

11 MAY 2020

EMPLOYMENT ALERT

IN THIS ISSUE >

Urgent CCMA Directive: Access to the CCMA during the COVID-19 lockdown

On 8 May 2020, the Director of the Commission for Conciliation, Mediation and Arbitration (CCMA) issued an urgent directive (Directive) in respect of access to the CCMA which will apply with effect from 11 May 2020, until CCMA operations may be normalised, and the restrictions set out in the Regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2020 (Regulations) provide otherwise. The Directive must be read together with the CCMA Rules and all applicable statutes.

FOR MORE INSIGHT INTO OUR
EXPERTISE AND SERVICES

CLICK HERE 



CLIFFE DEKKER HOFMEYR

Urgent CCMA Directive: Access to the CCMA during the COVID-19 lockdown

The Directive makes provision for the way in which matters are to be enrolled, heard and the measures in place to ensure the requisite health and safety requirements are adhered.

On 8 May 2020, the Director of the Commission for Conciliation, Mediation and Arbitration (CCMA) issued an urgent directive (Directive) in respect of access to the CCMA which will apply with effect from 11 May 2020, until CCMA operations may be normalised, and the restrictions set out in the Regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2020 (Regulations) provide otherwise. The Directive must be read together with the CCMA Rules and all applicable statutes.

The Directive makes provision for the way in which matters are to be enrolled, heard and the measures in place to ensure the requisite health and safety requirements are adhered.

A list of the pertinent questions and answers from the Directive can be found below:

Are the parties able to refer disputes to the CCMA?

Parties will not be able to submit physical copies of referral forms to the CCMA, however, CCMA Rule 7 allows for service of such referrals to be made by email, as well as fax. The CCMA is currently working on alternative online platforms to be utilised for referrals which will be communicated once ready.

How will conciliation hearings be conducted?

Conciliation hearings which comply with the requirements of the Directive will be set down for a physical hearing, unless otherwise agreed between the Parties and the CCMA. Where possible, these will take place telephonically or through a digital

online platform satisfactory to the CCMA or Commissioner and depending on what is available to all parties.

The parties and the CCMA can agree in writing to hold the hearing at an alternative venue.

Where the conciliation process could not take place within 30 days from the date of the referral and in the absence of an agreement between the parties to extend the 30 day period, the CCMA will issue a certificate of outcome in terms of section 135(5) of the LRA. The agreement to extend the 30 day period must be before the expiry of the 30 day period.

How will application proceedings be heard at the CCMA?

Applications will not be scheduled for oral hearings in an open hearing venue unless the CCMA or Commissioner directs otherwise. Application proceedings which cannot be dealt with by a way of written submissions will be dealt with by video conferencing facilities.

Where oral evidence is required but one or more of the parties cannot access electronic communication, the CCMA may direct that the matter be heard on a date where conditions compliant with COVID-19 Regulations and Directives allow, or in a way that the Commissioner may prescribe.

Where an application is made as a statement without a signature, the CCMA requires confirmation from the submitting party through electronic means that is not in the public domain such as SMS, WhatsApp, and voice recording or otherwise.

Urgent CCMA Directive: Access to the CCMA during the COVID-19 lockdown...continued

Any agreement reached in terms of the pre-arbitration conference must be recorded in writing and electronically submitted to the CCMA.

What should be discussed in the pre-arbitration conference?

Parties must hold a pre-arbitration conference to reach consensus on the issues listed in CCMA Rule 20(3). The Directive lists the following specific issues which must be dealt with:

- whether the parties are prepared to proceed with the arbitration at the employer's premises, subject to the COVID-19 Occupational Health and Safety Measures in Workplaces COVID-19 (C19 OHS), 2020;
- whether the parties are prepared to proceed by means of a video conferencing facility and the applicable facility to be used;
- the possibility of shorter periods of notice of set down;
- how evidence will be adduced remotely or if witnesses do not have access to video conferencing methods;
- the admission of evidence by affidavit or statement that may be confirmed, and
- any other information that the CCMA or Commissioner may require to determine how the matter is to be dealt with.

Any agreement reached in terms of the pre-arbitration conference must be recorded in writing and electronically submitted to the CCMA.

How will statements of case and answering statements be submitted?

The CCMA may, in terms of CCMA Rule 19, direct the requesting party to deliver a statement of case setting out legal issues arising from the material facts, and answering statements from the other party. Parties may be requested to agree on what oral evidence may be delivered by statement or by affidavit, which must be submitted electronically seven days prior to the scheduled date of the arbitration hearing.

The Commissioner may give ad hoc directives as to how the matter is to be disposed of, having regard to the arrangements the parties have made.

How will witnesses be secured?

