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Retrenchment Checklist: 5 Steps to Stay Out of the Industrial Court

A practical guide for HR professionals and in-house counsel, drawn from recent Malaysian employment decisions.

1. **Produce subsidiary-level financial evidence**

If the employer is a subsidiary, the court will examine its own financial position — not the group's. The Court of Appeal in *How Zheng Hong* rejected group-level accounts as proof of financial difficulty. Have the subsidiary's quarterly statements ready.

2. **Justify any departure from LIFO with objective data**

The Last-In, First-Out principle is not absolute, but if you use a bespoke selection matrix, document the rationale clearly, tie it to verifiable data, and be prepared to explain why it is fair. A general claim that the company “kept the best” will not suffice.

3. **Do not use medical leave as a negative factor**

Medical leave is a statutory right. Using it as a criterion in retrenchment selection invites a finding of unfairness, especially in safety-sensitive roles. The Industrial Court in *How Zheng Hong* found that medical leave is “not a performance failure but a safety imperative.”

4. **Follow Paragraph 20 of the Code of Industrial Harmony**

Before retrenching, consult employees' representatives or trade unions. Take positive steps to minimise workforce reduction — limit recruitment, restrict overtime, reduce working hours, offer retraining, or consider

transfers. The court looks for evidence that alternatives were genuinely explored.

5. **Document everything**

The Industrial Court examines the process. Keep clear records of financial evidence, selection criteria, consultation, and alternatives considered. A well-documented retrenchment exercise is far harder to challenge than one relying on after-the-fact justifications.

For a detailed analysis of the case that inspired this checklist, read [How Zheng Hong and the Judicial Review Appeal](#).

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