

CCS Insights: Retrenchment 14 – Lay- Off? This is what it means

see BEYOND THE NUMBERS

The commonly used Terminology

In England, the term "dismissal by reason of redundancy" is used for purposes of downsizing the workforce.

Whereas in Malaysia, "retrenchment", "termination" and "lay-off" are used interchangeably.

These terms, however, should be understood individually as they have their own distinct meanings.

The term "layoff" has been defined in Black's Law Dictionary as:

A termination of employment at the will of the employer.

Such may be temporary (e.g. caused by seasonal or adverse economic conditions) or permanent.

In OP Malhotra's "*The Law of Industrial Disputes*" it is stated:

In its etymological sense, a 'lay-off' is a 'period during which a workman is temporarily discharged'.

In other words, even according to the dictionary meaning, 'lay-off' means to discontinue work or activity; to dismiss or discharge temporarily.

When workers are in employment and they are 'laid-off, that immediately results in their unemployment, however temporary, and such unemployment will fall within the definition of a 'lay-off'.

But in its statutory sense, it is not a temporary discharge. It means the 'failure, refusal or inability' of the employer, on account of shortage of coal, power or raw materials, or the accumulations of

stock, a breakdown of machinery, or for any other reason, to give employment to a workman.

The key to understand the definition is to be found in the words 'failure, refusal or inability of an employer'.

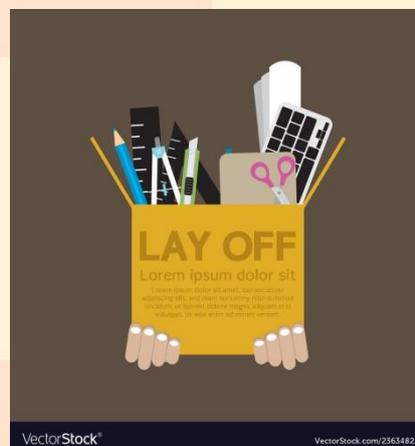
From these words, it is clear that the unemployment has to be on account of a cause, which is independent of any action or inaction on the part of the workmen.

Further, the unemployment must result from a failure, refusal or inability of an employer, on account of the causes enumerated in the definition.

'Lay-off' means the failure, refusal or inability of the employer, to give employment to his workmen, on account of the contingencies mentioned in the definition.

It is neither a temporary discharge of a workman, nor a temporary suspension of his contract of service.

It is merely a fact of a temporary unemployment of the workmen, in the work of the industrial establishment".



In the book "*Dismissal from Employment and the Remedies*" by Ashgar Ali, Ali Mohamed it is stated:

From the regulation, a lay-off is merely a suspension of the employee from employment for a certain period of time.

If the employee is laid-off due to temporary diminution in the particular kind of work done by the employee, and subsequently he is re-engaged without claiming lay-off benefits payment, it will be considered that there is no break in the continuity of his contract of service.

However, if the employee considers himself to have been dismissed, he will have a right to termination benefits, but once he has been paid the benefits, there will be a break in the continuity of his service, even if he is re-employed in the same organization later in time.



常用术语

在英国，“员工过剩为由的解雇”的这个术语，指的是缩小劳动力规模。在马来西亚，“裁员”、“解除合约”和“遣散”却是可以互换使用的。其实，大家应该要去各别理解这些术语，因为它们是具有独特的含义。在布莱克法律词典中，“遣散”一词被定义为：

按照雇主的意愿终止雇佣关系。

这可能是暂时性（例如，由于季节性或不利的经济状况所造成）或也有可能是永久性的。

OP Malhotra 在“**劳资纠纷法**”这本书中指出：

从词源上讲，“遣散”是指“一个工人暂时被解雇的时期”。

换句话说，即使按照字典的意思，“遣散”也意味着停止工作或活动；暂时被解雇或解除合约。

当就业中的员工被“遣散”时，这将马上导致他们暂时性失去工作，这一种情况就被视为“遣散”。

但是如果从法定意义上讲，这中雇佣的解除不能算是暂时性的。它意味着由于煤炭、电力或材料的短缺，又或者库存积压、机器故障或任何其他原因而导致雇主“不能、拒绝或无法”提供工作给员工。

理解有关定义的关键就在“雇主不能，拒绝或无法”这些字句上。

从这些话可以看出，失业显然是由于某种原因所造成的，而这种原因与工人的行为是毫无关系的。

此外，按照定义中所列举的情况，失业必须是因为雇主不能，拒绝或无法提供工作而引起的。

相对的，“遣散”指的就是出现定义中所提到的意外情况，雇主不能，拒绝或无法提供工作给其员工。

这既不是员工的合约暂时性被解除，也不表示暂时性被中止。

这仅仅只是因为公司的员工暂时性没有工作。

Ashgar Ali, Ali Mohamed 在“**员工解雇与补偿**”这本书中指出：

从条规中看到，遣散是指员工的工作，只是在一定的时间内被冻结。

如果员工是因为工作量暂时减少而被遣散，随后又在不要支付遣散费的情况下被重新雇用，有关员工雇佣合约的连续性将被视为没有中断过。

但是，如果雇员认为自己已被解雇，他将有权享有解雇金。而公司一旦付了解雇金给他，日后即使他重新回到同一间公司的工作岗位，他的雇佣合约的连续性将被视为已经中断了。



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