

Application of law in employment contracts: practices, considerations and recommendations

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ABSTRACT *The COVID-19 pandemic has brought about unprecedented changes to our daily life. It has impacted the whole world and has forced governments to take extreme measures, travel restrictions were imposed from late February on tourists from the largest tourist markets and the decisions taken to suspend issuing of arrival visas. This has a tremendous impact and halted the tourist operations in the country. In the Maldives, 45,000 employees were affected due to the COVID-19 pandemic. This article looks at the different measures adopted by the companies in the tourism industry within the legal arena of contract law and the employment law. This analysis was conducted through interviews with employees on measures undertaken, and the procedure followed to implement the measures. The results show that, the employer acted in good faith; however the adherence to legal principles were weak within the industry.*

The advent of COVID-19 has provided with unprecedented uncertainty to the world. Maldives is amongst the worst affected in Asia, due to the impact of the COVID-19 pandemic, as a country solely dependent on tourism (MOED-2, 2020). The government of Maldives introduced strict measures, from the emergence of the first case of the virus, which prevented tourists from arriving into the country. Travel restrictions were imposed from late February, on tourists from the largest tourist markets and the decision to stop issuing of arrival visas, had a huge impact and halted the tourist operations in the country (UNDP-1, 2020)

This tourism sector was the most affected industry. With more than 45,000 employees in resorts were affected, including approximately 22,000 locals and excluding third-party service providers to resorts (MOED-2, 2020). This was the direct result of COVID-19 measures imposed by the government (UNDP-2, 2020). The impact of the crisis on resort employees is evident in 3 ways, ie redundancy, retention but with no-pay and retention with reduced pay (MOED-2, 2020). The study on the Impact of the COVID-19 Crisis in the Maldives conducted by the Ministry of Economic Development indicated that 16 percent of payroll employees were terminated while 84 percent were retained with reduced pay.

There are two important issues at stake: (i) the crisis caused by the COVID-19 pandemic affecting the performance of employees; and (ii) the loss of jobs due to the pandemic. While this is extenuating circumstances, both the employer and employee should find a balance to support each other's interests. The relationship

between the employee and employer is governed by the employment contract; therefore whether releasing of employees without any violations is possible, is an important factor. In time of such, negotiation is the best option to employ, and as stated by Guy Ryder, the Director General of the ILO: “Workers and business are facing catastrophe, in both developed and developing economies” and “we have to move fast, decisively and together. The right, urgent, measures could make the difference between survival and collapse” (ILO, 2020).

The employer has the right to conduct business in the most efficient manner with optimal profit in an inductive environment, while the employee has a right to “fair procedure” when terminating the employment contract for a “just cause”. At present the main reason behind termination being the COVID-19 pandemic, which has affected capital and labour; so the question at hand remains how to maintain the employment contract or legally terminate/or change the employment contract. The issue for analysis under this article is whether the measures undertaken by the employer is in accordance with the contract law and employment law.

Legal context:

The employment relationship is governed through contractual principles and employment law. In this unprecedented time, there is no clear-cut rules applicable to this circumstance. However, it’s essential to abide by the rules of contract and not to violate the employment law.

The Merriam Webster dictionary describes a contract to be “a binding agreement between two or more persons or parties especially: one legally enforceable”. While the contract does not prescribe a certain method, the employment requires it to be in writing with specific provisions such as employees’ position, pay and leave entitlements included. Further, the contract prescribes the rights and responsibilities as outlined in the agreement creating the legal relationship thereof. The employment relationship is governed through the Employment law of the Maldives (Law No. 2/2008)

The negative impact to employment due to COVID-19 is expected, but the extent is unknown. Due to temporary close down of operations, a number of terminations are probable. Termination of contracts may be triggered on the following grounds: firstly, termination for “just cause” or termination due to redundancy which takes away the need for the particular position. Termination for just cause, which may due to tardiness, terms such as absences, abuses, fraud, falsification amongst others. In some jurisdictions termination and dismissal mean the same things while in other jurisdictions it is distinct. Termination maybe for breach of contract, while dismissals are for more serious offences which may even involve level of criminality.

