

What is a fair reason to retrench?



Don't retrench if operational circumstances don't merit it.

Section 213 of the LRA indicates that the reasons for retrenchment may be based on the economic, technological, structural or similar needs of the employer. It is necessary to look at each of these reasons more closely.

Typically, economic reasons given for the need for retrenchment include the ability to make money or to retain sufficient funds to continue operations.

Technological reasons advanced for the need to retrench often include the introduction of new chemical formulas, equipment, computer packages, electronic systems and techniques that might reduce the need for labour.

Structural reasons advanced for the need to retrench include the need to flatten the management structure or to switch from a functional corporate structure to a project based structure.

In *Tiger Foods Brands Limited vs L Levy* (CLL May 2007 page 102) the employer wished to introduce a system whereby employees would work on public holidays. The employees embarked on a strike in protest against this move. During the industrial action a large number of strikers behaved violently. As the company was unable to identify the perpetrators it concluded that it was unable to continue managing the workplace. It therefore decided to consider retrenching several employees.

The Labour Court the Court found that the company's need to protect its managers and to manage the business fell under the definition of 'operational requirements' as they affected the viability of the business. These were grounds "similar to economic, technological or structural needs."

Employers are warned not to interpret this finding as a licence to invent their own reasons for retrenchment.

For example, it would be folly for an employer to retrench employees on the basis of its operational requirement for 'employees to perform their work well'. While the need for good work performance can well be argued to be an operational requirement there is a separate legal procedure prescribed in Schedule 8 of the LRA for dealing with poor performance. In the case of NEHAWU vs Medicor (Pty) Ltd (2005, 1 BLLR 10) the Labour Court forced the employer to reinstate 67 unfairly retrenched employees with full back pay. This was because the employer had used the retrenchment process to get rid of alleged poor performers.

In the light of the above, before dabbling in the dangerous area of retrenchments, employers should obtain legal advice from a reputable expert in labour law.

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