



Circular No: AG 2/2009

12 February 2009

To: ALL MEMBERS

MEF Guidelines on Managing Lay Off/Retrenchment

MEF has prepared **Guidelines on Managing Lay Off/Retrenchment** for members. The Guidelines are attached for your information. Please do not hesitate to contact us at MEF if you have any enquiries concerning the Guidelines.

2. Please note that MEF provides consultancy services to members in implementing lay off/retrenchment exercise.

Thank you.

HJ SHAMSUDDIN BARDAN
Executive Director

GUIDELINE ON MANAGING LAY OFF/RETRENCHMENT

A. Employer's duty to provide work or pay

a) Section 16 (1) of E.A. 1955

In any agricultural undertaking, employer bound to pay for 24 days wages in each month even if there is no work to be done by the employee. (Only where the employee is employed on a daily rated basis. The employee must be fit and willing to work).

b) Regulation 5 (1) of Employment (Termination and Lay-Off Benefits) Regulations 1980

A minimum of 12 days work or pay in any four consecutive weeks is to be provided to an employee, failing which he is deemed to be laid off.

B. Cost cutting measures

a) If an employer wishes to downsize or reduce headcount, it is advisable to implement cost cutting measures before resorting to retrenchment.

b) Appropriate cost cutting measures as provided in the Code of Conduct for Industrial Harmony are as follows :

i) Limitation on recruitment of new employees, except for critical positions;

ii) Limit overtime work;

iii) Limit work on rest day and public holiday;

iv) Reduce the number of shifts;

v) Reduce working days;

vi) Reduce daily working hours;

vii) Conduct retraining programmes for employees;

viii) Transfer employees to other suitable vacant positions;

- ix) Lay off workers on a temporary basis (temporary shut down); &
- x) Pay cut for employees

Note: (ix) & (x) above may be implemented with the written consent of employees or Trade Union representing the employees.

If all the above measures fail to achieve the desired results, employer may downsize or reduce head count.

Employer may embark on the following:

- Voluntary Retrenchment Scheme (VRS), or
- Retrenchment exercise

C. Voluntary Retrenchment Scheme (VRS)

- a) Employer has to decide on the number of employees it wants to reduce, and which department is affected;
- b) Employer should call a meeting of all the department staff concerned, and explain the reason for embarking on the VRS, and have a Q and A session with the staff to clear any doubts the staff may raise;
- c) Communicate in writing to all the staff in the department it wants to reduce headcount, inviting them to apply for the VRS. The note should state the VRS package the employee would enjoy which normally contain the following :
 - VRS benefits based on every year of service;
 - Notice/pay in lieu of notice; &
 - Payment in lieu of unconsumed annual leave
- d) Employees wishing to be considered for the VRS to collect the application form from the H.R. Department;
- e) Employees to submit the completed form personally to the H.R. Department;

- f) Once reply is received by a fixed date determined by the employer earlier, employer will determine which employees are successful;
- g) Employer will inform all employees who applied as to whether they were successful or not;
- h) Employer to report to MOHR via *Borang PK* of the number of employees to be terminated due to VRS one month before VRS date; &
- i) Employer to ensure that Income Tax of the employee is cleared before releasing the compensation sum to the employee. Employees are given tax relief of up to RM6,000 for every year of service.
- j) Employees who opt for VRS should be required to sign an undertaking that it will be a full and final settlement in view of the many cases where the employees subsequently file claims that they were misled into signing the forms.

D. Retrenchment

1. Section 60N – Employment Act 1955

The employer shall not terminate the services of a local employee unless he has first terminated the services of all foreign employees employed by him in a capacity similar to that of a local employee.

2. If the company is unionized

Employer is to give notice of retrenchment to the Union in accordance with the provision of the Collective Agreement. Employer should invite Union to discuss the implementing of the retrenchment.

- a) Meeting with Union
 - i) Employer to inform the union of the necessity to embark on the retrenchment exercise;
 - ii) Employer to inform the union of the category/ group of employees identified for retrenchment;
 - iii) Discussion on mode of payment;

- iv) Minutes of meeting to be prepared and signed by all the parties concerned;
- b) Company to inform the MOHR via *Borang PK* one month before the retrenchment exercise;
- c) Company to issue notice of termination or pay in lieu of notice to employees in accordance with the Collective Agreement or Section 12(2) (a), (b) or (c) of the Employment Act 1955 whichever is more beneficial to the employee;
- d) Company to hold a meeting with all the employees and inform them of the decision to retrench; &
- e) Company to ensure Income Tax clearance is done for the employees concerned before releasing the retrenchment benefits.

3. If employees are not unionised

- i) Company identifies the group/ category of employees who are to be retrenched;
- ii) Company informs MOHR via *Borang PK* of the number of employees to be retrenched;
- iii) Company to hold a meeting with all the employees and inform them of the decision to retrench;
 - Company to issue notice of retrenchment or pay in lieu of notice in accordance with the contract of service or in accordance with Section 12(2) (a), (b) or (c) of the Employment Act 1955 (for employees under the scope of Employment Act 1955 whichever is more beneficial to the employee.
- iv) Company to ensure Income Tax is cleared for the individual affected employees;

4. Departure from Last in First Out (LIFO) Principle

Company may depart from the LIFO principle in retrenchment exercise. However, departure from the LIFO principle should be based on reasonable and valid reasons.

5. Notice of retrenchment

The length of notice of retrenchment or payment in lieu of such notice is as stated in the contract of service but shall not be less than the period stated in Section 12(2) (a), (b) or (c) of the Employment Act (for employees within the scope of Employment Act 1955).

6. Post retrenchment obligation by the employer

In the event there arises a necessity to recruit employees for the category of employees who were retrenched, company is to give preference to employees who were retrenched if they wish to be reemployed by the company. In the event such employees are reemployed, they are to be treated as new employees as they were paid retrenchment/termination benefits.