Dismissal due to redundancy is not “fault-based” termination, as it is caused by factors such economic conditions, business efficiency and technological developments. However, the correct procedure should be followed within the company and towards the employee. Furlough is “temporary” layoff from work, but returns to work when things normalize. It may be distinguished from layoff, and can occur in cases like COVID-19 lockdown, forcing businesses to shut down. A situation of furlough can arise, where the employer is unable to work, because of a situation which is temporary, and where notice of layoff is served before completion (Lawrie, 2020).

Methodology

The approach utilized is a mixed approach comprising of analyzing both primary and secondary sources, to collect data.

Primary data was collected through interviews of ten employers. Employers ranged from tourist chains to single resorts and foreign and local operators to incorporate a wider scheme of measures undertaken. The persons interviewed are part of the senior management, so that more insight and reasoning may be divulged.

Online interviews were conducted with persons representing the employers of companies in the tourism sector. The persons ranged from Human Resource Managers and Resort Managers or other senior management level staff. These companies are hereafter referred to as TRO.

The eleven TROs interviewed represents a total of 9582 employees working in the tourism industry. Semi-structured interviews with ten TROs were conducted. The questions were divided into three broad categories: (1) General information and measures taken; (2) Employment contract and the procedure utilized to bring changes; (3) Future plans as to commencing and treatment of employees.

Secondary data collection was through the most recent reports published by the relevant ministries and other international organizations. Secondly, both scholarly articles on this topic and country experiences recently published in journal articles was scrutinized. Thirdly texts on this topic is utilized to understand and research the topic discussed.

Limitation of the study: (1) The number of interviews conducted is limited, due to time constraints and the lockdown. (2) The total figure for employees used, was an approximate figure, rather than exact figure, and (3) There are is no difference made between the expatriate employees and local employees.

Literature Review

The most recent reports on the impact of COVID-19 was published by the Ministry of Economic Development and UNDP Maldives. *The COVID-19 Crisis- the Maldives Economic Update*, depicts that the travel restrictions and halting of issuing of tourist visa, from the largest tourism markets would have huge impact on the economy of the country. The main drivers of growth, the construction and tourism industry rely on expatriate workers and male employment. Due to the closedown of resorts, it is expected to affect directly, approximately 50,000 employees.

Impact of the COVID-19 Crisis in the Maldives was conducted to “understand the impact of the complete closure of the Maldives tourism industry on employment, livelihoods and the potential knock-on effects on their families and communities.” Some of the relevant key findings include that: (1) approximately 45,000 employees which includes 22,000 locals excluding external third-service providers were affected; (2) the impact on employees through redundancy, retention with no-pay and retention with reduced pay; (3) of those employees retained, a large proportion has been put on no-pay for the period April to June 2020, and (4) job security is uncertain for majority of employees.

There is no literature on this point; however there is limited literature on the

topic of contract law and employment law which is applicable. Firstly, the texts on this legal area are utilized to understand the topic widely.

The main text related to contract Law in the Maldives is by Husnu Al Suood, the Contract Law of Maldives. In this text, the basic elements of contract formation such as offer, acceptance, intention and consideration are discussed. A contract is based on the mutual agreement of both parties, employer and employee and in accordance with the employment law. The terms and conditions of the contract is binding on both parties, and where there is a breach, the injured party can sue and/or claim damages. A party may end the contract, through performance, agreement or frustration. In the COVID-19 pandemic, only termination through agreement or frustration is possible. Further there are specific clauses such as force majeure or redundancy clauses which may be applicable to the present circumstance.

There is limited text on employment related issues in the Maldives, especially in the area of dismissals and redundancy. The main two texts available is by Ismail Wisham, The Basics of Maldivian Employment Law and Maryam Manal Shihab, Employment law in the Maldives.

