



# BetterWork

## Managing Transitions and Retrenchments Guidelines

Version 2.0



International  
Labour  
Organization



International  
Finance  
Corporation  
WORLD BANK GROUP



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The Covid-19 pandemic continues to spread, transforming into both a health crisis and an economic and labour market shock. Beyond the urgent concern about the health of workers and their families, the virus is affecting the world of work, increasing unemployment and underemployment, and disproportionately impacting women workers who make up the majority of the garment workforce. These guidelines are designed to help factories confronting these economic challenges and to do so in line with applicable laws, internationally accepted good practices, and international labour standards. The intent is to support a process that is fair, transparent, and does not discriminate. These guidelines will be updated on a regular basis through the pandemic period based on changing information and regulations.<sup>1</sup>

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## Introduction

The retrenchment of workers should be considered as a last resort. Some possible alternatives to job losses include the following:

- ◆ imposing a freeze on new hiring
- ◆ restricting overtime
- ◆ shifting away from sub-contracting
- ◆ spreading the workforce reduction out over time, to allow for a natural reduction of the workforce
- ◆ (re)training workers
- ◆ reduction in hours worked by existing workers
- ◆ job sharing (e.g., two workers share a position formerly held by one)
- ◆ work sharing (e.g., workers' hours are reduced, while employers pay wages with governmental support)
- ◆ asking for volunteers to take early retirement with appropriate income protection
- ◆ internal transfers of workers within the enterprise
- ◆ transfer of workers to other entities, e.g., relocating some workers to a sister company or outplacing them to another local employer

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<sup>1</sup> These Guidelines are intended for informational purposes only, and should not be construed as legal advice. In addressing labour-related issues, it may be necessary to consult an expert such as a labour inspector, a lawyer, or a representative of your employers' association or union federation. The ILO and IFC shall not be held liable for any damage incurred as a consequence of reliance on these guidelines.



### Buyers can help to avert the need for retrenchments by:

- ◆ Applying responsible sourcing strategies
- ◆ Actively participating in finding alternatives to job loss
- ◆ Announcing withdrawal or significant reduction of orders well in advance
- ◆ Paying all outstanding invoices in a timely fashion and sticking to contractual agreements
- ◆ Engage with factories on the timeline and process, allowing sufficient time for the factory to find new customers or prepare for retrenchment

Before proceeding with retrenchment, management should consult with the Basic Labour Organization or workers' representatives<sup>2</sup> (or workers, in their absence) to consider and discuss alternatives to retrenchment. Retrenchment should only be implemented after all other alternatives have been ruled out.

## Do You Need to Restructure?

Your factory is downsizing in operations or restructuring the workforce, and retrenchment is being considered. Retrenchment is a very important decision that should be taken based on full knowledge of all relevant facts and the legal and economic context in which the factory is operating.

Reducing the number of workers seems to be the most obvious way to cut costs, however, **retrenchment itself is also costly:**

Direct and indirect costs associated with layoffs may eliminate any gains that a company may make by reducing its workforce. The chart below highlights some of the possible direct and indirect costs of layoffs, subject to national legislation.

DIRECT COSTS	INDIRECT COSTS
Severance pay and other termination costs, such as payment in lieu of notice	Higher unemployment insurance taxes
Accrued vacation and sick pay	Potential charges of discrimination
Supplemental unemployment benefits	Heightened worker insecurity and reduced productivity
Outplacement	Low morale among remaining employees
Pension and benefit payments	Training and retraining

<sup>2</sup> Throughout this Guideline, the term 'workers' representatives' in relation to Myanmar, refer to worker representatives that are not a Basic Labour Organization, but are recognised in national law to represent workers, where a Basic Organization does not exist in a workplace.



Administrative and legal costs	Recruitment and employment of new hires
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Retrenchment could also cause a number of serious operational problems:

- ◆ **Layoffs have significant operational disadvantages:** Workforce morale is lowered due to workers' fears of losing their jobs. Rapid turnover and low morale negatively affect productivity. Good employees may leave the factory for a more stable working environment. The company's reputation may be tarnished by its treatment of its workforce.
- ◆ **Layoffs have a negative impact on financial performance:** Studies on U.S.-based companies indicate that significant downsizing does not lead to expected savings. In fact, companies that do not resort to severe cutbacks are more successful.<sup>3</sup>
- ◆ **Employers tend to believe a number of myths about the advantages of downsizing:** The following chart compares some of the myths with the facts of retrenchment.

MYTH	FACT
Retrenchment boosts profits	Profitability does not necessarily follow retrenchment
Retrenchment boosts productivity	Productivity results after retrenchment are mixed
Retrenchment is a last resort	Data indicate that retrenchment is the first resort for many companies in labour intensive industry such as garment factories
Retrenchment has no adverse effects on workforce load, morale, or commitment to a company	In most situations, retrenchment has adverse effects on workload, morale, and workforce commitment
Retrenchment affects all dismissed workers equally	Given that the majority of garment workers are women, it is likely that retrenchment would lead to higher numbers of unemployed women than men
Retrenchment victims suffer no long-term income losses as a result of structural shifts in the economy	Downward mobility is the rule rather than the exception, and particularly in the garment sector where most jobs are lower-skilled, workers may find it difficult to find alternative employment

Adopting employment security and responsible workforce restructuring policies brings significant benefits:

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<sup>3</sup> Zorn, M. et al. 2017. "Cure or curse: Does downsizing increase the likelihood of bankruptcy?" in *Journal of Business Research*, Vol. 76, pp. 24 – 33.



