

The art of conciliation

By Anneline Scriven, senior legal advisor, LWO Employers Organisation

The Commission for Conciliation, Mediation and Arbitration (CCMA) in South Africa facilitates the resolution of workplace disputes through conciliation, mediation and arbitration. It serves as a forum for dispute resolution between employers and employees. Conciliation is the first step in the dispute resolution process and aims to reach a mutually acceptable settlement without going to court.

Conciliation is a process before the CCMA, a bargaining council or an accredited agency, where a conciliator will try to assist parties to resolve a workplace dispute. It is a compulsory process by law; however, the outcome is voluntary as it is the right of parties to decide whether they wish to settle the dispute and on what terms.

The process is private and confidential, off the record and 'without prejudice' – nothing the parties say during the process can be held against them in another process, unless by agreement or an order of a court.

Pre-conciliation

The commissioner or a conciliator may contact parties by phone or otherwise prior to the commencement of the conciliation in order to seek ways to resolve the dispute. If the dispute is resolved, the outcome is binding.

Advantages of conciliation

Conciliation is a free process providing for the quick and fair resolution of disputes. It is an opportunity for parties to listen to one another and to attempt to agree on an outcome that will bring closure.

Conciliation process at the CCMA

- **Filing the dispute:** The initiating party must complete and submit the CCMA's prescribed forms within the stipulated timeframe. The other party is notified of the dispute and given an opportunity to respond.
- **Selection of a commissioner:** The CCMA appoints a commissioner who acts as a neutral third party to facilitate the process. The commissioner schedules a date, time and venue for the conciliation hearing.
- **Preparing for conciliation:** Both parties gather relevant documents and evidence to support their case. They may also engage in pre-conciliation negotiations or attempt to resolve the matter informally.
- **Conciliation hearing:** The conciliation hearing takes place at the CCMA office or agreed-upon location. The commissioner facilitates discussions between the parties, encouraging dialogue and exploring possible solutions.
- **Settlement agreement:** If the parties reach a settlement during conciliation, they record the terms

of the agreement in writing. This agreement is legally binding and enforceable.

- **Certificate of outcome:** If a settlement is reached, the commissioner issues a certificate of outcome confirming the resolution of the dispute.
- **No settlement reached:** If the parties fail to reach a settlement during conciliation, the matter may proceed to arbitration, where a decision will be made by an independent arbitrator.

Applying for conciliation

An employee may apply for conciliation using an *LRA 7.11* referral form within:

- Thirty days of the date of dismissal.
- Ninety days of the date of an unfair labour practice.
- Six months of the date of an act of unfair discrimination.
- Six months after the act or omission referred to in section 198D (1) of the *LRA*.

A late referral will require an application for condonation. 📍

For more information, send an email to Anneline Scriven anneline@lwo.co.za.

The graphic features the LWO logo at the top, with the text 'WERKGEWERSORGANISASIE EMPLOYERS ORGANISATION'. Below the logo, there are two main sections. The first section is titled 'Laat jou arbeidsregskwessies in bekwame hande' and lists three bullet points: 'Sukcesvolle arbeidsregsadvises SEDERT 1990', 'SPESIALISTE in arbeidsregswetgewing', and 'Praat met gekwalifiseerde REGSPRAKTISYNS'. Below this is the text 'SLUIT NOU AAN'. The second section is titled 'Leave your labour law matters to our efficient team' and lists three bullet points: 'Successful labour law advice SINCE 1990', 'SPECIALISTS in labour law', and 'Speak to qualified LEGAL EXPERTS'. Below this is the text 'JOIN NOW'. At the bottom, there are two boxes: 'Die LWO is 24/7 beskikbaar by 0861 101 828' and 'The LWO is available 24/7 on 0861 101 828'. At the very bottom, there are two boxes: 'info@lwo.co.za' and 'www.lwo.co.za'.

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