

189. Dismissals based on operational requirements

- (1) When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult-
 - (a) any person whom the employer is required to consult in terms of a collective agreement;
 - (b) if there is no collective agreement that requires consultation –
 - (i) a workplace forum, if the employees likely to be affected by the proposed dismissals are employed in a workplace in respect of which there is a workplace forum; and
 - (ii) any registered trade union whose members are likely to be affected by the proposed dismissals;
 - (c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissals are employed, any registered trade union whose members are likely to be affected by the proposed dismissals; or
 - (d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.
- (2) The employer and the other consulting parties must, in the consultation envisaged by subsections (1) and (3), engage in a meaningful joint consensus-seeking process and attempt to reach consensus on -
 - (a) appropriate measures-
 - (i) to avoid the dismissals;
 - (ii) to minimise the number of dismissals;
 - (iii) to change the timing of the dismissals; and
 - (iv) to mitigate the adverse effects of the dismissals;
 - (b) the method for selecting the employees to be dismissed; and
 - (c) the severance pay for dismissed employees.
- (3) The employer must issue a written notice inviting the other consulting party to consult with it and disclose in writing all relevant information, including, but not limited to-
 - (a) the reasons for the proposed dismissals;

- (b) the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;
 - (c) the number of employees likely to be affected and the job categories in which they are employed;
 - (d) the proposed method for selecting which employees to dismiss;
 - (e) the time when, or the period during which, the dismissals are likely to take effect; the severance pay proposed;
 - (g) any assistance that the employer proposes to offer to the employees likely to be dismissed;
 - (h) the possibility of the future re-employment of the employees who are dismissed;
- (a) the number of employees employed by the employer; and
 - (b) the number of employees that the employer has dismissed for reasons based on its operation requirements in the preceding 12 months.
- (4)(a) The provisions of section 16 apply, read with the changes required by the context, to the disclosure of information in terms of subsection (3).
- (b) In any dispute in which in which an arbitrator or the Labour Court is required to decide whether or not any information is relevant, the onus is on the employer to prove that any information that it has refused to disclose is not relevant for the purposes for which it is sought.
- (5) The employer must allow the other consulting party an opportunity during consultation to make representations about any matter dealt with in subsections (2), (3) and (4), as well as any other matter relating to the proposed dismissals..
- (6)(a) The employer must consider and respond to the representations made by the other consulting party and, if the employer does not agree with them, the employer must state the reasons for disagreeing.
- (b) If any representation is made in writing, the employer must respond in writing.
- (7) The employer must select the employees to be dismissed according to selection criteria-
- (a) that have been agreed to by the consulting parties; or
 - (b) if no criteria have been agreed, criteria that are fair and objective.

