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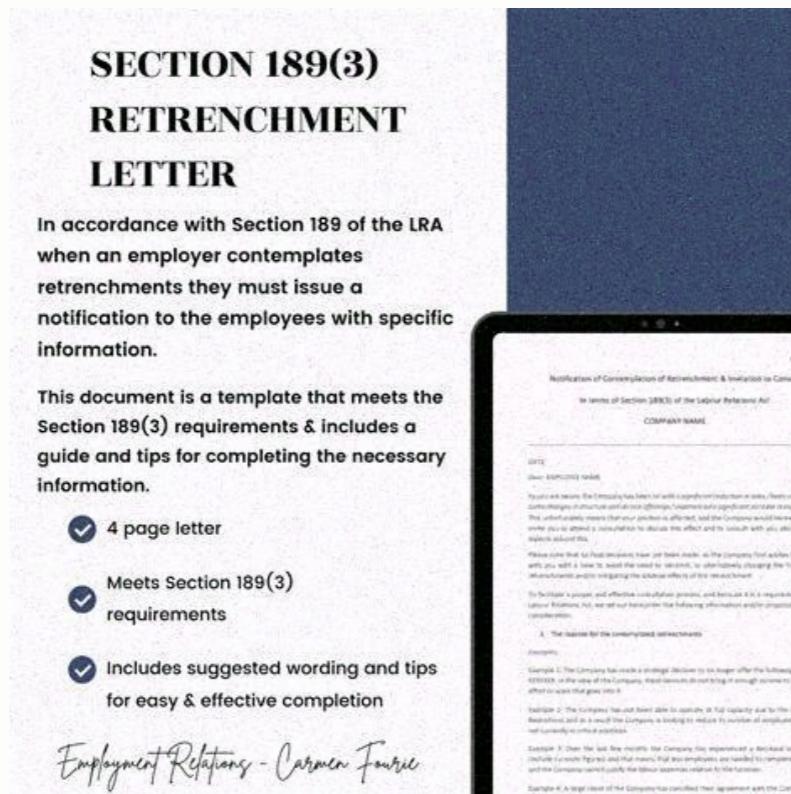
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A Comprehensive Guide to Retrenchment in South Africa: Understanding the Proper Procedure, Required Documents, and Calculating Retrenchment Packages **Introduction** Aslam Moola, a registered attorney at the National Legal Practice Council (Registration number 65753), presents this guide to help you navigate the CCMA process for Unfair Dismissal. The practical steps outlined in this guide will equip you with the knowledge and confidence to tackle retrenchment procedures in South Africa. **What's Inside** This comprehensive guide is divided into four chapters, covering essential topics such as: 1. **The Legal Position on Retrenchments**: Understanding Section 189 of the Labour Relations Act and the requirements employers must follow before retrenching employees. 2. **The Proper Procedure for Retrenchment**: The documents required for the retrenchment process, including the retrenchment letter, and how to calculate a fair retrenchment package. 3. **Advanced Tips for Retrenchments in South Africa**: Practical advice on navigating the retrenchment process, including calculating severance packages.

