

FACT SHEET

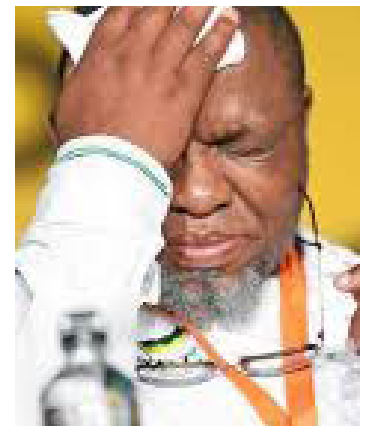
EMPLOYEE RETRENCHMENT: A necessary evil?



INTRODUCTION

The issue of retrenchment is very prominent in South Africa at the moment. Retrenchment is a very sensitive, emotional and painful process in any country and the socio-economic conditions currently prevailing in South Africa make retrenchment a particularly painful issue.

Impala Platinum Holdings Limited (Implats) announced early in August 2018 an intention to lay-off about 13 000 employees within two years. Also, there is an unconfirmed rumour that President Cyril Ramaphosa's administration is planning to lay-off 30 000 public servants in the next three years to cut costs due to a struggling economy and ever-growing social burden.



Mineral Resources Minister: Gwede Mantashe

On the 10th August 2018, the Minister of Mineral Resources, Gwede Mantashe, called Implats' announcement of proposed retrenchments "unethical and reckless". He advised them to look at available alternatives. In the strategic review on which their proposal was based, Implats concluded that "fundamental business restructuring was the only available option to secure long term future of the operation; a radical and urgent transition into a leaner, more focused and profitable operations is critical to support the future success of groups" (see www.implats.co.za).

Recently, labour federation Cosatu took a stance on retrenchments by calling on the government to use workers' pension funds administered by Public Investment Corporation (PIC) to take over some of the struggling mining shafts instead of closing them down. The National Union of Mineworkers is also fighting for workers' rights to tackle poverty, inequality and unemployment. To unions, a retrenchment is not a solution but an act that exacerbates the dire situation faced by employees.





COSATU President: Sdumo Dlamini



Although South Africa is the second largest economy in Africa after Nigeria and is one of the most industrialised countries in Africa, the country's historical dependence on the mining sector has exposed South Africa to vulnerabilities as this mining sector has declined fairly drastically over the last decades and associated sectors such as mineral-processing and manufacturing have been badly affected. The “de-industrialisation” of the South African economy over the past decades has meant a shift in employment from those sectors to the services sector and this, coupled with replacement of labour through automation, has had a very negative effect on employment. This trend is unlikely to change much in the short to medium term; South Africa's predicted economic growth rate to 2019 is 0.9%, according to South African Market Insights, as compared to a world average of 3.9%.

It is not only the mining industry facing the challenge but other sectors such as hospitality, health and transport among others. In the first quarter of 2017, the Quarterly Labour Force Survey (www.statssa.gov.za) reported the unemployment rate in South Africa to be at 27.7% and that it was the highest rate since 2003. In the first quarter of 2018, the unemployment rate stood at 27.2%, which is hardly any difference at all. Furthermore, Stats SA indicated that the number of people employed in the mining industry has dropped from 490 000 in 2015 to 190 000 at the beginning of 2018. Against the background of this alarming rate of unemployment, South African citizens are looking to the government for a solution to unemployment and poverty but are not finding a clear indication of a better future. Any further increase in the rate of unemployment will only add to the poverty and inequality which is already at an unacceptable level.

This Fact Sheet will look at definitions and legal requirements, avoiding retrenchments, alternatives to retrenchment, conducting a retrenchment programme, employee assistance and guidelines for HR practitioners.



DEFINITIONS AND LEGAL ASPECTS

Retrenchment is defined as a form of dismissal due to non-fault of an employee – the legal term is “dismissal for operational requirements” or rather a forced lay-off to save money. There are very detailed legislative processes and/or requirements to give effect to retrenchments; sections 189 and 189A of the Labour Relations Act, 66 of 1995 as amended provide that “when an employer contemplates dismissing one or more employees for reasons based on the employer’s operational requirements, the employer must consult in terms of a collective agreement”, must consult a workplace forum, a registered trade union or the employees affected, and must give notice of termination of employment.

