

# How business rescue affects employer and employee

Business rescue has gained momentum as an alternative to liquidation since its introduction in 2011 through section 6 of The Companies Act. A principal difference between the two is that, while under the supervision of the business rescue practitioner, the company continues to trade, so that employees don't automatically lose their jobs as they would under liquidation.



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As a result, more jobs are being saved, which is obviously, then, less devastating for all parties concerned, especially employees; but what happens, though, to the rights of employee and employer during the business rescue process?

Poor administration and poor human resources management are the primary difficulties with business rescue, as these significantly delay investigation into the affairs of the company as well as the practitioner's ability to formulate a turnaround strategy, thus delaying the entire process.

## Employment conditions remain unchanged

"Regarding human resources, there are many misconceptions among staff when a company is under business rescue. It doesn't mean that their employment is immediately suspended and they continue to be protected by the Labour Act," says Justin Gordon, a business rescue practitioner at Hobbs Sinclair.

It is important to understand that all factors of the employment relationship remain intact and unchanged, unless an agreement is reached between employee and the business rescue practitioner, to change these conditions.

“The practitioner will almost always look to the salary and wage bill to reduce monthly costs. Some changes are more drastic than others, such as a stop to all ‘non-statutory’ bonuses, with incentive payments being the first to be contemplated and then implemented. Thereafter, depending on the reason for the business rescue process, reduced working hours, short time, renegotiated salary packages and conditions of service will follow,” says HR specialist, Alan Bolt.

Employees are encouraged to form an employee committee, which has a mandate to deal with management on these issues. Although business rescue cannot alter the terms of the contract, it does affect certain rights.

## **Employment contracts**

On the other side of the spectrum, employers are urged to consult extensively with employees about what is going on, why it is happening, what the procedures are and what the company plans to achieve through the process of business rescue. Because the process can be very destabilising, case studies show that this is when companies lose their most valuable employees and the ‘fear of the unknown’ and the potential consequences force employees to start looking for alternative employment.

Bolt says that it is surprising how many companies, especially those in the SMME bracket, don’t have their employment contracts in line or up-to-date and that under business rescue this can be costly. “There are many businesses in South Africa which simply do not pay enough attention to their human resources,” he states.

Fundamental requirements like appropriately prepared, industry-specific contracts of employment are essential in forming the foundation of any employment relationship. Appropriate work standards, policies and procedures (including discipline) are the tools that management have at their disposal to ensure a productive, efficient, disciplined workforce. “Effective work relationship practices between employees and management will assist in maintaining positive relationships at work, and in so doing enable the productive management of staff,” he explains.

Whilst the reasons for businesses faltering are numerous, effective staff management will ensure that there is one less reason.

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