

# CCS Insights: Retrenchment 35 – What guidelines should employers follow when selecting employees to retrench?

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## What guidelines should employers follow when selecting employees to retrench?

The reasons for retrenchment may be based on the economic, technological, structural or similar needs of the employer. It is necessary to look at each of these reasons more closely.

- Typically, economic reasons given for the need for retrenchment. Such reasons need not be confined to the current financial situation but could include the company's projected financial circumstances.
- Technological reasons advanced for the need to retrench often include the introduction of new chemical formulas, equipment, computer packages, electronic systems and techniques that might reduce the need for Labour.
- Structural reasons advanced for the need to retrench include the need to flatten the management structure or to switch from a functional corporate structure to a project based structure.

When a retrenchment exercise is inevitable, the choice of which employees to retrench will depend on the situation.

If the company is adjudged bankrupt and receivers have been appointed by a court to take control of the company's affairs, it is likely that many of the employees will be retrenched.

The company may even close down entirely.

The Code of Conduct for Industrial Harmony ("Code") provides guidelines on the best practice for retrenchment exercises.

Although it is not legally binding, if the employer fails to comply, it may become a factor considered by the Industrial Court in determining whether the retrenchment exercise was carried out in a fair manner.

The employer should select employees to be retrenched in accordance with objective criteria.

Such criteria, which should have been worked out in advance with the employees' representatives or trade union may include:

- a) The need for the efficient operation of the establishment or undertaking
- b) Ability, experience, skill and occupational qualifications of individual workers required by the establishment or undertaking under (a)
- c) Consideration for length of service and status (non-citizens, casual, temporary, permanent)
- d) Age
- e) Family situation
- f) Such other criteria as may be formulated in the context of national policies.

以前大家都说  
“裁员” “下岗”

现在整出个  
“组织机构调整”



## 雇主在选择该裁员谁时，应遵循哪些指南或准则？

裁员的原因可能基于雇主的经济、技术、结构或类似的需求。因此，有必要仔细地研究每个原因。

- 因为经济原因 [一般上都是] 而需要作出裁员，而这也不一定就局限于当前的财务状况，它也可以根据公司的预计财务状况。
- 因为先进技术的原因而需要裁员，通常包括：公司引入新的化学配方、设备、电脑软件设备、电子系统和技术等等，这些都有可能会减少对劳动力的需求。
- 因为结构性原因而需要裁员，这包括需要扁平化管理结构或从职能性企业结构 [functional corporate structure] 转换为基于项目的结构 [project based structure]。

当不可避免地要进行裁员时，需要根据情况选择应该裁员谁。

如果公司被裁定破产，并且法庭已经任命了接管人来接管公司的事务，那么被裁退的员工可能会更多。

公司甚至还可能完全关闭。

工业和谐行为准则提供了裁员最佳实践指南。

尽管不具有法律约束力，但是雇主如果没有遵守的话，却可能成为工业法庭在确定裁员是否以公平方式进行时所考虑的一个因素。

雇主应根据客观标准去选择要裁员那些雇员。



选择标准必需事先与员工代表或工会制定，可包括：

- a) 公司或企业有效运作的需求
- b) 根据上述 (a) 公司或企业对于工人的能力、经验、技能和职业资格的要求
- c) 在公司或企业服务的时间和身份（究竟是非公民，还是散工、临时工，或永久性工人）
- d) 年龄
- e) 家庭状况
- f) 其他根据国家政策制定的标准。



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