

# THE CCMA SURVIVAL GUIDE

SUCCESSFULLY NAVIGATE THE  
MINEFIELD OF SOUTH AFRICAN  
LABOUR LAW





**GREAT THINGS IN  
BUSINESS ARE  
NEVER DONE BY  
ONE PERSON.  
THEY'RE DONE BY A  
TEAM OF PEOPLE**

STEVE JOBS

# WHY THIS BOOKLET?

Since I started practicing Labour Law, I have established that relationships, whether between the employer and employee or employee and employee, can turn sour in a heartbeat.

I have also dealt with many employers and employees who in turn wish to settle a matter in an amiable way.

I do acknowledge that each and every matter pertaining to Labour Law has its own set of facts and needs to be dealt with in its own manner.

This booklet will serve the purpose of informing employers or employees of what to expect when dealing with the CCMA specifically.

Each and every client has questions, which they need answered. For this reason I have identified the main questions, and this booklet will seek to answer these questions to give the client a broad understanding of Labour Law.

Remember that no booklet will ever replace sound legal advice. When in doubt, please do not hesitate to contact our offices for assistance.

**Chante Mouton**  
BA (UJ), LLB UJ



## WHAT IS THE PURPOSE OF THE CCMA?

The CCMA was established with the main purpose to resolve various types of disputes that arise in the workplace. The CCMA has its own set of Rules, which need to be adhered to.

## WHEN DOES A MATTER GO TO THE CCMA?

When an employee feels aggrieved by a certain event that transpired in the workplace, he/she may refer the matter to the CCMA to be resolved.

When an employer feels aggrieved or requires certain assistance as a result of an event that transpired in the workplace, he/she may refer it to the CCMA to be resolved.



## DETERMINING JURISDICTION

It is important, before deciding to go to the CCMA, to determine whether the CCMA will have the jurisdiction to deal with the dispute, or whether the matter should be referred to a Bargaining Council. This may usually be established by looking at the salary advice of the employee.

If the matter has been referred to the incorrect forum, it can delay your matter and cause further costs to be incurred.

WHICH FORUMS ARE EMPOWERED TO DEAL  
WITH LABOUR MATTERS

In labour matters you may proceed in either the:

**CCMA / Bargaining  
Council**

**OR**

**Labour Court**

The Labour Relations Act, in most cases, specifies  
which forum should be approached



## TIME LIMITS TO ADHERE TO

The CCMA and Bargaining Councils impose strict time limits within which matters should be referred.



Unfair Dismissal	30 Days
Unfair Retrenchment	30 Days
Unfair Labour Practice	90 Days
Unfair Discrimination	6 Months

If a party does not refer a matter within the prescribed time, that party may apply for condonation.

Condonation is when the CCMA or Bargaining Council "forgives" the lateness of the referral and allows the matter to proceed. To be granted condonation, the following issues need to be ventilated:

1. The reasons for the lateness;
2. How many days the matter is late;
3. Whether there are good prospects of success in the matter;
4. Prejudice that would be suffered.

# DIFFERENCES BETWEEN CONCILIATION AND ARBITRATION

## Conciliation



### ROLE OF COMMISSIONER

Commissioner plays a minimal role and tries to facilitate settlement



### REFERRAL

Commenced by means of a Form 7.11



### OUTCOME OF PROCEEDINGS

A Settlement Agreement is signed if consensus is reached



### TIME-FRAME TO REFER

30 Days



### APPROACH

Co-operative



## Arbitration



Commissioner hears evidence and makes a final decision

Commenced by means of a Form 7.13

The Arbitrator will consider the evidence and issue a finding and award

90 Days after Conciliation has failed

Adversarial

## BENEFITS OF SETTLING AT CONCILIATION

1

### AVOID LEGAL COSTS

Settling at conciliation negates the need to incur further legal costs in Arbitration.

2

### SAVE TIME

Conciliation is the first step in resolving a labour dispute. If the matter is settled at this stage the matter is finalised.

3

### GET RID OF UNCERTAINTY

If parties settle at conciliation, they are in control of the outcome of the matter, whereas in arbitration there will always be a clear winner and loser.