- ◆ **Employment security creates a climate for change and growth:** Employees protected by employment security willingly support changes made to help the company be more competitive and successful. Employers are encouraged to invest in training and talent development, leading to a more skillful and flexible workforce. Employers are then able to increase production and to service customers more quickly than their competition when the downturn ends.
- ◆ **Employment security promotes productivity:** Productivity is arguably the key reason for adopting employment security. When workers are assured of continued employment, they dedicate themselves to improving the organization and its products. W. Edwards Deming, the founder of total quality management principles, noted that employment security creates a bond between workers and employers that ultimately contributes to the success of quality programs. Job security creates loyalty and confidence in management, which reduces resistance to technical changes, lowers workforce turnover, and improves workplace cooperation and relations.

In addition, to the cost to employers, retrenchments can significantly and negatively impact workers and their communities.

It is strongly recommended that employers carefully consider the above retrenchment-related costs and drawbacks before making a decision about retrenchment.

**Socially responsible workforce restructuring** ensures that employers facing serious business problems make consider the business needs of the factory while also minimizing the negative impacts on workers and the community, through a process of dialogue. Employers should provide the Basic Labour Organization or workers' representatives with relevant information on the challenges the factory is facing, and consult with them regarding possible solutions, as they may have constructive ideas as to how layoffs can be avoided, minimized or more effectively managed.

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## Retrenchment as the Only Option

Before making a final decision on retrenchment, employers should gather information to answer the following questions:

- ◆ What are workers' rights and obligations in relation to job loss? Note that their rights (i.e., their entitlement to payments upon retrenchment) are outlined in their employment contracts, collective agreements, and applicable laws and regulations.
- ◆ What are the business' short-term plans?
- ◆ Is there any governmental or other assistance available to support businesses and protect jobs and incomes? Governmental authorities and employer organizations may be helpful in this regard.
- ◆ How employable are the retrenched workers and what is the job market like for the types of skills they possess?
- ◆ What is the social demographic breakdown of the workers to be retrenched versus those who are to be retained (i.e. gender, ethnicity, sexual orientation, disability, union membership, migrant status, contractual status, religion, and age)? Are certain groups of workers disproportionately affected (including by work area and function)?



The answers to the above questions will help to envision the available options and to consider alternatives to job losses. Workers should be consulted during this process to enable the factory to maintain employment security to the greatest extent possible.

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## Organizing a Retrenchment Committee

If retrenchment is found to be the only possible outcome, then the first thing to do is form a committee or task force within the organization to manage the process. The committee should include the following people:

- ♦ factory owners
- ♦ factory manager
- ♦ finance department
- ♦ production department
- ♦ HR personnel department
- ♦ Basic Labour Organization representatives, or workers' representative(s) where a Basic Organization does not exist.

In Myanmar, the *Standard Employment Contract Template (2017)* provides that if an employer is considering retrenchment of workers, it should be carried out in coordination/consultation with the Basic Labour Organization, or, if this does not exist, then with the Workplace Coordinating Committee (WCC). Where there is no WCC, consultation should take place with workers.

The committee's role includes the tasks below:

- ♦ Determine the revised shape of the workforce.
- ♦ Plan in detail the numbers of workers required in each division of the organization and the skills required for each post.
- ♦ Draft a time frame for implementation for each stage of the retrenchment process.
- ♦ Start to develop the selection criteria.
- ♦ Consult key stakeholders during the development and implementation of retrenchment plan.
- ♦ Determine budgets for each course of action.
- ♦ Reach a decision on the appropriate course of action.

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## Developing a Retrenchment Plan

A retrenchment plan should include the following content:

- ♦ brief description of the problems the factory is facing



- ◆ analysis of alternatives to retrenchment that have been considered and why retrenchment is the only remaining option
- ◆ description of the retrenchment plan
- ◆ consultation process
- ◆ selection criteria
- ◆ severance packages
- ◆ remedial measures that the factory will take to assist workers
- ◆ procedures and implementation schedule

A Basic Labour Organization or workers' representatives **must** be involved in this planning process.

## Preparing Preliminary Information

Information and criteria used for decision-making regarding retrenchments should be briefly documented, describing the challenges facing the factory and the reasons for the retrenchment.

## Analyzing Alternatives

List all alternatives to retrenchment that have been considered, including those initially considered by factory owner or top management and those suggested by the Basic Labour Organization or workers' representatives and other stakeholders during the consultation process. Analyze every alternative, point out pros and cons of each, and verify that retrenchment is the only remaining option.

