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FACT SHEET

RETRENCHMENT



INTRODUCTION

In the current economic climate many companies across a range of industries are finding themselves in the situation of having to make 'cuts' on jobs and people, largely for operational requirements. But why? This could be for a few different reasons, namely:

- Economic needs, where the organisation has experienced a drop-in sales or services, or even facing closure due to a downturn in the economy.
- Another reason could be due to the organisation implementing a new technology, that essentially replaces some employees, and lastly simply due to a business restructure to increase operational effectiveness.
- Inability of management and staff to meet financial targets.

Retrenchment is sometimes an unfortunate but necessary process to increase profits or limit losses, which leads to reducing its employees. Retrenchment is a very "people" intensive process that requires good strategies, and the tenacity to ensure best practices that are fair to all parties involved.

Retrenchment defined:

"Retrenchment is nothing but a dismissal for operational reasons, which can include a variety of reasons such as the financial decline of a business, an employer deciding to increase profits of his business or a part thereof, the introduction of new technology that results in a decline in positions or structural changes such as the transfer of a part of the business of the employer. Retrenchment is also known as a "no fault dismissal". Due to the fact that it is in essence still a dismissal, the requirement of "fair labour practices" still applies."

Source: <http://www.labourguide.co.za/retrenchment/574-retrenchment-and-measures-how-to-avoid-retrenchment>

"The act of retrenching; a cutting down or off, as by the reduction of expenses, the act of reducing expenditure in order to improve financial stability."

Source: <http://www.thefreedictionary.com/retrenchment>

2017 has reported many companies affected, announcing job 'cuts' and retrenchments. Furthermore, in August 2017, Business Live, reported "SA job crisis to worsen in 2017"¹, where the unemployment crisis is expected to worsen in the third quarter of 2017, as more companies have issued section 189 notices to employees, according to labour federation Cosatu.

Although it is not evident, the question remains, what is the overall percentage contributor of retrenchments to the following unemployment statistics released by Statistics South Africa? The results of the Quarterly Employment Survey² for the 2nd quarter of 2017 reported a decline of 34 000 jobs (or -0.4%) in the formal non-agricultural sector in the quarter which ended in June 2017. It reported a gain of 13 000 (or 0.1%) jobs when compared to the same period last year (June 2016). The Quarterly Labour Force Survey, reported the unemployment rate to 27,7% in the first quarter of 2017. This is the highest unemployment rate observed since September 2003, and could imply that retrenchment trends have impacted that rate.

¹ (<https://www.businesslive.co.za/bd/economy/2017-08-07-jobless-rate-defies-hope-for-improvement/>)

² Source Reference: <http://www.statssa.gov.za>

SOUTH AFRICA UNEMPLOYMENT RATE



SOURCE: TRADINGECONOMICS.COM | STATISTICS SOUTH AFRICA

Retrenchment is an unfortunate but necessary process to increase profits or limit losses, which leads to reducing its employees, but there are alternatives and the Labour Relations Act requires the organisation to consider suitable measures to avoid retrenchment and minimise the number of dismissals. With the inevitable on the horizon, leadership has to steer the company into sustainability and profitability during trying times, considering all strategies to do so. Retrenchment commonly comes up as part of the strategy or solution, which results in HR having to manage one of the least-liked functions of retrenching its people. This at times is unfortunately unavoidable.

This fact sheet aims to inform and assist the HR professional in the subject matter of retrenchment.

“According to its records, 29 261 mining jobs hang in the balance as 36 companies in the sector engage in retrenchments (see table . Formal retrenchments would also lead to numerous indirect job losses, “...in mining 1.7 job opportunities are created for every permanent appointment made”, Solidarity general secretary Gideon du Plessis told reporters in Pretoria.”

Source: <https://www.moneyweb.co.za/news/industry/29-261-jobs-line-solidarity/>

4 http://www.who.int/disabilities/world_report/2011/report.pdf

Managing Retrenchments – what you need to know

Retrenchment is a serious procedure and subject that when implemented will severely impact the lives of the retrenched employee and those left behind. The South African Labour Law ensures that the process is carefully outlined to ensure fairness, transparency and good practice. Section 189³ and 189 A of the LRA (Labour Relations Act⁴), guides an employer in relation to the procedural requirement when embarking on a retrenchment process.

Section 189 (3)⁵ sets out very specific points which must be consulted on when embarking on such process. These must be disclosed in the form of a written notice whereby all relevant information must be disclosed.

