

CCMA RULES – WHAT THE PUBLIC NEEDS TO KNOW

Rule 1 How to contact the Commission?

You may contact the Commission and file documents at the addresses, telephone and telefax numbers, and e-mail addresses as listed in Schedule One to the Rules.

Rule 2 When the offices of the Commission are open?

The CCMA is open every day from Monday to Friday, except public holidays, between the hours of 08h30 and 16h30. You may file documents during these hours or fax or e-mail them at any time.

Rule 3 How to calculate time periods

“Days” are ordinary days (not only working days). Time periods in the Rules exclude the period from 16 December to 7 January.

Rule 4 Who must sign documents?

Referral forms may be signed by the applicant or by a person entitled to represent that party in terms of legislation or the CCMA Rules. If you are part of a group of employees, you should choose one employee to sign the form and attach a list of the names of the other employees who have mandated that employee to sign on their behalf.

Rule 5 How to serve documents on other parties?

You must serve a document on other party in a number of ways including: handing a copy of the document to that person or his representative authorised in writing to accept service on behalf of that person, or by handing a copy of the document with a person who appears to be at least 16 years old and apparently in charge of the person's place of residence, business or place of employment at the time; or by leaving a copy of the document at the other party's chosen address.

You can also serve documents on the other party by e-mail, fax, telex, or registered mail. In certain situations, you can ask the CCMA to assist you to serve a document on the other party.

Rule 5A Notice of CCMA hearings

The CCMA may notify you of any hearing by hand delivery, e-mail, fax, registered mail, or by SMS.

Rule 6 How to prove that a document was served

You must prove to the CCMA or a commissioner that a document was served on the other party by providing one or more of the following: a registered mail or fax slip, sent e-mail report, a copy of the document that is signed and dated by the other party, or an affidavit that you served the document on the other party.

Rule 7 How to file documents with the Commission

You may hand deliver documents or send them per registered mail, fax or email to the CCMA at an address listed in Schedule One to the CCMA Rules.

Rule 8 Documents and notices sent by registered post

Any document or notice sent by registered post is presumed, until the contrary is proved, to have been received seven days after it was posted.

Rule 9 How to seek condonation for documents delivered late?

If you file documents late, for example after the 30 day period to refer an unfair dismissal case, you must apply for condonation.

An application for condonation must be in accordance with Rules 9 and 31 and explain a) how late it is; b) why it is late; c) why you believe that you have a good case; d) how the lateness may prejudice (negatively affect) the other party and e) any other relevant factors. The CCMA may assist you with your application.

Rule 10 How to refer a dispute for conciliation?

You may refer a dispute to the Commission, by signing the prescribed referral form, (see Rule 4), serve it on the other party, attach proof that you have served it and deliver or send it to the CCMA.

If the referral is late, you have to attach an application for condonation (see Rule 9). The CCMA will not process the referral if it is not signed or no proof of service is attached, or, if necessary, an application for condonation has been received.

Rule 11 When must the Commission notify parties of conciliation?

The CCMA must give 14 days' notice of the date of conciliation for all matters other than disputes relating to matters of mutual interest, refusal to bargain, a unilateral change to terms and conditions of employment and disputes relating to large-scale retrenchments where seven days' notice may be provided. Despite the above, the CCMA may give the parties a shorter notice period if the parties have agreed or reasonable circumstances require a shorter notice period.

An additional seven days must be provided, if notice of conciliation is sent by registered mail.

Rule 12 CCMA may seek to resolve dispute before conciliation

The CCMA may contact the parties by telephone or other means, prior to the commencement of the conciliation, to try to resolve the dispute without a formal hearing. This is called “pre-con” (pre-conciliation).

Rule 13 What happens if a party fails to attend at conciliation?

If a party fails who has referred a dispute fails to attend or to be represented at conciliation, the commissioner will decide whether to a) continue with the conciliation b) adjourn the conciliation to a later date within the 30-day period; or c) conclude the conciliation by issuing a certificate. In exercising his or her judgement, the conciliator will consider, amongst other things, whether the party has previously failed to attend a conciliation hearing in respect of the dispute, prejudice to the other party, and whether it is possible to hold the hearing in the absence of one or more of the parties.

Rule 14 How to determine whether a commissioner may conciliate

If a party claims that the CCMA does not have jurisdiction to deal with the matter, the commissioner will ask the referring party to prove that the CCMA has jurisdiction to conciliate the dispute.

Rule 14A Extension of the conciliation period in terms of Section 135 (2A)

In the absence of an agreement by the parties to extend the 30-day conciliation period, a party to the process or the conciliating commissioner may apply to the CCMA Director to extend the conciliation period. This application must be made on the prescribed form before the expiry of the 30-day conciliation period. The Director must consider, amongst other things, whether the extension may lead to resolution of the matter. The extension period may not be more than five days.

