



The rapid increase in the number of Covid-19 cases has forced governments to implement strategies to reduce the growth rate of the disease. Many countries have implemented lockdowns, which no doubt will have severe and lasting economic consequences. In the case of South Africa, the downgrade of its investment grade rating by Moody's Investors Service will only serve to exacerbate an already dire situation.

As a consequence, many businesses will unfortunately be forced to consider retrenching employees. In doing so, it is important that employers tread carefully with employees who are employed on fixed-term contracts. In *Buthelezi v Municipal Demarcation Board*, the Labour Appeal Court affirmed the common law position that a party to a fixed-term contract has no right to terminate such contract in the absence of a repudiation or a material breach of the contract by the other party. In other words, an employer has no right to terminate a fixed-term contract unless its terms provide for such termination. As such, employers will have to carefully consider each employee's employment contract and ensure that the fixed-term contracts of affected employees specifically contemplate a dismissal on account of operational requirements. If a fixed-term contract does not contemplate a dismissal for operational requirements, the employer may not retrench that employee. The rationale for this is that when parties agree that their contract will endure for a specified period as opposed to an indefinite period, they bind themselves to honour and perform their respective obligations in terms of that contract for the duration of the contract. They are entitled to plan their lives on the basis that the obligations of the contract will be performed for the duration of that contract, except if there is a repudiation or material breach of the contract.

Therefore, as employers will be contemplating retrenchments due to the economic consequences of Covid-19, it is important that they carefully consider the employment contracts of all the employees who may be affected.

Employers may easily avoid the consequences of the Buthelezi judgment by ensuring that their fixed term contracts specifically provide for operational requirements as a ground for dismissal. In the absence of such a provision, employers may not lawfully terminate that employment contract unless there is a repudiation or a breach. A termination in those circumstances would constitute an unfair dismissal.

**Pumezo David**

**Tel: 011 669 6108**

[pd@khl.co.za](mailto:pd@khl.co.za)

**JOHANNESBURG OFFICE**

**Address** 4<sup>th</sup> Floor The Forum 2 Maude Street Sandown Sandton 2196

**Postal** P O Box 782687 Sandton 2146 | Dx 42 Sandton Square

**Telephone** (011) 669 6000 | **International** +27 11 669 6000

**Website** [www.khl.co.za](http://www.khl.co.za) | **Email** [enquiries@khl.co.za](mailto:enquiries@khl.co.za)

**Registration No.** 2000/000004/21

**CAPE TOWN OFFICE**

**Address** 10th Floor 2 Long Street Cape Town 8001

**Postal Address** PO Box 1478 Cape Town 8000 | Dx 49 Cape Town

**Telephone** (021) 405 4200 | **International** +27 21 405 4200