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EMPLOYMENT

Employee entitlements in the event of employer death

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When the employment relationship ends due to the death of the employer, it terminates by operation of law, absolving both parties from their contractual obligations. Sole proprietors or employers who conclude contracts of employment in their personal capacities are the singular force behind their business and their demise marks not only the end of an era but also raises profound questions about the rights and entitlements of their employees. Among these considerations lies the often-misunderstood issue of severance packages – those crucial safety nets designed to cushion the impact of no-fault job loss. In this article, we consider whether employees are entitled to severance packages upon the death of an employer and offer tips to sole proprietors who conclude contracts of employment in their personal capacities.

What is Retrenchment?

Sections 189 and 189A of the Labour Relations Act No 66 of 1995 ("**LRA**") govern dismissals based on operational requirements in South Africa. Section 41(2) of the Basic Conditions of Employment Act 75 of 1997 ("**BCEA**") on the other hand provides that employees dismissed for operational reasons are entitled to severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer. In this regard, section 41(1) of the BCEA provides that *operational requirements* means requirements based on economic, technological, structural, or similar needs of an employer.

In summary, severance pay is only payable if the employee has been dismissed for operational requirements.

Severance Due Upon Death?

The death of an employer does not necessarily terminate a contract of employment. The contract may remain valid in accordance with the provisions of the law of contract in cases. Furthermore, upon the death of the employer, the executor of the deceased's estate assumes control over the deceased's assets, including any employment-related matters. The exception to this principle is the case where the services are of a personal nature. In these instances, it is impossible to perform, and the contract is terminated on the death of the employer. The death of the employer during the term of the contract terminates the contract because of the objective impossibility of performance.

In the matter of *Meyers / Estate Late Dr Gordon* [2022] 1 BALR (CCMA) ("***Meyers* Case**") an employee's services were terminated as a result of the death of the medical practitioner by whom she was employed. The employee lodged a claim against the estate of her late employer for severance pay for her 10 years of employment and a 13th cheque. The Commission for Conciliation, Mediation and Arbitration ("**CCMA**") held that an employee whose services were terminated by the death of their employer was not entitled to severance pay as the employment relationship terminated by operation of law and not for operational reasons.

Closing Remarks

In South Africa, the termination of the employment relationship due to the death of the employer results in the contract being terminated by operation of law, absolving both parties from their contractual obligations. While severance pay is mandated for dismissals based on

operational requirements under Sections 189 and 189A of the LRA, they do not apply in cases where the employment ends due to the death of the employer.

Tips for Employers

Employers who employ in their personal capacities should consider estate planning to ensure smooth transitions in the event of their passing, including addressing employment-related matters and potential obligations to employees. The employment contract should also provide what remuneration is due (if any) in the event of the demise of the employer.



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