In the Basics of Maldivian Employment Law, Ismail Wisham, prescribes the basic principles of dismissals and redundancy through reference to statute and case laws. It differentiates between ‘dismissal’ and ‘termination’, where the first is due to a dishonorable discharge from service which arises because of a breach of contract or work ethics. The effect to this discharge is that, an employee is discharged due a dishonorable discharge and is not subjected to the notice period or the term of the contract. It also highlights that the Employment law do not expressly state the principles of substantial and procedural fairness, as opposed some other countries. The burden on establishing a cause for fair dismissal rests solely on the employer, therefore the employer has to show that, there were reasonable concerns that the employee had been detrimental to the company, the employee was given a chance to explain himself and to propose remedial actions on this own part to rectify the issue and that the decision was made finally based on all tangible evidence and the decision does not seem excessive. Under performance is not sufficient, but the employer has to show corrective measures undertaken to increase performance.

In the Maldives Employment Law, Shihab, covers dismissals, redundancy and governance and enforcement of employment contracts. Further the relevant cases are deliberated in the above-mentioned sub-topics, which is amongst the landmark cases discussed below.

Secondly, the law on this topic, including the relevant statutes and case laws are discussed. In this regard the relevant provisions of the Employment Law (“EL”) (Law No. 14/2008) and Contract Law (“CL”) (Law No. 4/1991) are observed.

The Employment Law and Contract law together govern the employment contract. The EL provides that employment contracts are to be in writing and provides the particulars to be included in the contract (Section 13 (b) and (c)). Namely includes personal information, durations of contract, salary, and terms of dismissals amongst others. Further it prescribes the maximum probation period and that either party may terminate during this period (Section 14). The Act also distinguishes between fixed term, permanent contracts and contracts for specific works (Section 13 (c)). Where an employer seeks to terminate the employee, certain minimum notice periods prescribed by the EL should be followed depending on the terms of service (Section 22(a)). The EL provides that an employee may not

be dismissed unless appropriate cause has arisen, such as failure to maintain work ethics and inability to fulfil the duties and responsibilities and only after measures were taken to discipline and improve the skill deficiencies (Section 21(a)). Section 21(b) provides for a list of instances, which is deemed not “appropriate” causes for termination. This includes pregnancy related issues, membership of a worker’s association or involvement in an illegal activity, exercise of right to stay away from work on the reasonable belief that the work environment is unsafe, and but not limited to, the employee’s race, colour, nationality, social standing, religion, political opinion, affiliations with political party, sex, marital status, family responsibilities or any disability.

Even where an employee is terminated under Section 21, the *Maldives Transport and Contracting Company Plc v Ahmed Mohamed* (2011/HC-A/134), reiterated that substantive fairness and procedural fairness has to be established. Both these elements have to be based on the grounds of being fair and just to the employee. It was decided that substantial fairness is satisfied where the decision of restructure and terminate the employee was made in good faith and due to financial and economic reasons. Procedural fairness is maintained where the employees are given notice of restructuring and redundancy and based on the process, with notice and in lieu of notice should be informed prior to the redundancy.

Further, under Section 23, where dismissal occurs without notice, the employer has to fulfill the substantial and procedural fairness. This was first recognized in the case *Reethi Rah Resort Private Limited v Ali Muaz* (2010/HC-A/24) in which the court stated that:

(1) To establish substantial fairness, the employer is required to prove on the balance of probabilities that the grounds of termination is reasonable and based on factual evidence and not mere suspicion or assumptions; and

(2) To establish procedural fairness, the employer is required to apply the principles of natural justice and adhere to due process and provide an opportunity for the employee to respond to allegations.

The principles of redundancy were first recognized in the High Court case of *Maldives Airports Company Limited v Adam Manik* (2011/HC-A/89), which held that the redundancy will serve as a ground for termination even where not stipulated under the contract of employment or the Employment Law. In this case it was held that in such cases of redundancy it should be ascertained that:

(1) That an actual circumstance of redundancy exists; (2) there is good faith on the part of the employer; (3) the action is not directed at a certain employee or a group of employees, (4) the procedure to select the employee to be terminated and, whether (4) substantive fairness and procedural fairness was established by the employer in the process.