The South African labour legislation emphasises consultation in various circumstances, including on proposals to retrench employees. This is because those employees affected by the proposal may very well have constructive suggestions on how the employer’s objectives may be met through using other means. The purpose of this is to ensure that alternative suggestions are actively considered by the employer and that together the parties search out constructive solutions. Professor Alan Rycroft has argued in a 2015 article that “s 189 contains an underlying assumption that consultation can only be meaningful and consensus-seeking if all parties engage in the process, full disclosure is made by the employer and any exchanges by the parties are well-motivated and rational.” (Industrial Law Journal, vol. 36, p. 1775)

When an employer considers retrenching workers because of operational needs, it must, in writing, invite for consultation:

- the people mentioned in the collective agreement; or
- workplace forum; and
- the registered trade union of affected workers; or
- if there is no trade union, the affected workers or their representatives.

The employer must at the same time provide written information on:

- the reasons for the proposed dismissals;
- the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;
- the number of employees likely to be affected and the job categories in which they are employed;
- the proposed method for selecting which employees to dismiss;
- the time when, or the period during which, the dismissals are likely to take effect;
- the severance pay proposed;
- any assistance that the employer proposes to offer to the employees likely to be dismissed;
- the possibility of the future re-employment of the employees who are dismissed;
- the number of employees employed by the employer; and
- the number of employees that the employer has dismissed for reasons based on its operation requirements in the preceding 12 months.



The purpose of the consultation is to reach agreement on ways of:

- avoiding or minimising retrenchments
- changing the timing of retrenchments
- reducing the effects of retrenchment
- choosing which workers to retrench; and on
- Severance payments

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

Bradley Workman-Davie, Director: Werkmans Attorneys has pointed out that “to prevent an unfair dismissal claim, the retrenchment must be substantively and procedurally fair”.¹ In other words, retrenchment should be informed by a fair reason related to employer’s operational requirements. Procedural fairness should be adhered to at all times.



1 <https://showme.co.za/secunda/business/business-finance/the-most-common-reason-people-are-retrenched-in-south-africa-and-how-companies-decide-who-goes/>



AVOIDING RETRENCHMENT

A proposal to retrench staff in the private sector or State Owned Enterprises can arise from one or more of various drivers, including, but not limited to:

- Declining sales, which may be due to a declining market overall or a declining market share, which may be due to obsolete products or failure to compete effectively with other businesses;
- Declining profits, or declining margins, which may be due to:
 - Greater input costs
 - Lower sales prices achieved
 - Declining productivity;
- An unacceptably low rate of return to investors;
- Anticipated future capital expenditure requirements, which could alter the profitability and viability



Courtesy of business alive



- of the company;
- Identified opportunities to change products, markets, technologies, processes which would require a change in skills of employees or reduce the number of employees required. This could arise from benchmarking current state of any of these to other companies and identifying significant differences.

In the public sector, some of the above drivers may also be present, but because the public sector is funded entirely through taxes and levies, a shortfall in collection of these can result in a need to reduce services.

As can be seen from the points above, drivers for retrenchment arise out of choice of strategy by the employer and/or the success or failure of implementation of strategy. As such, constant monitoring within the organisation will “flag up” circumstances which could in future lead to retrenchment. If this is done proactively and looking far forward enough, workforce planning measures can be put in place to avoid the need for retrenchment at all, including for example hiring freezes, skills re-training, creating new types of employment.



ALTERNATIVES TO RETRENCHMENT

Retrenchment should always be seen as a last resort, not a first choice.

Experience from around the world has shown that where parties really do work together, alternatives can be found. Some alternatives could include:

- reductions or changes to terms and conditions of employment;
- short term lay-offs;
- short-time, placing a moratorium on new appointments, overtime or Sunday work;
- transferring affected employees to other jobs in the employer's business or group;
- training or re-skilling employees for other available positions; and
- granting extended unpaid leave.

