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# CCS Insights

The Essential Guide to Handling a  
Retrenchment

处理裁员的基本指南

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# The Essential Guide to Handling a Retrenchment 处理裁员的基本指南

By: CCS & Co [Chartered Accountants]



## CORRECT PROCEDURE

Where practicable, consultation must take place as soon as the employer contemplates retrenchment. Consultation must take place –

- ◆ In consultation with the Ministry of Labour and Manpower
- ◆ With a registered trade union whose members are likely to be affected or
- ◆ With the employees or their representatives.

An attempt must be made to reach consensus on —

- ◆ Avoiding the dismissals (examples could include limitation on recruitment, restriction of overtime work, restriction of work on weekly day of rest, reduction in number of shifts or days worked a week, reduction in the number of hours of work, re-training and/or transfer to other department/work);
- ◆ The timing of retrenchment;
- ◆ Ways to lessen the effects of the retrenchment;
- ◆ The method for selecting the employees to be retrenched; and
- ◆ Termination benefits.

## DISCLOSING INFORMATION IN WRITING

Sufficient notice in writing has to be given and has to disclose relevant information, including the —

- ◆ Reasons for retrenchment;
- ◆ Alternatives considered and why they were rejected;

- ◆ Number of employees likely to be affected and their job categories;
- ◆ Proposed method of selection;
- ◆ Timing;
- ◆ Termination benefits proposed;
- ◆ Assistance that the employer will be offering (examples could include offering employees time off to attend interviews, early release should a new job be found, issuing letters of reference, psychological counselling); and
- ◆ Possibility of future re-employment.

## OPPORTUNITY FOR FEEDBACK

The employer must give the other consulting party an opportunity to make presentations that must be considered and be responded to.

## CRITERIA FOR SELECTION

Selection criteria must be fair and objective. The LIFO (last in first out) principle is often applied. If an employer's business and operational needs require it to make use of multi-rating selection criteria during a retrenchment exercise, certain practical measures should be followed to increase the likelihood of the employer meeting the threshold of objectivity and fairness.

## PAYMENTS

The following payments need to be made –

- ◆ Termination benefits.

Employees should be paid not less favourable than that provided under the Employment (Termination and Lay-Off Benefits) Regulations 1980 [or the Labour (Termination and Lay-off Benefits) (Sabah) Rules 2008 or Labour (Termination and Lay-Off Benefits) (Sarawak) Rules 2008]

Should an employee *unreasonably* refuse an offer of alternative employment he/she may not be entitled to a termination package.

- ◆ Outstanding leave to be paid out.
- ◆ Payment in lieu of Notice pay  
If employed for less than 2 years – 4 week's notice; if employed for more than 2 years but not more than 5 years – 6 weeks' notice, and if employed for more than 5 years – 8 weeks' notice. The employer may require employees to work/not to work during the notice period.
- ◆ Other  
Depending on the employment contract, the following *may* be relevant — pro rata payment of bonus, pension and provident fund.

## RELEVANT LEGISLATION

- Employment Act 1955 [Sabah & Sarawak Labour Ordinance]
- Employment (Termination and Lay-Off Benefits) Regulations 1980 [or the Labour (Termination and Lay-off Benefits) (Sabah) Rules 2008 or Labour (Termination and Lay-Off Benefits) (Sarawak) Rules 2008].
- The Code of Conduct for Industrial Harmony

**For further consultation, please contact:**

**Chin Chee Seng**

Partner

+6012 365 4331

cschin@ccs-co.com

**Jared Low**

Assurance Manager

+6018 763 4813

jared@ccs-co.com

**Wong Woei Teng**

Audit Manager

+6017 237 8233

woeiteng@ccs-co.com

**Vivian Lim**

HR Manager

+6012 618 6220

vivian@ccs-co.com

**Yap Huey Shan**

Assistant Audit Manager

+6012 369 7222

hueyshan@ccs-co.com

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