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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.

A note on timing: the Court of Appeal's decision in *How Zheng Hong* is now under appeal to the Federal Court, which granted AirAsia leave on 29 September 2026. The guidance below reflects the Court of Appeal's findings. It remains sound practice to follow them, and the outcome of the appeal will clarify the legal position.

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 Court of Appeal in *How Zheng Hong* held 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 — including the Federal Court's decision to hear the appeal — read [How Zheng Hong and the Judicial Review Appeal](#).

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