Rule 15 Issuing of a certificate in terms of Section 135(5)

A certificate will be issued at the end of the conciliation, stating whether the dispute has been resolved or not.

Rule 16 Conciliation proceedings may not be disclosed

Conciliation proceedings are private and confidential and are conducted on a without prejudice basis and no person may refer to anything said at the conciliation during subsequent proceedings, unless the parties agree in writing or as ordered to do so by a court of law. Only a court of law or a commissioner conducting an arbitration hearing may call a person (or a commissioner in the case of the court) as a witness in any subsequent proceedings in the CCMA or in any court, to give evidence about what happened during the conciliation hearing.

Rule 17 Conduct of con-arb in terms of Section 191(5A)

The CCMA must give (fourteen) 14 days' notice of the date of a con-arb hearing unless the parties agree to a shorter period or reasonable circumstances require a shorter period, for example if a party intends to leave the country.

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Objection to a con-arb is not permissible in disputes relating to the dismissal of an employee for any reason related to probation or an unfair labour practice relating to probation; or a dispute relating to a compliance order referred to the CCMA in terms of section 69(5) of the Basic Conditions of Employment Act 75 of 1997 (as amended by Act 7 of 2018) (BCEA); or a claim for failure by an employer to pay a worker or employee any amount owing in terms of the National Minimum Wage Act 9 of 2018 (NMWA), the BCEA, a contract of employment, a sectoral determination or a collective agreement referred to the CCMA in terms of section 73A of the BCEA.

In other matters, a party may object to a con-arb in writing at least seven (7) days before the scheduled date. If a party does not attend the hearing, the commissioner must commence with the arbitration immediately after issuing a certificate stating that the dispute remains unresolved. The commissioner may then decide whether to continue or adjourn proceedings to another date.

Rule 18 How to request arbitration

You have ninety (90) days after a certificate of non-resolution was issued to request arbitration. You need not do this if the matter is dealt with as a con-arb.

To make the request, you have to complete LRA Form 7.13, serve it on the other party, attach proof of service and deliver or send it to the CCMA.

If the request for arbitration is late, you need to apply for condonation (see Rule 9 read with Rule 31). The CCMA may refuse to process the referral if it is not signed (Rule 4) or no proof of service is attached (Rule 6), or, where applicable, an application for condonation is required.

Rule 19 When must the parties file statements?

The CCMA may order you to file a statement of your case. The statement of case must set out the main facts and legal issues related to these facts upon which you rely and must be delivered within the time-period specified by the commissioner. The other party may then deliver an answering statement.

Rule 20 When the parties must hold a pre-arbitration conference

The Convening Senior Commissioner, the Senior Commissioner in charge of a region or the presiding Commissioner may order the parties to hold a pre-arbitration conference or the parties may do so by agreement. This applies in matters where both parties are represented by a trade union, an employers' organisation, a legal practitioner and/or a candidate attorney. In a pre-arbitration conference the parties must try to agree on the issues specified in Rule 20(3) and file a minute signed

by both parties setting out the facts on which the parties agreed or disagreed.

Where the parties agree to hold the pre-trial conference, it must be held at least fourteen (14) days before the scheduled arbitration hearing and deliver a copy of the minute of the pre-trial conference to the appointed commissioner seven (7) days before the date of the arbitration hearing.

Rule 21 When must the CCMA notify parties of an arbitration?

The CCMA must give twenty one (21) days' notice of the date of an arbitration hearing unless the parties agree to a shorter period or reasonable circumstances require a shorter period, for example if a party intends to leave the country.

Rule 22 How to determine whether a commissioner may arbitrate

If during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the Commissioner must require the referring party to prove that the CCMA has jurisdiction to arbitrate the dispute.

Rule 23 How to postpone an arbitration?

The parties may agree in writing to postponement the arbitration hearing and send the agreement to the CCMA at least seven (7) days before the scheduled date.

In the absence of an agreement or where there is fewer than seven (7) days before the arbitration hearing, an application for postponement must be made in writing (see Rule 31) and the CCMA will decide whether to postpone the matter.

Rule 24 Where a conciliation or arbitration will take place

A dispute must be conciliated or arbitrated in the region (province) where the dispute arose or where the employer's principal place of business is located, unless a senior commissioner in the head office of the CCMA decides otherwise.

The CCMA in the region decides on the venue for conciliation or arbitration proceedings.

