

14 April 2020

RESUMING BUSINESS AFTER LOCKDOWN

The RMI has been inundated with questions and queries from Members as to what their rights and obligations are in respect of the right-sizing of their business after the expiry of the national lockdown period, specifically considering the impact that lockdown has had, and will continue to have, in our Industry. None of us like to ponder these options and prefer not to consider the alternatives, however this Monitor is aimed at advocating not only legislative compliance, but also the utmost of fairness to those whom we employ in our businesses in the event that these alternatives becomes inevitable.

BACKGROUND

During the ongoing struggle to overcome the Covid-19 virus, the State has extended the first lockdown period of three weeks by a further two weeks, with the possibility of an even further extension should the infection rate not remain stable.

This will obviously place further pressure on already weakened sectors of the economy and the retail aftermarket sector of the motor industry cannot escape this. By now you should all have considered taking advantage of the various avenues of financial relief that have been made available to business so far.

We attach two of our relevant newsflashes distributed namely:

- Newsflash: What must I pay to MIBCO during the Covid-19 crisis? (26 March 2020) and
- Newsflash: Financial support measures for medium, small and micro businesses (7 April 2020).

We hope that more relief schemes will be introduced as we move through the second phase of lockdown but since there is no guarantee of this, members should begin to contemplate their strategic options for the near future in respect of their businesses and, in particular, their employees.

STAFFING REQUIREMENTS

- Employers are not obliged to pay salaries and wages to their employees during the lockdown period and we do not know the landscape which businesses will be faced with once the lockdown is lifted. We do know that employees will expect to return to work and to be remunerated in the same way as they were before the lockdown.
- The business however might not then be in a position to do so. Some already might not be in a position to do so.
- The alternatives which employers should consider in such an event are:
 - a. A reduction in working hours
 - b. A reduction in remuneration
 - c. A reduction in employees.

The option chosen will depend on the circumstances of each business.

It is **important to note**, however, that:-

- These decisions should ideally be made only once all of the financial relief options (listed in the Newsflashes referred to above) have been explored and/ or exhausted.
- These options should be considered successively: (a), then (b), and as last resort, (c).

What follows below is only a guide, and members should discuss any prospective decision with the RMI's regional IR Specialists.

REDUCTION IN WORKING HOURS (SHORT TIME)

- Clause 4.6 of the MIBCO Main Agreement entitles an employer to dispense with the services of any employee on any one or more days, provided that the employee is notified of this at least by the day before.
- This option can be used when the restarting of the business is slow, and there is insufficient work to cover the payroll for all employees.
- Although not compulsory, different employees in the same categories may be placed on short time on alternate days, and this will ensure fairness.
- This is only a temporary remedy.



REDUCTION IN REMUNERATION

- Clause 7.3 of the MIBCO Main Agreement entitles an employer to reduce the remuneration of an employee as an alternative to retrenchment (subject to the approval of MIBCO).
- This option can be used when a full complement of personnel is required to work a full week, but there are insufficient funds to cover this immediately.
- Ideally, all personnel should be subject to the same proportionate reduction as this will ensure fairness.
- Members must ensure that they consult with one of the RMI's IR Specialists before embarking on this route, as there are procedural requirements that must be met in order for this process to be deemed fair.
- This is only a temporary remedy.

REDUCTION OF PERSONNEL (RETRENCHMENT)

Retrenchment has always been regarded as a last option for employers, and this principle will probably more rigorously upheld in the current climate, where employees might lose their jobs through no fault of their own.

The crucial element in any retrenchment exercise is consultation with the affected employees (and their unions, where required). This is usually done on a face-to-face basis, but there might be members who have already realised during this lockdown period that the temporary measures of short-time or reduction in wages will not be viable for their circumstances: that a more permanent solution is called for, and that this cannot wait until the lockdown is lifted.

In such a case, consultations with employees/ trade unions will of necessity be conducted remotely.

Members are reminded:

- You will be liable to pay retrenched employees a severance package equal to two weeks per completed year of service and one week per completed year of service thereafter, and that this expense must be a factor which is included in their decision.
- Further, the retrenchment process must also be followed in the event of the permanent closure of the business (in such instances, exemption from paying a severance package is sometimes allowed, but this is very seldom the case, and should not be relied upon).



Section 189 of the Labour Relations Act (1996), as amended, places very strict requirements on an employer when it contemplates retrenchments and Members will be well advised to consult with one of the RMI's IR Specialists before embarking on this route, as penalties in the event that the employer fails to meet these requirements in law, are quite harsh.

We have seen that this pandemic is characterised by unpredictability, both biologically and politically. Members are therefore urged to bear in mind that the business decisions that are taken now will outlive the lockdown period. In other words we urge you to balance financial considerations with social responsibilities.

PROPOSED POLICY AND PRACTICE REGARDING REMOTE CONSULTATIONS

- The member and the relevant RMI IR Specialist will draft a section 189 letter addressed to the affected employees (and where a Union is concerned, to that Union), inviting participation in the consultation process.
- The member will call each employee and advise of the section 189 letter to follow, and that the employee will again be called after a minimum of 24 hours in respect of any questions of clarity with regard to the process. This call must be recorded.
- The letter should then be sent to the employee via WhatsApp.
- The member will follow up by phone after a minimum 48 hours, in order to receive the employee's response. This call must be recorded.
- The employer will then communicate its final decision in writing to the employee, via WhatsApp.
- The member should be advised to retain all correspondence and phone records in the event of future claims regarding the fairness of the process.

