

Panic is close second to the Corona Curse



It is understandable that business owners feel panicky because of the toll Corona is taking on business income. However, many businesses realise that if they implement wholesale retrenchments, they will not only lose valuable skills but will also reduce the buying power of the public. This would then further reduce the business's ability to earn an income.

Many businesses with stressed finances are therefore seeking, in consultation with employees, ways of avoiding retrenchment. These include, amongst possible others, the working of short time, pay cuts and temporary layoffs.

These employers are also finding out about the Department of Labour's Corona Disaster assistance schemes. While the operation of these schemes is still unclear it appears that employer's that temporarily lay employee's off without any pay can apply to the Department of Labour's for TERS benefits through which employees may qualify for state payments of up to R17000 per month for a maximum of three months. the Department of Labour's COVID 19 TERS EASY AID guide states that employers may email their TERS benefit applications to Covid19claims@labour.gov.za. together with the following documents:
Letter of Authority, on an official company letterhead granting permission to an individual specified to lodge a claim on behalf of the company
MOA (completion of the agreement between the state and the employer)
Prescribed template that will require critical information from the employer Evidence/payroll as proof of last three months employee(s) salary(ies)
Confirmation of bank account details in the form of certified latest bank statement.

Employers that need information regarding available funding can enquire via the following email address: covid19ters@labour.gov.za. or phone 012 337 1997.

It appears that the new TERS benefit is confined to cases where employees are not been paid at all over a specific period. The Department of Labour's guide states that it will also assist through other UIF benefit schemes that already exist including Illness and Reduced Work Time benefits.

Where employers are successfully able to assist employees with obtaining these benefits this could go a long way to alleviating their financial hardships and keeping the business going. This is a most important alternative to business liquidations and or retrenchments.

Employers are warned that, where retrenchments are truly unavoidable, these must be implemented according to the requirements of section 189 of the LRA. However, the panic attached to Covid 19 has a high potential to result in hasty and legally non-compliant retrenchments.

At Labour Court the employer has the duty of proving that:

There was a genuine and valid reason for retrenching

The employees chosen for retrenchment were fairly chosen

The retrenchment procedure as laid down in the LRA has been followed properly and in good faith by the employer

The employer has shared with the targeted employees (or their representatives) all documentary and other information pertinent to the retrenchment.

In the case of NUMSA and others vs Dorbyl Ltd and another (2004, 9 BLLR 914) the plant at which the 122 applicant employees worked was closed down and they were retrenched. The Court found that the decision to retrench was taken before the employer consulted with the employees regarding the retrenchments. The employer was required to pay each of the 122 retrenchees two months' remuneration in compensation.

As I have repeatedly warned employers, the courts see retrenchments as no-fault terminations. This means that the employee is losing his/her job through no fault of his/her own. In addition, the unemployment rate in South Africa is extremely high and the Coronavirus will ensure that it will be close to impossible for many retrenchees to find new jobs. For this reason, the courts have no hesitation in protecting the rights of retrenchees and making employers pay heavily where they deviate from the law. Thus, while Corona is currently the employer's primary enemy, panic comes a close second.

Ivan Israelstam: MHRP is Chief Executive of Labour Law Management Consulting. He may be contacted on (011) 888-7944 or 0828522973 or on e-mail address: ivan@labourlawadvice.co.za. Go to: www.labourlawadvice.co.za