For a discussion on some of the difficulties which can arise during the consideration of alternatives, see the article by Neil Coetzee of Cowan Harper Attorneys on the De Rebus website (<http://www.derebus.org.za/alternatives-retrenchment-employers-obliged-save-jobs/>)

All too often, employers put together a proposal to retrench as a first option before themselves looking at alternatives and then try and justify or defend this proposal which sets the consulting parties up in opposition to each other from the start.

Productivity SA has for some years run a programme called Turnaround Solutions. "Turnaround Solutions is a proven programme, designed to effectively solve business challenges. We use trusted methods to analyse distressed organisations, and take practical steps to successfully revive and restore them to functional, profitable enterprises. Its purpose is to increase overall productivity and improve organisational structures, but most importantly, save and retain jobs. If retrenchment is unavoidable, we actively manage and facilitate the process to reduce its effects on individuals, organisations and the local economy. Initially, the programme focused on reactionary intervention and crisis management of struggling companies.

However, it evolved as we recognised the need to resolve problems proactively. Through the establishment of Future Forums, we create collaborative structures between management and employees, which function as early warning systems to detect and manage potential problems before they arise. Thus, Turnaround Solutions identifies with all companies, not only those in distress."



CONDUCTING A RETRENCHMENT PROGRAMME

In order to be able to conduct a fair and accepted retrenchment programme, the organisation must have a relationship of trust with employees and their representatives. This takes time to build up and is accomplished in part through sharing financial information on a continuous basis, through good times and bad.

The second requirement is to consult in good faith, as described in section 2.

It is also important for the employer to consider carefully the consequences of various options that are put forward and decided upon. As an example, offering attractive voluntary retrenchment packages or early retirement packages can lead to loss of key staff if the conditions of the offer are not clearly spelled out – and even if it is made clear that the employer has the right to refuse a volunteer, often the psychological contract with the employee has been damaged and that key member of staff becomes disengaged.

Throughout the preparation for and implementation of the retrenchment programme, excellent communication is essential. Rumours will be rife and disinformation campaigns can take on a life of their own.

The formal communication with each affected employee must be conducted with regard to respect and dignity of the employee. There are sad examples of letters being left on employees' desks, or emails being sent. Each affected employee deserves a face to face meeting with a line manager which allows time for the message to be clearly conveyed and personal issues to be dealt with.

All retrenchment programmes should be accompanied by comprehensive and carefully structured assistance programmes which cover areas such as financial, psychological, job search, amongst others. This is further dealt with in the next section.



EMPLOYEE ASSISTANCE

Employee assistance around retrenchments centres on the concept of resilience. Not only directly affected employees should be offered assistance, other employees often suffer from “survivor guilt” as described by David Noer in his seminal 1993 book *Healing the Wounds*, still available in an updated version.

Many organisations offer programmes of retrenchment support – for example, the South African Depression and Anxiety Group (SADAG – www.sadag.org) which often extends to helping employees search for new employment.

Good financial advice is also essential, and can often be arranged through pension/provident fund administrators.

Line managers who have to implement retrenchment programmes need support also, in how to deliver the message, support the employee and deal with their own feelings of failure and guilt.

Some “common sense” tips for surviving retrenchment are offered in many blogs, for example, financial accountant, Nomfundo Mancini-Ring advises on some of these measures as follows:

- Challenges should be turned into opportunities
- Use the available time to think about what one can do (planning a future and career one can enjoy)
- Thinking about strengths and weaknesses and empowering oneself with skills needed in the market
- Keeping strong networks as a source of motivation
- Keep enquiring with close networks about new job opportunities available
- Do job searches through technology
- Know the skills you have and check if still relevant; if not, upgrade the skills
- Aligning oneself with the market demands.

(<https://www.pressreader.com/south-africa/move/20180117/282351155173348>)

GUIDELINES FOR HR PRACTITIONERS

There are some ethical considerations for HR practitioners in dealing with retrenchments.

Firstly, it could be considered an HR practitioner's duty to society (one of the pillars of the SABPP HR Competency Model) to ensure that the organisation's strategic planning and monitoring processes adequately forecast workforce needs so that retrenchments are minimised, if not avoided.

