# Covid-19 is no excuse for unfair dismissals

The pandemic brought with it a slew of realisations for business owners; one such an epiphany is how most organisations need fewer employees to remain functional. But using Covid-19 as a reason for retrenching a surplus of employees constitutes unfair dismissal, warns Advocate Tertius Wessels, Legal Director, from Strata-G Labour Solutions.

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“Businesses are understandably struggling and have decided to restructure to become more efficient with less staff. But the termination of employees even as a result of the pandemic and the loss of income that followed, without following due process, is a violation of fair labour practice. Forging ahead without conducting proper consultation can lead to costly consequences for businesses,” explains Wessels.

He says employees who feel they were dismissed unfairly can challenge their dismissal by referring their cases to the Commission for Conciliation, Mediation and Arbitration (CCMA) or any appropriate dispute resolution body.

“According to legislation, the employee can be entitled to any one of three reliefs. The first is a reinstatement into their position, with all the backpay for loss of income. The second relief is re-employment where the employee would be considered as a new employee, and the last option may involve compensation where the aggrieved employee could be entitled to a maximum of 12 months salary,” Wessels explains.

But employees may also run into a problem of waiting. According to the CCMA when compared with last year July, the number of employees who were likely to be affected by retrenchment was in the range of about 5,728. But over the same month in 2020, the number of affected employees who are likely to be affected by retrenchment is around 22,722.

This has created a bottleneck and has slowed down the number of cases that can be resolved expeditiously.

Wessels says the law is clear on employers using Covid-19 as a reason to retrench employees and organisations must further ensure they do not discriminate against employees that have tested positive for the coronavirus.

“Even at a capacity level when an employee is isolating at home and is not coming into work for 14 days, the employer does not have grounds to terminate that contract. They may have grounds if that employee refuses to return to work, citing Covid-19. In that case, it becomes about the capacity of that individual and what their employment contract stipulates,” says Wessels.

“Any company that is about to embark on restructuring must have a clear strategy on how they will facilitate the process and who are the people that they will need to consult with. They need to understand what the expectations are surrounding the process. Retrenchments are not just a tick box exercise. There has to be meaningful engagement and that can only be done if there is proper planning from the beginning.

“This goes even for companies that have closed shop as a result of Covid-19. They must adhere to legislation with regards to dismissals. The easiest way to avoid being on the wrong side of the law once you have decided to embark on retrenchments, is to involve a professional body who understands how the process works,” concludes Wessels.