## Describing the Retrenchment

Give a brief description of the retrenchment, which includes the following information:

- ◆ size of the retrenchment with number of workers to be retrenched by skill level, type of contract, gender (and other social demographic groups where relevant)
- ◆ retrenchment methods
- ◆ retrenchment schedule

## Planning for Consultation with Key Stakeholders

Begin consultation with key stakeholders as early as possible. The earlier workers and others know about what is likely to happen, the more they may be able to contribute in terms of avoiding job losses, looking for alternative economic solutions, or ensuring that those selected for redundancy receive fair and equitable treatment. As soon as a clear proposal for retrenchment is available, the factory should commence consultation with key stakeholders. Listed below are key points to ensure effective consultations:

- ◆ Consultation process must precede the final decision.
- ◆ Consultations should be a joint problem-solving exercise where the parties strive for solutions based on consensus.
- ◆ The employer should consult in good faith and seriously consider all proposals put forward. The disclosure of information by the employer on matters relevant to the retrenchment is essential to ensuring the objectivity of the process and avoiding conflict.



- ◆ The consultation process should allow the Basic Labour Organization or workers' representatives to meet and report to workers; meet with the employer; and request, receive, and consider information about the situation at hand.

## THE CONSULTATION PLAN SHOULD CLEARLY ADDRESS THE FOLLOWING QUESTIONS.

### Who to consult?

This may vary among countries but important groups often include the following:

- ◆ workers' representatives (or workers, in their absence)
- ◆ employer/ industry associations
- ◆ buyers
- ◆ government authorities
- ◆ community leaders

### What consultations are needed?

The consultations should at least cover these themes:

- ◆ sessions and consultation times with the stakeholders
- ◆ alternatives to retrenchment
- ◆ mechanism and selection criteria for workers to be dismissed
- ◆ dismissal schedule (time frame)
- ◆ payment of severance allowances and other termination payments
- ◆ criteria and mechanisms for ensuring priority in rehiring dismissed workers if/when the factory is able to re-hire workers
- ◆ support activities to assist affected workers, if any

### What should be the consultation process (sessions and times) and how should information be released?

The consultation process should be agreed upon with the key stakeholders.

Not all information has to be released at the same time. Good practice encourages a phased release of information and consultation on a scheduled basis, which includes the following:

- ◆ announcement of the need to reduce workforce numbers (should take place reasonably early in the process)
- ◆ consultation and discussion about the alternatives and likely numbers of workers affected
- ◆ consultation on selection criteria
- ◆ announcement of the proposed final numbers and the proposed criteria for dismissal

The table below is a suggested consultation plan with key stakeholders.

CONSULTATION SESSION	ISSUES	STAKE-HOLDERS	INFORMATION RELEASED	TIME
1 <sup>st</sup> Consultation	<ul style="list-style-type: none"> <li>◆ Alternatives to retrenchment</li> <li>◆ Agreement with key stake-</li> </ul>	Basic Labour Organisation /WCC workers' representatives, Buyers	<ul style="list-style-type: none"> <li>◆ Business problems (reasons for terminations)</li> </ul>	Reasonably early in the process



CONSULTATION SESSION	ISSUES	STAKE-HOLDERS	INFORMATION RELEASED	TIME
	holders on the consultation sessions and times		<ul style="list-style-type: none"> <li>Alternatives have been considered</li> <li>Proposed process (sessions and times) of consultations</li> </ul>	
<b>2<sup>nd</sup> Consultation</b>	<ul style="list-style-type: none"> <li>Proposed final decision (retrenchment)</li> <li>Selection mechanism and criteria for dismissal</li> <li>Time frame for dismissals</li> </ul>	Basic Labour Organisation /WCC workers' representatives, government where applicable	<ul style="list-style-type: none"> <li>Results of alternatives analysis</li> <li>Proposed affected workforce: number of workers or categories of workers to be dismissed</li> <li>Proposed time frame for dismissals</li> </ul>	
<b>3<sup>rd</sup> Consultation</b>	<ul style="list-style-type: none"> <li>Severance payment</li> <li>Support for affected workers</li> </ul>	Basic Labour Organisation/ WCC workers' representatives, buyers, employer organizations, government where applicable	<ul style="list-style-type: none"> <li>Final list of affected workers</li> <li>Types and calculation methods of termination payments</li> <li>Proposed support activities and schedules</li> </ul>	Before officially informing individual workers
<b>4<sup>th</sup> Consultation</b>	<ul style="list-style-type: none"> <li>Anticipated retrenchment and remedial measures</li> </ul>	Communities	<ul style="list-style-type: none"> <li>Summary of business problems and affected workforce</li> <li>Proposed support activities</li> </ul>	After consulting with Basic Labour Organisation/ or WCC workers' representatives and buyers and making final decision on these issues

## Determining Selection Criteria

### SUGGESTED SELECTION CRITERIA INCLUDE:

- ♦ voluntary measures
- ♦ voluntary early retirement with appropriate income protection
- ♦ length of service
- ♦ skills and qualifications
- ♦ performance record
- ♦ absence record



- ◆ contractual status

**Voluntary measures:** Ask workers to terminate their employment voluntarily in exchange for some benefit (beyond their legally required entitlements).