Retrenchment Reasons: The three legitimate reasons why an employer can retrench employees: economic, technological, or structural reasons. **The 3 Reasons to Retrench** An employer must choose one or more of the following three reasons to justify retrenching employees: 1. **Economic Reasons**: Financial strain affecting the business, such as poor economic conditions or loss of key customers. 2. **Technological Reasons**: New technology making existing jobs redundant or requiring employees to adapt to new tools and processes. 3. **Structural Reasons**: Redundancy of posts due to changes in the organization or industry. **Conclusion** This guide aims to empower you with the knowledge and practical steps necessary to navigate the retrenchment process in South Africa. If you require additional assistance, please reach out to us for support. A business restructuring can lead to employee retrenchments, such as when two people perform the same job and only one is required. In this case, it would be unfair to keep both employees doing the same job. Retrenchment reasons include economic, technological, or structural changes. The employer must follow proper procedures and requirements. To determine the reason for retrenchment in your situation, consider whether it's due to economic, technological, or structural factors. For a proper retrenchment process in South African law, consult with affected employees individually, as required by Section 189(1) of the Labour Relations Act (LRA). If an employee is a union member, the Union must also be consulted. When selecting employees for retrenchment, employers often use the LIFO principle. However, this criteria may not always be in the best interests of the business. Employers can choose based on agreed-upon or fair and objective criteria, considering factors such as length of service, skills, experience, attendance records, or efficiency. Important: Ensure that your selection criteria is not discriminatory and does not infringe upon entrenched constitutional rights. For instance, retrenching only females would be considered unfair dismissal with serious legal consequences. Action steps for employers: 1. Create a list of employees intended for retrenchment. 2. If more than 50 employers are affected, consult a labour lawyer due to stricter requirements. 3. Schedule individual consultations with each retrenched employee and invite the Union representative (if applicable). Before scheduling consultations, send written notices advising employees of anticipated retrenchment. Now that you've identified the employees who might be let go, it's essential to meet with them individually to discuss the reasons behind the potential retrenchment. This section outlines the key points to cover during these meetings. Action Steps: 1. Explain the reason for the proposed retrenchment and how it was a last resort. 2. Discuss any efforts made to minimize job losses, such as placing employees on short time or reducing salaries. 3. Ask the employee if they have any suggestions to avoid the proposed retrenchment and make a note of their responses. 4. Explore measures to mitigate the effects of retrenchment, like providing Letters of Recommendation or Certificates of Good Standing.

