CORPORATE NEWSLETTER

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IN THIS EDITION

VOORWOORD

Net soos gedurende die eerste helfde van verlede jaar, het 2018 gebuk gegaan onder sukkelende ekonomiese omstandighede. 'n Ligpunt is dat ekonome meen dat die Namibiese ekonomie in 2019 sy kop gaan oplig.

2018 bly vir ons hier by SEENA 'n mylpaal met die viering van ons tienjarige bestaan.

In this issue of our corporate newsletter, we investigate the legal requirements of Retrenchments and give a summary of our Customer Service training product. We also give notice of our annual increase which will be effective from 1 September 2018.

As a loyal client of SEENA, you should not remain in the dark concerning Labour Law, NEEEF and Employment Equity (Affirmative Action). Give us a call and we will be glad to enlighten you.

Onthou dat ons SEENA Payroll produk nou beskikbaar is.

SEENA Training bied kursusse aan by u besigheidsperseel indien daar geskikte fasiliteite is.

SEENA Groete / Greetings

JJ Barkhuizen
MANAGING DIRECTOR

RETRENCHMENTS – AN OVERVIEW

Despite the fact that the mainstream media often reports on retrenchments, and the disputes that so often accompany retrenchment proceedings, many business owners remain blissfully ignorant of the legal prerequisites underlying retrenchment proceedings.

Before getting into legal specifics, it is important to understand that retrenchments are not a quick fix. This legal process takes time. It is important that Employers, even when only remotely considering future retrenchments, obtain professional advice as early as possible. The process is unlikely to be concluded in a day or two, it will require proper planning, will have to be properly motivated and should only be undertaken as a last resort.

Retrenchments are governed by the provisions of section 34 of the Labour Act, under the heading "**dismissal arising from collective termination or redundancy".** The section applies when it is necessary to reduce the workforce for reasons related to:

1. the re-organisation or transfer of a business;
2. the discontinuance of a business; or
3. the reduction of the workforce arising from economic or technological reasons.

As with any other forms of dismissal, the onus will rest on the Employer to show that retrenched employees have been dismissed for reasons that are substantively fair and in accordance with a fair procedure.

The procedure is laid down in section 34 in detail, but briefly put, it requires notification, a disclosure of information and negotiation. In short:

1. **Notice** to the Labour Commissioner of any intended dismissal at least four weeks before it is intended to take place. The notice should include the reasons

for the intended reduction of the workforce, the number and categories of employees that may be affected, as well as the anticipated date of dismissals. It is important to note that the notice makes mention only of an intended dismissal, with the rationale being that no final decision can be taken by the employer prior to proper consultation and negotiation with the employees that are likely to be affected.

Where there is a recognised trade union, written notice should also be given to the union. This notice is similar in nature to that given to the Office of the Labour Commissioner. In the absence of a recognised union notice is to be given to the Shop-Stewards and/or the Employees.

2. **A Disclosure of All Relevant Information** as is necessary in order to enable the trade union or workplace representatives to engage effectively in the negotiations on the intended dismissals. This step is important as a failure to adequately disclose all relevant information may render the process unfair.

3. **Negotiate, in good faith, on:**
   a. Alternatives to dismissals;
   b. The criteria for selecting the employees for dismissal;
   c. Measures on minimising the intended dismissals;
   d. The conditions on which the dismissals are to take place; and
   e. Measures aimed at averting, or mitigating, the adverse effect that the dismissals may have on the affected employees.

In the recent Labour Court judgement of Matuzee v Methealth Namibia, as delivered by DJP Angula, Methealth failed to convince the Labour Court that they had retrenched a former employee on grounds that were procedurally and substantively fair. The end result was that the retrenched employee was ruled to have been unfairly dismissed and had to be re-instated, with his former employer having to pay him the compensation he would have earned had he not been so dismissed. As the employee was dismissed in May of 2014, and the judgement was only delivered in March of 2018, the end result was a costly one.

In order to illustrate some of the principles at play when retrenching employees it is important to have a brief grasp of the merits of this particular case.

The Appellant was a former Claims Supervisor of Methealth. He was retrenched on the 24th of April 2014 on what was labelled to be operational reasons. After having lost his case at arbitration the former employee took the matter on appeal to the Labour Court.

Retrenchment proceedings started when the Employer informed the Appellant, through his Union, that his position as Claims Supervisor had become redundant along with that of two other Supervisors. The first letter communicating the Employer's intentions was dated 24 February 2014. This letter was however not in compliance with section 34 of the Act and did not have the effect of formally commencing retrenchment proceedings.

In terms of the aforesaid letter the Employer's case for retrenchment was that the position of supervisor no longer made operational sense as there were too many layers in management, i.e. Managers, Supervisors, Controllers, etc. Employees were given until the 26th of February 2014 to comment on the aforesaid and is was stated that no final decision would be made before all input received from affected staff was taken into account.

Assisted by his Union Representative the Appellant sought an extension on the allotted time, as well as disclosure of certain documents, in order to enable him to understand the employer's case for retrenchment. The list of documents requested was quite extensive, but amongst others included copies of the Employer's organogram, minutes of management's strategic meeting and a copy of their affirmative action plan. From the evidence adduced during the Arbitration proceedings it was clear that the Employer made only a superficial effort to disclose the documents requested.

