

## **1.5. RETRENCHMENT: MORE THAN 50 EMPLOYEES**

Employers that employ more than 50 employees have to meet more stringent requirements if they are considering reducing their staff.

The provisions that follow apply in the following circumstances, i.e. if an employer contemplates retrenching at least:

- (i) 10 employees, if the employer employs more than 50, but not more than 200, employees;
- (ii) 20 employees, if the employer employs more than 200, but not more than 300, employees;
- (iii) 30 employees, if the employer employs more than 300, but not more than 400, employees;
- (iv) 40 employees, if the employer employs more than 400, but not more than 500, employees; or
- (v) 50 employees, if the employer employs more than 500 employees;

or if the number of employees that the employer contemplates retrenching together with those who have been retrenched in the past 12 months (i.e. 12 months before the invitation to consult), is equal to or exceeds the relevant number referred to in (i) to (v) above.

### **1.5.1. Appointment of a facilitator**

Either of the parties can request the CCMA to appoint of a facilitator. The employer must do so in the notice inviting consultation. The employees have to do so through whatever body represents the majority, by notifying the CCMA within 15 days of the said notice from the employer. The parties are also free to appoint a facilitator by agreement.

### **1.5.2. Sixty days allowed for consultation/facilitation**

- Where a facilitator has been appointed:

At least 60 days must pass after the notice from the employer (invitation to consult) to allow for consultation and facilitation, unless the parties agree to vary the timeframe. The employer may not give notice of termination of employment until after the 60 day period has passed. Where a facilitator has been appointed there may not be a strike or lock out during this period. A notice to strike may, however, be given at any time during the 60 day period if the employer has prematurely given notice of termination of employment.

- Where a facilitator has not been appointed:

Either party may refer a dispute to the CCMA (or Bargaining Council), but only once 30 days since the notice from the employer (invitation to consult) has passed. The employer can only give notice of termination of employment once a further 30 days has passed after either party has referred the matter for conciliation (which means that if the employer wants to get the matter over and done with, it is incumbent on the employer to refer the dispute to the CCMA if it has not been resolved within the initial 30 day period). A strike notice may be given if a certificate is issued by the CCMA (or Bargaining Council) that the matter remains unresolved. The employer may respond with a lock out.

### **1.5.3. The consultation process**

The same requirements regarding consultation is required for any retrenchment exercise. If a fair procedure has not been followed, there is a limitation on the period within which the Labour Court may be approached for relief, namely within 30 days from the date that the employer has given notice of termination of employment. After this date the Court will not be willing to entertain any complainants about flaws in procedure, unless it grants condonation for the late referral.

### **1.5.4. After the 60 days**

After at least 60 days have passed (Where a facilitator is appointed: 60 days after invitation to consult; Where no facilitator is appointed: 30 days after invitation, plus a further 30 days after referral of dispute to CCMA), the employer may give notice of termination of employment. The employees or their representatives are free to either give notice of a strike or to refer a dispute about whether there is a fair reason for the dismissal to the Labour Court. If the employees opt for a strike, the employer may respond with a lock out.