

Employer guidelines with regard to CCMA procedures



Every employer has been, or most likely will in future be summoned to the Commission for Conciliation, Mediation and Arbitration (CCMA) by an employee or former employee.

It would therefore be helpful to ensure that they know the procedures and have made the necessary preparations to present a decent case at the CCMA.

This article aims to explain the purpose of the CCMA as well as provide some guidance for employers with regard to the procedures.

What is the purpose of the CCMA?

One of the main objectives of the Labour Relations Act (LRA) 66 of 1995 is to promote the effective resolution of labour disputes. In order to give effect to this objective, the **Commission for Conciliation, Mediation and Arbitration, better known as the CCMA**, was created.

The CCMA is an independent statutory body for resolving disputes efficiently, expeditiously and inexpensively. It is mandated to promote social justice and fairness in the workplace by delivering ethical, qualitative, innovative and cost-effective dispute and resolution services, institution-building services, education, training and development and efficient administration.

The functions of the CCMA are set out in section 115 of the LRA, which states, amongst other things, that the Commission must attempt to resolve, through conciliation, any dispute referred to it and, if the dispute remains unresolved after conciliation, must arbitrate the dispute if so requested by any party in the dispute.

What are the proceedings at the CCMA?

When a dispute has been referred to the CCMA, the respondent must be informed of the referral and thus a form 7.11 will be completed and delivered to the respondent and the CCMA. The CCMA will then send out a notice to both parties advising them to attend either conciliation, arbitration or a con/arb. The notice will include the date, time and venue where the proceedings will take place to enable parties to timeously prepare for the CCMA process.

What is the conciliation stage?

During this stage, the Commissioner will facilitate negotiations between the parties in an attempt to resolve the dispute and arrive at a mutual agreement. He/she does not have the power to make a binding determination and will only make suggestions or recommendations to assist the parties to arrive at a possible settlement.

- *Attorneys may not represent parties at the conciliation; however, the parties may be represented by a trade union official or an official from an employers' organisation.*
- If the parties are unable to resolve the dispute, the Commissioner will issue a "certificate of no-outcome" and the parties may then refer the case for arbitration by completing and submitting a form 7.13 within 90 days of receiving the certificate.

What is con/arb?

If the notice to attend indicated that the matter is set for **con/arb**, it means that arbitration will take place directly after conciliation (on the same day) if the dispute remains unresolved after conciliation. However, the respondent may lodge an objection to the con/arb before the proceedings take place to ensure that the proceedings do not take place on the same day. Therefore, it would be important for employers to establish the procedure that would apply, in order for employers to prepare the necessary objections should they wish to split the proceedings.

What is the arbitration stage?

During the arbitration stage, a new hearing will take place regarding the issues in dispute which had led to the employer's decision being challenged. The Commissioner will consider the fairness of an employer's decision based on the evidence presented and submissions made at the arbitration. The stages in the arbitration proceedings are as follows:

- Each party makes a short opening statement explaining their case
- Each party gives evidence and calls their witnesses to testify
- Each party may cross-examine the other party and their witnesses
- After all the evidence has been led, each party makes a short closing statement
- The Commissioner then makes his/her ruling. He/she has up to 14 days within which to make his/her ruling, which will be delivered in writing. The Commissioner can award monetary compensation, reinstatement or re-employment, amongst other remedies.

The adjudication of the CCMA is final and binding and may be made an order of the Labour Court if the Director of the CCMA certifies the judgement.

Therefore, it would be of utmost importance for employers to apply due diligence and prepare for arbitration by gathering facts and evidence and ensuring that their witnesses will be available on the day of the arbitration. Employers must not ignore any notice received from the CCMA.

What is the appeal or review process?

The decision made by the Commissioner cannot be appealed on the basis that his/her decision was wrong. However, the Commissioner's decision can be taken on review and for the review to succeed, it must be proven that the Commissioner was guilty of one or more of the following actions:

- He/she committed misconduct concerning his/her duties.
- He/she committed a gross irregularity in the conduct of the proceedings.
- He/she exceeded his/her powers; or
- He/she made the award improperly.

In conclusion

Employers are advised to consult with SERR Synergy as we specialise in labour relations where we guide and assist businesses in a practical and supportive way.

We assist employers to ensure that all matters are dealt with fairly and according to the relevant procedures and we can provide guidance during preparations for CCMA matters.

About the author: Angelique van der Sandt joined *SERR Synergy* in March 2017. She is a Senior Labour legal advisor at our Cape Town branch. She is an admitted attorney of the High Court of South Africa and completed her Bachelor of Arts (BA) in Law and subsequent Bachelor of Laws (LLB) degrees, Law School and post-graduate Certificate in Advanced Labour Law at the University of Pretoria.

Reference list of sources consulted:

- S115 of the LRA
- S135-138 of the LRA

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