

Short Notes on:

SEVERANCE PAY, WHAT MAKES YOU THINK YOU ARE ENTITLED TO IT?

Introduction

Employees may be offered severance pay if they are dismissed for reasons based on the employer's operational requirements¹. Section 41(1) of the Basic Conditions of the Employment Act, 1997², provides that a retrenched employee is entitled to severance pay at least one week's remuneration for every year of completed service with the employer. In addition, section 41(2) provides for the obligation to pay severance pay.³

When are You Entitled to Severance Pay?

An employee who has been employed continuously for one year by the same employer and has been dismissed is entitled to severance pay. Severance pay is offered to employees who has been dismissed for operational requirements, for example, economic, technological, structural or similar needs of an employer.⁴ Your severance package will depend on how long you were employed.

When an employee's service is terminated, the employee must comply with section 41 of the Act⁵ which states the following:

1. An employer must pay an employee who is dismissed for reasons based on operational requirements or whose contract of employment terminates or is terminated in term of section 38 of the Insolvency Act⁶, severance pay equal to at least one (1) week remuneration for each completed continuous year of service to the employer as calculated in terms of section 35⁷.

¹ The Basic Conditions of the Employment Act, 75 of 1997, Section 41.

² Act 75 of 1997.

³ Act 75 of 1997.

⁴ Labour Relations Act, 66 of 1995, Section 213.

⁵ Act 75 of 1997.

⁶ Insolvency Act 24 of 1936.

⁷ Act 75 of 1997.

2. An employee will only be entitled to severance pay once retrenchment has been concluded. The Bargaining Council and Main Agreements to the Council will stipulate the severance package payable if the employee is a member of a Bargaining Council.

If during the retrenchment consultation process, the parties agree to a severance package which is more favourable to the minimum as per the Act, the agreement will replace the statutory minimum.

What is the Limitation on the Right to Severance Pay

There are a few limitations on the right to severance pay, which is not limited to the following:

1. When there is a break in service (more than 12 months) of the employee that the employee will not be entitled to severance pay for the years exceeding the break in service;
2. The employee worked on a fixed-term contract for less than two years, the employee will also not be entitled to severance pay. The employer will be liable for the emp one week's salary for each continuous year of service where the contract exceeded 24 months.
3. An employee would not be entitled to severance pay for the period that they worked as an independent contractor for the employer;
4. When an employee reaches the age of retirement are not entitled to severance pay if they are requested to retire at the age. The employee is not entitled to severance pay should they be allowed to work beyond their retirement age.

Therefore, it is on the employer to prove that one of the abovementioned limitations exists to be absolved of the liability to pay an employee severance pay.

Conclusion

The South African labour law, specifies, severance, notice and leave pay, should be calculated when paying severance package. Subject to the employment contract, bonuses and pension benefits payment will also be part of the severance package.

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