On the 24th of April 2014 the Appellant's services were formally terminated, without prior notification and without any form of consultation. The formal notice read:

> *"Even though the redundancy of your position as supervisor, which is part of the realignment of supervisors as a result of the business decision to re-organize the business operation for economic reasons had been explained and elaborated, including the email communications on or about 7 April 2014, no alternative to dismissal is found, the company has no option than to issue this notification in terms of section 34 of the Labour Act, 2007."*

The notice further read that the Appellant's date of termination would be 31 May 2014 and that the company would continue to negotiate with the Appellant as required in terms of the provisions of section 34 of the Act from the date of the letter to the date of termination.

Given the fact that the notice had already, in no uncertain terms, terminated the Appellant's employment, such further negotiation would have made little sense. Simply put: "Why waste time negotiating when the decision had already been taken?" Following the notice of termination there was no further contact between the parties, aside from two unanswered letters addressed to the Employer by the Union.

The timing of the notice terminating the Appellant's services is also noteworthy. It needs to be mentioned that the Appellant had obtained an adverse award against his employer on the 23rd of April 2014, only one day prior to his services being terminated, after the Employer was ruled to have made unlawful deductions from his salary. The fact that this award was merely one day prior to the Appellant receiving his notice of dismissal did not do much to help the Employer's case.

In evaluating the merits of the case, the Judge found procedural irregularities in so far as:

1. The notice given to the Appellant in terms of the provisions of section 34 was not one of intended dismissal, but was in fact a notice of dismissal. The judge rules that the notice cannot be in compliance with section 34, unless it is phrased in conditional terms. Once the notice is final and decisive it is no longer subject to negotiation and not in line with the provisions of the Act.
2. A fair procedure would entail the disclosure of relevant information necessary in order to enable the other party to negotiate effectively. Failure to disclose will amount to a procedural irregularity.
3. In the matter at hand the Employer failed to negotiate at all, which in itself is a major procedural irregularity. From this failure to negotiate it flows that there was no negotiation or consultation on any of the subject matters on which the Employer was compelled to negotiate, i.e.:
    - Alternatives to dismissals;
    - The criteria for selecting the employees for dismissal;
    - The conditions on which the dismissals are to take place; and
    - Measures aimed at averting, or mitigating, the adverse effect that the dismissal may have on affected employees.

On the substantive merits the Judge made it clear that the onus rests on the Employer to show that there was no alternative but to retrench the employee. Generally this will entail

that a retrenchment for operational reasons should be justified by proper and valid commercial or business rationale. The fact that the Appellant had obtained an adverse award against his employer merely one day before having his services terminated, coupled with the total lack of adherence to statutory procedure rendered the judge to conclude that the employer did not succeed in discharging the onus that rested on them to show that they had no alternative but to retrench.

In conclusion:

Retrenchments are at the best of times emotional affairs for both Employer and Employee. The law is designed and intended to ensure that retrenchments are not sprung on employees as a surprise. It is a last resort, and where absolutely necessary, needs to be handled with discretion and empathy as it is brought about through no fault on the part of the Employee. It is of the utmost importance that action, where necessary, be taken at the appropriate time. Many employers fail to take action timeously, which can put unnecessary strain on the negotiation process and finances of the Company. By obtaining advice and taking action at the appropriate time, many of the pitfalls can easily be avoided.

Case reference: Matuzee v Shilahla (LCA 2/2016)[2018]NALCMD 3 (15 March 2018)

Article by: Nicky Smit

ANNUAL PREMIUM INCREASE

All members are advised that an annual premium increase of 5.5% (five and a half percent) will take effect on the 1st of September 2018. Members who joined us during June, July and August of 2018 will not be affected by this increase.

CUSTOMER SERVICE TRAINING

One of the most important elements contributing to the profit and success of a business was the way in which the company treats their customers.

Despite technology permeating every aspect of business in our modern society, and thereby reducing traditional human interaction dramatically, the vast majority of business relationships and actual operational sales still take place on a direct level of interaction between people. In short, the success of a business still depends notably on its team's ability to effectively deal with and satisfy customers' needs.

The purpose of this course is to provide participants with the essential knowledge and skills that will enable them to effectively interact with customers to the benefit of the business.

Considering the above-mentioned, SEENA set forth to develop a Customer Service Training course aimed at firstly introducing employees to essential skills, providing them with a strategic insight and understanding of their core responsibilities, and secondly empowering them with a number of practical skills which can be used daily, on an operational level, to ensure excellent customer service.

During this course the attendee will obtain a better understanding of his/her role and they will be empowered with new competences and in many cases, existing skills and knowledge will be refreshed. The subjects we explore during this course is as follows:

- Importance of Customer Service;
- Consequences of poor Customer Service;
- Advantages of good Customer Service;
- Principles of Customer Service;
- Exceeding Customer expectations;

- Golden rules in providing exceptional Customer Service;
- 7 step f-formula;
- Personal appearance;
- Roles of the team;
- Communication skills and
- Problem-solving skills.

Should you be interested in attending one of our courses or sending a delegate on your behalf, please do not hesitate to contact us for a booking.

Our details are as follows:

Contact Person:	Sonja van der Merwe
Telephone:	061 309 260
Fax:	061 309 266
E-mail:	training@seenalegal.com

Cost:	
Non-Members:	N$ 1 200.00 (Incl. Vat.)
Members:	N$ 950 (Incl. Vat.)

Duration:	09:00-14:00 (Light Lunch & Attendance Certificate included)

Remember that we have limited seating - first come first served. Your seat will only be confirmed once payment was received.

Please visit our website at www.seenalegal.com if you have missed any of our previous newsletters. You can also download labour related Acts, Regulations, Collective Agreements, Frameworks and Bills directly from this site.

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