- ◆ **Advantages:**
  - **Speed.** Allowing workers to volunteer will reduce the time needed to go through other selection criteria.
  - **Less conflict.** In contrast to compulsory dismissals, giving workers an opportunity to leave voluntarily is **less damaging to morale** and less likely to lead to disputes.
- ◆ **Disadvantages:**
  - **Lack of control.** Some workers, for instance, highly skilled workers, may volunteer as they may have confidence in their ability to find a new job.
  - **May be involuntary.** Some workers may be asked to “volunteer” or see adverse changes in their employment conditions, often leaving workers in a worse-off situation. There may be a risk that workers are asked to “volunteer” to leave or face termination based on grounds other than their ability to perform the job (e.g. pregnancy status, union affiliation, other) .
- ◆ **Recommendations:**
  - Decide on a criteria for workers who qualify as volunteers and for those who are ineligible, including workers who are considered the most valuable or have the highest productivity. Offer the eligible group of workers the option of volunteering. This is preferable to setting up a system where all workers can volunteer and are then subject to approval. To avoid potentially discriminatory practices, ensure that there is a justification in selecting the workers who are eligible for voluntary termination.

**Voluntary early retirement:** Ask for volunteers to take early retirement with appropriate income protection

- ◆ **Advantages:**
  - **Speed and reduced conflict.** Similar to voluntary measures, this can be a quick and conflict-free way of selecting workers.
  - **Opportunities for younger workers.** Giving older workers an opportunity to take on early retirement may provide opportunities for younger workers to advance.
- ◆ **Disadvantages:**
  - **Loss of skills and experience.** Oftentimes workers closest to retirement age have greater skills and experience in the sector. Early and voluntary retirement may lead to a loss of expertise.
  - **Lack of eligible workers.** In the garment sector, most workers are not near retirement age. In addition, pension costs are accelerated.
  - **May be involuntary.** Similar to the concerns above, older workers may experience age-based discrimination in which they are asked to take early retirement, see changes in their employment conditions, or maybe be terminated.
- ◆ **Recommendations:**
  - If early retirement is offered to employees, it should be offered on a voluntary basis, with appropriate income protection, and where refusal does not affect their employment status.

**Length of service:** This is the most commonly used criteria, known as LIFO (last in, first out), meaning the workers with the least time with the company are the first to be dismissed.

- ◆ **Advantages:**



- **Retaining experience and rewarding loyalty.** Length of service can be a useful criteria to reward workers who are loyal to the workplace, and to retain workers who are well-trained and experienced
- **Protecting older workers.** Length of service may be used to protect older workers who may face difficulty in finding other employment opportunities.
- ◆ **Disadvantages:**
  - **Recent hires may have the needed and relevant skills.** Looking at length of service only can lead to the dismissal of recent hires, including younger workers, with desirable skills and experience.
  - **Discriminating against certain groups of workers.** Workers, including ethnic minorities, migrant workers, women (or men workers in some cases), and younger workers, often have the least length of service. Depending on how the factory calculates the length of service and whether this includes all contractual statuses and periods of leave such as maternity leave, some workers may be disproportionately affected. For instance, in some countries, it is common for factories to hire women workers on shorter-term contracts (i.e. to discourage pregnancy) or on a temporary basis, and/or to exclude maternity leave from a worker's period of service.
- ◆ **Recommendations:**
  - Length of service should take into account the hiring date. In case of multiple contracts and/or consecutive contracts, factories should consider the initial hiring date. The length of service should consider the different types of contracts that make up the total length of service, as well as periods of leave such as maternity leave. It is recommended that length of services is used with other criteria to avoid indirect discrimination. Maternity leave should not be penalized.

**Skills and qualifications:** Under this approach, workers are evaluated based on their skills and qualifications to do their jobs, which is crucial for business recovery and development.

- ◆ **Advantages:**
  - **Retaining workers with the most skills.** Retaining workers who have the most important skills needed for their job helps the factory in the future.
- ◆ **Disadvantages:**
  - **Indirect discrimination.** While employers may be seeking to retain their most skilled workers, it may indirectly discriminate against particular groups of workers, including ethnic minorities, migrant workers, and women workers who may have less access to the trainings and professional development opportunities. When using this criterion, factories should ensure that the qualifications reflect the skills necessary for the post.
- ◆ **Recommendations:**
  - Skills and knowledge can be used as a criterion for retrenchment in two ways. First, skills and knowledge can be used as a requirement for a job that cannot be met by further training or experience. Second, it can be used to distinguish between two employees in a similar role. The key is to ensure that the skills and knowledge requirements are relevant to the job function itself.

**Performance record:** Performance may be measured on the basis of productivity, flexibility, and commitment.

- ◆ **Advantages:**
  - **Retaining more productive workers.** This can help ensure that productivity is maintained despite loss of workforce.
- ◆ **Disadvantages:**



- **How performance is measured can be discriminatory.** Terminations on the basis of performance could be discriminatory if accommodated employees are laid off, for example, due to perceived lower performance as a result of a disability. This also could adversely affect workers with family responsibilities (particularly women) if, e.g., performance is evaluated based on actual output over a set period of time (without factoring out periods of work lost due to maternity leave, family leave, medical leave for health check-ups during pregnancy, and leave to care for sick family members, etc.), or if based on more subjective criteria including flexibility or commitment (i.e. willingness to work overtime, during holidays, or in night shifts).
- **Lack of written records on performance.** While employers may seek to retain their most productive workers, good record-keeping is essential in order to apply it.
- ◆ **Recommendations:**
  - In the case of workers, factories may use a combination of team performance (line productivity), individual performance (where documented), and disciplinary records (where production-related issues are highlighted). In the case of managers, there may be more detailed and written metrics on their performance. However, in the absence of a written performance record, the use of this criterion may not be advised as it is difficult to verify and justify, particularly against discrimination.