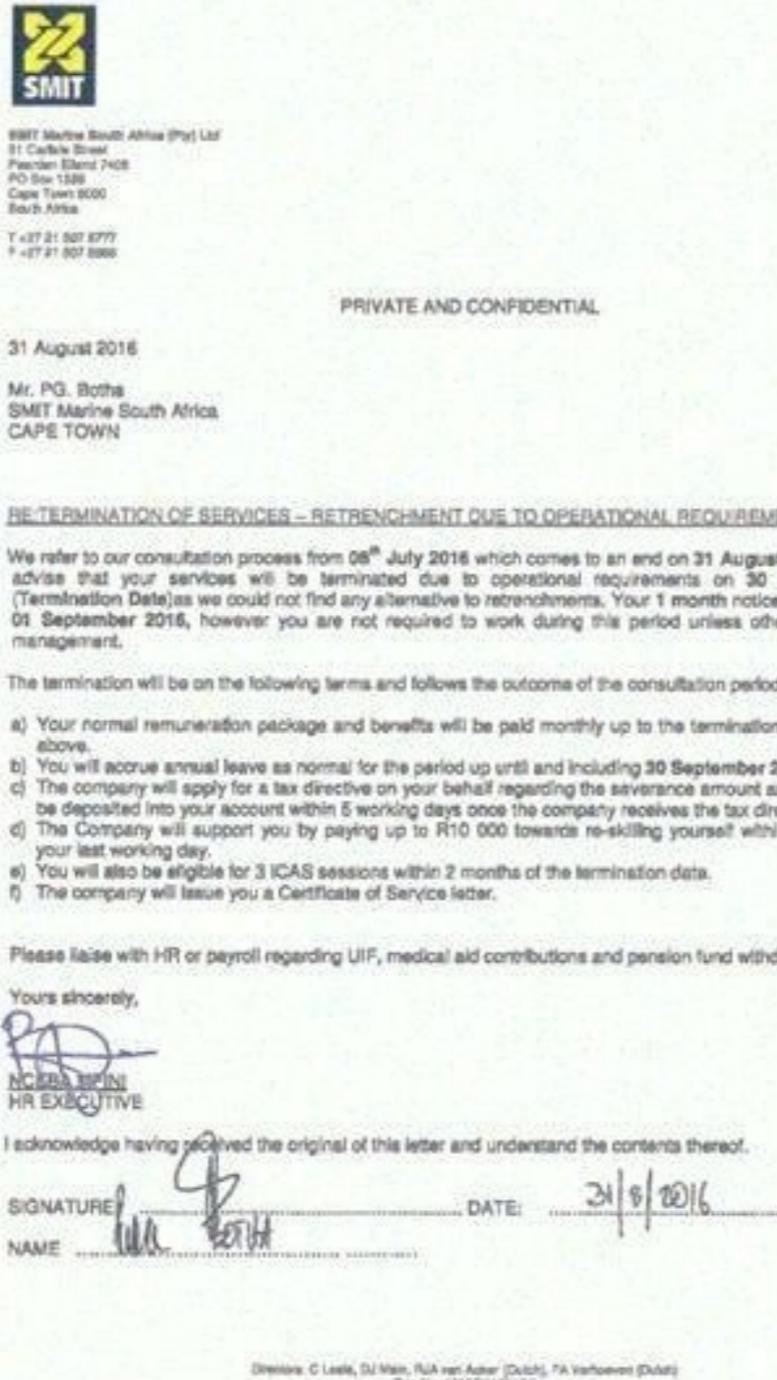


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SAMPLE LETTER OF SEVERANCE

DATE

Our Ref:
Enquiries:

Telephone No:
Facsimile No:
Email:

Dear

SEVERANCE ARRANGEMENTS

I am pleased to be able to write to you to confirm the terms and conditions of your voluntary severance from **INSERT AGENCY**.

You are requested to consider the terms of the voluntary severance, and sign the copy of this letter attached to affirm your understanding, and acceptance, of those terms.

Terms

You are currently employed as **INSERT TITLE AND LEVEL** by the **INSERT**

EMPLOYING AUTHORITY and have agreed to the cessation of your employment in return for a severance payment.

The severance payment is in the amount of **[\$AMOUNT]** and will be paid to you within 14 days of the agreed date of your cessation.

The severance payment is made to you pursuant to section 94 of the *Public Sector Management Act 1994* and Part 5 of the *Public Sector Management (Redeployment and Redundancy) Regulations 1994*. I have attached a copy of the relevant Part of the Regulations for your information. I particularly draw your attention to regulation 22 which states, in summary, that a person to whom a severance payment is made shall not

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(Date)

Name
Address
City, State, Zip

Dear _____

The investigation of the matters discussed in my letter to you dated _____ has now been completed. The purpose of this letter is to inform you that your employment with County is terminated for cause, specifically (detail the conduct/activities in which the employee engaged – use the reasons contained in the due process letter). Your employment is terminated as of _____.

Arrangements have been made for you to receive all of your wages, unpaid leave, and personal property.

Please contact me regarding the return of County property, payment of wages, and the return of your personal property.

I am enclosing a copy of the County's Complaint Resolution/Grievance Procedure for your use in the event

you wish to contest this disciplinary action.

Sincerely,

Department Head (or appropriate title)

Enclosure

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2. Discuss any efforts made to minimize job losses, such as placing employees on short time or reducing salaries. 3. Ask the employee if they have any suggestions to avoid the proposed retrenchment and make a note of their responses. 4. Explore measures to mitigate the effects of retrenchment, like providing Letters of Recommendation or Certificates of Good Standing. 5. Explain how employees were selected for retrenchment, ensuring fairness. 6. Discuss Severance Pay, which should be at least one week's pay per completed year of service. 7. Cover the possibility of future reemployment and get all parties to sign the meeting minutes. **STEP 3: CONSIDER THE EMPLOYEE'S PROPOSALS** After allowing the employee to suggest alternatives, take time to consider the options. If retrenchment can be realistically avoided, send a letter indicating that decision not to proceed with it. However, if all proposals are unworkable, move on to the next step. **Step 4: HAVE A SECOND MEETING WITH THE AFFECTED EMPLOYEES** Action Steps: 1. Explain that you've considered the employee's suggestions. 2. Justify why those suggestions didn't work. 3. Confirm that retrenchment will proceed. 4. Get all parties to sign the meeting minutes. **REQUIREMENT NUMBER 5: SEND A WRITTEN NOTICE OF TERMINATION** Before terminating the employee's contract, send a written notice to the employee. This notice should cover: "Dear [Employee Name], With reference to the notification of anticipated retrenchment and subsequent consultation between yourself and the employer, we regretfully have no other option than to... Due to operational requirements, your employment with us will be ending on [insert date]. You will not need to provide a notice period.

