescribed notice periods as stated in the MAIN Collective Agreement, Clause 19 are relevant, and these are as set out below:

- 5.1 6 working days notice if the Employee has been employed for a period of 6 months or less;**
- 5.2 12 working days notice if the Employee has been employed for a period of longer than 6 months.**

6. SEVERANCE PAY

Clause 20 of the MAIN Collective Agreement REFERS:

- 6.1 Six days' wages for each completed year of service or part thereof for an employee who has been employed for less than five consecutive years;**
- 6.2 Seven days' wages for each completed year of service or part thereof for an Employee who has been employed for five to ten consecutive years;**
- 6.3 Eight days' wages for each completed year of service or part thereof for an Employee who has been employed for ten consecutive years or more.**

7. PAYMENTS

- Severance Pay**
- Outstanding leave to be paid out**
- Notice Pay (unless agreed other otherwise)**
- Normal salary**