Unfortunately, not all matters are capable of settlement at conciliation stage, and in these cases the matter would have to be referred to arbitration.



## PROCESS INVOLVED IN CONCILIATION

### STEP 1 - THE FORM 7.11

The matter is referred to the CCMA / Bargaining Council by means of the Form 7.11 being completed by the party referring the dispute. The Form 7.11 is delivered to the other party involved and the CCMA / Bargaining Council.

### STEP 2 - THE NOTICE OF SET DOWN

Once the CCMA / Bargaining Council has received the Form 7.11 they will allocate a date for conciliation to take place.

This conciliation date will usually be communicated to the parties by means of fax, e-mail and/or SMS.

### STEP 3 - CONCILIATION

The parties attend the offices of the CCMA / Bargaining Council on the allocated date.

A Commissioner will try to assist the parties to reach settlement by discussing the relevant issues with the parties. If the parties reach an agreement, a Settlement Agreement is prepared and signed. Attorneys are not allowed to attend conciliation with either of the parties and are usually requested to wait outside.

If the matter is not settled, a Non-Conciliation Certificate is issued and the matter must then proceed to Arbitration.



## PROCESS INVOLVED IN ARBITRATION

### STEP 1 - THE FORM 7.13

The matter is referred to arbitration by the completion and delivery of a Form 7.13 within 90 days from the date on which conciliation has failed.

### STEP 2 - THE NOTICE OF SET DOWN

Once the CCMA / Bargaining Council has received the Form 7.13 they will allocate a date for arbitration to take place.

This arbitration date will usually be communicated to the parties by means of fax, e-mail and/or SMS.

### STEP 3 - ARBITRATION

The parties attend the offices of the CCMA / Bargaining Council on the allocated date.

A Commissioner will conduct a hearing wherein he or she will hear evidence from all parties involved in the dispute. Once the Commissioner has heard all the evidence an award will be issued by the CCMA / Bargaining Council. This award will be binding on all parties.

## PROCESS INVOLVED IN ARBITRATION HEARING

### GENERAL

Each party involved in the dispute will have an opportunity to testify and call witnesses to prove their case. Every person testifying at an arbitration hearing will be subjected to three phases of examination, namely examination in chief, cross-examination and re-examination.

### EXAMINATION IN CHIEF

The first phase of testimony is known as examination in chief. In this phase, the witness will be asked questions by the attorney acting for the party on whose behalf the witness is testifying.

In this phase of examination, the attorney will ask questions and extract answers to set out the basis of their client's case.

### CROSS EXAMINATION

In this phase of questioning the opposing attorney will subject the witness to extensive questioning to test the validity and truthfulness of their testimony.

### RE-EXAMINATION

The attorney acting for the party who called the witness has one more opportunity to question the witness. The purpose of this phase of questioning is merely to elucidate on issues raised in cross examination. No further facts may be introduced in re-examination.

### CLOSING ARGUMENT

Both parties will have an opportunity to present argument and submissions on the evidence that has been presented in an attempt to persuade the Commissioner to find in their favour.



## GENERAL ISSUES

### DEFAULT AWARDS

A Default Award is issued against a party if they fail to attend arbitration. This means that the Commissioner will only hear the evidence of the attending party and make a ruling in his/her favour, depending on the evidence and facts.

### RESCISSION APPLICATIONS:

A Rescission Application would be launched when a default award was granted. When applying for a rescission, the party must prove that he was unaware that the matter was set down on the specific date, or he/she must be able to prove that he/she was unable to attend due to valid reasons.

The party applying for the Rescission would have to show good cause as to why the rescission should be granted. If a party institutes the Rescission Application, that party would have to provide details as to their absence at the Arbitration and provide a full explanation to show why they were not in willful default and the reasons why that party would have good prospects of succeeding in the matter.

It is important to note that a Rescission Application can be opposed or unopposed. If a party wishes to oppose the rescission they must do it within the time periods as prescribed.

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**CONTACT VERMEULEN ATTORNEYS FOR MORE  
INFORMATION**

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