

## Best-practice criteria for retrenchments

Last-in-first-out principle not set in stone, employers may use other fair considerations: MEF

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**PETALING JAYA:** The economic fallout caused by the Covid-19 pandemic has brought a significant risk of job losses for many workers.

Newer employees are most at risk given that retrenchments are usually based on the last-in-first-out (LIFO) principle. However, other factors can and have been taken into account without legal implications, according to Malaysian Employers Federation (MEF) executive director Datuk Shamsuddin Bardan.

He cited the case of retrenchment exercises by Malaysia Shipyard Engineering Company in 1984, 1985 and 1986, which saw other criteria being considered, such as age, work performance, and medical and disciplinary record.

“These criteria were applied to all categories of employees in the company and the High Court ruled that the criteria set by the company was reasonable and fair,” Shamsuddin told theSun yesterday.

However, he said the LIFO principle should be the only criteria “if all else are equal”.

“LIFO is outlined in the Code of Conduct for Industrial Harmony but it is not a mandatory requirement and retrenchment may be carried out based on other criteria too,” he said.

Shamsuddin agreed that a worker who has performed better should be retained compared to a worker who under-performs even if he has been with the company the longest.

“We do not want the company to be saddled with more expensive but less productive employees. In addition, the younger employees are more tech savvy and digitally literate compared to the older staff.”

Shamsuddin said that in any case, the company may choose to depart from LIFO if they have reasonable criteria but should keep in mind that LIFO is only one of the criteria for retrenchment.

“A departure from LIFO will ensure that employees keep their performance at a high level, hence this would be deemed beneficial to both employees and employers.”

Labour lawyer S. Muhendaran said companies are allowed to depart from LIFO principles but should adopt a selection criteria which is fair, transparent, reasonable and should avoid criteria that are solely there to get rid of employees.

“Companies can use skill sets, performance, productivity and merit as criteria to depart from LIFO if they choose to,” he said.

He added that the court, particularly the Industrial Court, has the jurisdiction to examine whether the selection criteria is fair, reasonable and transparent and it is up to the Industrial Court to decide whether these criteria set by the company have been applied in the right way to ensure no unfair advantage, unfair labour practice, victimisation or mala fide practice is present in the selection process.

A request for comment sent to the Malaysian Trades Union Congress had yet to receive a response at press time.