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# Kenya: The evolution of redundancy laws



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The Employment and Labour Relations Courts (the "**Courts**") have, in recent cases, introduced additional requirements to the redundancy procedure set out in the Employment Act 2007 (the "**Act**").

By way of background, the Act sets out certain mandatory conditions to be fulfilled by an employer before carrying out a redundancy process. These include:

- Notifying the local labour officer, the affected employees and the relevant trade union (in the case of unionised employees) of the reasons for, and the extent of, the intended redundancy no less than one month prior to the date of the intended date of termination;
- When selecting the employees to be made redundant, an employer is required to consider the seniority, skill, ability and reliability of each employee in the pool of affected employees; and
- Payment of the relevant termination sum to the employees, which includes untaken but accrued holiday / leave pay and severance pay at the rate of 15 days' pay for each completed year of service.

The most onerous additional requirement established by the Courts is that the employer is now required to consult with the affected employees and the union (where applicable). This means the employer must now invite the employees to attend consultation meetings as part of the notification process.

During these consultations, the reason for, and the extent of, the redundancy should be explained and the criteria being followed by the employer in declaring those employees redundant should also be communicated. The employer is required to provide the union and its employees with a reasonable opportunity to constructively engage in the consultations. In the case of management / senior level employees, consultations should be carried out through individual discussions.

The employer is also required, as part of the consultation process, to consider whether there are any alternative employment positions that can be filled by the affected employees within the company or its group companies.

In certain instances, employers have arranged for a third party counsellor or adviser to meet with the affected employees in order to assist them plan their finances and / or provide psychological counselling. This helps to demonstrate that the redundancy process has been implemented reasonably and fairly, and with due concern to the effects of the redundancy on the employees.

Only after the consultation process is completed can the employer provide a final redundancy notice to the employees.

## **Comment**

The introduction of the requirement to consult is in line with best practice in other jurisdictions, although there is little guidance on the timelines and parameters for such consultations. It will be interesting to see how this requirement will evolve in the coming months.

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