Secondly, some difficult questions should be debated and worked through, for example:

- Is it ethical to look at people costs as a first step in cost cutting?
- What are the most ethical criteria for choosing those people to be retrenched?
- Is the offer of voluntary retrenchment always an ethical approach?

Thirdly, HR practitioners should not allow themselves to become the messengers of bad news on behalf of management.

As regards the conduct of the retrenchment programme itself:

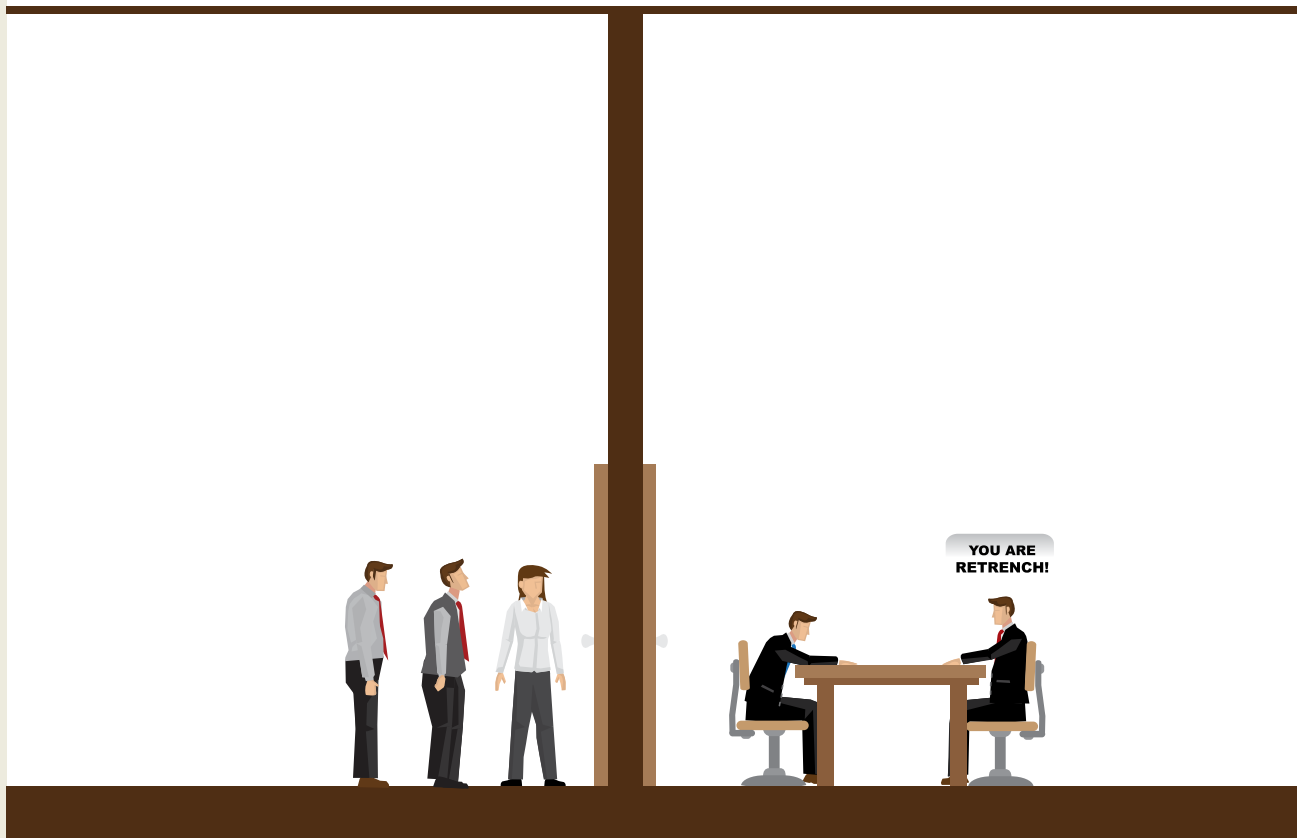
- HR practitioners should ensure that employees are well aware in advance about the employer's intention to retrench;
- Employees should be supplied with all the necessary and relevant information on their rights including trade union representation;
- The actual process and dates should be outlined in such a manner that employees will be in a better position to understand what will happen when;
- Ensure that workers understand labour legislation;
- Inform workers of their right to challenge the decision in a proper way;
- Encourage maintenance of a constructive relationship with the employer;
- HR practitioners should ensure that fair procedures are followed and be transparent with the information.
- Employees should be informed on available assistance programmes and alternatives such as skills development.



