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UNDERSTANDING RETRENCHMENT LAW AND PROCEDURE IN ZIMBABWE*

1. The Labour Act (Chapter 28: 01) (the Act) defines retrench as, “*in relation to an employee, means terminate the employee’s employment for the purpose of reducing expenditure or costs, adapting to technological change, reorganising the undertaking in which the employee is employed, or for similar reasons, and includes the termination of employment on account of the closure of the enterprise in which the employee is employed.*” Retrenchment law in Zimbabwe is designed to balance the needs of employers to reduce costs with the rights of employees to fair treatment and adequate compensation. It is a form of termination of employment for operational requirements. It is not fault-based. It is sometimes described as “economic dismissal” meant to save the company. The law governing retrenchment is contained in the Act and the regulations made in terms of the Act. Below is a summary of our current retrenchment law and procedure.

A. What are the steps to be taken by employers when retrenching?

The procedure for retrenchment as provided for in terms of section 12C read together with section 12CC and section 12D of the Act is as follows:

Where an employer wishes to retrench one or more employees:

- (i) The employer must give written notice of the intention to retrench to the Works Council established for the undertaking.
- (ii) The employer must provide the Works Council with details of every employee they wish to retrench and the reasons for the proposed retrenchment. If there is no Works Council for the undertaking, the notice is sent to the employment Council established for the undertaking.
- (iii) A copy of the notice must be sent to the Retrenchment Board.



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- (iv) The Works Council, upon receiving the notice, should attempt to secure an agreement between the employer and the employees concerned or their representatives on whether the retrenchment should proceed and the terms and conditions of the retrenchment.
 - (v) If an agreement is reached within one month, the Works Council must send the employer its written approval of the retrenchment in accordance with the agreement and send a copy of the approval to the Retrenchment Board.
 - (vi) If parties do not agree, the employer is mandated to pay the stipulated minimum retrenchment package - section 5 of the Labour Relations Retrenchment Regulations, 2024.
 - (vii) The employer must afford the employee the 14 days' notice of termination to which they are entitled.

B. What is the role and functions of the retrenchment board?

- 2. The Retrenchment Board plays a key role in ensuring that the retrenchment procedure is complied with by:
 - (i) Considering and resolving matters (disputes) related to retrenchment.
 - (ii) Offering guidance through recommending solutions and policies on retrenchment.
- 3. The use of the word shall in the provision bestowing the above functions on the Retrenchment Board tentatively entails the binding force of its decisions.

C. What is the minimum retrenchment package?

- 4. When an employer needs to let go of employees, unless a different agreement is made, they must pay a stipulated minimum retrenchment package. The basic rule is that for every year an employee has worked, they should receive one month's salary or wages. If they worked for less than a year, they get a



proportionate amount of that month's salary. This is in terms of section 5 of the Labour Relations Retrenchment regulations 2024, (S.I 194 of 2024). Consequently, employees who have been in long-term employment generally attract a higher package and *vice versa*. It is therefore recommended that permanent long-term contracts be avoided, if possible, and that long serving employees should just be retired if they are eligible.

D. Effects of non-compliance with retrenchment law and procedure outlined above.

5. Non-compliance with these procedures can have significant legal and financial implications for the employer namely:
- (i) If an employer fails to follow the retrenchment procedures, the Retrenchment Board may issue a Non-Compliance Certificate. This certificate officially records that the employer did not comply with the legal requirements for retrenchment.
 - (ii) The Retrenchment Board can refer the case to the Zimbabwe Republic Police for prosecution. This means that the employer could face legal action for violating the Labour Act. Section 12C (12) implies that any member of the governing body of the employer may be held liable for failure to comply with the requirements of retrenchment.
 - (iii) An indictment report is prepared by the Retrenchment Board. This report details the employer's failure to notify the Retrenchment Board about the retrenchment and other violations of the Labour Act. The imposition of a criminal sanction is deemed constitutional owing to the presumption that unless successfully challenged, a law in operation remains valid and enforceable notwithstanding its harshness.
 - (iv) The case can be taken to court, where the employer may be required to defend their actions. If found guilty, the employer could face penalties, including fines or other legal sanctions. This is provided for in terms of section 12 C (12) of the Act.



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- (v) If the retrenchment is found to be unlawful, the affected employees might be entitled to reinstatement or compensation. This could include back pay or damages for the wrongful termination of their employment.
 - (vi) Non-compliance with retrenchment laws can therefore entail reputational damage in addition to the financial burden imposed – see **Retrenched Employees of National Breweries Limited v National Breweries Limited & The Minister of Public Service, Labour and Social Welfare N.O SC 121/2002**

E. Ways to mitigate liability on retrenchment.

- 6. Employers in Zimbabwe must navigate the retrenchment process carefully to avoid liabilities. Here are ways they can mitigate potential liabilities:
 - (i) Employers can negotiate with employees or their representatives to agree on a retrenchment package better than the minimum required. This can help smoothen the separation.
 - (ii) Employers must ensure they give the required written notice to the appropriate councils or the Retrenchment Board, as specified in section 12C of the Act. Timely notice helps in avoiding penalties for non-compliance and having to redo the process.
 - (iii) If an employer is financially incapable of paying the minimum retrenchment package, they can apply for exemption to the employment council or Retrenchment Board. Providing sufficient evidence of financial incapacity is crucial.
 - (iv) Before proceeding with retrenchment, employers can explore alternatives such as short-time work or shift systems, as provided under Section 12D. This can reduce the number of retrenchments and associated obligations.
 - (v) If a retrenchment package is agreed upon, employers should adhere to the payment schedule. Failure to do so can result in enforcement actions by the Labour Court.



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- (vi) When claiming incapacity to pay, employers should disclose their audited financial statements to the Retrenchment Board or employment council. Transparency can build trust and potentially avoid disputes.
 - (vii) Engaging in open dialogue with employees and their representatives about potential retrenchments and exploring all options can prevent misunderstandings and reduce the risk of litigation.
 - (viii) Employers must stay informed about legislative changes and ensure compliance with current laws.
 - (ix) Engaging legal counsel to navigate the complexities of retrenchment laws can help employers avoid missteps that lead to liabilities.

Please note that this article is intended for informational purposes only. It is not a substitute for professional legal advice. For further clarity and legal assistance, please contact the writer directly.

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