The following points, not limited to, must be consulted on:

- The reasons for the proposed dismissals.
- The alternatives considered before embarking on such process, and reasons for declining these:

Section 189 (5) also requires an employer to consider representations on alternatives made by consulting parties. The employer is required to respond on these once made and to state reasons if these are found not to be feasible. Alternatives may include:

Short time
Voluntary packages
Lay-offs
Transfers

- The number of employees likely to be affected and their job categories.
- Selection criteria - LIFO. And / or LIFO, subject to the retention of skills.

(The act states that parties must attempt to reach joint consensus on criteria for selection. If not, then criteria that is fair and objective).

- Selection criteria may either be applied throughout the organisation, or in certain divisions if the disruption of, or the operations of the business could be hampered due to imposing selection throughout.
- Time-period when or during which the dismissals are likely to take effect.
- Notice periods as per the contract or BCEA is applicable. Notice may only be given once consultations have been exhausted and if no alternatives have been found. Notice may be in lieu.
- Severance pay:
 - One week for every years' continued service. This is tax free.
 - The employer is required to apply for the tax directive.
 - Section 41 of the BCEA deals with severance pay. Subsection 4 states that the unreasonable refusal of an alternative may result in an employee not qualifying for severance.
 - The package should include:

³ <http://www.labour.gov.za/DOL/legislation/acts/labour-relations/read-online/document.2008-05-29.4548985152>

⁴ <http://www.labour.gov.za/DOL/legislation/acts/basic-guides/basic-guide-to-retrenchment>

⁵ <http://www.labour.gov.za/DOL/legislation/acts/labour-relations/read-online/document.2008-05-29.4548985152>

Notice Pay
Leave Pay
One monthly contribution to any benefit funds
A service certificate and UI-19
Note: Certain industries also have ex-gratia payments (MEIBC)

- Assistance that the employer proposes to offer the employee likely to be dismissed.
- Measures to mitigate and / or assist may include:

Time off to attend interviews
Letters of reference
An increase in severance pay

- Possibility of future re-employment of dismissed employees⁶.
 - The act does not put in place time limits; however, 6-months is sufficient period to re-employ a dismissed employee if a position becomes available and provided that the employee fits the profile of the position.
 - The number of employees employed and the number of employees dismissed during the past 12 months.
 - The employer must give fair reasons for making the decision to retrench and follow a fair procedure when making such a decision or the retrenchment may be considered unfair.

What are the alternatives to Retrenchment?

Retrenchment should be avoidable if possible, however one must know what are the possible alternatives to retrenchment. In recent times we have witnessed situations where retrenchment was inevitable, however there are alternatives that HR can utilise when presenting their business case. These alternatives can be found in the Labour Guide⁷ which are:

- Measures to increase productivity.
- Short time.
- Rationalising costs and expenditure.
- Increase or decrease in shifts and length of shifts.
- Decreasing the number of contractors or casual labourers.
- Using employees to perform the functions performed by contractors or casual labourers outsourcing a function to its own staff after the employees have formed themselves into a company.
- Skills development to enable employees to move into different positions.
- Stopping overtime or Sunday work.
- Reducing wages (by agreement).
- Early retirement offers or schemes.
- Moratoriums on hiring new employees.
- Gradual reduction of workforce by way of natural turnover.
- Extended unpaid leave or temporary lay-off.

⁶ Dimitri Stavridis, Operations Manager at SA Labour Dynamics (Pty) Ltd

⁷ Source Reference: <http://www.labourguide.co.za/most-recent/1569-retrenchments-back-to-basics>

“A note to employees: There are many ways organisations can avoid retrenchment. That said, new technologies and improved business processes can also lead to positions being made redundant. Skills that were common 5 or 10 years ago may simply no longer be needed in the modern business environment. So, there’s another angle to consider – workers can avoid retrenchment by retraining themselves for jobs that are currently in demand.

The unemployment rate in South Africa is one of the highest in the world and, with our current recession, it may get worse. At SAPA, we’re reaching out to employers to not just follow the law but to do their utmost to avoid retrenchments. Sometimes, there’s no other way. But if it’s an excuse to cut costs or improve shareholders’ dividends, this isn’t the right time for such thinking. So please, approach retrenchment responsibly. With the high number of dependents each employee must support, it’s not just one person who will go without.”

Source: <https://www.cnbcfrica.com/news/2017/09/05/companies-consider-retrenchment/>

It is important for HR to own and recommend innovative solutions to leadership on the topic of retrenchment. Exploring the alternatives above can assist accordingly.



