

Unlocking Labour Laws

Ditsela recently held a labour law conference at which unionists asked a number of useful questions. The **Commission for Conciliation, Mediation and Arbitration (CCMA)** answered these questions.

What is the principle aim of the CCMA?

The CCMA is a labour dispute resolution body set up in terms of the Labour Relations Act 66 of 1995 (LRA).

The main aim of the CCMA is to promote social justice and fairness in the workplace in accordance with the law. It aims to deliver a user-friendly, inexpensive, quality dispute management and dispute resolution service. The service should be delivered with speed.

The CCMA has compulsory and discretionary (can take up according to its own judgement) functions set out in the LRA. Its compulsory LRA functions are to:

- conciliate workplace disputes
- arbitrate certain disputes that remain unresolved after conciliation
- establish picketing rules
- facilitate the establishment of workplace forums and statutory councils
- compile and publish information and statistics about its activities (see article 'Labour law compliance in agriculture: Surprising results')
- consider applications for accreditation and subsidy by bargaining councils and private agencies

- provide support for the Essential Services Committee.
- The CCMA's discretionary functions in the LRA are to:
- supervise ballots for unions and employer organisations
 - provide training and information relating to the objectives of the LRA
 - advise a party to a dispute about the procedures to follow
 - offer to resolve a dispute that has not been referred to the CCMA
 - publish guidelines on any aspect of the LRA and make rules.

How much will it cost to take a matter to the CCMA? For example, the South African Transport & Allied Workers Union recently spent R7 000 to get seven tapes transcribed.

The CCMA's primary services are generally free to the public. The only cost involved on the referring party's side is for faxing or mailing the referral forms to the other party.

Under exceptional circumstances the CCMA will charge fees for its dispute resolution work where labour laws allow it. These are:

- When conducting, overseeing or scrutinising an election or ballot at the request of a registered

trade union or employers' organisation. The fee is between R750 and R1 000 for each day or part thereof.

- When asked by employees, employers, registered trade unions, registered federation of trade unions, federations of employers' organisations or councils to provide advice or training relating to:
 - establishing collective bargaining structures
 - designing, setting up, and electing workplace forums and creating deadlock-breaking mechanisms
 - the functioning of workplace forums
 - preventing and resolving disputes and employee grievances
 - disciplinary procedures
 - procedures in relation to dismissals
 - the process of restructuring the workplace
 - affirmative action and equal opportunity programmes
 - sexual harassment in the workplace.

The fee is between R750 and R1 500 for each day or part thereof. The CCMA may charge an employer with an arbitration fee in

dismissal matters relating to conduct or capacity where the commissioner finds that a dismissal is procedurally unfair in terms of s140(2), in addition to the provisions of s194(1).

The CCMA may charge R750 to R2 000 for each day or part thereof when resolving a dispute about the interpretation of a collective agreement when:

- the collective agreement does not provide a procedure for resolving that dispute
- the procedure provided in the collective agreement is not operative
- a party to a collective agreement has frustrated the resolution of the dispute
- resolving a dispute between parties to a council if the council's dispute resolution procedures are not operative
- resolving a dispute between parties to a collective agreement where they use an accredited agency whose dispute resolution procedures are not operative.

The CCMA records arbitration proceedings and the cost for dubbing tapes is R15 for the first tape and R6 for every tape thereafter. The CCMA does not have the facility to transcribe recordings. External independent service providers offer this service and the CCMA has no control over their prices.

When does a commissioner give a cost order against people and why?

A cost order refers to an order by a commissioner for the party to pay the other party for expenses incurred in resolving the dispute through the CCMA. For example: legal, subsistence or travelling costs.

In terms of s138 of the LRA and CCMA Rules parties have a right to

request the commissioner to award a cost order against the other party if they believe it has wasted their time, for example by referring a trivial matter or behaving in a way to annoy the other party.

CCMA commissioners may not include an order for costs in an arbitration award unless a party or its representative conducted the case in a way that lacked seriousness, or proceeded with a dispute without sufficient grounds in order to annoy the other party.

No loss of professional earnings can be claimed from the CCMA, and the CCMA will pay witness fees if the witness was called by the CCMA.

What cases should go to the CCMA and what cases to other forums such as bargaining councils?

Examples of jurisdiction:

- Disputes over non-payment of salaries or wages and unemployment records are handled by the Department of Labour.
- The CCMA will assist in disputes covered by collective agreements only if the agreement does not mention a dispute resolution route; or if the other party frustrates the resolution of the dispute or the procedure in an agreement is not operative.
- Disputes covered by a private dispute resolution body must be dealt with by this body.
- In disputes involving independent contractors, the CCMA will only cover employees as defined in the LRA.

The contract of the independent contractor is characterised by one person hiring another person to do a specific piece of work. The person letting out the work is seen

as the principal and the person doing the work is seen as the agent. It is not a contract of employment, but a contract relating to the performance of a certain piece of work.

Another feature of the contract of an independent contractor is that there is far less control by the principal over the agent (contractor) than an employer has over the worker.

As such, the Labour Relations Act and the Basic Conditions of Employment Act do not cover independent contractors.

In sectors that have bargaining councils employees must refer their cases to the relevant council and not the CCMA. The council is an equivalent of the CCMA and is set up to deal with disputes in a particular sector or industry. The CCMA accredits, subsidises and provides training to councils.

As the first step in a dispute referral process the CCMA screens for jurisdiction at the front desk and then refers parties to the relevant body. However, the CCMA has a right to assume jurisdiction over a case even where there is a bargaining council in some instances.

What does a worker do when s/he cannot easily access the CCMA in remote, rural areas?

In areas where the CCMA offices are not easily within reach, in some cases the CCMA has opened satellite offices. Examples of some CCMA satellite offices are Richards Bay, Pietermaritzburg and East London. In other areas parties can go to the Department of Labour (DoL) offices or Labour Centres where they can get assistance on CCMA matters. Hearings are also conducted from DoL offices to save people the trouble of travelling long distances.