Rule 25 Representation before the CCMA

At conciliation and arbitration, a party may appear in person or be represented only by –

- i) if the party is an employer, a director or employee of that party, or if it is close corporation, by a member of that close corporation;
- ii) any member of that party's registered trade union or employers' organisation, or an office bearer or official as defined in the Labour Relations Act (LRA);

- iii) if the party is a registered trade union, any member of that trade union, or an office bearer or official as defined in the LRA and authorised to represent that party;
- iv) if the party is a registered employers' organisation, any director or employee of an employer that is a member of that employers' organisation or any official or office bearer, as defined in the LRA and authorised to represent that party.

A legal practitioner, a candidate attorney or an individual entitled to represent the party at conciliation is allowed to represent a party at unless the dispute being arbitrated is about dismissal for misconduct, ill health or poor performance (incapacity), or is referred in terms of section 69(5), 73 or 73A of the BCEA. In such cases the parties and the commissioner may agree to legal representation, or a party may apply to be represented following motivation on the basis of factors listed in Rule 25(1)(c). The commissioner will then decide whether to allow for such representation.

In addition, sub-rule (6) allows for an application to be made (Rule 31) by a party to allow a person, other than those referred to above, to represent a party at arbitration proceedings. The grounds for such an application are set out in sub-rule (6) (1) and need to be carefully motivated.

No person representing a party before the CCMA, other than a legal practitioner or a candidate attorney, may charge a fee or receive a financial benefit for agreeing to represent that party.

Rule 26 How to join or substitute parties in a case

The CCMA or a commissioner may at any stage before the conclusion of an arbitration or hearing, on own accord or on application, join persons as parties to the proceedings if their right to relief depends on the same questions of law and facts, the party to be joined has a substantial interest in the subject matter of the proceedings, or may be prejudicially affected by the outcome of the proceedings.

The CCMA may also, on application, substitute a party. A party may not be joined to a dispute unless that party has received notice of the application for conciliation.

Rule 27 How to correct the citation of a party

If a person has been incorrectly or defectively cited, for example the spelling of the company's name is incorrect or defective, the CCMA may on own accord, by consent of the parties or on application correct the defect or error. All parties must have right to conciliation though.

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Rule 28 When the Commission may consolidate disputes

The CCMA or a Commissioner may, of its own accord, by consent of the parties or on application and on notice to the parties concerned, consolidate more than one dispute. This will allow both disputes to be heard as part of one hearing. The grounds for this include that the relief sought in the different disputes depends on the determination of similar questions of law and fact, neither party will be substantially prejudiced and that the CCMA has jurisdiction to determine the disputes in question.

Rule 29 Disclosure of documents

A request for disclosure (handing over) of documents may be made after the request for arbitration has been made, but not less than fourteen (14) days before the hearing date. Such a request may be made by one of the parties, by agreement between the parties, or at the direction of the Commissioner. Once the request has been made, the other party has five (5) days in which to respond to the request.

Rule 30 What happens if a party fails to attend arbitration?

If the party that referred the case fails to attend arbitration, the commissioner may dismiss the matter or proceed to hear evidence of other party. If the other party does not attend, the commissioner may continue with the case in that party's absence or postpone the case to a later date.

Rule 31 How to bring an application

Any application, for example an application for condonation, rescission or postponement, must be in accordance with Rule 31.

The application must be brought at least fourteen (14) days before the hearing. The other party has five (5) days to respond and the applicant party has three (3) days to reply.

Rule 31A How to apply for picketing rules or the determination of disputes relating to picketing

An application for picketing rules or a dispute relating to the application or interpretation of a picketing agreement or picketing rules determined by a conciliating commissioner must be made on a LRA 7.11 application form and served on all parties to the dispute. Unless the parties agree otherwise, the CCMA must schedule the hearing within two (2) days of receiving the application form.

Rule 31B How to apply for the enforcement of written undertakings and compliance orders

An application to have a compliance order issued in terms of section 69(1) of the BCEA or a written undertaking secured in terms of section 68(1) of the BCEA made an arbitration award must be made on BCEA Form 15 and in compliance with this Rule. An employer may, subject to the provisions of the BCEA, object in writing to a written undertaking or compliance order an arbitration award within five (5) days from the date on which the application was served on the employer. The applicant party may deliver a reply within three (3) days from the day on which any objection is served on it. The CCMA may then either schedule the matter for a hearing or determine it on the papers.

Rule 32 How to apply to vary or rescind awards or rulings

In terms of section 144 of the LRA, an application for rescission or variation of an award or ruling may be made on the following grounds--

- the award or ruling was erroneously sought or erroneously made in your absence;
- there was an ambiguity or an obvious error;
- the award or ruling was granted as a result of a mistake common to the parties; and
- the award or ruling was made in the absence of any party, on good cause shown.

Rule 32 requires that the application be brought within 14 days of the date on which the party became aware of the award or ruling.