The concept of “substantial fairness” and “procedural fairness” was discussed in the cases, 2011/HC-A/182, 2011/HC-A/183 and 2011/HC-A/184, expanded on the decision of 2011/HC-A/89:

(1) What constitutes a situation of redundancy: The High Court held that for

redundancy factors such as changes in organizational structure, financial capacity and other factors such as the business operation of the employer can be taken into account.

(2) To establish substantive fairness: The High Court held that to establish, that the action of terminating an employee, should not be through discrimination against the employee, the decision to terminate should be taken in good faith and due to economic factors and where the employer has a redundancy policy, it should be brought to the attention of the employee.

(3) To establish procedural fairness: The High court held that employees should be treated fairly and due process followed. The following processes should be followed: (a) notice must be served, citing reasons of economic situation; (b) the procedure which will be followed must be communicated; (c) notice must be served in accordance with the employment law or the payment in lieu of notice; and (d) redundancy payments, benefits are offered, details of such payments should be communicated to the employee.

Further the High Court heard appeals separately, the cases, 2017/HC-A/186, 2017/HC-A/187 and 2017/HC-A/184, and furnished a judgement, which stated the fair procedure that an employer must follow when dismissing an employee for redundancy reasons and a genuine redundancy must be established. In 2017/HC-A/185 states that the just and fair measures should be taken, there should be a genuine redundancy, the position is abolished, disclosed to the employee and maintain fair procedure, attempted to provide a position to the employee and the employee should be selected from a redundancy pool.

Findings

The COVID-19 pandemic has most affected the employees of the tourism industry due to many indirect factors. The employers were faced with a conundrum, to retain the employees and to reduce costs and close down business. Due to this employees have been dismissed or made redundant. Additionally, many have been forced to go into no-pay leave or reduced leave.

Employers utilized different methods to treat employees, including dismissals, no-pay, redundancy, retention with full pay or reduced pay.

The Illustration 1.1 shows the effect on employees due to COVID-19 pandemic. The chart shows the percentage of employees who were retained with reduced pay, full salary, no pay, dismissals and redundancy. It is depicted that 79 percent was retained with reduced pay, while 18 percent was retained with full pay.

Given that the COVID-19 pandemic was unprecedented and the employers were unprepared, the terminations were very low. Only in one of the TROs, employees on probation was terminated through serving of one-week notice, which was consistent with their employment contract.

Employers have chosen to make some of the employees redundant, due to restructuring because of business restructuring and reduction of business profit due closure. Seventy-four out of 9582 employees were made redundant.

Employers have opted to retain employees with full salary. Three TROs with approximately around 1746 employees, were retained with full salaries. This includes two resorts being used as quarantine facilities, where all the staff was re-

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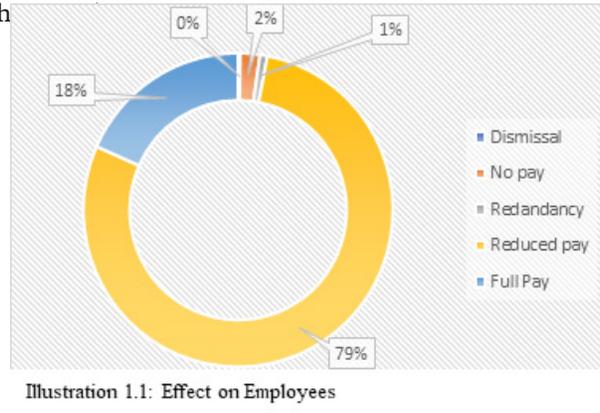


Illustration 1.1: Effect on Employees

Figure 1.1: Effect on Employees

Employer opted to retain employees with reduced pay. Six TROs with approximately around 7547 employees elected to retain employees with reduced salary. As illustrated in the table 1.1 below, the TROs employed different methods to reduce salary. The norm was that a percentage was deducted with a minimum salary limit.

