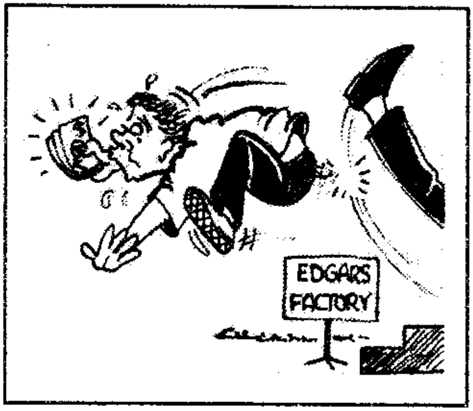
TERMINATION OF EMPLOYMENT AND SEVERANCE PAY ACT 1997



The Termination of Employment and Severance Pay Act 1997 is essentially intended to provide minimum standards on termination of employment and grant of redundancy and severance payments. It was passed in 1997. The Act protects both worker and employer by giving basic guidelines on minimum standards that the employer should extend to an employee. Higher benefits are allowed through agreements or arbitration awards. Thus, if the standards of a company in this regard were higher than when this Act came into force, these standards will continue. If they are less, the minimum benefits in the Act must be complied with.

CONTINUITY OF EMPLOYMENT

1. Employment is considered as continuous from the 1st day of work to and including the date of termination of employment of the employee.
2. There is no break in service for sick, maternity and annual leave; suspension (with or without pay); reinstatement, temporary lay-off of 6 (six) weeks or less; a lockout; or in accordance with a contract of employment.
   (These must be in accordance with the law, or by agreement between employer and employee)

However, in instances of industrial action, in accordance with law or a collective bargaining agreement, while this action does not interrupt employment, the period off the job will not be added to length of service. Therefore, while one may not lose one's job, the industrial action affects how one's years of service are counted. The days off the job will not be added. In cases where a business is sold (divested), leased or transferred, there can be continuous employment if the employer taking over the business agrees to this.

Your employer has a duty under this Act to keep records on all areas of this Act which require record-keeping.

WHAT CONSTITUTES TERMINATION OF EMPLOYMENT?

Termination and employment may occur:-

1. Where the employer and employee agree that their relationship should end.
2. The employee is made redundant due to modernisation or automation of the employer's business; closure or discontinuance of all or part of the business; sale of the business; reorganisation of the business to improve efficiency, or the impracticability of continuing the business at its present level due to factors including shortage of materials on breakdown and reduced operations due to economic conditions;
3. By the employer firing an employee for good and sufficient cause, or by an employee resigning from employment for good or sufficient cause;.
4. By the employer or employee giving notice to the other. Under the Act, before terminating employment for any of these reasons the employer consults with the employees, any trade unions and the Chief Labour Officer and informs them of those reasons, the numbers and categories of workers likely to be affected and the period over which any termination is likely to be carried out.

N.B. It is a breach of this Act for an employer to dismiss an employee from a job or discipline a person on:

(a) discriminatory grounds such as race, colour, religion, social origin, marital status, family responsibility, political opinion, ethnic origin or sex, national extraction;

(b) Grounds such as: age (except for a law or collective agreement specifying grounds of retirement age);

(c) pregnancy or reasons connected with the pregnancy;
(d) certified absence from work due to sickness or injury;
(e) absence from work on lawful military or civic duty;
(f) participation in allowed industrial action, or refusal by an employee to do the work of another who is on industrial action;
(g) filing a complaint or being involved in proceedings in relation to alleged violations by the employer or any law or rule.

An employer also cannot discipline or dismiss an employee for filing a complaint or taking part in proceedings concerning violations committed by the employer.

PROBATION

Serving a probationary period of at least three (3) months or any other reasonable time may also be required by an employer of an employee.

TERMINATION OF EMPLOYMENT BY EMPLOYER

This can occur as a result of:

1. Serious misconduct.
2. Misconduct on account of which the employer cannot be expected to continue to employ an employee, e.g. theft.
3. Warnings in writing for similar misconduct.
4. Redundancy (as dealt with earlier).
   In such cases, adequate notice of at least 1 (one) month must be given and the trade union concerned must be informed and involved. All steps must be taken by the employer to minimise the hardship to the employee in such circumstances.
5. During probation for unsatisfactory performance.
   However, before this can occur the employee must have been informed about his unsatisfactory performance and given time to do better.

CERTIFICATE OF TERMINATION

An employee is entitled to a certificate of termination where he/she requests one from an employer.

NOTICE

An employer must give an employee with less than 1 (one) year's service, 2 (two) weeks' notice. 1 (one) month's notice must be given for service of 1 (one) year or more.

He can however opt to pay the employee remuneration in lieu of notice. Notice cannot be given while an employee is on authorised leave.

A longer period of notice can be agreed to between employer and employee. You may seek redress in the High Court if you feel that your dismissal was unfair. If you get judgment, compensation may be awarded to you.

DISCIPLINE

An employer is entitled to discipline an employee where it is reasonable to do so. Discipline may be by way of:

(a) written warning;

(b) suspension without pay.

Fines or other monetary penalties cannot be imposed.

If it is felt that the disciplinary action taken was unreasonable, a complaint can be made to the Chief Labour Officer for a decision by him/her. Should the action be ruled unreasonable, all necessary steps must be taken by the employer to reinstate the employee, i.e. withdrawing a warning letter or refunding pay deducted.

SEVERANCE/REDUNDANCY PAY

This is payable in the event that an employee is made redundant. The Act sets minimum allowances for redundancy or severance allowance:

A) For 1-5 years - 1 week's wages for each completed year.

B) For 5+-10 years - 2 weeks' wages for each completed year.

C) For 10+ years - 3 weeks' wages for each completed year up to 52 weeks.

By collective bargaining agreements better allowances in this regard can be agreed upon.

It is an offence for an employer not to pay severance or redundancy allowance where it is required to be paid. On

The Magistrate's Court may also order the employer to pay the redundancy/severance allowance.

It is generally an offence to disobey the provisions of this Act, and the penalty is a fine and imprisonment.

The Chief Labour Officer is the prosecuting authority under the Act.