

SOUTH AFRICA
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1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

There are significant laws governing the lay-off of employees in certain sectors. This would be as a particular alternative to termination of employment. Usually this would be for a limited duration of a period not exceeding eight weeks. Essentially, the laws require that there should be a proper business reason and economic necessity and, in addition thereto, that any such process should be preceded by a comprehensive and thorough consultation process.

2. Are there any formal requirements for terminating an employee or groups of employees?

Yes. A distinction is drawn between employers which employ in excess of 50 employees and those who employ less. In the former instance, at least a sixty day consultation process is required prior to the termination of employment based on operational requirements. This procedure necessarily requires the intervention of any trade union or representative committee of which the employees may be members. During the course of this particular process, employers are required to embark upon a thorough and comprehensive consultation process with a view to avoiding or, at the very least, minimising the termination of employment based on operational requirements. With employers who employ less than fifty employees, whilst a similar process is the goal, the time period concerned (namely sixty days) may be relaxed in appropriate circumstances.

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

Based on the fact that this is a termination which is no fault of the employee, specific legal requirements are determined insofar as proper. Thorough and adequate consultation is required along with formal minutes and any dismissal must be premised on a proper commercial basis. In addition, the selection criteria of employees to be dismissed must either be agreed upon with the representative body or, at the very least, be fair and objective. The most fair and objective criterion is that of "*last in first out*" (namely the later engaged employee should be the first to be terminated) subject of course, to the retention of the appropriate skills and expertise.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?

Indeed there are. Employees who are laid off may challenge the fairness of the dismissal both from a procedural and substantive perspective in the Labour Court. In instances where an employer engages more than fifty employees, in the event of there being a dispute, employees who remain employed may strike and embark upon industrial action in protest against the lay-offs, as an alternative to litigating.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

The primary remedy insofar as an unfair dismissal is concerned in South Africa is that of reinstatement – namely that any employee who has been dismissed without a fair reason may be retrospectively reinstated in his previous job. In instances, nonetheless, where only the procedure has been found to have been unfair, employees would be entitled to payment of their ordinary monthly rate of remuneration up to a maximum of twelve months.

6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?

Inevitably, employers try to short circuit the process and do not engage in thorough and adequate consultation. In addition, very often improper and unfair selection criteria of employees to be dismissed are implemented. In this last mentioned instance, such a dismissal would deem to be substantively (as opposed to procedurally) unfair.

7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?

In many instances, and with the current economic climate being as it is, sympathy strikes and secondary strike action seem to be increasingly more popular. This is where individuals who are not directly affected by the dispute in question embark use industrial action in solidarity with individuals who have initiated a primary strike.