**Absence record:** Looking at attendance records and selecting workers who may have the worst performance against attendance standards.

- ◆ **Advantages:**
  - **Rewarding commitment.** Absence records may be used to identify workers who are most present and who meet the standard set by the factory.
- ◆ **Disadvantages:**
  - **Disproportionately affecting workers who take leave, including sick leave, maternity leave, and family leave.** The use of absence records could indirectly discriminate against workers with health conditions affecting their attendance at work. Pregnant workers, women on maternity leave, men on paternity or family leave, and workers with care responsibilities (disproportionately affecting women) may be at risk of being dismissed if the absence records do not take into account care responsibilities.
- ◆ **Recommendations:**
  - When using this criterion, factories should ensure that maternity leave, paternity leave, family leave, medical leave for health check-ups during pregnancy, and sick leave are not counted as absence in the absence record.

**Contractual status:** Selecting workers based on the type of contract they have.

- ◆ **Advantages:**
  - **Reducing administrative burdens.** Factories may see this as a way to relieve administrative burdens and costs for workers in shorter-term or part-time contracts.
- ◆ **Disadvantages:**
  - **Indirectly discriminating against workers.** As noted above depending on common practices in a particular country, certain groups of workers may be over-represented in different types of contractual status (for instance, migrant workers, women workers, workers with care responsibilities, or in some cases, local workers). This leads to indirect discrimination where these workers are disproportionately affected.
- ◆ **Recommendations:**
  - In reviewing contractual status, the factory should consider whether using this criterion would lead to dismissals on discriminatory grounds (i.e. a disproportionate



amount of workers from a specific group is affected). As well, the factory should not conflate part-time work or reduced working hours with lower performance and/or productivity (in case both contractual status and performance are used as criteria for retrenchment). Especially in downsizing and restructuring, part-time employment could be used as a way to mitigate total job losses.

## Ensuring that the Selection Criteria is Non-Discriminatory

The criteria selected may inadvertently be gender insensitive and discriminatory, causing unforeseen negative consequences. During the design and implementation of the selection criteria, factories should consider how their retrenchment criteria may impact women and men differently, as well as other groups who may be adversely affected. This will help ensure that all workers, both women and men, will be treated fairly and have equitable access to benefits.

After developing and applying the selection criteria, factories can draw up a list of employees to be retrenched. Analyzing this list can help identify whether specific groups of workers are over-represented on the list, based on common prohibited grounds for discrimination, which may include:

- ◆ sex, including pregnancy and maternity
- ◆ marital status or family responsibilities
- ◆ trade union membership or participation in union activities
- ◆ seeking office, acting or having acted as a workers' representative
- ◆ filing of a complaint or participating in proceedings against the employer
- ◆ race or color
- ◆ national extraction, origin or ethnicity
- ◆ religion
- ◆ political opinion
- ◆ disability
- ◆ age

For instance, to evaluate whether women workers are more affected than male workers, a factory may compare the percentage of women workers scheduled for dismissal to the percentage of women workers in the workforce.

If factories identify scenarios where one group of workers is affected more than others, they are advised to adjust the selection criteria to reduce the impact on these groups.

Factories should keep records of dismissals and retrenchments to ensure that discrimination does not occur over time (in cases where retrenchments are done through multiple phases). Factories should involve workers' and employers' representatives to take part in this review process to ensure that the process is fair, transparent, and non-discriminatory. Their involvement can also provide legitimacy to the process and reduce future conflicts and disputes.

## Planning for Severance Pay

Severance payments are key to mitigating the negative effects of retrenchment. Workers are entitled to severance and other termination payments in accordance with national law. National labour legislation normally provides for severance pay, which commonly includes:

- ◆ **Statutory or collectively agreed termination benefits/severance payment:** national law or collective agreements normally establish payment of a minimum number of weeks/months' wages in accordance with a worker's length of service.



- ◆ **Notice period or payments in lieu of notice:** workers should be fully compensated during the notice period. If not required to work during this time, workers should be paid the wages they would have earned had they been working.
- ◆ **Gratuity benefits:** these are additional payments that may apply upon, e.g., retirement or dismissal.
- ◆ **Pension benefits:** were applicable these should be compensated according to national regulations
- ◆ **Unused earned leave:** payment should be made for any holiday leave that has been earned by workers but not taken prior to termination.
- ◆ **Payment of salaries/wages in arrears:** outstanding salaries/wages should be paid in full. Deductions for monies owed to the employer are only allowed if provided for under the worker's employment contract and national law, and should be clearly identified.

Severance payments will often vary within a company based on a worker's length of service, wage or salary level, performance, or special hardship payments.

In Myanmar, the Employment and Skill Development Law 2013 and Notification No. 84/2015 set out worker's entitlements to severance pay. It also includes a requirement of 30 day's notice. These are minimum requirements, and do not prevent the employer and workers from negotiating more favourable severance pay and longer notice periods.

