



THE CCMA RULES

NUMSA TRAINING 29 MARCH 2019

3 HOW TO CALCULATE TIME PERIODS IN THESE RULES



How to calculate time periods - Rule 3(1)(a)(b) & (2)

- Calculated in terms of calendar days.
- First day is excluded and the last day is included, subject to sub-rule (2).
- 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.

13 FAILED TO ATTEND CONCILIATION



What happens if a party fails to attend at conciliation - 13(1)(a) – (c)?

The commissioner may:

- continue with the proceedings;
- adjourn the conciliation to a later date within the 30-day period; or
- conclude the proceedings by issuing a certificate that the dispute remains unresolved.

13 FAILED TO ATTEND CONCILIATION



What does the Commissioner look at in exercising this discretion - Rule 13(2)(a) - (e):

- Whether the party has previously failed to attend a conciliation in respect of that dispute;
- Any reason given for that party's failure to attend;
- Whether conciliation can take place effectively in the absence of one or more parties;
- The likely prejudice to the other party of the commissioner's ruling; and
- Any other relevant factors.

14 EXTENSION OF CONCILIATION PERIOD IN TERMS OF SEC 135(2A) OF THE ACT

Extension of conciliation period – 14(1)

- The conciliating commissioner or a party to a conciliation process may request an extension of the conciliation period referred to in section 135.

How is the request made – 14(2)?

- The request must be made on the prescribed form and before the expiry of the conciliation period as determined in terms of section 135.

14 EXTENSION OF CONCILIATION PERIOD IN TERMS OF SEC 135(2A) OF THE ACT



Within 2 days of receiving request the Director must consider whether (14(3)(i) – (iii):

- An extension is necessary to ensure a meaningful conciliation process;
- The refusal to agree to the extension is unreasonable; and
- Whether there are reasonable prospects of reaching agreement; and
- Advise the parties on whether or not the extension is granted and where the extension is granted, the period of such extension (14(3)(b).

Extension does not apply when (14)(4):

- The employer is the State.

20 WHEN THE PARTIES MUST HOLD A PRE-ARBITRATION CONFERENCE

Circumstances in which parties must hold a pre-arb (20(1)(a) – (c))?

- Both parties are represented by a trade union, employer's organisation, legal practitioner and/or candidate attorney.
- Both parties agree to hold a pre-arbitration conference; or
- Directed to do so by the Convening Senior Commissioner, the Senior Commissioner in charge of a region or the presiding commissioner.

When must a pre-arb be held (14)(2)?

- At least fourteen (14) days prior to the date of the scheduled arbitration.

25 REPRESENTATION BEFORE THE COMMISSION



In Conciliation proceedings (25(1)(a):

- In person or be represented by:
 - If the party is an employer - a director or employee. If close corporation - a member or employee
 - Any member of that party's registered trade union or registered employer's organisation or an office bearer or official as defined in the Act;
 - If the party is a registered trade union - any member of that trade union or any office bearer or official as defined in the Act.
 - If the party is registered employer's organisation - any director or employee of an employer that is a member of that employer's organisation or any official or office bearer as defined in the Act.
 - If a party is the department of labour - any employee or official of the department.

25 REPRESENTATION BEFORE THE COMMISSION



In arbitration proceedings (25)(1)(b):

- Appear in person or be represented only by:
 - (i) A legal practitioner;
 - (ii) A candidate attorney; or
- (i) An individual entitled to represent the party at conciliation proceedings in terms of sub-rule(1)(a).

25 REPRESENTATION BEFORE THE COMMISSION



Exceptions – Rule 25(c)(i) – (ii):

- No representation by legal practitioner or candidate attorney when dispute is referred in terms of section 69(5), 73 or 73A of BCEA or if dispute is about fairness of a dismissal for reasons related to the employee's conduct or capacity.
- Unless Commissioner and all parties consent.
- Commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, considering certain factors.

25 REPRESENTATION BEFORE THE COMMISSION



In facilitation of large scale retrenchments - Rule 25(1)(d)

- Appear in person or be represented by:
 - If the party is an employer - a director or employee. If a close corporation - a member or employee;
 - Any member of that party's registered trade union or employer's organisation or office-bearer or official as defined in the Act and authorised to represent the party.
- No representation by a legal practitioner or candidate attorney is allowed (25(1)(e)).

25 REPRESENTATION BEFORE THE COMMISSION



Exception to who can represent a party in terms of rule 25(1)

- A Commissioner may also allow a person not contemplated in sub-rule (1) to represent a party at arbitration proceedings before the Commission, after considering certain factors.

- An application in terms of Rule 31 must be brought.

26 HOW TO JOIN OR SUBSTITUTE PARTIES TO PROCEEDINGS



When will Commissioner make an order joining person as parties - Rule 26(1)(a) - (c):

- The right of the referring party to relief depends on substantially the same question of law or fact, which, if a dispute were to be referred separately against the person sought to be joined, it would arise in a separate claim;
- The party to be joined has a substantial interest in the subject matter of the proceedings; or
- The party to be joined may be prejudicially affected by the outcome of the proceedings.”

