

Labour Relations (Retrenchment) Regulations, 2003

IT is hereby notified that the Minister of Public Service, Labour and Social Welfare has, in terms of section 17 of the Labour Relations Act [*Chapter 28:01*], made the following regulations:—

1. Title

These regulations may be cited as the Labour Relations (Retrenchment) Regulations, 2003.

2. Interpretation In

these regulations—

“form” means the appropriate form prescribed in the Schedule:

“retrenchment board” means the retrenchment board established in terms of section 4;

“works council” means a works council as defined in section 2 of the Labour Relations (Workers Committees) (General) Regulations, 1985, published in Statutory Instrument 372 of 1985.

3. Retrenchment of employees

- (1) An employer who wishes to retrench five or more employees shall do so in terms of section 12C of the Act.
- (2) An employer who wishes to retrench less than five employees shall—
 - (a) give written notice of his intention to the works council established for the undertaking or if there is no such works council to the employment council established for the undertaking or industry; and
 - (b) provide the works council with details of every employee whom he wishes to retrench and the reasons for the proposed retrenchment.
- (3) The works council or employment council shall forthwith attempt to secure agreement between the employer and the employees concerned or their representatives as to whether or not the employees should be retrenched and if they are to be retrenched, the terms and conditions on which they may be retrenched, having regard to the considerations specified in subsection (11) of section 12C of the Act.
- (4) If, within one month after receiving notice in terms of subsection (1), the works council or employment council secures an agreement between the employer and employees concerned or their representatives on the matters referred to in subsection (2), the works council or the employment council shall send the employer its written approval, in Form LRR2, of the retrenchment of the employees concerned in accordance with the agreement and the works council or employment council shall send another copy to the retrenchment board.
- (5) If, within one month after receiving notice, in terms of subsection (1), the works council or employment council has failed to secure an agreement between the employer and the employees concerned or their representatives on the matters referred to in subsection (2), the works council or employment council shall refer the matter together with all documents which the employer and the employees concerned may have submitted to the works council or employment council and copies of the minutes of any proceedings or deliberations, to the retrenchment board which shall deal with the matter in terms of section 12C of the Act.
- (6) In an establishment or undertaking where there is no works council or employment council the employer shall—
 - (a) give written notice to the employee(s) concerned of his intention to retrench them, together with the reasons for the proposed retrenchment; and
 - (b) attempt to secure an agreement with the employee(s) concerned on whether or not the employee(s) should be retrenched and the terms and conditions on which they may be retrenched having regard to the considerations specified in subsection (11) of the section 12C of the Act.
- (7) If the employer secures an agreement with the employee(s) concerned on the matters referred to in paragraph (b) of subsection (6) the employer shall send a copy of the agreement signed by all parties concerned, to the retrenchment board.
- (8) If within one month after giving notice in terms of paragraph (a) of subsection (6) the employer had failed to secure an agreement with the employee(s) concerned on the matters referred to in paragraph (b) of subsection (6), the employer shall refer the matter to the retrenchment board which shall deal with the matter in terms of section 12C of the Act.

4. Retrenchment board

(1) There is hereby established a board, to be known as the retrenchment board, consisting of the following members appointed by the Minister—

- (a) two persons employed in the Ministry of Public Service, Labour and Social Welfare, one of whom shall be designated by the Minister as the chairman of the retrenchment board; and
- (b) one person nominated by the Minister of Finance and Economic Development; and
- (c) one person nominated by the Minister of Industry and International Trade; and
- (d) two persons appointed from a list of not less than four names submitted by such employers' organizations or federation of employers' organizations as the Minister may recognise for the purposes of this paragraph; and
- (e) two persons appointed from a list of not less than four names submitted by such trade unions or federation of trade unions as the Minister may recognise for the purposes of this paragraph.

(2) Members of the retrenchment board shall hold office for such period, not exceeding three years, as the Minister may fix on their appointment and, on the expiry of their term of office, shall be eligible for reappointment.

(3) If at any meeting of the retrenchment board the chairman is absent, the members present may elect one of their number to preside at the meeting as chairman.

(4) Five members of the retrenchment board shall constitute a quorum at any meeting of the board.

(5) All acts, matters or things authorised or required to be done by the retrenchment board may be decided by a majority vote at a meeting of the retrenchment board at which a quorum is present.

(6) At all meetings of the retrenchment board each member present shall have one vote on each question before the board and, in the event of an equality of votes, the chairman or person presiding shall have a casting vote in addition to a deliberate vote.

