

Forced changes to employment conditions not on



Operational circumstances such as takeovers, reduced work orders and financial constraints often create the need for employers to change the employment conditions of employees.

However, labour law severely restricts the employer's right to make such changes without the employees' consent. Specifically, under the Labour Relations Act (LRA):

In a takeover of a going concern the employer is compelled to retain the terms and conditions of employment of the employees concerned

Unfair acts on the part of the employer as regards employee benefits are prohibited

Section 187(1)(c) of the LRA prohibits the employer from firing employees who refuse to agree to changes in terms and conditions of employment.

However, what if the employer genuinely needs to change the work circumstances due to serious operational problems? That is, what if, for example, client demands are such that a new shift system is required, but the employees are not willing to agree to the change? Is the employer entitled to go into a retrenchment process with a view to hiring employees willing to accept the new terms and conditions of employment?

In the case of *CWIU and others vs Algorax (Pty) Ltd* (2003 11 BLLR 1081) the employer needed to switch to a new shift system but the employees refused to accept this. The employer then retrenched its employees but consistently said that it would re-employ them if they would change their mind and agree to the new shift system. The Labour Appeal Court found that:

The retrenchments could have been avoided or minimised if the employer had got rid of a number of contractors

The employer's firm and consistent statements that the employees would be taken back if they agreed to

the new shift system showed that the employer had ulterior motives

The dismissals were not genuine retrenchments but were instead a ploy to get the employees to agree to a change in their conditions of employment

The dismissal was therefore automatically unfair in terms of section 187(1)(c).

All the employees were to be re-employed with effect from the date of the court order.

In the case of *Pedzinski vs Andisa Securities (Pty) Ltd* (2006, 2 BLLR 184) the employer informed the employee that if she did not agree to extend her working hours to full day she would be retrenched.

When she was retrenched, she took the employer to the Labour Court where it was decided that:

the employee had been threatened with retrenchment in order to coerce her into extending her working hours

her dismissal was automatically unfair

the employer was to pay the employee compensation equivalent to 24 months remuneration as well as the employee's legal costs.

While the making of such changes are often justified employers need to be extremely careful as to how they go about this. Therefore, before they begin to implement any changes that affect employees, employers need to get advice from a labour law expert who also understands practical operational needs.