

# QUICKLAW

ANSWERS YOUR QUESTIONS

## HAVE YOU BEEN RETRENCHED?

### Why do employers retrench employees?

- Financial reasons
- Restructuring
- New technology and
- New business ventures

### What steps should be followed before retrenchment?

- The employer should consult the employees, an employee representative or a Trade Union representative.
- During consultation the parties must agree on the following:

Possible ways of:-

1. Avoiding the dismissals.
2. Minimising the number of dismissals.
3. Reducing the negative effects of the dismissals.
4. Selecting the employees to be retrenched, for example "Last In First Out" (LIFO) or "First In First Out" (FIFO).
5. Determining the retrenchment package for the dismissed employees.

### What must I do if my employer did not follow these steps?

- Find out what industry / sector you work in (eg. Mining and Education).
- Find out if there is a Bargaining Council for your industry/sector.
- To find out if you have a Bargaining Council or not, contact the Commission for Conciliation, Mediation and Arbitration (CCMA) call centre on 0861 161616.
- If there is a Bargaining Council, contact the Council for assistance with your dispute.
- If there is no Bargaining Council for your industry / sector, contact the CCMA for assistance.
- You only have 30 CALENDAR DAYS to refer the dispute to the CCMA.
- Complete the LRA 7.11 referral form (available from the CCMA.)
- Sign the original form. A copy must be served on your employer and filed at the CCMA.
- Collect all the information about the internal company procedures that were followed.
- The CCMA must send you a notice. The notice will tell you what your case number is and the date that you must go to your conciliation at the CCMA.
- If you refer your case to the CCMA after 30 calendar days, ask the CCMA to help you lodge an application for condonation. This means that you are asking the CCMA for

permission to take your dispute further even though you referred it too late.

### How does the CCMA work?

**THE CONCILIATION PROCESS:**  
This is an informal procedure where you and your employer will try to sort out the problem by means of negotiation with the help of a Commissioner. If the problem cannot be resolved, the Commissioner will issue a certificate saying what the nature of the problem is, and that it could not be resolved through conciliation and s/he will refer the matter to the Labour Court.

**LABOUR COURT**  
If the matter is not resolved at conciliation stage, you must issue a statement of claim at the Labour Court within 90 days.

### How much money should I receive from my employer?

The retrenchment pay formula is 1 week's pay for every completed year of service.

*For example:* Mary has worked at the same company for 5 full years. She earns R500, 00 per week. She will be entitled to  $R500, 00 \times 5 = R2500, 00$ .

Should your employer offer you reasonable alternative employment prior to dismissal and you refuse to accept it you will not be entitled to a retrenchment package.

#### KEY:

1. EMPLOYEE - a person who works for another in return for wages
2. EMPLOYER - a person or firm that employs people
3. EMPLOYMENT - having a job
4. DISMISSED - to be fired from a job
5. RETRENCHMENT - when an employer reduces staff