



NEWSLETTER



**WORKING
SHORT TIME**
**- as an alternative to
retrenchment**

In terms of Section 189 of the Labour Relations Act when an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must first consider alternatives to retrenchment.

One of these measures is working short-time. However, before taking this route, there are certain things to be considered:

1. In terms of common law Contract of Employment, the employee undertakes to put a certain of his time at the disposal of the employer and the employer in turn is obliged to pay an agreed wage for such time. By proposing short time, the employer is proposing to change the terms and conditions of employment. This must be done by negotiation. If negotiations fail and employees refuse to work short time, then it cannot be imposed by the employer. In such event, the employer would have to resort to retrenchment if there are no other viable alternatives.

2. If there is a representative union, negotiations must be with the union, if not, with the employees themselves.

3. Some bargaining councils (e.g. MEIBC) have certain provisions dealing with application of short time. Employers must first check these provisions and comply with these provisions.

4. If the employer is not covered by a bargaining council, issues for negotiation will include:

- The reasons for short time working;
- When short time will commence;
- When it is likely to end (often difficult to determine);
- The amount of short time (i.e. days/weeks employees will not work/not be paid);
- Alternatives to short time;
- Who will work short time and an even spread of short time over the entire workforce;
- The alternative to short time for the employees (being retrenchment);
- Those employees by reason of operational requirements who will not be required to work short time (i.e. they are in key positions in operations that will continue to work right through);
- What will happen to existing conditions of service during short time (provident fund contributions etc.).

5. In order to meet the terms of the current employment contract, the employer must give employees notice of short time. This should be in line with the notice period for termination provided in the employment contract – one week/month/calendar month or longer as provided in the contract.

6. The biggest drawback to lengthy periods of short time is that employees become demotivated, often resulting in the best employees leaving. Others may deliberately work slowly and drag out jobs in the belief that this will enhance their job security. In other words, productivity is negatively impacted – a job that should be done in a day can take 2 or 3 days.

- Employee attitudes during short time working and the numbers actually on site can also impact on safety (i.e. in the absence of a sick employee the remaining employees may be at risk because there is not sufficient cover).
- Sometimes employees take up other employment or do private jobs (effectively starting a business) during the short time. When business returns to normal, the employees may not want to give up the extra income (especially if their private jobs paid well). This can lead to conflicts of interest when employees fail to declare their other work interests.
- Some employees might even find that they earned more from their private work than they did from their jobs. They might then decide to leave their employer to start a private business.
- Occurrences of theft, sick leave are likely to increase.



7. The employer needs to determine the extent of short time that is required and the best way of doing it. This can and should form part of the negotiations but the employer needs first to determine work requirements (i.e. what work needs to be done and the labour required to do it).

8. From a productivity point of view, before resorting to short time, one should if possible, compel employees to take all outstanding leave.

9. It is also better, if possible, and practical, to stop production for a block period (e.g. one / two months) in the same way as agricultural based industries close down during the off-crop season. This avoids the problem of employees working slowly and dragging out the work that they have. It is also far less disruptive to employee morale but of course, still runs the risk of the best employees leaving if they find alternative work/jobs.

10. The other alternative is to close a shift for a temporary period and in the process, stop all overtime (i.e. if employees are working in a 4 shift system and work overtime, especially on weekends)

11. Another problem that the employer needs to consider is what to do about employer contributions to medical aid, provident funds and other benefits (see end of point 4).

12. When finalising the short time agreement, the employer also has to factor in what to do in the event of last minute orders or a temporary increase in business. Possibly a standby allowance could be agreed for a skeleton staff to be available to address such business requirements.

There are many drawbacks to short time working but it is a better option to retrenchment but the pros and cons need to be carefully considered before an employer takes this route.

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What will happen to existing conditions of service during short time?

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