“With regards to Fixed Term employment contracts, employers are advised to insert a clause allowing them to terminate the employee’s services prior to the end date of the contract, for operational reasons. An employer cannot simply retrench an employee on a fixed term contract. If there is no such provision, then an employer is liable to pay the employee for the duration of the fixed term agreement”.

Nicole Ramjee: HR Synthesis Director



What is the role of HR in a retrenchment process?

Today, retrenchment, a form of dismissal, is no fault of the employee, however for the employees affected, they encounter a roller-coaster of emotions during the process, from fear to anger, sometimes even panic. They may even experience high levels of stress and anxiety. All caused by the uncertainty of their future, which HR is expected to support. If there is no alternative, HR then sets out to manage one of the least-liked functions - retrenching its people, which is therefore deemed, unavoidable.

Here are some key elements HR responsibilities:

- “Consult and act as ‘advisors to business. When an employer considers retrenching employees, full consultations must first take place about this intention before making any decision to retrench, according to the Labour Relations Act. When employees belong to a trade union, the employer is required to consult with that union on several issues, the most important of which is ways of avoiding job losses.” Source: <http://www.labourguide.co.za/retrenchment/221-consult-with-unions-or-staff-before-you-retrench>
- Explore alternatives.
- Identify alternative assistance.
- Implement a Retrenchment work plan, to plan and manage the entire process. A poorly executed process can lead to low morale and an overall decrease in performance. Follow the “Code of Good Practice”⁸ to ensure the correct and fair process is implemented.

“According to the CCMA retrenchment guidelines summarised in the Codes for Good Practice as related to operational retrenchments, the Labour Relations Act (LRA) (The Labour Relations Act, 1995 [Act 66 of 1995] defines retrenchments based on the employer’s inability to operate with the number of employees based on economic, structural or technological needs of the specific employer as acceptable and legitimate, but only if the correct procedures are followed.”

Source: <http://www.allardyce.co.za/ccma-retrenchment/>

- Manage the risks and impact to the business.
- Ensures legal compliance.
- Explain the legislation to the workforce explicitly.
- Create communication strategies that are clear and frequent.
- Manage the fear, uneasiness and anxiety that may be prevalent, and ensure fairness, transparency and good practice.
- Document the criteria they’ll use to decide whom to terminate, preferably according to a funnel approach that considers critical skills before job performance.
- While the process can be demotivating for affected employees, it can equally impact employees ‘staying behind, therefore HR will need to implement measures to instil confidence during and post the process.
- Provide skills development support, eg “How to cope with retrenchment, or how to open your own business.”

The Labour Relations Act, section 189 (3)⁹, outlines what information must be disclosed to employees affected by such a process, where the employer should offer “Assistance” (“any assistance that the employer proposes to offer to the employees likely to be dismissed”).

While it is not defined or legislated in the Labour Relations Act, what “assistance” should be provided, this is at the discretion of the employer. However, the inclusion of an Outplacement Programme, has proved to be highly effective and beneficial supporting the employer and more importantly the affected employees.

⁸ <http://www.allardyce.co.za/ccma-retrenchment/>

⁹ Source *<http://www.labour.gov.za/DOL/legislation/acts/labour-relations/read-online/document.2008-05-29.4548985152>

What is Outplacement?

“Outplacement is the support service provided by responsible organisations, keen to support individuals who are exiting the business (voluntarily or involuntarily) - to help ‘former’ employees transition to new jobs and help them re-orient themselves in the job market. A consultancy firm usually provides the outplacement services which are paid for by the former employer and are achieved usually through practical advice, training material and workshops. Some organisations may even offer psychological support.”¹⁰

Outplacement is either delivered through individual one-on-one sessions or through group workshops and includes:

Career guidance	Career evaluation
Job search skills	Targeting the job market
Resume (CV) writing	Interview preparation
Developing networks	Negotiation (salary)

Outplacement support is designed to support individuals seeking a new job, start a new business, retire or event structure a portfolio of activities. This support can be offered across all levels of an organisation and generally these programs have time limits, which could extend from a few months to 12-months. Many companies will stop providing support after a defined period, although some outplacement service provides provide support for as long as the individual needs it.

An additional service which can be offered is to track the success rate of re-employment, which supports an organisation’s operational reporting and also helps evaluate the outplacement providers services.

