

ENFORCEMENT OF ARBITRATION AWARDS IN ACCORDANCE WITH SECTION 143 OF THE LABOUR RELATIONS ACT 66 OF 1995



INTRODUCTION

Section 143 of the Labour Relations Act 66 of 1995 (LRA) provides an effective and accessible way to enforce an arbitration award where the award has not been complied with. The award can be enforced as if it was an order of the Magistrate's Court, and the fees applicable will be on the Magistrate's Court scale.

THE LAW

Section 143(1) of the LRA reads:

"An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued."

Section 143(5) reads further:

"Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court."

The 2018 amendments to the Basic Conditions of Employment Act 75 of 1997 (BCEA) extend the enforcement function of the CCMA to include compliance orders issued by the Department of Labour and written undertakings made by employers to comply with provisions of the National Minimum Wage Act (includes the extended definition of "workers"), 2018, the Unemployment Insurance Act 30 of 1996, the Unemployment Insurance Contributions Act 4 of 2002 and the BCEA.

When a written undertaking and a compliance order has not been honoured, and application (compliance order) or request (written undertaking) may be made to the CCMA to

make the undertaking or order an arbitration award in terms of sections 68 and 73 respectively.

There is no longer a need for employees who have had awards issued in their favour to approach the Labour Court for a writ of execution in the event of employer's non-compliance with the award.

An arbitration award that orders the payment of a sum of money, e.g. compensation, must be enforced or executed as if it is an order of the Magistrate's Court.

Where an arbitration award orders the performance of an act other than the payment of money (e.g. reinstatement of an employee), any party to the award may, without further order, enforce it by way of contempt proceedings instituted at the Labour Court.

ASSISTANCE TO EMPLOYEES

The CCMA may assist employees who earn below the earnings threshold as set out in the BCEA, and who have had awards issued in their favour, but cannot afford the costs of enforcing or executing the awards (the sheriffs' fees).

Such assistance may be irrespective of whether the employees were represented by a trade union or a legal representative in the arbitration proceedings.

THE PROCEDURE

The procedure to be followed to enforce or execute the award is as follows:

- An employee who complains that an employer refuses to comply with the award issued, reports to a CCMA Regional (provincial) Office. Where an employee is not

able to access a CCMA office, he or she may apply for such assistance by means of post, fax or e-mail.

- The employee must complete the application for certification of awards form (LRA 7.18 form).
- A copy of the application must be served on the other party.
- The arbitration award will be considered for certification by the CCMA.
- Where the DoL is the applicant party, the written undertaking or compliance order will first be made an arbitration award before being certified and processed for enforcement.
- The CCMA will then submit the certified award and the completed LRA 7.18 Form to the Deputy Sheriff for enforcement.
- The Deputy Sheriff must then proceed to execute the order.

Where an arbitration award orders the performance of an act other than the payment of money, the certified award and the completed LRA 7.18 must be served on the Labour Court for contempt proceedings.

For the Court to make a finding of contempt of Court, it must be established beyond reasonable doubt that: (1) there was a refusal to comply with the order; (2) this refusal was wilful (deliberate); and (3) the deliberate refusal to comply must be *mala fide* (without justification).

RELEVANT LEGISLATION

- Labour Relations Act 66 of 1995, as amended.
- Basic Conditions of Employment Act 75 of 1997, as amended.