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LABOUR NEWS

ISSUE: NOVEMBER 2026

BEYOND THE BASICS: OPERATIONAL RESTRUCTURING, LEGAL TRAPS & TACTICAL EMPATHY

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THE RESTRUCTURING PARADOX & LEGAL DIVIDE

Most business owners have walked the painful floor of operational restructuring. You already know the baseline: retrenchment is a "no-fault" dismissal driven by economic, technological, or structural needs rather than employee performance.

Yet, experienced employers still encounter costly legal and operational pitfalls when restructuring is approached as a compliance exercise rather than a strategic consultation process.

If you are a business owner reviewing your processes, ask yourself: "How are we supposed to defend standard retrenchment if our contracts, headcount thresholds, and consultation tactics are built on outdated assumptions?"

This edition cuts past the obvious and arms you with advanced legal distinctions, hidden contractual risks, and advanced negotiation frameworks to protect your bottom line.



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THE CRITICAL LEGAL DIVIDE:

SECTION 189 VS. SECTION 189A

One of the most costly mistakes employers make is assuming all operational restructuring follows the exact same rules. Under South African labour law, scale and headcount change everything.

HERE ARE THE CRITICAL DIFFERENCES BETWEEN A STANDARD SECTION 189 PROCESS AND A LARGE-SCALE SECTION 189A PROCESS:

1. Section 189 (Small-to-Medium Restructuring)

- Application: Applies to all employers regardless of total workforce size where dismissals fall below mass thresholds.
- Consultation Timeline: There is no rigid statutory calendar; consultation must simply be meaningful and take place over a reasonable timeframe before any final decisions are made.
- Dispute Resolution: Unfair procedural or substantive disputes typically proceed to conciliation at the CCMA and, if unresolved, to the Labour Court for standard unfair dismissal claims.





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2. Section 189A (Large-Scale "Mass" Restructuring)



- **Application:** Applies strictly to employers who **employ more than 50 employees** AND contemplate dismissals meeting statutory thresholds (e.g., 10 employees if employing up to 200, scaling up to 50+ employees for larger workforces within a rolling 12-month window).

- **The 15-Day CCMA Notice & Neutral Facilitator:** Within **15 days** of issuing a notice under Section 189A, an employer or consulting party can request a neutral facilitator from the **CCMA**. This facilitator is an appointed CCMA **commissioner** whose role is to manage the consultation meetings and assist parties in reaching consensus.

- **The Strict 60-Day Consultation Period:** Unlike standard Section 189, Section 189A imposes a strict statutory calendar. If a facilitator is appointed, **no notice of termination can be given until 60 days have elapsed** from the date the employer's notice was issued.

- **Labour Court Jurisdiction & CCMA Lack of Jurisdiction:** For Section 189A dismissals, **the CCMA lacks jurisdiction to arbitrate unfair dismissal disputes** based on operational requirements. Instead, all substantive disputes bypass CCMA arbitration entirely and must be referred directly to the **Labour Court** (with procedural challenges governed under Section 189A(13) requiring urgent application within 30 days of notice).

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DID YOU KNOW?

DID YOU KNOW THAT IN SECTION 189A PROCESSES, THE CCMA LACKS JURISDICTION TO ARBITRATE OPERATIONAL REQUIREMENT DISMISSALS, MAKING LABOUR COURT LITIGATION THE EXCLUSIVE BATTLEGROUND FOR AGGRIEVED EMPLOYERS AND EMPLOYEES ALIKE?

CONTRACTUAL LANDMINES & STRATEGIC ENGAGEMENT

THE HIDDEN CONTRACTUAL LANDMINE: THE NOTICE TRAP



When cutting costs during a restructuring, employers often focus solely on statutory severance pay (the minimum 1 week per completed year of service) while forgetting their own employment contrac

The Notice Trap Warning: If your standard employment contract incorporates an extended notice period—such as 3 months' notice—you are legally bound to honour or pay out that contractual notice period upon retrenchment, regardless of what the Basic Conditions of Employment Act (BCEA) minimums state.

Crucial Caution: Attempting to alter employment contracts right before or during a restructuring process is too late and looks highly suspicious to employees, unions, and the courts. Instead, review your existing employment contracts proactively to factor contractual notice periods directly into your restructuring budget before taking any formal steps.

The Financial Impact: For a senior employee earning R40,000 per month, an overlooked 3-month contractual notice clause translates to an immediate, unplanned cash outflow of R120,000—completely wiping out the anticipated monthly savings of the restructure if unbudgeted.