Rule 33 How to apply to refer a dismissal case to the Labour Court

A party may apply to have a case heard by the Labour Court instead of the CCMA. The application must be brought within ninety (90) days of the date on which a certificate has been issued that the dispute was not resolved or within fourteen (14) days of the date on which the other party has requested arbitration.

The application must state the grounds on which the applicant relies in support of the application. If the application is granted, the party who applied for the dispute to be referred to the Labour Court must refer the matter to the Labour Court in line with Rule 11 of the Labour Court Rules.

Rule 34 How to request an inquiry in terms of Section 188A

An employer may request the CCMA to hold an inquiry in terms of section 188A instead of a disciplinary inquiry at the workplace, by completing LRA Form 7.19.

The employee must agree to it by signing the LRA Form 7.19, unless the employee has agreed to it in his or her contract of employment or in

accordance with a collective agreement, in which case a copy of the contract or collective agreement must be attached.

The employer must pay the prescribed fee to the CCMA by bank guaranteed cheque or electronic transfer. Once the application and fee has been received, the CCMA will give the parties at least seven (7) days' notice of the commencement of the inquiry.

Rule 35 Condonation for failure to comply with the Rules and forms

The CCMA may condone any failure to comply with the Rules on good cause shown. The provisions of this Rule do not apply to Rule 25.

Rule 36 Recordings of Commission proceedings

The Commission must digitally record all processes except conciliations, unless otherwise stated in these Rules. You may request a copy of the record on payment of the relevant costs, where applicable.

Rule 37 How to have a subpoena issued

Any party to proceedings before the CCMA may request the CCMA to issue a *subpoena* for a witness to appear before the CCMA by completing LRA Form 7.16 together with a written motivation.

The LRA Form 7.16 must reach the CCMA at least 14 days prior to the hearing date and must be accompanied by a motivation why the evidence of the witness is necessary and proof that the prescribed witness fee and reasonable traveling costs and subsistence expenses have been paid.

A *subpoena* must be served on the witness at least seven (7) days prior to the hearing date. This can be undertaken by hand delivery, by registered mail, and by leaving a copy of it at the *subpoenaed* person's place of residence or place of business or employment, with a person who is apparently at least sixteen (16) years of age and is residing or employed there.

Rule 37A Expert witnesses

A party intending to call an expert witness such as a medical doctor or polygraph analyst, must give the other party seven (7) days' notice together with a summary of why the person is regarded to be an expert, the proposed evidence of the witness and the documents the expert will rely on.

Rule 38 Payment of witness fees

A person requesting the CCMA to issue a subpoena must pay the prescribed witness fee (currently R300.00 per day), unless the CCMA waived it in terms of section 142(7) (c) of the LRA, and the reasonable

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traveling costs and subsistence expenses. Proof of payment must accompany the request for a *subpoena*.

Rule 39 Order of costs in an arbitration

The commissioner may order a party to pay costs to the other party according to requirements of law and fairness.

If a party is not represented by a legal practitioner or candidate attorney, the commissioner may order the other party to pay the reasonable disbursements actually incurred of that party.

Legal fees may only be awarded if both parties were represented by a legal practitioner or candidate attorney.

Legal fees of R7000.00 (VAT inclusive) for the first day and R4700.00 (VAT inclusive) for each additional day of arbitration may be awarded. An award for costs in respect of a candidate attorney must be 50 percent of the amount set out in sub-rule (4).

Rule 40 Certification of arbitration awards

If the other party fails to comply with the award, the effected party may apply for the award to be certified in terms of section 143 of the LRA by completing LRA Form 7.18.

Once the award is certified, and if it is for payment of money, the Sheriff of the court in the Magisterial District where the employer party resides or conducts business may enforce the award through execution. Such money shall include the amount ordered to be paid in terms of the arbitration award, any award of costs, an arbitration fee charged in terms of section 140 (2) of the LRA, any interest on the amount set out in the award, and the Sheriff's costs permitted in terms of the Magistrate's Court Tariff for Sheriffs.

The CCMA may also recover its costs in situations where it financially assisted the party in whose favour the award was granted in the enforcement or execution thereof.

If the award orders the performance of an act other than the payment of money, such as reinstatement, the effected party may institute contempt proceedings in the Labour Court.

Rule 41A Payment of an arbitration fee issued in terms of section 140(2) of the LRA

An arbitrator can decide whether or not to order an arbitration fee in matters where the dismissal is only procedurally unfair. This fee is set out in the Commission's Tariff of Fees and is payable by the employer within fourteen (14) days of receipt of the award ordering payment of

such a fee. Payment may be made by a bank guaranteed cheque, delivered to any of the CCMA's offices, or by electronic transfer into the bank account of the CCMA.

