

CUTTING EDGE



aviation union of southern africa

Registered as a trade union in terms of the labour relations Act, (Act 66 of 1995) as amended

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Dear Members,

RETRENCHMENT (S189A)

As all of you know by now the Company gave all Employees notice to start with a S189A "Dismissal (retrenchment) based on operational requirements". The Company did request the CCMA to facilitate the process and the first meeting is scheduled for Thursday 23 May 2019.

Below is a short explanation on what, how and why.

What is Retrenchment

It's known as "no fault dismissal" a dismissal for operational reasons, which can include a variety of reasons such as;

- ◆ Financial decline of business
- ◆ Restructuring of Company by down scaling workforce.

As this is still a dismissal the requirements of "fair Labour practices" still applies. The Constitution by way of section 23(1)(a) gives each person this right. The Labour Relations Act (LRA) lay down strict requirements in section 189 and 189A, the breach of these requirements will land the Employer in hot water. These provisions require that the Employer must;

- ◆ Have a good reason for the need to retrench.
- ◆ Use fair criteria in deciding which employees are to be retrenched.
- ◆ Follow an intricaded consultation procedure aimed primarily at seeking ways to avoid retrenchment.

Why Consultation

Section 189 and 189A place a high value on consultation, in fact, if the Employer fails to consult with Employees on retrenchment, it will be seen as an unfair retrenchment process.

The purpose of consultation is to enable the parties, in the form of a joint problem-solving exercise, to strive for consensus on, among other things, appropriate measures to avoid retrenchments (dismissals).

Why CCMA facilitation.

Both parties need to agree on the process and complete LRA form 7.20, the facilitator will have the following powers and duties;

- ◆ To chair the meeting between the parties
- ◆ To decide on any issue of procedure that may arise between the parties

A minimum of four (4) meetings must be scheduled, at the first meeting the facilitator must seek to conclude an agreement between the parties on the following;

- ◆ The procedure to be followed
- ◆ The date and time of additional meetings
- ◆ The information the Employer is required to disclose

Policy changes

The Company informed Employees on 30 April 2019 that some policies have been revised and will be effective as from 1 April 2019. This issue did receive immediate attention from Labour and we requested the Company to consult with us on this issue.

We can confirm that to date no meeting had been scheduled to discuss this issue. We did inform the Company if it fails to consult with Labour on this issue, it leaves us no other option but to raise a dispute at the CCMA.

Feel free to contact the Union office for more information and feedback.

Regards

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