(7) Except as otherwise provided in this section, the procedure for the convening and conduct of meetings of the retrenchment board shall be as fixed from time to time by the board.

(8) The Minister shall assign such officer in his Ministry as may be necessary to act as secretary of the retrenchment board and otherwise to assist the board in the performance of its functions.

5. Retrenchment deemed approved in terms of subsection 10 of section 12C of the Act

Where the proposed retrenchment is deemed approved in terms of subsection 10 of section 12C of the Act and no prior agreement has been made as to the terms and conditions of the retrenchment, the matter shall be referred to the Labour Court which shall give a ruling as to the terms and conditions of the retrenchment.

6. Forms

The forms specified in the Schedule shall be used for the purposes of giving effect to the above and the provisions of section 12C of the Act.

7. Repeal

The Labour Relations (Retrenchment) Regulations, 2003, published in Statutory Instrument 132 of 2003, are repealed.

SCHEDULE (*Section 6*)

NOTICE OF INTENTION TO RETRENCH

TO:
(insert name of works council/employment council/retrenchment board)

Kindly take note that I/We*
(Insert name of employer)

of
(insert address of employer)

intend to retrench the employees whose names are listed in Annexure 1 and seek approval to effect such retrenchment. My/Our* reasons for the retrenchment are listed in Annexure 2 to this notice.

.....
Employer

*delete inapplicable

NOTES:

1. The name of every employee whom the employer seeks to retrench must be listed on a separate sheet of paper which should be marked "Annexure 1" and attached to this notice.
2. The reasons for the retrenchment must be stated on a separate sheet of paper which should be marked "Annexure 2" and attached to this notice.

APPROVAL OF RETRENCHMENT OF EMPLOYEES

THE
(insert name of employment board/employment council/works council granting approval)

hereby grants approval to:.....
(insert name and address of employer to whom approval is granted)

to retrench the employees whose names are listed in Annexure 1 to this form on
(insert date on which retrenchment is to take effect)

subject to the terms and conditions which are listed in Annexure 2.

.....
Secretary

.....
Chairman

NOTES:

1. The name of every employee whose retrenchment is approved must be listed on a separate sheet of paper which should be marked "Annexure 1" and attached to this notice of approval.
2. Any terms and conditions subject to which the employees concerned may be retrenched must be listed on a separated sheet of paper which should be marked "Annexure 2" and attached to this notice of approval.
3. This notice of approval should be signed by the chairman and secretary of the employment council or works council which grants approval.
4. This notice of approval must be sent to the employer and the employees concerned, and a copy of it, together with a copy of each annexure, must be sent to the retrenchment board.

REFERENCE OF RETRENCHMENT APPLICATION TO RETRENCHMENT BOARD

TO: The Secretary, Retrenchment Board, Ministry of Public Service, Labour and Social Welfare, Private Bag 7707, Causeway.

FROM: (insert name of employment board/employment council/works council)

On the (date), this board/council received a notice from: (insert name and address of employer concerned)

stating his intention to retrench certain employees. This board/council has been unable to reach agreement on the following issues: (state issues on which agreement has not been reached)

and the matter is therefore referred to you in terms of subsection (4) of section 12C of the Act. Copies of the relevant documents are attached hereto.

Secretary

Chairman

NOTES:

- 1. This form must be accompanied by copies of all documents submitted to the board or council by the employer and employees concerned, together with copies of the minutes of the proceedings and deliberations of the board or council.
2. This form must be signed by the chairman and secretary of the board or council concerned.

NOTICE OF MINISTER'S DECISION REGARDING RETRENCHMENT OF EMPLOYEES

IT is hereby notified that the Minister of Public Service, Labour and Social Welfare, in terms of subsection 9 of section 12C of the Act, has considered the proposal of—

(insert name and address of employer)

to retrench the employees whose names are listed in Annexure 1 of this Authority, and—

- (a) has approved the proposed retrenchment, subject to the terms and conditions which are listed in Annexure 2.
(b) has refused to approve the proposed retrenchment.

Secretary for Public Service, Labour and Social Welfare

NOTES:

- 1. The name of every employee whose retrenchment is authorized must be listed on a separate sheet of paper, which should be marked "Annexure 1" and attached to this notice.
2. Delete paragraph (a) or (b), as appropriate.
3. Any terms and conditions subject to which the employees concerned may be retrenched must be listed on a separated sheet of paper, which should be marked "Annexure 2" and attached to this notice.
4. Copies of this notice, together with its annexures, must be sent to the retrenchment board, the employment board/employment council/works council which considered the matter, and the employer concerned.