

Short notes on:

Condonation Applications at the CCMA- What Employers should know

Introduction

The Commission for Conciliation, Mediation and Arbitration (hereafter referred to as “CCMA”) was established so that Employees will have a forum whereby they can refer their disputes to. The CCMA would then attempt by conciliating, mediating and arbitrating to resolve the dispute between the Employees and their Employers. The CCMA Rules determine the time frames within which disputes may be referred to it for adjudication. Should the Employees refer their disputes outside of these time frames, then the Employees must apply for condonation at the CCMA before the merits of their matter will be considered.

Timeframes to refer disputes to the CCMA

Section 191 of the Labour Relations Act, 66 of 1995 (hereafter referred to as “LRA”), as amended, determines the time frames within which Employees must refer disputes pertaining to alleged unfair dismissals and unfair labour practices. An Employee must refer their alleged unfair dismissal to the CCMA within 30 (thirty) days in accordance with Section 191(1)(b)(i) of the LRA. Should the Employee’s dispute relate to an alleged unfair labour practice, then the Employee has 90 (ninety) days to refer their dispute to the CCMA in accordance with Section 191(1)(b)(ii) of the LRA. If the Employee fails to refer their dispute within the set time frames, then the Employee must apply for condonation of their late referral.

What does condonation mean and how does it work?

Condonation means that the Employee is seeking the permission of the CCMA for the late referral of their dispute. The Employee must complete an Application supported by an affidavit stating the reasons why their referral is late. The Commissioner at the CCMA should then hear their Application and determine if the Employees’ lateness should be condoned or not. In accordance with Rule 9(3) of the Rules for the Conduct of Proceedings before the CCMA, the Employee must clearly state the degree of lateness, the reasons for their lateness, prospects of success, the prejudice they will suffer should condonation be refused, the importance of the matter and any other information that may be important to take into consideration. The Employee must therefore show good cause as to why condonation should be granted. The Employee must send their Application to the Employer prior to the matter being heard by a CCMA Commissioner.

What should Employers do?

The Employer must respond to the Employee's Application within 14 (fourteen) days of receipt thereof. An affidavit stating reasons why the Employee's Application is being opposed must then be submitted by the Employer. The affidavit must contain the information that the Employer is using to illustrate that the Employee did not provide plausible and reasonable reasons for his/her late referral. The affidavit must rebut and/or refute any evidence that the Employee is submitting that are contrary to what transpired. The Employer may for example mention the following: the Employee's length of service; disciplinary record; if a Disciplinary Hearing was held and/or if the Employee was dismissed or not. The opposing affidavit must be sent to the Employee as well as the CCMA. Service can be effected via email, registered post, fax and/or personal service. If the Employer does not oppose the Application, then the Application will be unopposed.

CCMA Process

The CCMA must then set the matter down to be heard by a Commissioner. The CCMA must issue a Notice of Set Down to both Parties indicating the date and time when the matter will be heard. This process is called an *In Limine*. Both the Employee and Employer will then get an opportunity to state their respective cases verbally before the Commissioner, on the date as indicated on the Notice of Set Down. Legal Representation is allowed during this process. The Commissioner will consider the verbal and written submissions. The Commissioner will issue a Ruling indicating that condonation is either granted or refused. This will usually occur within 14 (fourteen) days after the matter was heard.

What does it mean if condonation is refused?

If condonation is not granted, then it will be the end of the matter at the CCMA. Should the Employee want to take this further, he or she will have to apply for review of the Commissioner's Ruling at the Labour Court. This must be done within 6 (six) weeks of receipt of the said Ruling.

What does it mean if condonation is granted?

Should the Employee's lateness be condoned, the matter will proceed at the CCMA at a later stage. The matter will then be set down for a "Con/Arb". This means that Conciliation and then Arbitration will proceed on the same day as indicated on the Notice of Set Down. Both Parties must present their case by calling witnesses and using documentary evidence during the arbitration.

Conclusion

Employers should therefore not ignore any correspondence received from Employees, former Employees and/or the CCMA. It is important to oppose Applications seeking condonation. Should the matter be unopposed condonation will be granted and the matter will then proceed.

Contact SchoemanLaw Inc today for expert advice on all Employment-related matters. We can assist with the drafting opposing papers for Applications, representation at the Condonation proceedings at the CCMA. We can also chair Disciplinary Hearings and draft Disciplinary Codes and Policies. We also provide training to Employers to help ease their burden so that they can focus on running their businesses.

