



FARRELL INC. ATTORNEYS

SPECIALISING IN EMPLOYMENT LAW

MEMORANDUM TO CLIENT

DATE: 12 JUNE 2020
TO: ALL CLIENTS
E-MAIL:
FROM: DUNSTAN FARRELL
REF:

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Dear Sir/ Madam,

RE: COVID-19: RETRENCHMENTS IN THE DIGITAL AGE

Section 189 and 189A of The Labour Relations Act 66 of 1995 ("LRA") sets out the procedural requirements which employers must fulfil, when terminating contracts of employment for operational reasons. One of the procedural requirements, is that an employer must consult.

Because of the stringent regulations implemented by the Government in response to the Covid-19 pandemic, employers are holding these retrenchment consultations on online platforms such as, Skype, Zoom, Microsoft Teams, and WhatsApp.



Trade unions have expressed their reluctance to conduct these consultations on online platforms and have argued that holding these consultations in this manner does not meet the requirement of fair consultation.

The recent judgement in *Food and Allied Workers Union ("FAWU") v South African Breweries ("SAB")*, dealt with whether consultations via Zoom would fulfil the requirement as prescribed by the LRA.

FAWU approached the Labour Court in terms of section 189A (13), seeking an order declaring the retrenchment process procedurally unfair and further, interdicting SAB from retrenching employees until a face-to-face consultation could be held.

The Labour Court found that the consultation meetings, which were held online on Zoom, were fair given the current circumstances.

This judgement is one example of how the Covid-19 pandemic has made it a necessity for employers to adapt to a 'new normal'; and requires employers to accommodate employees in a reasonably fair manner in order to avoid employees seeking legal recourse for unfair procedures.

It is advised that employers must still conduct these consultations in the most practical and reasonable way possible. Whether an employer has made a reasonable effort, will be determined on a case to case basis.

A reasonable effort may mean an employer making provision for their employees to have access to an online virtual consultation platform, as not all employees have access to this technology.

Should you require any further information, please do not hesitate to contact our offices.



Yours faithfully,



DUNSTAN FARRELL
FARRELL INC. ATTORNEYS
Email: dunstan@farrell.co.za



Director: Dunstan Farrell - Cell: 082 443 7669
Tel: 031 - 312 4242 • Fax: 086 615 9446
Docex 29 Durban • Website: www.farrell.co.za
271 Problem Mkhize Road, Durban, 4001
P O Box 78045, Avondale Road, 4101
Registration Number: 2010/012629/21