## Planning for Assisting Dismissed Workers

When workers are dismissed, finding alternative means to livelihood is essential to cushion the effects of retrenchment on both the individual and the community. In mitigating the social impact, factories should be sensitive to the particular needs of different groups of workers. For example, women workers are less likely to have access to both financial literacy and financial services. In providing financial counselling, factories may also consider ensuring that women workers have access to relevant services in addition to training. Similarly, depending on the country context, women or men may be the sole "breadwinner" for their families. In evaluating the potential social impact, factories should analyze this aspect and consider the impact on families and their communities and provide support to ensure sustainable alternative means of livelihood to minimize the impact. Assistance to dismissed workers may include measures such as:

- ◆ **Transfer:** Where possible, employers can offer workers the possibility to transfer to other factories they own at a comparable wage.
- ◆ **Outplacement assistance:** Employers may consult workers and their representatives to determine what would be useful. This may include setting up "job banks" or "job fairs" to help workers find jobs at nearby factories or within the community; setting up a mechanism to inform workers about job opportunities; and placing paid ads in local media calling on other employers to support the retrenched workers by giving them priority in hiring. Employers can also use their networks and connections with employer and industry associations to help identify job opportunities.
- ◆ **Access to training to find jobs in the same or other sectors:** This may include training on new skills, new technologies, in small business development, or in basic literacy and numeracy. This should be done in consultation with government, Basic Labour Organizations, workers' representatives, employers, and other stakeholders to determine what kinds of trainings are available and would be most useful.
- ◆ **Access to financial counselling:** This is especially relevant where workers receive severance pay or may access social protection schemes. Counselling would ensure that workers can manage their finances carefully when receiving a larger sum of money, despite unemployment and loss of steady income.



- ◆ **Additional financial support:** This includes additional severance, paid time off to look for a job, financial assistance for retraining, or economic support for micro-enterprise projects.
- ◆ **Medical benefits:** In addition to what is legally required, including extensions of health insurance and additional assistance for pregnant workers and workers with health conditions.
- ◆ **Assistance in obtaining government benefits:** This may include educating workers about their rights and coordinating with appropriate local government agencies, such as, in Myanmar the Social Security Board. For example, government agencies and NGOs could hold information sessions at the factory or at a nearby convenient location to assist workers in filling out forms to obtain governmental assistance and access to government training programs.
- ◆ **Referral and linkages to community-based services:** Provide workers with access to community-based services including nutrition, health, and sanitation.
- ◆ **Psychological counseling:** employ an independent advisor or a local advice center to listen to the retrenched workers and give advice to them.

When the retrenched workers include migrants, governments and employers **must** ensure that migrant workers have adequate housing, health care, and other social support while they remain in country. In addition, migrant workers must be provided with logistical and financial support to return to their countries of origin.

#### ROLE OF BRANDS AND RETAILERS:

Brands and retailers may consider the following when engaging with their suppliers during this process:

- ◆ Monitor and play a constructive role to ensure that employers meet their obligations
- ◆ Ensure that all outstanding payments for orders placed are honored so that workers are paid
- ◆ Support social dialogue processes and assist key suppliers to do this to ensure that workers and their representatives are consulted throughout the transitioning/retrenchment processes
- ◆ Play an active role to ensure that national level social protection mechanisms are in place
- ◆ Assist where possible retrenched workers to find new jobs with other suppliers

## Managing the dismissal process

### Communicating the Retrenchment

Announce the number of dismissals that will take place and the manner in which workers will be selected for dismissal in writing.

Arrange for clarification sessions for workers; make sure they all understand the process and their rights.

### Dismissal Selection



Have a clear management procedure and make sure all implementers understand it so that the selection process is transparent and applied accurately and consistently to all workers considered for dismissal.

## **Severance and Other Termination Payments**

Severance and other termination payments should not be delayed. Ensure that workers receive payments on their last day of work. However, circumstances (such as when the money is not yet available) may make it necessary to provide the payments in stages over a period of time. If this route is taken, it is important to ensure that workers and their representatives understand what is happening and know when payments will be made. There should be a means for complaints about late payment.

Calculating the appropriate payment for each worker requires accurate information on the salary and wage levels in the company and information about service and other criteria. It is important to ensure that this information is correct and the way in which the payments are calculated is fully transparent to each worker.

## **Appeals and Grievances**

Workers should be able to raise concerns either individually or collectively and have them addressed in an effective manner. In Myanmar, Workplace Coordinating Committees (where they exist), should seek to resolve grievances that arise.

Key elements of an effective appeal or grievance procedure are as follows:

- ◆ The process should be transparent and communicated to workers in writing.
- ◆ All workers should have the right to initiate the procedure.
- ◆ The process should be completed promptly.
- ◆ When possible, a manager other than the one who initiated the dismissal should hear the appeal or grievance.

Appeal hearings must be conducted fairly. It is often useful to have another person in the room in addition to the manager and the worker. The appeal process should involve reviewing the decision to select the individual for retrenchment and verifying how the selection criteria were applied to the worker, or reviewing the information used to calculate severance payments. It should also consider any factors that the employee puts forward against their selection for dismissal.