In addition to your normal wages up to the termination date, you are entitled to: * One week's wages for every completed year of service in the employment (Severance Pay calculation: [insert calculation here]) * Payment of any outstanding leave equal to (insert number of days here) Please note that normal deductions will still apply. You will also receive a Certificate of Service. Retrenchment is not taken lightly by Management, and has been done to secure the long-term future and stability of the business. Without this step, the company may be unsuccessful, which would jeopardize the employment of all employees. If you have any questions or concerns, please do not hesitate to contact me. Sincerely, _____

Signature of Employee Date To view this letter in its entirety, click here. [**Chapter 3: How is a Retrenchment Package Calculated?](#) According to Section 35 (4) of the Basic Conditions of Employment Act, employers must calculate an employee's average remuneration over the preceding 13-week period and use this average to calculate severance pay. This includes: * Basic salary * Commission * Periodic incentive bonuses * How Much Severance? The company must pay an employee who is being dismissed one week's salary for every completed year of continuous service with the company. For example, an employee who has worked for a company for four years would be entitled to four weeks' salary. In situations where employees have worked for less than a year, the amount of severance pay is at the discretion of the employer. [**Payment Details](#): The following payments are required: * Severance pay: at least one week's remuneration for each completed and continued year of service * Outstanding leave to be paid out * Notice pay (where applicable) If an employee unreasonably refuses alternative employment with that employer or any other employer, they will not be entitled to a severance package. As an employer, it's crucial to understand how to handle retrenchments in South Africa. When terminating an employee, they're entitled to severance pay, calculated as one week's wages for each completed year of service with the employer. This payment is subject to tax, and employers must submit a tax directive application to SARS before paying out the lump sum. In case of a dispute at the CCMA, employees have three options if they win their case: reinstatement, re-employment, or compensation. Reinstatement means restoring the employee to their previous role with any outstanding pay, while re-employment involves returning them to work in a different capacity. Compensation involves paying out an amount based on the employee's length of service, capped at 12 months. Employers can choose to represent themselves at the CCMA, but it's essential to have credible evidence to support their case. Without sufficient proof, winning the case becomes challenging. Now, let's move on to Chapter 4 - Advanced Tips and Frequently Asked Questions for Retrenchments in South Africa. Before diving into the retrenchment process, it's crucial to understand how a retrenchment package is calculated by law. With your preparation now complete, review the article above for essential information. Our experience has shown that being well-prepared can significantly impact the outcome of your case at the CCMA. If you have a specific question or topic you'd like us to cover, send an email to _____ with 3-4 paragraphs detailing your situation. Please allow a few days for our response as we receive many emails from both internet users and paying clients. For immediate assistance, consider purchasing a paid consultation session with a certified labour lawyer. Our lawyers are experts in Labour Law, having handled Unfair Dismissal cases, challenged retrenchments, and achieved a winning track record at the CCMA and Labour Court. By contacting us, you'll receive a full case evaluation, risk-free, from our approved and certified lawyers who can appear in the High Court of South Africa. Our quotations are fixed fees that are affordable, with simple and straightforward business practices. All services are legally enforceable and professional. Now it's your turn! We hope today's Retrenchment guide was helpful. Which tip would you like to try? Are you looking to challenge the reason for retrenchment or perhaps a business owner with questions? Share your thoughts by leaving a comment below. Re: Notice of retrenchment You are referred to our previous discussions on (set dates of consultations) regarding the possible retrenchment of some employees in the _____ division/branch. As we discussed during our meeting on _____, we explored alternatives to retrenchment. In your case, we considered the following alternatives and reasons for rejection: 1.

Unfortunately, this is not feasible as we could not find any alternatives or accommodate you in another position.