CONCLUSION

Retrenchment has become a serious challenge for leaders in recent times. It always affects workers psychologically, emotionally and physically. As pointed out, retrenchment hinges largely on the economic situation of a country. When we look at retrenchment in South Africa, we cannot overlook the economic situation facing this country. The socio-political environment facing many companies, low economic growth and hardships faced by those affected, are urgent calls to leadership to think differently and to invest in new techniques to alleviate unemployment in the country.

Leaders should ensure that unless there are genuinely compelling reasons for retrenchment, it should be avoided at all cost. Organisations should carefully observe the economic downturn alarms and be proactive to strategise ways to survive that will not affect workers negatively. Getting rid of fruitless expenditures should always be a first option. Leaders should really think out of the box and avoid resorting immediately to retrenchments as a way of resolving the challenge. HR practitioners' role is to support and advise those leaders in this difficult task.





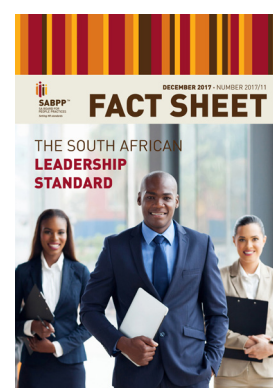
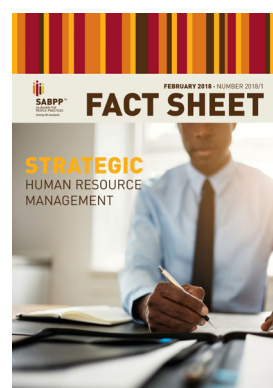
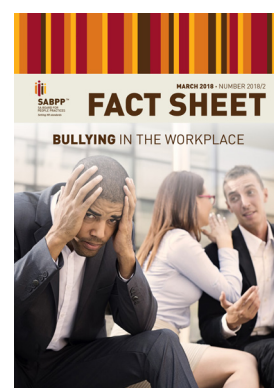
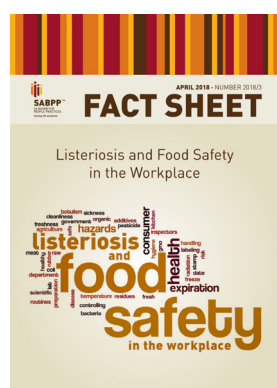
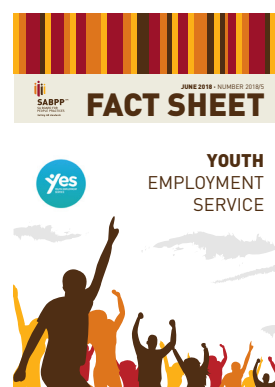
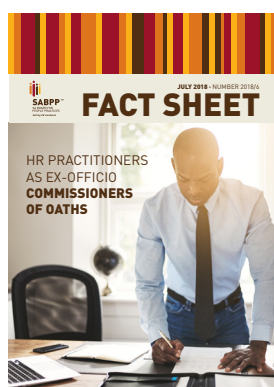
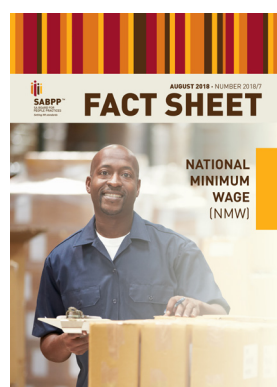
This Fact Sheet was written by Kgomotso Mopalami: SABPP Head of Knowledge and Innovation with contributions by Dr Penny Abbott.



