

### What your managers must know:

- Section 189 of the Labour Relations Act (LRA) governs retrenchments; and
- There is a code of good practice on dismissal in terms of retrenchment.

### Substantive Fairness is proved if

- The reasons for retrenchment are based on **financial** , **technological** or **structural needs of the employer** and are deemed acceptable.

### Procedural Fairness is proved if

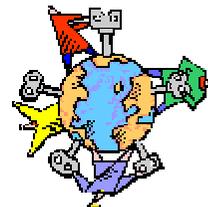
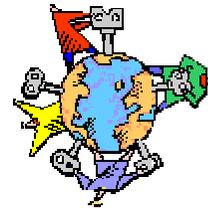
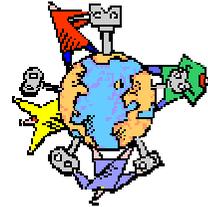
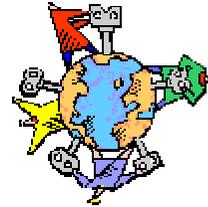
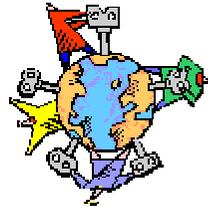
**a formal letter** is given to all staff stating the reasons why the company is embarking on a retrenchment exercise.

The process of consultation is dealt with in a **'working memorandum' format** which sets out s 189 of the LRA precisely and coherently.

Every consultation is to be **meticulously recorded** and the minutes are to be vetted.

**Time** is afforded to both management and staff to assess the situation and **seriously look at alternatives**. All alternatives presented by staff are **responded to by management in writing**.

Once all alternatives are considered and should the company still believe retrenchments are necessary, the effected staff member will be called in and given their letters of retrenchment in terms of the consensus reached during the consultation process.



### Tips

- Retrenchment is a no fault dismissal.
- Know your rights and those of your staff by being fully conversant with s 189 of the LRA and the code of good practice, thus ensuring a comprehensive process.
- Due empathy and assistance should be afforded to staff members. For instance, when formal letters are issued, give staff time to digest information, such as a weekend.
- Invite staff for the consultations electronically so that these can be monitored. Always be available on email (it is an instant recorder of facts) and copy HR in on all correspondence, no matter how frivolous.
- Do not shy away from an employee's representative as they help to legitimize the process.
- Managers are to embark on consultations in a genuine manner using your memorandum as your script.
- Minute all consultations, ensure that same are vetted and place on file.
- Respond to alternatives timeously and in writing.
- Embellish upon your memorandum continuously so that it is a conclusive and comprehensive written recordal of the process you have followed.

Should you need assistance contact Natasha at Moni Attorneys 011 706 0924.