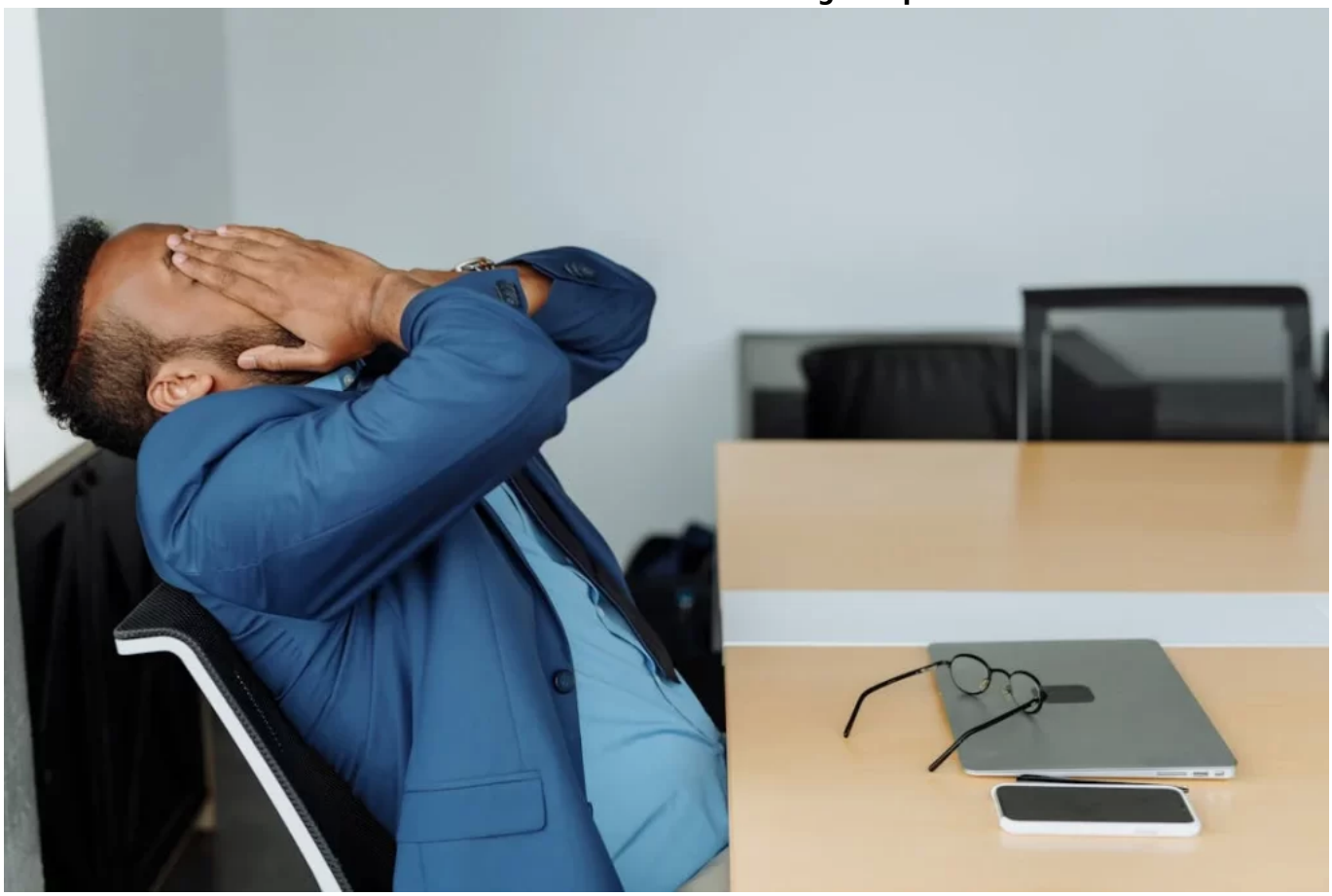
**Don’t do retrenchment tricks on the Labour Law Tightrope**



An all-too-common reason for retrenchments these days is the closure of a business. Such closures inevitably result in the employer’s belief in the need to retrench. This belief stems from the logic that, when a business closes down there cannot be alternatives to retrenchment because there can be no jobs in a closed business.

While this is true in some cases it is folly to assume that it is always the case. For example, alternatives to retrenchment in the case of a closure could be:

Explore a buyout by a competitor
Sell or give the whole or part of the business to the employees
Seek suitable posts for the employees in associate companies
Offer employees retirement where they qualify for this.

***Due to the fact that retrenchees lose their jobs through no fault of their own the courts are prone to penalising employers that do not identify and implement viable alternatives to retrenchment.***

A case in point is that of Groom vs Daimler Fleet Management (Lex Media. 10 July 2024, Labour Court case number 166/16).

Here, Daimler decided to close the company and embarked on a section 189 process. Amongst the affected employees was a Mr Groom, a manager with 35 years’ service. He applied both for two posts in the employer’s parent company and for early retirement.

The employer did not assist Groom with these two alternatives to retrenchment despite its failure to allege that these alternatives were not viable. Instead, the employer inexplicably offered Groom two

junior posts, one of which would have required him and his family to relocate.

While Groom was responding to these unsuitable offers and trying to obtain proper responses to the alternatives proposed by him, the employer issued him with a notice of termination on the grounds of operational requirements. The company informed him that, because he had refused the alternative posts it had offered him, he would receive no severance package.

The Labour Court found that the employer's offer of the two unsuitable posts was merely a ploy and that the employee's retrenchment had been substantively unfair. ***The Court ordered the employer to pay Groom his full severance benefits, an additional 12 months' remuneration and his legal costs.***

This case decision shows that the Courts are wise to ruses that employers use to avoid acceding to employees' rights. In order to ensure that managers know what the law expects of them and to avoid the use of dirty tricks employers need to train their managers thoroughly.