Outplacement Services have existed for over 30 years internationally. “The offer of Outplacement support goes back 30 years internationally, with increased rates of ‘downsizing’, ‘rightsizing, redundancies and ‘layoffs’, particularly during the 1980s and 1990s in the United States, where businesses increasingly found a need for some form of assistance in reducing the trauma of redundancy for both departing employees and those who remain.”¹¹

“Stress is an intrusion on your peaceful existence, job loss is reported as one of the top five (5) most stressful situations, along with death of a loved one, divorce, moving and a major illness.”
https://www.healthstatus.com/health_blog/depression-stress-anxiety/top-5-stressful-situations/

Benefits of including Outplacement as Part of Human Resource Management

The inclusion of Outplacement support is designed to create upliftment, increase morale and help employees through the challenge of dealing with the uncertainties about their future. It is designed to concentrate on areas of development or improvement to effectively re-enter the job market - such as:

¹⁰ <https://en.wikipedia.org/wiki/Outplacement>

¹¹ <https://en.wikipedia.org/wiki/Outplacement>

1. Protect your employer brand and avoid any potential reputational damage.
2. Many companies use social media to market their brand and position themselves as “good” employers to work for. Social media is a platform or tool that assists job seekers when they looking for employment, and when researching a company.
3. Support the Executive team and HR process.
4. Outplacement provides former employees structure and guidance towards their new career option, and preserves the morale of those who remain in the organisation who see that colleagues are given the necessary support when they leave the company.

How can HR justify to Executives, to offer outplacement services?

Besides empathy and desire to support affected employees in finding a job as quickly as possible, there is a definite ROI for the organisation to offer outplacement services. The reasons are set out as follows:

- Employee Relations - the inclusion of Outplacement assistance contributes to improved employee relations, through maintaining better retention rates and productivity of the remaining staff.
- Maintaining a strong brand - Outplacement elevates the organisation’s brand in the eyes of the remaining employees, future employees, investors, customers, etc. It demonstrates that people matter.
- Corporate Responsibility – will minimise liability.
- While it is often assumed by organisations that HR can handle the planning and employee notifications during a retrenchment process, they often do not have the capacity or practical experience

International Case Studies:

The following table shares some Outplacement case studies conducted by Connor, an HR Consultancy based in Berkshire, UK with some strong market brands.

Company	Requirement	Outcome
National Housing Federation, UK (NHF)	<p>“NHF was restructuring its leadership team to be smaller and more strategically focused. They wanted to provide people at risk with personal coaching for an internal recruitment process.</p> <p>If this process resulted in employees exiting the business, they wanted to provide each individual with personal outplacement to support them in securing their next role quickly.”</p>	<ul style="list-style-type: none"> • Over half of the NHF employees who left got new roles in less than four months. • All employees gained new skills and commercial insight to apply for and secure new roles. • This project was a success and NHF asked us to provide a number of career coaching interventions for remaining individuals.

¹⁴ <http://www.dpsa.gov.za/dpsa2g/documents/ehw/2010/WELLNESS%20MANAGEMENT%20POLICY.pdf>

¹⁵ <http://www.enca.com/self-declaration-key-accurate-disability-figures>

<p>UPS</p>	<p>“UPS was closing two UK call centres with 200 administrative staff at risk of redundancy. They wanted to provide every individual with a flexible, personal outplacement programme. The service needed to be delivered in both locations and needed to cater for the unique needs of each employee.”</p>	<ul style="list-style-type: none"> • 70% of individuals secured new jobs in less than four months. • We received 100% engagement for outplacement workshops. • We achieved over 95% positive feedback from candidates. They responded saying that we understood their particular circumstance and what they really wanted. • We delivered the service in line with the client’s timelines and desired budget.
<p>Blackberry</p>	<p>“Blackberry was undergoing a complex restructure throughout EMEA. They wanted to provide affected employees with specialist, face to face support at two levels: senior professionals and management; and senior executives.”</p>	<ul style="list-style-type: none"> • 85% of individuals secured new jobs inside four months • We supported over 350 Blackberry people across EMEA • 100% of Blackberry individuals we have supported in previous restructures have secured new roles.

Table: Research by “Connor HR Consultancy (UK) <https://connor.co.uk/case-studies/>

When should HR engage the services of an Outplacement partner?

HR should engage the services of an Outplacement partner, when the organisation has explored and exhausted all alternatives and the decision is taken that retrenchments are necessary.

Ideally HR should source and approach an Outplacement Partner “as early as possible in the planning stages of the retrenchment process, to scope an effective solution that meets the need and objective of the organisation, offers benefit and value to the affected employees which can be included in the Retrenchment work plan.

“Pick n Pay CEO Richard Brasher says the company was left with no choice but to offer voluntary retrenchment to employees, with 3,500 employees leaving the business. The company has confirmed that workers were offered packages as the company cites harsh economic conditions.