26 HOW TO JOIN OR SUBSTITUTE PARTIES TO PROCEEDINGS



How do you bring a joinder application – rule 26(3):

- Joinder application is brought in terms of Rule 31.

What must accompany the application – rule 26(6):

- Must be accompanied by copies of all documents previously delivered, including the referral form, unless the person concerned or that person's representative is already in possession of the documents.

When do you make the application

- At any stage prior to the conclusion of an arbitration hearing.

31 HOW TO BRING AN APPLICATION

Where does this rule apply? (31(1)(a)-(c))

- Applications for condonation, joinder, substitution, variation, rescission, or postponement;
- Application in a jurisdictional dispute; and
- Other preliminary or interlocutory application.

When must the application be brought? (31(2))

- At least fourteen (14) days prior to the date of the hearing and on notice to all persons who have an interest in the application.

31 HOW TO BRING AN APPLICATION



How must the application be brought 31(3) & (4):

- **On notice of application**
 - Setting out the title of the matter, the case number assigned to the matter by the Commission, the relief sought, etc.
- **Supported by an affidavit**
 - Setting out a statement of material facts, a statement of legal issues that arises out of the material facts, etc.

31A APPLYING FOR PICKETING RULES OR THE DETERMINATION OF DISPUTES RELATING THERETO

Where does the rule apply – 31A(1):

- Applications for Picketing Rules in terms of s69(6B);
- Disputes relating to the application or interpretation of a picketing agreement or picketing rules determined by the commissioner; and
- Disputes relating to an issue concerning picketing contemplated by s69(8)

How to bring the application - 31A(2) – (3)

- An application must be brought in a prescribed in a form (LRA 7.11) with supporting documentation.
- The application must be served on all relevant parties.

31B ENFORCEMENT OF WRITTEN UNDERTAKINGS AND/OR COMPLIANCE ORDERS



Where does the rule apply:

- Applications for an undertaking to be made an arbitration award in terms of s68(3) of BCEA.
- Applications for a compliance order to be made an arbitration award in terms of s73(1) of BCEA.

How to apply? (31b (2))

- An application must be brought in a prescribed form (BCEA Form 15) and supported by certain documents, such as copy of the undertaking or compliance order etc.

RULE 32 AND 35



How to apply to vary or rescind arbitration awards or ruling? (32)

- Application must be made within fourteen (14) days of the date on which the applicant became aware of the arbitration award or ruling.

Condonation for failure to comply with the rules and form (35)

- Commission or Commissioner may condone any failure to comply with any provision of these Rules, on good cause shown.
- These Rules do not apply to Rule 25.

Rule 25 –
Representation before
the CCMA

37 HOW TO HAVE A SUBPOENA ISSUED AND SERVED



How to subpoena a person? (37(1))

- File a completed LRA Form 7.16 together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.

When to file? (37(3))

- Fourteen (14) days prior to the arbitration hearing, or as directed by the commissioner hearing of the arbitration.

37 HOW TO HAVE A SUBPOENA ISSUED AND SERVED



Serving the subpoena (37(5))

When? at least seven (7) days prior to the scheduled date of the arbitration.

By Who? Party who requested a person to be subpoenaed or the sheriff.

How?

- Delivering a copy of it to the person subpoenaed personally;
- Sending a copy of it by registered post to the subpoenaed person's residential address, place of business or PO Box; or
- Leaving a copy of it at the subpoenaed person's place of residence or place of business or employment with a person who apparently is at least sixteen (16) years of age and is residing or employed there".

37A EXPERT WITNESSES



A party intending to call an expert witness shall give seven (7) days, prior to the hearing, notice thereof to the Commission and the other party to the dispute, together with –

- a summary of the proposed evidence of such witness;
- any document on which the witness will rely on during the evidence; and
- the basis on which the witness is regarded to be an expert

39 ORDER OF COSTS IN AN ARBITRATION



- The commissioner may make an order for the payment of costs in favour of a party who appears or is represented by a non-legal person in respect of reasonable disbursements incurred in the conduct of the case.
- The Commissioner may make awarded of costs for legal fees only if both parties were represented by legal practitioners.
- An award for costs in respect of legal practitioners is as follows:
 - First day of arbitration – R7000;
 - Each additional day of an arbitration – R4 700
- An award for costs of candidate attorney – 50% of the above amounts

40 CERTIFICATION AND ENFORCEMENT OF ARBITRATION AWARDS



HEADLE THOMPSON
& HAYSON INC.
ATTORNEYS

Form for application for certification of arbitration award (40(1))

- LRA Form 7.18 in respect of an award issued by a commissioner;
- LRA Form 7.18A in respect of an award issued in an arbitration conducted under the auspices of the bargaining council.

How to enforce arbitration awards

- Orders for the payment of an amount of money - execution against the property of the employer by the sheriff.
- Orders for the performance of an act other than the payment of money - contempt proceedings instituted in the Labour Court”.



THE END.

THANK YOU!

