
 RULE 14

- (d) **Collective Agreement:** s213 of the LRA defines ‘collective agreement’ to mean a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade union, on the one hand, and, on the other hand:
- (i) one or more employers;
 - (ii) one or more registered employers’ organisations; or
 - (iii) one or more employers and one or more registered employers’ organisations.

In terms of s23 of the LRA, the legal effect of a collective agreement is that it binds:

- (a) the parties to the collective agreement – s23(1)(a);
- (b) each party to the collective agreement and the members of every other party to the collective agreement, insofar as the provisions are applicable between them – s23(1)(b);
- (c) the members of a registered trade union and the employers who are members of a registered employers’ organisation that are party to the collective agreement if the collective agreement regulates:
 - (i) terms and conditions of employment; or
 - (ii) the conduct of employers in relation to their employees or the conduct of employees in relation to their employers (s23(1)(c)); and
- (d) employees who are not members of a registered trade union or trade unions party to the agreement if -
 - (i) the employees are identified in the agreement;

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- (b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
 - (c) the failure or refusal by an employer to reinstate or re-employ an employee in terms of an agreement; and
 - (d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 26 of 2000, on account of the employee having made a protected disclosure defined in that Act.’

- (ii) the agreement expressly binds the employees; and
- (iii) the trade union or trade unions have as their members the majority of employees employed by the employer in the workplace (23(1)(d)).³³

In terms of s23(2) of the LRA, a collective agreement binds for the whole period of the collective agreement every person bound in terms of s23(1)(c) of the LRA who was a member at the time it became binding, or who became a member after it became binding, whether or not that person continues to be a member of the registered trade union or registered employers' organisation for the duration of the collective agreement.

In terms of s24(1) of the LRA, every collective agreement, excluding an agency shop agreement (concluded in terms of s25 of the LRA) or a closed shop agreement (concluded in terms of s26 of the LRA) or a settlement agreement³⁴ (contemplated in either s142A or s158(1)(c) of the LRA), must provide for a procedure to resolve any dispute about the interpretation or application of the collective agreement. This procedure must first require the parties to attempt to resolve the dispute through conciliation and, if the dispute remains unresolved, to resolve it through arbitration.

In terms of s24(2) of the LRA, if there is a dispute about the interpretation or application of a collective agreement, any party to the dispute may refer the dispute in writing to the CCMA if:

³³ The right of an employer and a majority trade union to extend a collective agreement to employees who are not members of a registered trade union party to such agreement was fully canvassed and approved in the *AMCU v Chamber of Mines acting in its own name and obo Harmony Gold Mining Co (Pty) Ltd and Others* (2017) 38 ILJ 831 (CC); (2017) 28 SALLR 1 (CC). See further *National Union of Metal Workers of South Africa v Bader Bop (Pty) Ltd* 2003 (3) SA 513 (CC); (2003) (2) BCLR 182 (CC)

³⁴ In respect of settlement agreements, the following principles are furthermore of relevance:

1. if a representative is signing a settlement agreement on behalf of a party it has to be established whether the representative has the necessary authority to represent the party and, furthermore, that such representative has obtained the consent of the party to sign such agreement – an agreement entered into without the required authority is invalid: *Mavundla and Others v Vulpine Investments Ltd t/a Keg and Thistle and Others* (2000) 21 ILJ 2280 (LC); [2000] 9 BLLR 1060 (LC);
2. an employee who unreservedly accepts the employer's settlement offer abandons his or her right to pursue the dispute further – *Naidu v Ackermans (Pty) Ltd* [2000] 9 BLLR 1068 (LC); *Van As v African Bank Ltd* [2005] 3 BLLR 304 (W); and
3. an employer is obliged to deduct tax from the amount payable in terms of a settlement agreement, in accordance with a tax directive so issued by the South African Revenue Service ('SARS') – *Shellard Media (Pty) Ltd v Barnard* [2000] 11 BLLR 1359 (LC)

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- (a) the collective agreement does not provide for a procedure as required by s24(1) of the LRA;
- (b) the procedure provided for in the collective agreement is not operative; or
- (c) any party to the collective agreement has frustrated the resolution of the dispute in terms of the collective agreement.

In terms of s147(1)(a) of the LRA, if a dispute has been referred to the CCMA about the interpretation or application of a collective agreement, the CCMA may:

- (i) refer the dispute for resolution in terms of the procedures provided for in the collective agreement; or
- (ii) appoint a commissioner or, if one has been appointed, to confirm the appointment of the commissioner, to resolve the dispute in terms of the LRA.

In terms of s147(1)(b) of the LRA, the CCMA may charge the parties to a collective agreement a fee for performing the dispute-resolution functions if their collective agreement does not provide a procedure as required in s24(1) of the LRA or the procedure provided for in the said collective agreement is not operative. Furthermore, in terms of s147(1)(c) of the LRA, the CCMA may charge a party to a collective agreement a fee if that party has frustrated the resolution of the dispute.

- (e) **Council jurisdiction:**³⁵ the parties to a dispute must not be subject to a bargaining council that has jurisdiction.³⁶

In terms of s147(2)(a) of the LRA, if at any stage after a dispute has been referred to the CCMA it becomes apparent

³⁵ In short, where a bargaining council and not the CCMA has jurisdiction in respect of a dispute, the CCMA must make a ruling on whether or not to refer the dispute to the relevant bargaining council for resolution or, alternatively, whether the CCMA would assume jurisdiction – *Happy Qibe v Joy Global Africa Z (Pty) Ltd and Others* (2015) 36 ILJ 1283 (LAC); [2015] 4 BLLR 415 (LAC)

³⁶ *Cadema Industries (Pty) Ltd v Bulbring NO and Others* (2005) 26 ILJ 1049 (LC) where the court reviewed and set aside an award handed down in arbitration proceedings conducted under the auspices of the National Bargaining Council for the Clothing Manufacturing Industry on the basis that the employer alleged an operational requirements dismissal and the main agreement reserves such dismissal dispute for adjudication by the labour court