

The **CCMA** (Commission for Conciliation, Mediation and Arbitration) is an independent body established by law to carry out a range of dispute resolution and prevention functions. The CCMA's vision is to promote social justice and economic growth through the transformation of workplace relations.

### What does the CCMA do?

The CCMA:

- Conciliates workplace disputes;
- Arbitrates disputes that remain unresolved after conciliation;
- Offers advice and training on a variety of subjects, including:
  - how best to process cases and use the CCMA's dispute resolution processes;
  - model workplace procedures and their application;
  - resolution of workplace conflict;
  - establishment of collective bargaining structures, designing and establishing workplace forums, employment equity programmes,
  - workplace restructuring;
- May offer to resolve disputes prior to referral to the CCMA in certain circumstances;
- Compiles and publishes information and statistics about its activities;
- Considers applications for accreditation and subsidy of bargaining councils and private agencies.

### When would I use the CCMA?

If you are an employee in dispute with your employer, or vice versa, over a matter such as:

- Freedom of association
  - Labour Relations Act (LRA) s. 9(3);
- Organisational rights
  - LRA s. 22(3);
- Collective agreements
  - LRA s. 24(4);
- Mutual interest issues
  - LRA s. 64;
- Unfair dismissals & Unfair labour practices
  - LRA s. 191(4);
- Unfair discrimination
  - EEA s. 10.

A trade union or employers organisation may also initiate this action.

### Things to do before referring a dispute to the CCMA

- Follow and complete all internal company procedures aimed at resolving workplace disputes;
- Ensure that you have met all the legal requirements before referring the dispute;
- First determine the strengths of your case if it is a dismissal

dispute and avoid referring disputes that have no strengths. You may want to discuss your matter with a union official or ask a university law clinic for advice.

- Consider whether your dispute should come to the CCMA and refer it appropriately.

Examples of common jurisdictional issues are:

- Disputes over non-payment of salaries / wages and unemployment records – these are handled by the Department of Labour;
- Disputes covered by collective agreements - the CCMA does not have power to deal with such cases;
- Disputes covered by a bargaining council or a private dispute resolution body;
- Disputes involving independent contractors- the CCMA only covers employees as defined in the LRA.

### How do I refer a dispute to the CCMA?

If it is a dismissal dispute, make sure you complete the required forms and refer your dispute to the CCMA for conciliation within 30 days of the date of dismissal or, if it is a later date, within 30 days of the Employer finally deciding to dismiss you or uphold your dismissal.

If it is an unfair labour practice dispute, refer your dispute to the CCMA within 90 days of the unfair labour practice or within 90 days of you becoming aware of what you believe is an unfair labour practice.

The 30 or 90 days are calculated by counting all days, including weekends and public holidays. Ensure that you refer your case in time.

Complete and serve the CCMA referral form (LRA 7.11) correctly. You may ask your nearest CCMA office to help you complete the form.

### How to serve and file the CCMA referral form

The completed CCMA referral form must first be sent to the other party. This can be done in the following ways:

- By handing a copy of the form to the other party;
- By faxing the form to the other party;
- By sending a copy of the form to the address of the other party by registered mail.

When filing the referral form with the CCMA, proof that you have sent the form to the other party must be attached. This proof can consist of:

- If hand delivered – a copy of the receipt signed by or on behalf of the other party, which must include the name and title of the person who received the form and the place, time and date of receipt;

- If faxed – a copy of the fax transmission report showing that all the pages of the form were faxed to the other party;
- If sent by registered post – a copy of the registered mail slip.

### Processes conducted by the CCMA

**Pre-conciliation:** This is an informal telephonic hearing. A commissioner will contact the parties and will try to resolve the matter telephonically.

**Conciliation:** A conciliation hearing is a process where a commissioner (or a panelist in the case of a bargaining council or agency) meets with the parties in a dispute and explores ways to settle the dispute by agreement.

**Arbitration:** Arbitration is a more formal process than conciliation. The commissioner investigates the demands and counter demands of both parties and decides on a final settlement in the form of an arbitration award. The award is imposed on the parties after hearing the evidence. The award is legally binding on both parties.

**Con-arb:** The con-arb process is a two stage process. The first stage of the process is the conciliation process (explained above). Should the matter not be resolved in conciliation, the arbitration stage proceeds immediately thereafter. Parties to a con-arb are therefore advised to attend the hearing with all their witnesses and the documentary evidence they will need to prove their case. A party to a con-arb process may object to the con-arb hearing by filing or sending a letter to the CCMA and the other party stating that they object to the con-arb process. This objection must be delivered 7 days before the hearing.

### What to expect at a conciliation hearing or pre-conciliation

Conciliation is a private and confidential informal process. An independent commissioner assists the disputing parties to reach an agreement. It is a quick and inexpensive way of settling disputes.

During the process, parties are allowed to share information and suggest ways of settling the dispute themselves. The commissioner may also suggest and explore settlement ideas.

In a conciliation hearing you may attend or be represented only by:

- a director or employee of that party; or
- any member, office bearer or official of your registered trade union or employers organisation.

You cannot be represented by a consultant or an attorney at conciliation.

The CCMA might first try to resolve the issue by telephone – be prepared to participate in a telephonic conciliation.

### What to expect at an arbitration or con-arb hearing

Arbitration is a more formal process. The commissioner makes a decision on the outcome of the dispute. This decision is given to the parties in writing in the form of an arbitration award. The award is made after hearing evidence from the parties, and is binding.

Prior to the arbitration hearing, prepare the evidence you will lead. Decide which issues are in dispute, which issues are not and the relief you want. Put together all the important documents and make copies for the arbitrator and the other party.

At the arbitration hearing you may attend in person or be represented only by a legal practitioner; a director or employee of the party; or any member, office bearer or official of your registered trade union or registered employers' organisation.

If the dispute is about the fairness of a dismissal, the parties may not be represented by a legal practitioner unless the commissioner and all other parties agree, or the commissioner decides that it would not be fair to expect a party to deal with the dispute without legal representation.

During the process, you and the other party will be allowed to call witnesses and cross-examine each other's witnesses.

Con-Arb means that the conciliation and arbitration are held together, with the arbitration stage following immediately after the conciliation stage of the process. Therefore, if a con-arb has been scheduled, the arbitration hearing will be held immediately after the conciliation, without you having to fill in a separate CCMA form requesting arbitration.

If a con-arb has not been scheduled, and settlement is not reached at the conciliation hearing and you want to continue with your case, you need to complete the CCMA referral form requesting arbitration.

- A con-arb will always be scheduled if an employee on probation wants to refer a dismissal or unfair labour practice dispute.

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# CCMA

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'Revolutionising Workplace Relations'