

# Know your rights on retrenchment

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Gordon explains that, at the first stage of a retrenchment process, an employer may offer employees a sweetened retrenchment package if they agree to be selected to go first.

“This is part of the retrenchment process and does not make this first stage of retrenchment into a resignation, which would be a voluntary act of terminating service. It is the first stage of the retrenchment process and qualifies as retrenchment,” says Gordon.

She says it is equally important for employers to make sure they follow the correct process: “It is important for employers to understand the importance of ticking the correct boxes when completing tax and claim forms as the incorrect box can have a significant effect on the way the benefits are taxed.”

While being retrenched is a financial blow, it legally allows you to access many benefits. This includes better tax rates, waivers on premiums and even debt repayments.

## **YOUR TAX BENEFITS**

If you are retrenched, you can take up to R500 000 tax free from a combination of your retrenchment package and pension. However, this can only happen if you have not previously withdrawn money from a retirement fund.

While the retrenchment package itself is there to assist you with your day-to-day expenses, try not to use the retirement benefits portion for daily living as this could have a material impact on your future retirement benefits. Think of your retirement fund as an emergency fund to be used if you are unable to find work after your unemployment insurance fund (UIF) and severance package payments have run out.

## **INSURANCE THAT COVERS YOUR DEBT**

If you have debts such as a short-term loan, credit card or even car finance, there is a good chance you have credit insurance. In many cases, the credit insurance will provide cover for retrenchment. Depending on your insurance, it would cover between six and 12 months of your credit instalments.

There are usually time limits before you can claim. For example, in some cases, you will not have cover if you are retrenched within 90 days of taking the cover, or if you received a retirement notice up to three months before taking out the cover.

You can also only claim against your credit insurance if you are up to date on your payments.

According to Tlalane Ntuli of credit insurance provider Yalu, you can only be covered for retrenchment if you are permanently employed. This is something that must be indicated when the policy is taken out. If you are not permanently employed, you cannot be covered for retrenchment and therefore should not pay for the benefit as part of your premium.

In terms of the process, you would have to provide the following documents for the retrenchment claim to be processed:

- A section 189 letter or letter of retrenchment on a company letterhead with a valid company stamp;
- A certified copy of your ID;
- A certificate of service;
- A stamped UI-19 form;
- A settlement agreement or loan agreement; and
- An employment contract (where required).

### **INSURANCE WAIVERS: COVER WHEN YOU CAN'T PAY**

Many consumers are unaware that their life cover, short-term insurance and retirement annuity policies may offer retrenchment cover. These are usually in the form of premium waivers, where your premiums are waived for six to 12 months, so your policy will not lapse.

#### **How much should you be paid?**

Arlene Leggat, the president of the SA Payroll Association, says the procedure for retrenchment is clearly set out in the Labour Relations Act. The Basic Conditions of Employment Act also provides clear guidance on what has to be included when calculating the severance package.

The act provides that an employer must pay an employee for at least one week for every year of completed continuous service.

“It is extremely important to make sure that, if the company is acquired by another firm, your contract of employment states that your years of service prior to the takeover will be taken into account,” Leggat says.

There is generally an agreement that the new company will not retrench people for at least one or two years, but once that time comes, there will be retrenchments, warns Leggat. People then find they only have one or two years of completed continuous service.

To calculate the value of that one week – it could be more, but it may not be less than one week – the employer must include the employee’s salary or wage, average overtime, shift and standby allowances, as well as travel allowances and commissions. It must also include the employer’s contribution to benefit schemes such as death, funeral, retirement and medical aid contributions.

Some life insurers also provide specific cover for retrenchment as part of their income protection benefits. You would have to take this as an additional benefit on your policy as it is not automatic.

Typically, retrenchment insurance would pay up to 75% of your taxable salary for up to six months. The idea is that retrenchment insurance payments over a six-month period will allow you to meet your financial commitments and find another job or start a business.

If you do not already have this cover in place and your company is about to start a retrenchment process, you will not qualify because a waiting period applies.