Table 1.1:
Methods utilized to reduce pay

No.	Method	Term
1	50% of Salary with a cap of \$380 and \$1600	April to June
2	% decrease of salary above Rf5000	Until commencement of operations
3	Less than \$400 Full Salary; Above at 75%	April to June
4	80% of salary which is above \$300	April to June
5	3 months' salary to be spread over 6 months	April to September
6	Rf 1000	Until commencement of operations

Employers maintained equality and there was no discrimination between expatriate and local employees

There was no discrimination between nationalities or positions for employees, through implementation of measures due to COVID-19. However, often an amount was benchmarked; those receiving higher than that amount was, affected through deductions.

Employers acted in good faith and utilized equitable measures throughout

the process

Employers acted in good faith towards the employees wholly. In this regard some equitable measures undertaken include: (1) Change staff from probation to permanent without performance review; (2) Allow automatic renewal of contracts when the term expires; (3) Not employ new staff until all the present staff is called back to work; (3) Free travel arrangements made for both locals and foreigners; (4) choice given to take leave with pay or stay back in resorts which were operational, and (5) encourage and assist in applying for economic stimulus packages. Further some TROs conducted training to create awareness on COVID-19 related matters, and health and safety measures. They have also arranged activities to maintain morale for employees detained in the resorts because of lockdown.

The employers are satisfied with the present Employment Law and are in the opinion that it provides protection to both employers and employees

But the overall belief is that this circumstance is outside the scope of the act, therefore provisions are not applicable. One TRO believed that the protections are more towards the employee than the employer. Two TROs mentioned that the option of sick leave is troublesome to the employer as it allows the employee, not to attend work without showing cause, and allow for more days with a medical certificate.

Table 2.1:
Methods utilized to change contract terms

No.	Method	Details
1	Notice to all employees	A notice to all employees that business was closing and about the changes in salary and leave arrangements
2	Unilateral variation	The employer decided on the leave and salary arrangements and informed the employee.
3	Board Resolution	Passed a board resolution, which was informed to the employees
4	Addendum	The changes to salary and leave were added as an addendum
5	New contract	A new contract was signed with the changes to leave and salary.
6	Temporary contract	The new terms were seen as a temporary contract.
7	Through a letter	A letter informing the employees of the changes.

Employers acknowledged the existence of employment contracts for all employees. The changes were brought through different methods, illustrated in table 2.1

All TROs mentioned the existence of an employment contract and that it allows for the amendments. It was stressed that the employees agreed with the changes brought to salary, although the level of negotiation and discussion is not clear. In

one TRO, employees' requests were incorporated into the reduced pay scheme. In all cases, a new document was signed by the parties.

The changes were brought through different methods as illustrated in table 2.1

All Employers stated that legal advice was taken, or were instructed by the cCompany lawyer or legal department before the measures were taken

The employers were satisfied with the approach taken, as to get legal advice before the measures were taken. Although the legal advice was more related to the decision than the process to be enforced to bring about the changes. This issue was treated more like a business decision than a legal decision, because of the special circumstance.

Employers were positive that employees would not bring any case against the employee because they understood the circumstances

The TROs were positive about whether the employees would not bring a case against the employer, as all the employees understood the circumstances. While some TROs believe that there was room to bring a case because of the changes, as even if they understood, the reduction will be difficult to manage for a lot of employees with families.

All Employers have plans to call-back all employees, including the employees on no-pay leave

TROs have intention to re-instate all the employees; however, the rate of call-back would depend on the occupancy rate of the resort. Therefore, depending on the market, it may take months to call back all employees, and at the end the employees may not want to come back.

