

THE PROVISIONAL LIST OF ISSUES TO BE DEALT WITH DURING THE UPCOMING HALF-DAY CCMA RULES WORKSHOP IS OUT

- * the alignment of the new rules with the Electronic Communications and Transaction Act
- * the alignment of the new rules with the rules of the labour court
- * despite the CCMA offices only being operational from Monday to Friday, the faxing or emailing to the CCMA on any day of the week and any time of the day
- * eliminating the confusion in respect of the service requirements set out in rule 5 of the CCMA rule and other service requirements set out elsewhere in the CCMA rules, e.g. rule 37
- * the amended rule 5(1)(a)(iii) relaxing the burden of proof to be satisfied when service takes place on a person who appears to be at least 16 years' old and in charge of the person's place of residence, business or place of employment
- * reconciling the methods of service contained in rule 5(1) with the specific methods contained in rule 5(2) of the CCMA rules
- * the amendment to the rules ensuring mandatory attendance at conciliation and arbitration in the absence of a notice transmitted via post, fax, email or personal service but by sms
- * proving that a document was served by sms
- * limiting the filing of documents by post and fax to CCMA offices and excluding offices of the Department of Labour in this regard
- * the compatibility required when filing documents by email to the CCMA
- * the change to the timelines applicable when service takes place by registered post
- * the consequences of the failure to comply with the CCMA's or a specific appointed commissioner's request for a party to file original documents
- * the content of the amended LRA Form 7.11 and the incorporation of such form into various rules of the CCMA, including rule 10
- * dealing with a referral document of a dispute that is defective
- * the shorter notification period for set down of matters of mutual interest and large scale retrenchments
- * the discretion of the CCMA to give parties a shorter notice period than contained in rule 11(1) of the CCMA rules

- * the calculation of 'an additional seven (7) days' to be provided if notice of conciliation is given by registered post
- * the process to be adopted by the CCMA to resolve disputes before conciliation
- * the incorrect interpretation that rule 13 only applies in circumstances where a matter had been referred on behalf of a party
- * the clarification that the party is not in default when an authorised representative attends conciliation on such party's behalf
- * the amended jurisdiction of a conciliating commissioner to deal with jurisdictional issues at conciliation, irrespective as to whether or not evidence is required
- * the extension of the conciliation period in terms of s135(2B) of the LRA, introduced by the LRA Amendment Act 2018
- * the newly-introduced LRA Form 7.25 to be attached to the certificate of outcome
- * the incorporation of the principles formulated by the constitutional court in *September and Others v CMI Business Enterprise* into the amended rule 16
- * the distinction at conciliation between the process relating to settlement negotiations and the process relating to all other facts or issues unrelated to settlement negotiations
- * the true meaning of the following phrase 'no person may refer to anything said at conciliation proceedings'
- * the true meaning of the following phrase: 'no person, including a commissioner, may be called as a witness during any subsequent proceedings'
- * the consequences of a mandatory con-arb process in respect of disputes pertaining to underpayment in terms of s73A of the BCEA Amendment Act 2018 as well as compliance orders in terms of such amendment Act
- * the alignment of rule 17(4) with s191(5A)(c) of the LRA relating to the peremptory commencement with arbitration immediately after certifying that the dispute remains unresolved, where no objection is allowed or filed
- * the creation of the newly-inserted rule 17(4)(c) in line with the principles set out by the labour court in *Pioneer Foods (Pty) Ltd t/a Sasko Milling v CCMA and Others*
- * the new principles regulating a request for arbitration