Brasher says the process, which began in April, was in the best interests of the business. According to Brasher, “They still have long-term incentives, which I’m confident they will, but I think in terms of cutting things back, we did decide in our 50th year that this was an opportunity to put our business properly in shape and make sure we gave it back to the people who we absolutely need to be on our side, which is the customers.”

Source:<http://ewn.co.za/2017/07/31/pick-n-pay-ceo-we-had-no-choice-but-to-offer-voluntary-retrenchment>

Retrenchment, a crisis and reality

According to the Labour Market Report 2017 2nd Quarter¹²:

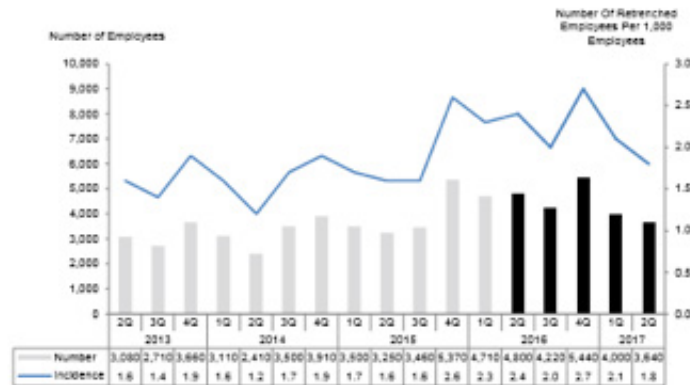
Layoffs lower than past quarter and a year ago

Retrenchment

3,640 workers were retrenched in the second quarter of 2017, lower than in the first quarter 2017 (4,000) and a year ago (4,800). The decline over the quarter was observed across all broad sectors. In the second quarter of 2017, 64% of retrenchments were from services, mainly in professional services (17%), financial services (12%) and wholesale trade (12%).

In the first half of 2017, 7,640 were laid off, also lower than the same period a year ago (9,510).

Chart 6 Retrenchment



The statistics above show a slight decrease in the retrenchment figures, yet the reality of retrenchment is faced by many still. HR must take ownership, and assume the leadership position when it comes to retrenchment. One of the most unpleasant aspects of the HR portfolio is to retrench an employee for purposes that do not relate to performance, discipline or crime.

HR has the very important position of power and influence within the realm of retrenchment, as they act on behalf of the organisation, and should ensure that the best interest of both the employer and employee are ensured. The employees selected to be retrenched, should have a clear understanding of the reason and process, and that must be provided by HR.

HR should not forget the golden rules of the portfolio, which should include yet not limited to:

- Caring for the individual.
- Providing the support and assistance.
- Being honest and transparent.
- "Listen" to the feedback, and advise correctly.
- Give feedback when promised.
- Build trust and keep to your word.
- Manage the process with competence and integrity.

Retrenchment should be a last resort, and HR should drive their strategies to ensure that the company does not succumb to it. In most cases retrenchment is unavoidable, however "what" informs the decision to retrench is critical. HR must be a part of that decision to input on:

¹² http://stats.mom.gov.sg/iMAS_PdfLibrary/mrsd_qt1mr172.pdf#page=7

- Process.
- Policy and legislation.
- Critical talent.
- Criteria, whether it is fair.
- Interaction and communication to employees.
- "Assistance".
- Repercussions of the decision.
- Sensitising workforce and equipping leadership to manage the retrenchment.
- Costs.
- Future planning.

There is no getting away from the uncomfortable experience of retrenchment, and it is important for HR to ensure the "people" are treated in a "human" manner that includes respect, fairness and care. HR is not just the implementer, but the heart of the organisation, who has to manage the emotions, the tension and the actual act of informing someone that they will be retrenched. HR leadership and professionalism will be the key ingredients when in that position, and showing respect and empathy for the employee/s impacted by retrenchment, would exalt good HR practices, value and leadership.

Websites:

<http://www.labour.gov.za/DOL/legislation/acts/basic-guides/basic-guide-to-retrenchment>

<http://www.labourguide.co.za/retrenchment/>

<http://www.workplacelaw.co.za/Downloadable%20documents/Retrenchments/Code%20of%20Good%20Practice%20Dismissal%20Operational%20Requirements.pdf>



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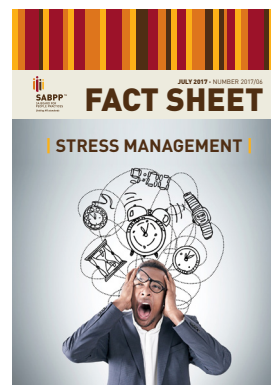
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