All employers are concerned for the future, uncertainty as to commencement date and occupancy rates may lead to future terminations and dismissals due to redundancy

All TROs have commencement dates, and plans to call-back employees. Some TROs plans to bring back Heads and Senior Managers first, while others plan to bring service staff. However, the service staff recalled back will depend on the occupancy rates, which is dependent on many factors outside the control of the management. Further if there is delay in commencement and low occupancy rates remain, TROs have plans to restructure and reduce staff through redundancy.

Discussion and Analysis

(1) Application of principles of law of contract

Employers had contracts with all employees in accordance with the rules of contract and Employment law. All the employees signed new documents outlining the changes to the salary and leave, which was drafted by the employer. Paying regard to the fact that the employers acted in good faith towards the employee and believed that they adhered to the rules of employment law.

Contractual theory revolves around two basic assumptions;

(1) **Benefit-Detriment theory:** This theory revolves around the issue that consideration adequately exists where a promise is made to the benefit of the promisor and to the detriment of the promisee.

(2) **Bargain for exchange theory:** Adequate consideration exists where a promisor makes a promise in return for something else. Under this theory, the essential condition is that the promisor was given something specifically to influence the making of the promise.

Although, in all cases, it was stated that legal advice was taken or it was under the instruction of the company lawyer, or legal department, the legal principles of contract was not adhered in the majority of the cases. Maybe it was because the changes were treated as a business decision, rather than legal decision. Nonetheless if rules of contract are not followed, it will open avenues for breach of contract.

Some issues which may have a basis for breach includes and is not limited to:

(1) If the salary changes were brought about, without regards to the original contract, without ascertaining whether it allows it or not.

(2) Dismissals due to redundancy was without regard to substantial and procedural fairness.

(3) Dismissals without following the notice procedure.

Second, the question of whether the contract has been frustrated or not:

Frustration occurs where due to unforeseen circumstance, which is outside the control of the parties makes it impossible to perform the contract (Elliot, 2015). The COVID-19 pandemic falls into this category, although it can be argued that it is not unforeseen as, there has been other pandemics in the past. However, the impact of COVID-19 is uncertain and unprecedented, which may allow for discharge of contract. If this is the case discharge of contract can occur through:(1) agreement; (2) breach; (3) frustration; and (4) performance (Mckendrik, 2014). All the TROs has followed the first option of agreeing to change the terms. In this regard there are two ways this can be achieved, that is through unilateral or bilateral discharge.

Unilateral discharge arises where one party has fully performed their obligations, however the other party is yet to do so. The first party may agree to release the other party from his obligations, but this type of discharge is purely gratuitous and therefore unenforceable, unless made by deed (Richards, 2017).

Bilateral discharge is explained as:

Where both parties have yet to carry out their obligations under the contract, either wholly or partially, then their respective promises must be supported by consideration. This situation is described as “accord and satisfaction.” Accord and satisfaction is the purchase of a release from an obligation, whether arising under a contract or tort by means of valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative (Rich-

ards, 2017).

Discharging the contracts brings the contract to an end through rescission. However, if the intention is to vary the contract, the rescinded contract is replaced by a new agreement, where new consideration is required and the sufficiency of consideration comes into question (Beatson, 2016). The mutual release and mutual promises in a new contract will be regarded as sufficient consideration to support the initial release and the new contract.

Waiver can arise where one party promises to enforce its rights against the other party. This can arise where one party requests an alteration of the contract and the other party do not insist on strict enforcement of rights acquired by the contract (Poole, 2016).

Unilateral variation of contractual terms was the norm. Due to the circumstances, and the lack of awareness on the part of the employees made it easier to make the employees sign the document including the amendments. Further, where employees received reduced pay was better than outcomes where employees were forced to go on no-pay leave. In this situation, even where the terms were “unfair”, the employees are powerless to do anything due to the unequal bargaining power. This was also confirmed by the study published by Ministry of Economic Development which stated that there “was no formal conversation, negotiation or communication with the decision regarding the pay packages and leave arrangements for the duration of the resort closure.” Often in this kind of situations, the inequality of bargaining power, the introduction of standard terms and desperation of the employees may be reduced, if stronger advocacy and protections were in place.