## Steps to take if you are retrenched

1. **DRAW UP A SURVIVAL BUDGET:** This is how much you need to survive – immediately accept that you will have to cut back on luxuries and “nice to haves”. It may take longer to find another job than you expected, and you need to make your benefits last for as long as possible. Don’t carry on as if nothing has happened – if you adjust your lifestyle quickly, the retrenchment will have less of an effect on your longer-term finances. Start making adjustments to your monthly budget. For example, you may have the opportunity to move back home and save on rent.
2. **SIGN UP FOR UIF ONLINE:** Once you know your unemployment benefits, you will have a better idea of how much of your survival budget will be covered. Even if you chose to take the severance package, as long as your company has issued a section 189 letter, you can apply for unemployment benefits. You can receive unemployment benefits for up to 12 months. UIF applications can be done online.
3. **CLAIM CREDIT INSURANCE BEFORE YOU LAPSE:** Don’t fall behind on debt repayments until you have claimed for credit insurance. Magauta Mphahlele, the CEO of Ithuseng Credit Solutions, says the biggest mistake when people are retrenched is that they fall into arrears before claiming credit life insurance.

“They don’t understand that the policy lapses when the account falls into arrears.”

Speak to your creditors and don’t just let your debt repayments lapse. Make sure you are not wasting your package paying debts covered by the credit insurance.

Settle debt not covered by insurance with a portion of your severance, but keep in mind that this may affect the amount of money you have left to live on day-to-day.

4. **SPEAK TO YOUR CAR AND HOME INSURER:** Your policy may include cover that waives your insurance premiums for a period of time after you’re retrenched, which means you still have insurance cover in place even when you cannot afford the premiums.

However, you need to notify the insurer rather than just leave the debit order to bounce. If the debit order bounces, your cover will lapse.

5. **CHECK YOUR LIFE AND RETIREMENT POLICIES:** Ask your financial adviser or product provider whether you have an added benefit on your retirement annuity and life insurance policies that waives your premium contributions for a period of time.

In some cases, your premiums could be waived for up to a year, which means that you still have life cover in place even if you cannot meet the monthly repayments. Again, you need to inform your insurer of the retrenchment and not just let the policies lapse.

Also find out if you have an income protection policy and if it covers retrenchment.

Some income protection policies will pay 75% of your taxable salary for a maximum of six months after retrenchment.

6. **DON'T RUSH INTO A NEW VENTURE:** Don't panic by immediately using your retrenchment package to start a small business.

What to do with your home loan

If you are retrenched and have a home loan, contact your home loan provider immediately. In most cases, you will have some form of credit insurance in place.

Felix Kagura, the head of long-term insurance propositions at Standard Bank, says the bank provides cover in the event of retrenchment. This covers the instalments on the underlying loan for 12 months or until the client gets a new job – whichever comes first.

Geoffrey Lee, the managing executive of home loans at Absa, says the bank always recommends taking out a life policy that will cover the outstanding amount on the bond in the event that a homeowner dies, is permanently disabled or gets retrenched.

However, if you are unable to meet your home loan payments, Lee says the bank has processes and tools available to help you through this time.

"It is vital that customers immediately engage with the home loans collections department throughout any stage of financial difficulty. The sooner a customer advises us of their financial situation, the sooner we will be able to look at the different plans or options we have in place that could assist the customer for a period of time," he says.

Lee adds that the team will explain the various options based on the nature of the customer's financial circumstances. These are split between short-term and long-term plans.

With short-term plans, home loan instalments can be reduced for a period of six months and potentially extended to up to 12 months depending on the customer's situation. Arrangements can be made to reduce the instalment to as low as 25% of the contractual monthly payments in extreme cases, based on what the customer can afford. With the long-term plan, the loan could be restructured. This includes extending the term to up to 360 months to reduce the monthly instalments.

"The acceptability of a forbearance plan is primarily dependent on the customer meeting the affordability criteria and, as always, each situation is assessed individually," says Lee. Mfundo Mabaso, growth head of FNB home finance, says the bank provides various options to distressed customers. This includes a payment holiday of up to four months while the customer waits for their retrenchment package, interest-only payments for up to four months or a reduced repayment of up to 50% of their normal mortgage repayment.

The bank also provides what's called a quick sell, which allows the customer to trade out of their current property and find a home that is more affordable.

Any restructuring of a loan will result in higher interest payments over time, but it can provide breathing space and allow you to keep your home. If you are unable to secure an income, you may eventually need to make the decision to sell your house rather than continually accrue more debt.

Setting up a business takes a lot of research and planning, and most small businesses fail in their first year. If working for yourself is a dream you have always had, use the opportunity,

but make sure you have a proper business plan and business case. You can also find ways of earning an income, even a small sum, without paying out capital. Don't get caught up in the belief that a job is "below" you – think of every extra rand as a boost to your future wealth. Being active is a lot better for our psyche than sitting at home is.