Visit our Website at www.sabpp.co.za
for the list of previous Fact Sheets



FACT SHEET



FACT SHEET

DATE	NUMBER	SUBJECT
2013		
February	1	GAINING HR QUALIFICATIONS
March	2	ETHICS, FRAUD AND CORRUPTION
April	3	NATIONAL DEVELOPMENT PLAN
May	4	BARGAINING COUNCILS
June	5	EMPLOYMENT EQUITY
July	6	HR COMPETENCIES
August	7	HR MANAGEMENT STANDARDS
September	8	PAY EQUITY
October	9	COACHING AND MENTORING
November	10	HIV/AIDS IN THE WORKPLACE
2014		
February	1	EMPLOYING FIRST-TIME JOB MARKET ENTRANTS
March	2	PROTECTION OF PERSONAL INFORMATION ACT
April	3	QUALITY COUNCIL FOR TRADES AND OCCUPATIONS
May	4	WORK-INTEGRATED LEARNING
June	5	RECRUITMENT – SCREENING OF CANDIDATES
July	6	HR RISK MANAGEMENT
August	7	BASIC HR REPORTING (1)
September	8	BASIC HR REPORTING (2)
October	9	EMPLOYEE ENGAGEMENT
November	10	SEXUAL HARASSMENT

For more information about SABPP, visit our website www.sabpp.co.za or follow us on twitter @Sabpp1 for daily HR information

FACT SHEET

DATE	NUMBER	SUBJECT
2015		
February	1	AMENDMENTS TO LABOUR LEGISLATION 2014
March	2	THE REVISED BROAD-BASED BLACK ECONOMIC EMPOWERMENT CODES OF GOOD PRACTICE
April	3	LESSONS LEARNED FOR EMPLOYERS FROM CCMA CASES
May	4	EMPLOYEE WELLNESS SCREENING
June	5	CHANGING THE EMPLOYMENT EQUITY LANDSCAPE
July	6	EMPLOYEE VOLUNTEERING
August	7	DEPRESSION IN THE WORKPLACE
September	8	EMPLOYEE WELLNESS
October	9	EQUAL PAY AUDITS
November	10	BASICS OF EMPLOYEE COMMUNICATION
2016		
February	1	PRODUCTIVITY BASICS
March	2	SERVICE LEVEL AGREEMENT
April	3	TALENT MANAGEMENT: PAST, PRESENT AND FUTURE
May	4	BUILDING ORGANISATIONAL CAPABILITIES
June	5	CHANGE MANAGEMENT
July	6	INNOVATION IN HR
August	7	HR TECHNOLOGY
September	8	HR IN BUSINESS SUSTAINABILITY
October	9	THE LEARNING & DEVELOPMENT LANDSCAPE IN SA
November	10	TOWARDS A CODETERMINATION MODEL FOR SOUTH AFRICA

For more information about SABPP, visit our website www.sabpp.co.za or follow us on twitter @Sabpp1 for daily HR information

FACT SHEET

DATE	NUMBER	SUBJECT
2017		
February	1	MODERN SLAVERY
March	2	PENSION LAW FOR EMPLOYERS
April	3	THE GAME CHANGER: ROLE OF HR
May	4	HR GOVERNANCE
June	5	INTEGRATING SKILLS DEVELOPMENT, EMPLOYMENT EQUITY AND B-BBEE TRANSFORMATION
July	6	STRESS MANAGEMENT
August	7	REMUNERATION: RECENT TRENDS
September	8	HOW CEOs AND CHROs CAN USE THE SABPP TO CREATE EXCELLENCE IN HR MANAGEMENT
October	9	PEOPLE WITH DISABILITIES
November	10	RETRENCHMENT
December	11	THE SOUTH AFRICAN LEADERSHIP STANDARD
2018		
February	1	STRATEGIC HUMAN RESOURCE MANAGEMENT
March	2	BULLYING IN THE WORKPLACE
April	3	LISTERIOSIS AND FOOD SAFETY IN THE WORKPLACE
May	4	FLEXIBLE WORK PRACTICES
June	5	YOUTH EMPLOYMENT SERVICE
July	6	HR PRACTITIONERS AS EX-OFFICIO COMMISSIONERS OF OATHS
August	7	NATIONAL MINIMUM WAGE (NMW)
September	8	EMPLOYEE RETRENCHMENT

For more information about SABPP, visit our website www.sabpp.co.za or follow us on twitter @Sabpp1 for daily HR information