(2) Application of principles of employment law

Even in the companies where, no dismissals have occurred, there is still the probability of dismissals through redundancy. As companies going to full operation will depend on many factors outside the control of the parties, such as relaxation of international travel and opening of borders, resulting in full occupancy. All resorts have plans to call back the employees; however, the end result is uncertain as the decisions will be made in accordance with the change of circumstances. All companies have a future plan to operate the resorts and call back employees, however the percentage of employees called back would depend on the occupancy rate of the company. There are uncertain factors such as travel restrictions, border control and safety measures which play a role.

Unfortunately, all companies have redundancy plans and restructuring if the market does not improve and further if the resort is not occupied. This study also confirms observations of the study on the Impact of the COVID-19 Crisis in the Maldives conducted by the Ministry of Economic Development: (1) that job security beyond July is uncertain for majority of the resort workers, experts forecast a slow recovery for the Maldives, as those who open operations with minimal operations and a skeleton staff structure. A large number of employees that are currently retained up to the end of June risk losing their jobs after July 2020 as resorts may not be able to retain them.

Employers were satisfied that they had abided by the employment procedures. However, the belief was that this pandemic situation was outside the scope of the employment law and therefore there were no applicable provisions. Even though

only a minimum number of terminations and dismissal due to redundancy was observed from the research undertaken. Due to the uncertainty in the tourism industry it is probable that a high number of terminations and dismissals because of redundancies will occur in the future. Presently the procedure to conduct redundancy is provided through case laws as previously discussed. Therefore, it is important that substantial and procedural fairness is applied to dismissals through redundancy.

Recommendations

From the present research and other research reports it is evident that the impact on the employment in the tourism sector will be long-term. The risk of unemployment rising is evident, as the retained employees with full salary and reduced pay until June or July, maybe not be retained for further terms. Therefore, as recommended by the study published by the Ministry of Economic Development, a “strategic and planned approach” is required to negate the long-term impact on employment levels through, consultations with key stakeholders (MOED-1, 2020).

The present research is based on a legal perspective; therefore, the following recommendations are based on the results of the research and the analysis of the law thereof.

Employees need to be educated on the rights, duties and protections provided by the contract

Both employee and employer need to familiarize with the basic principles of contract and the rules which governs the contract. While the employer may be able to get advice through lawyers or legal departments, employers themselves need to understand and respect the rights of the employees. The employees, while subject to employment contracts are not aware of their rights and the legal effect of the terms. They do not understand the effect of signing the contracts, and their right to negotiate the terms. Employees need to be educated on the basic principles of contract and provide guidance on contract negotiation and understanding of employee rights.

Employees and employers need to be educated on the laws and procedures of redundancy

Both employers and employees need to know the procedure for redundancy and the rights in respect of it. Presently, although the case law provides for guidance in redundancy, there is no guidelines or procedures established under the law. This reduces the protection for employees, and provides uncertainty for the employers. This issue should be addressed through an elaborate redundancy procedure, which includes the following: (1) when employees maybe dismissed for redundancy; and (2) the redundancy payment in accordance with the terms of service.

Employees need to be provided with more advocacy rights and protection

Employees need to be in a stronger position to advocate for their rights and fair bargaining power. From the results it can be seen that the employees are unaware of their rights, and unwilling to advocate for their rights. Therefore, a neutral third party who understands the situation and who is aware of the implications of signing contracts and may provide legal advise in these kind of situation to protect the

rights and to provide a stronger advocacy to the employees.

Conclusion

In conclusion the research shows that the measures introduced by the employers were equitable, given the dire circumstances. Employers under legal advice were under the belief that they were in compliance with the rules of contract and employment law. However, there were clear cut breaches of the process which needs to be followed both under contractual principles and violations of employment law. Most of these problems may be resolved by educating both the employee and employer and introducing more stringent measures for protection and guidance of the employees.

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