

# WORKPLACE STRATEGIES

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## **R-Rated: A Practical Guide to Implementing Redundancy Programs**

In these unprecedented times of global economic turmoil, many companies struggle to come to terms with the interwoven Rs words; recession and redundancy. South Africa is no exception to the global financial woes and trade unions in this country have already commenced action aimed at preventing job losses. Media reports state that some union bodies are actively lobbying President Motlanthe's Government to enact changes to the Labour Relations Act (**LRA**) that will make it more difficult for employers to dismiss due to redundancy, whilst the National Union of Metalworkers have publicly called for a moratorium on retrenchments for any company that taps into the Government's economic rescue package.

What follows is a 'best-practice' guide for redundancies. It includes analysis of issues that need to be considered before redundancies are contemplated, the legal requirements for effecting redundancies and a discussion of the human resources issues that are central to the smooth implementation of redundancies programs.

### **Redundancy Law**

The starting point when considering redundancies is to take account of the LRA and the Minister of Labour's Code of Good Practice: Operational Requirements (see <http://www.workplacestrategies.co.za/usefuldocs.htm>). The LRA permits dismissals based on 'operational requirements', defined as meaning "requirements based on the economic, technological, structural or similar needs of an employer". If an employer is able to show that such a requirement exists, it is likely that they will have a fair reason for any dismissals due to redundancy.

In times of low economic growth, particularly recessions, it is the 'economic' element of the operational requirements definition that is most commonly relied on; employers implementing cost-cutting exercises to either stabilise profits or in an effort to remain solvent. Shifts in the economy can alter this trend. In periods of high economic growth, redundancies tend to result from employer's investing in capital works (such as new machinery) that reduces their workforce requirements.

As the definition suggests, genuine redundancies arise because of the employer's needs and are deemed to be "no fault" dismissals in that the employee is not responsible for the loss of his or her employment. Recognition of this no-fault element has led to prescriptive procedures in the LRA and particular payments (termed severance payments) arise in the case of a redundancy, over and above the usual termination pay requirements.

The prescriptive procedural obligations that arise when implementing a redundancy program depend on the number of workers employed by the organisation.

Small to medium business need to be mindful of section 189 of the LRA that imposes an obligation on employers to consult with employees (or their union) likely to be affected by the program. The LRA states that consultation must begin once dismissals are contemplated, although this can often be a contentious issue. For example, does the obligation arise when a management team explores ways to reduce expenditure (in the case of redundancy for economic reasons) or considers purchasing plant and equipment that will lessen the need for some positions (in the case of redundancy for technological reasons)? The short answer is no; the managerial team is free to make these decisions without the need to consult with employees. It is only at the point that the managerial decision could lead to dismissals does the obligation to consult arise.

The issues for consultation must be set out in a written notice to the consulting parties (known as a 'section 189 letter') and include:

- the reasons for the proposed dismissals;
- the number of employees likely to be affected and their job categories;
- the proposed method of selecting which employees will be dismissed;
- any assistance that the employer proposes to offer to employees likely to be affected; and
- the possibility of future re-employment of those who are dismissed.

Employer obligations are not restricted to consultation; there is also an obligation to disclose information on matters relevant to the consultation, in the same way that employers must disclose information during collective bargaining negotiations.

Employers with more than 50 workers who implement redundancy programs may have to play by slightly different rules, depending on the number of employees affected. Section 189A of the LRA regulates large-scale redundancies and allows for greater rights to take industrial action and an obligation to use a facilitator during the consultation period.

### **Redundancies: When, How & Who?**

There are a number of golden rules to be mindful of before commencing a redundancy program. These pre-program rules include:

1. Don't shoot from the hip. It is important that companies have solid justifications for a redundancy program and that they have considered the legal ramifications.
2. Think carefully about the need for employee reduction. Whilst there may be a need to reduce the company's cost base, reducing employee numbers by 15% will not be as nearly as effective as increasing productivity by 1%.

3. Refer to your organisation's strategic plan and question which type and category of employee is most crucial to the implementation of that strategic plan. To put it another way, identify your critical staff versus your non-core staff.
4. Avoid the temptation to focus on middle management. Often employers conclude they can do away with the middle-management tier, but do not recognise that whilst strategy is developed by senior management, it is most usually middle management that is tasked with delivering the strategic outcomes.
5. Try to avoid a 'death by a thousand cuts'. A well-planned redundancy program should avoid the need for further dismissals in the future. A redundancy program is often a tumultuous times; it is preferable to implement the program only once and allow focus to return to the organisation's core business objectives.

Once the planning stage is complete, and if dismissals appear to be at least a possibility, consultation should commence and employers must make reference to either section 189 or section 189A of the LRA. Once again, there are a number of golden rules that apply during this phase:

1. Communicate as much as you can during the consultation phase, not just with those likely to be affected (called a selection pool), but also those employees who are not at risk of dismissal. Silence can be more dangerous than the dissemination of too much information.
2. Pay more than lip-service to exploring alternatives to avoid dismissal. At the very least, employers should consider:
  - Offering part-time positions.
  - Placing a moratorium on new hires; that is, promote internally rather than making external appointments. Take advantage of natural attrition and do not rush to replace someone who has resigned.
  - Deploying workers from non-revenue producing roles to revenue producing positions, or from non-profitable business divisions into profitable business divisions. If an employee can self-fund their remuneration, the need for redundancy is considerably lessened.
  - Implementing short-time (an interim arrangement whereby employees work less than full-time hours and are paid only for hours worked).
  - Review remuneration structures. A company-wide pay rise freeze is often warranted and in some instances, employees may agree to a reduction in their salary or benefits.
3. Where employees are performing the same role and only some will be chosen for redundancy, it is important to adopt fair and objective selection criteria. Many

employers use length of service as the primary method of selection, adopting the “last-in-first-out rule”. Other criteria that can be taken into account include:

- skills and experience;
- competence and merit; and
- conduct and absenteeism record.

Once the consultation period is finalised, employers need to make a decision about whose employment is to be made redundant and notify those employees accordingly. Outgoing employees should be offered career planning assistance and be notified of any opportunities for re-employment in the future. Employers should also give thought to those who are remaining and there is often a need to take steps to lift morale and engagement, once the program is complete.

### **Conclusion**

By following the procedures in the LRA (including the Code of Good Practice: Operational Requirements) and being mindful of the issues that are central to employees facing dismissal, redundancy programs can be carried out fairly and as smoothly as possible. Like so many other human resource issues, successfully implementing a redundancy program can depend on “the pitch”; employers displaying empathy and a degree of understanding of the employee’s issues, coupled with compliance of their legislative requirements, will invariably be more successful than those who have little concern for the effects of losing one’s employment or the law regulating this type of dismissal.

Workplace Strategies assist clients with implementing and facilitating redundancy programs.

For more information:

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