- * the new principles regulating the filing of statements
- * the new principles contained in the amendments to rule 20 regulating the holding of a pre-arbitration conference with the object of ensuring greater reliance on this process, as of 1 January 2019
- * the extended circumstances upon which the holding of a pre-arbitration conference will be compulsory
- * the newly-introduced rule 20(2) indicating the time period within which such a conference must take place before the scheduled date of arbitration
- * the amended rule 20(6) regulating the filing of a pre-arbitration minute so allowing the relevant commissioner to properly deal with the issues raised
- * the amended rule 20(7)(b) making provision for the removal by the relevant commissioner, upon considering a pre-arbitration minute, of the matter from the roll and the re-enrolment thereof at a later date
- * the newly-inserted rule 20(8) providing for the consequences if the parties fail to comply with a directive to hold a pre-arbitration conference and/or to file minutes
- * the deletion in rule 21 dealing with the notification by the CCMA of an arbitration
- * the consequences of a commissioner requiring a referring party to prove that the CCMA has jurisdiction to arbitrate a dispute
- * the amendments to rule 23 intending to clarify when a postponement application must be brought to the CCMA
- * the changes to the formula to be applied as to which regional office of the CCMA must conciliate or arbitrate a dispute, taking into account the employer's principal place of business
- * the amendment to rule 25(1)(a)(i) of the CCMA rules relating to a close corporation
- * the implications that an office bearer, official or member of a party's registered trade union or registered employer's organisation must comply with the definition as contained in the LRA
- * the implication of the newly-created requirement that, if the party is a registered trade union or a registered employers' organisation, any member, office bearer or official of such institution must, apart from complying with the statutory definition in the LRA, also be authorised to execute such representation
- * the amended representative status of candidate attorneys

- * the extended prohibition against legal representation covering compliance orders and amounts due in terms of the BCEA
- * the newly-created principles regulating representation and facilitation of large scale retrenchments in terms of s189A(3) of the LRA in order to avoid a number of inconsistencies as to decisions made with reference to representation of parties during such process
- * in terms of rule 25(1)(f) of the CCMA rules, the CCMA no longer has a discretion to allow representatives, other than legal practitioners, to charge fees for representing parties before the CCMA
- * a new provision has been inserted to permit representation by an employee of the Department of Labour, giving effect to the BCEA Amendment Act 2018
- * for the first time, the CCMA has a discretion, on application and subject to certain conditions to allow a party to be represented by any other person than referred to in rule 25(1) in any arbitration proceedings before the CCMA, apparently to give effect to the principles formulated by the labour court in *CWAO and Others v CCMA*
- * the amendment to the rules governing joinder applications so as to align same with the relevant principles of case law as well as the relevant rules of the labour court
- * the amended powers of the CCMA or the commissioner to make an order for joinder
- * the amendment to rule 28 clarifying the legal requirements for the consolidation of various disputes, with reference to case law principles
- * the amended provisions permitting the CCMA or a convening commissioner to consolidate various disputes under specific circumstances and taking into account specific factors like the balance of convenience
- * the amendments to rule 29 ensuring that parties are placed in possession of all documents intended to be used at arbitration within five days of receipt of the request for disclosure, thus limiting the need to postpone matters so as to allow parties to obtain documents sought or to consider documents presented on the day of the hearing
- * the correct interpretation of the failure of a party to attend arbitration proceedings
- * the timelines applicable to applications in respect of variations or rescissions
- * the newly-created rule 31A read with annexure 'A' to LRA Form 7.11 allowing for picketing rules to be dealt with on an urgent basis

- * the process, requirements and timelines relevant to applications for undertakings and compliance orders to be made arbitration awards in terms of s68(3) and s73(1) of the BCEA, read with the newly-created BCEA Form 15
- * by means of the newly-created rule 31(6) aligning referrals of a dismissal dispute to the labour court with rule 11 of the labour court rules
- * reconciling the jurisdiction of the CCMA or a commissioner to condone a failure to comply with a provision of the rules on good cause shown with the requirements relating to representation
- * reconciling the requirements of the CCMA rules relating to the issuing of a subpoena and the service of same with regulation 3 of the LRA
- * the amendment to rule 39(2) making individuals or applicants appearing in person eligible for costs orders in their favour, albeit it limited to disbursements relevant to the matter
- * the increase in the maximum legal fees that may be awarded to a party represented by a legal practitioner in arbitration proceedings
- * the awarding of costs in respect of a candidate attorney
- * the deletion of the referral of a dispute relating to an award of costs to the CCMA and empowering the labour court to deal with such matter in terms of s145 of the LRA
- * the amendment to rule 40 empowering a sheriff to collect interest on monies owed in terms of an award as well as enforcement or execution costs and same to be collected directly from the defaulting party
- * the amendments intended to enable the CCMA to legally recover monies spent in assisting users with the execution of awards so as to ensure that such costs, with interest, are to be collected directly from the defaulting party
- * the newly-created rule 40A providing for the automatic payment of arbitration costs ordered in terms of s140 of the LRA without the CCMA having to actively collect same