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MASTERING HIGH-STAKES NEGOTIATION DYNAMICS

In complex restructurings, impasses are won not by arguing logic, but by mastering emotional dynamics and tactical empathy.
Here is how to apply advanced negotiation frameworks to your restructuring process:

1. USE AN ACCUSATION AUDIT TO DISARM RESISTANCE EARLY

BEFORE EMPLOYEES OR UNIONS REACT DEFENSIVELY, PUT THEIR UNSPOKEN FEARS ON THE TABLE FIRST.

- **Instead of saying:** "You need to understand our financial position."
- **Try saying:** "By the time we finish reading this notice, you're going to feel like we've completely devalued years of your loyalty, that management made reckless decisions, and that this consultation is just an unfair formality where our minds are already made up."
- **Why it works:** It neutralizes negative assumptions before they derail the meeting.

2. DEPLOY CALIBRATED "HOW" AND "WHAT" QUESTIONS

FORCE THE CONSULTING PARTIES TO HELP YOU SOLVE THE OPERATIONAL PUZZLE RATHER THAN DIGGING IN THEIR HEELS.

- **Instead of saying:** "We cannot afford your department anymore."
- **Try asking:** "How are we supposed to maintain operational safety and client delivery targets if labour costs consume our entire operating margin?" or "What suggestions do you have that allow us to preserve jobs while cutting overhead by 20%?"
- **Why it works:** It shifts the burden of problem-solving onto the employees, turning adversarial posturing into collaborative brainstorming.

3. TACTICAL LABELING OF EMOTIONAL DYNAMICS

ACKNOWLEDGE THE EMOTIONAL REALITY WITHOUT CONCEDING LEGAL CORRECTNESS.

- "It seems like you feel blindsided by the timing of this restructuring."
- "It looks like you're concerned that selection criteria won't be applied fairly across departments."

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DID YOU KNOW?

Did you know about the proposed two-week severance shift? Proposed legislative changes may increase the statutory severance of entitlement from one week to two weeks' remuneration for every completed year of service. Although these amendments have not yet been enacted, prudent employers should monitor developments and consider the potential financial impact.

OOLS, RESOURCES & CALL TO ACTION PROPRIETARY FINANCIAL TOOL: SEVERANCE & NOTICE CALCULATOR

To ensure your restructuring budget accounts for every hidden variable, we have included our proprietary Contact Labour Severance & Notice Calculator (attached to this newsletter package). Use this Excel tool to instantly model statutory severance minimums, contractual notice liabilities, and total portfolio cash-flow exposure before issuing formal notices.

DID YOU KNOW?

Did you know that under Section 41(4) of the Basic Conditions of Employment Act, if you offer a retrenched employee a reasonable alternative position and they unreasonably refuse it, they legally forfeit their right to statutory severance pay?

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STOP GUESSING.
START PROTECTING YOUR BUSINESS TODAY.

The current economy and rising petrol prices are pressing challenges placing immense strain on businesses across South Africa. Many businesses are either facing restructuring requirements or postponing difficult operational decisions while risks continue to accumulate.

Don't wait for a costly CCMA dispute, a Labour Court interdict, or a budget-busting surprise to find out if your process is legally sound.

PICK UP THE PHONE AND CALL US RIGHT NOW FOR A FREE EMPLOYER RESTRUCTURING CONSULTATION.

Let our specialists review your exposure, run our severance calculator on your figures, and guide you step-by-step before it's too late.
(**Retainer Client Reminder:** Remember that your retainer package includes unlimited service and priority advisory support at zero additional cost. Do not hesitate—call your dedicated team today!)

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Our Strategic Partnership

"Temporary contracts deserve permanent clarity."
Ensure your contracts reflect reality — because legal risks aren't seasonal.

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UPCOMING WEBINAR ADVERTISEMENT

🗓️ MASTERING RESTRUCTURING & AVOIDING THE NOTICE TRAP

Join our exclusive live employer webinar next week! We break down economic pressures, statutory compliance under Section 189 and 189A, and advanced negotiation strategies to keep your business safe.

Full schedule, registration links, and dial-in details are indicated on the final registration page of this dispatch.

🔗 Registration Link: https://docs.google.com/forms/d/e/1FAIpQLSeXHEdXtFXANNFz6WjH4BVviF24xw3pgIemgiJeSskxTqSI5Q/viewform?usp=header



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