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# Annexes

## Annex 1 - Retrenchment Plan

### BACKGROUND

Brief description (information or data) of problem necessitating a retrenchment, which may include the following:

- ◆ reduced client orders and production volume, for current and future periods
- ◆ affected areas or factories
- ◆ foreseen duration of the problem

Analysis of alternatives to retrenchment

- ◆ Summary of the analysis of all alternative solutions generated by all stakeholders including the factory owner or top management, Basic Labour Organization, workers' representatives, etc. The table below can be used to present the information.

ALTERNATIVE	DESCRIPTION OF ALTERNATIVE	ADVANTAGE	DISADVANTAGE

- ◆ Indicate whether any alternatives were chosen in addition to retrenchment.

### CONSULTATION SCHEDULE

CONSULTATION SESSION	ISSUES	STAKE-HOLDERS	INFORMATION/ DATA TO BE PREPARED	TIME



## SELECTION MECHANISM AND CRITERIA FOR DISMISSAL

MECHANISM	EXPLANATION OF HOW MECHANISM WORKS	CRITERIA	AFFECTED WORKFORCE	DISMISSAL SCHEDULE
1. (Name of mechanism, such as voluntary, length of service, ...)			(Affected areas, and estimated number of affected employees with list of affected workers in a separate document)	(Planned last day of work for affected employees)
2.				

## SUPPORT ACTIVITIES FOR DISMISSED WORKERS

ACTIVITY	TIME	CONDUCTED BY	TYPE OF WORKERS TO RECEIVE
Training on new skills for dismissed workers			
Career counselling			
...			

## COMMUNICATION PLAN

TO WHOM	TIME	MESSAGE/ CONTENT TO COMMUNICATE	COMMUNICATION METHOD	CONDUCTED/ DELIVERED BY
(Remaining workers, dismissed workers, or other stakeholders)			(Meeting, seminar, official documents, ...)	(The Basic Labour Organization or Workers' representatives)



TO WHOM	TIME	MESSAGE/ CONTENT TO COMMUNICATE	COMMUNICATION METHOD	CONDUCTED/ DELIVERED BY
				should be involved in communicating retrenchment to workers)



## Annex 2 - Retrenchment Policy

### PURPOSE

The purpose of this policy is to establish the regulations pertaining to retrenchment at the company to ensure the following:

- ◆ Retrenchment decision is non-discriminatory to its workers and severance benefits and other termination payments for affected workers are guaranteed.
- ◆ Retrenchment is carried out in compliance with the law.
- ◆ Retrenchment decision best serves the future requirements of the company.

### DEFINITIONS

- ◆ Retrenchment: this can cover a wide range of dismissals that do not essentially relate to the conduct or performance of the workers:
  - ◆ the closure of a plant, factory, or other workplace with a number of job losses
  - ◆ job losses arising from a reduction in staffing requirements due to efficiency gains or falling demand for the company's products
  - ◆ job losses arising from a downsizing in operations or restructuring of the workforce
- ◆ Workers: in this policy, they are all types of employees including office staff, workers, and managers who work for the company.

### ELIGIBILITY

This policy is applicable to all workers including office staff, workers, and managers of the company who might be affected by a retrenchment decision.

### POLICY

The company will, to the best of its ability, provide continuity of employment to workers within the constraints of organizational and financial circumstances. Circumstances such as reduced workloads or funding may, however, necessitate terminations of employment.

Should a retrenchment become necessary, the company will make it transparent to all workers.

### RESPONSIBILITIES

The General Manager is responsible for making decisions on retrenchment and for forming a committee to implement it.

The HR Manager, as assigned, assists the General Manager in establishing the retrenchment plan and joins the retrenchment committee.

### PROCEDURE

#### Making Decisions on Retrenchment

- ◆ Once business conditions necessitate a retrenchment or other alternative measures, the company will provide the Basic Labour Organisation / workers' representative(s) with related information so that they understand the current business and financial conditions motivating the company to consider retrenchment or alternative measures.



The company encourages the Basic Labour Organization / workers' representatives to participate in finding solutions to the problem.<sup>4</sup>

- ◆ The company will organize meeting(s) with the Basic Labour Organization / workers' representatives and managers of potentially affected areas. If possible, the suggested solutions will be reviewed and analyzed during the meeting. Otherwise, the company will seriously analyze the alternatives after the meeting.
- ◆ If possible, the company will consult with other stakeholders, such as government organizations, employer associations, and clients/buyers for other alternative measures. These alternatives will be analyzed together with those suggested by the Basic Labour Organization / workers' representatives.
- ◆ The ultimate decision on what course of action should be taken remains with the company. The company will inform the Basic Labour Organization / workers' representatives and managers of potentially affected areas about the final solution and why it was selected in writing at least two months before implementation.

### **Selection of workers to be dismissed**

- ◆ Once it has been established that there is no alternative to retrenchment, the company will determine selection criteria for workers who will be dismissed. The company will ensure the selection is transparent, fair, and applied consistently.
- ◆ A combination of the following methods will be considered for selecting workers to be dismissed

#### **Voluntary Mechanism**

- ◆ The company will decide upon a voluntary gratuity amount (in addition to the normal severance established by Myanmar's labour laws) to compensate those workers who volunteer to resign from their jobs.
- ◆ The company may decide to open the voluntary mechanism to all workers of the affected workforce or only designate certain groups of workers as eligible to volunteer.
- ◆ The company will ensure that all workers are well informed about the voluntary mechanism, including the gratuity amount.

