



LATE REFERRALS – APPLICATIONS FOR CONDONATION

WHAT IS A LATE REFERRAL

The Labour Relations Act, as amended, stipulates that unfair dismissal disputes need to be referred to the CCMA within 30 days of the date of the dismissal. If the dispute is referred outside the 30-day period it is a late referral, and an application to condone the late referral is required.

The Labour Relations Act also requires an unfair labour practice dispute to be referred to the CCMA, within 90 days of the act or omission that allegedly constitutes the unfair labour practice or, within 90 days of the date on which the employee becoming aware of the act or occurrence. If the unfair labour practice dispute is referred outside of this 90- day period it is a late referral and condonation for the late referral is required.

Similarly the Labour Relations Act requires that a party seeking to refer a dispute to arbitration must do so within 90 days after a commissioner has issued a certificate that the dispute remains unresolved. An application for referral outside of this period will require an applicant for condonation.

HOW IS THE 30-DAY AND 90-DAY PERIOD COUNTED

Excluding the first day and *including* the last day calculate the 30-day or 90-day period. All days are counted, including weekends and public holidays. For example, if an employee is dismissed on 6 August, the calculation of the 30 days will start from 7 August and the last date, by which the dispute must be referred to the CCMA, is 5 September. *However*, this rule is subject to sub-rule (2) of the CCMA rules. Subrule (2) stipulates that the last day of any period must be *excluded* if it falls on a Saturday, Sunday, public holiday or on a day during the period between 16 December to 7 January.

HOW TO APPLY FOR CONDONATION

If a dispute is referred outside the time periods prescribed by the Labour Relations Act the referring party needs to apply for condonation. The CCMA Rules, require the applicant to bring an application, on affidavit (sworn statement), explaining why the referral is late and why the CCMA should allow the matter to continue (condonation). The Labour Relations Act permits condonation to be granted on “good cause shown”. The CCMA Rules set out what the application should contain. These are the following:

- **The degree of lateness**
The applicant must indicate the number of days that the referral is late by explaining when the applications have been served. The applicant must show the number of days late by showing when the CCMA should have received the application.
- **The reason for the lateness**
The applicant needs to explain why the dispute was referred late by explaining the steps taken prior to referring the case to the CCMA.
- **Prospects of success on the merits of the case**
The applicant needs to set reasons why the case should succeed. This will involve giving some background into the nature of the dispute and explaining why the applicant believes that the case will be successful.
- **Any prejudice to the other party**
Finally, the applicant must show what disadvantages will be suffered by both parties if condonation is not granted/or granted.

FURTHER STEPS TO FOLLOW

Once the statement is completed, a commissioner of oath must sign and stamp the application e.g. Police officer;

The applicant must serve a copy of the application on the other party by (fax, registered mail or hand delivery) and return the application to the CCMA with proof that the copy has been served on the other party.

The other party has the opportunity to oppose the application in writing within 14 days.

The applicant has the opportunity to respond to the other parties' allegation within 7 days, however no new issues need to be raised at this stage.

NOTE: A commissioner appointed by the CCMA will consider whether or not to grant condonation. This is done by either holding a hearing or considering the application on the basis of the sworn statement served. The commissioner will notify the parties in writing of the decision and explain why condonation was granted or refused.

RELEVANT LEGISLATION

Labour Relations Act, s191 (2)
CCMA Rules, clauses 9 and 31
Information sheet on conciliation
Information sheet on Con-arb
Rule 3,6,7