#### **Length of Service**

- ◆ Those workers with the least service in the company are first selected for dismissal to be weighed against other criteria

#### **Skills and Qualifications**

- ◆ The company will choose to retain those workers whose qualifications will be most suitable to its future business based on what is relevant to the job or tasks required. While using this mechanism, the company will clearly determine qualification criteria and will review workers' performance records or conduct assessments/tests.

#### **Performance Record**

- ◆ Workers are evaluated based on written and documented performance, including team performance (line productivity), individual performance

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<sup>4</sup> Throughout this Policy, the term 'workers' representatives' includes persons recognized under national law or practice as worker representatives where a Basic Labour Organization does not exist, in line with national laws and regulations. In the absence of workers' representatives, the company will engage with workers.



(where possible), and disciplinary records (where production-related issues are highlighted).

- ◆ Managers are evaluated on written metrics on their performance.

#### **Absence Record**

- ◆ Workers with the worst attendance records may be selected for dismissal. However, sick leave, maternity leave, paternity leave, and family leave should not be counted as absent in the absence record.
- ◆ When deciding on the method and criteria for dismissals, the company will take the workers' interests into account. The method and criteria for dismissals will be consulted with workers' representatives and managers of the potentially affected workers.
- ◆ As per the Basic Labour Organization / workers' representatives' suggestions, if any, the company might consider extra support for some affected workers. Those cases of extra support will be documented and acknowledged by both the company and representative(s).

#### **Time Off for Affected Workers**

- ◆ Upon receiving the written notification of dismissal, affected workers will be granted a period of one month's leave with full basic wages paid. This time off is to support affected workers in seeking a new job.

#### **Severance and other Termination Payments**

- ◆ A dismissed worker will be paid a severance allowance package which includes the following:
  - ◆ statutory severance allowances established by labour laws, as well as other legally required termination payments
  - ◆ wages paid for unused annual leave
  - ◆ wages paid for time off
  - ◆ gratuity benefit for voluntarily retrenched workers (if any)
  - ◆ other allowances if distributed by the company at the time of retrenchment
- ◆ The company will pay the severance allowances on the worker's last day at the latest.

#### **Notification to the Affected Workers**

- ◆ The company will work together with the workers' representatives to clearly communicate the retrenchment to the affected workers.
- ◆ Official communication: the company will officially send written notifications of dismissal to affected workers. The following information will be included in the notifications for the workers' easy review:
  - ◆ reason for retrenchment
  - ◆ selection criteria for dismissal
  - ◆ time off for the affected workers
  - ◆ severance amount and explanation of severance calculation
  - ◆ advice on social insurance benefits paid by the government's social insurance organization
  - ◆ advice on where the worker can receive more information or raise complaints
  - ◆ advice on support from the company, if any



### **Other Support to Affected Workers**

- ◆ To the best of its ability, the company will look for and implement support measures to help dismissed workers find new options for employment. As appropriate, the support measures could include assisting the workers to find information about alternative jobs and opportunities; counseling; or providing training in financial matters or small business development.

### **Grievance**

- ◆ Any worker who is dissatisfied with the company's activities relating to the retrenchment has a right to complain.
- ◆ The company will ensure that the grievance process is conducted in a fair and transparent manner in the Workplace Coordinating Committee. Once a grievance is received, the company shall negotiate and in an effort to settle the grievance within seven days, keep a record of the settlement and provide a copy to all the participants as well as the township conciliation body.

### **Recall Policy**

- ◆ Once the company recovers and can hire new workers, the company will give priority to the retrenched workers with comparable qualifications.



## Annex 3 - Legal Requirements

### Things to consider:

- ◆ Is the factory/ sector covered by a collective agreement and if so, what are the provisions with respect to collective dismissals/ retrenchment?
- ◆ Is governmental permission required to proceed?
- ◆ What are the requirements for consultation with trade unions or other workers' representatives over retrenchment and downsizing?
- ◆ Is voluntary severance/early retirement a possible legal alternative?
- ◆ How are minimum severance and other termination payments calculated?
- ◆ How much notice must be given to each worker?
- ◆ What are the individual requirements that must be observed in relation to each worker's dismissal?
- ◆ Is there specific legislation dealing with women or other protected groups such as minorities?
- ◆ What legislation, if any, covers unemployment insurance and other forms of social protection?
- ◆ What legal requirements apply in terms of workplace joint welfare funds or other systems of workplace support?
- ◆ What rights do workers have in the event of transfers to other employers and outsourcing?
- ◆ What governmental dispute resolution mechanisms are available, such as arbitration (binding and non-binding), conciliation, and mediation?
- ◆ What laws are in place related to the rights of workers in "atypical" employment, including temporary, part-time, and self-employed workers?
- ◆ What is the position in relation to public and private pension arrangements and their portability between employers?
- ◆ Are there rules that require preferential rehiring for retrenched workers in the event of future employment?