Where parties require the presence of witnesses, who are entitled to administrative assistance in terms of section 115(2)(bA) of the LRA, a Commissioner may direct any party to be present and/or available on a time and date as determined by the Commissioner, where the commissioner is satisfied that the other requirements for a person to be served has been met.

Applications for subpoena may be served electronically in terms of CCMA Rule 37(5).

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

Urgent CCMA Directive: Access to the CCMA during the COVID-19 lockdown...continued

Communication between the Parties and the CCMA must be by email where such communication may be printed out to be copied or saved electronically.

What are the health and safety related requirements for a physical hearing?

Where the CCMA may convene physical hearings in terms of the Regulations and Directives, anyone seeking access to the CCMA or other venue agreed upon must:

- submit for compulsory screening;
- wear a face mask;
- apply hand sanitiser; and
- adhere to applicable social distancing rules.

Only parties fewer than 10, and their representatives will be allowed to enter the CCMA buildings or other designated venues subject to the size of the venue. Representatives and parties required to travel to the CCMA or other venue, must comply with any applicable restrictions.

Objection to the physical hearing?

Any party objecting to physical hearing being conducted under the conditions described above, must submit a notice of objection and reasons in writing and serve same on the other party and the CCMA. After consideration and provision of alternatives, the Commissioner or a Provincial Senior Commissioner must decide whether the matter should proceed or be postponed.

What is the protocol applicable in video conferences?

For the purpose of maintaining order, the CCMA provides protocols to be followed, *inter alia*, ensuring that there is no ambient noise interfering with the audio quality of the hearing, participants to mute their microphone when not speaking.

Where the party hosting the video conference is called to do so, the party must record the session and submit the audio file to the CCMA along with a signed statement of confirmation that the recording has not been tampered with in any way.

How will the CCMA and parties communicate?

Communication between the Parties and the CCMA must be by email where such communication may be printed out to be copied or saved electronically.

What happens if the parties settle?

The terms of any settlement agreement reached must be recorded and sent to both parties to sign electronically and filed with the CCMA. Where the parties do not have access to an electronic signature, the parties and the Commissioner will agree on an applicable way to record this agreement.

How will the parties sign documents?

The use of any electronic signature or electronic confirmation process will be accepted if such proof can be stored, retrieved and safely printed when needed.

**Jaden Cramer and
Jessica Van Den Berg**

EMPLOYMENT

CASE LAW UPDATE 2019

CLICK HERE
to access CDH's
Employment Law
booklet to assist
you in navigating
the employment
relationship during
the current economic
uncertainty.



STOP SEXUAL HARASSMENT

E-learning Offering

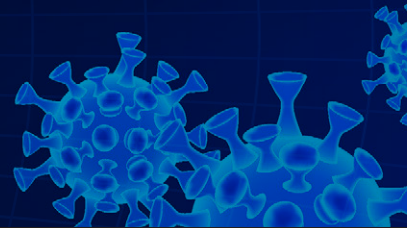
Our Employment practice recently launched an e-learning module:
A better place to work

The module will empower your organisation with a greater appreciation and understanding of what constitutes sexual harassment, how to identify it and what to do if it occurs.

CLICK HERE FOR MORE INFORMATION 

CDH'S COVID-19 RESOURCE HUB

Click here for more information 



CHAMBERS GLOBAL 2014 - 2020 ranked our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2020 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2018 - 2020 in Band 2: Employment.

Gillian Lumb ranked by CHAMBERS GLOBAL 2020 in Band 3: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2020 in Band 2: Employment.

Michael Yeates ranked by CHAMBERS GLOBAL 2020 as an up and coming employment lawyer.



OUR TEAM

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Anli Bezuidenhout
Senior Associate
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Jose Jorge
Director
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Mohsina Chenia
Executive Consultant
T +27 (0)11 562 1299
E mohsina.chenia@cdhlegal.com



Sean Jamieson
Senior Associate
T +27 (0)11 562 1296
E sean.jamieson@cdhlegal.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Faan Coetzee
Executive Consultant
T +27 (0)11 562 1600
E faan.coetzee@cdhlegal.com



Bheki Nhlapho
Senior Associate
T +27 (0)11 562 1568
E bheki.nhlapho@cdhlegal.com



Gillian Lumb
Director
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Avinash Govindjee
Consultant
M +27 (0)83 326 5007
E avinash.govindjee@cdhlegal.com



Asma Cachalia
Associate
T +27 (0)11 562 1333
E asma.cachalia@cdhlegal.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Riola Kok
Consultant
T +27 (0)11 562 1748
E riola.kok@cdhlegal.com



Tamsanqa Mila
Associate
T +27 (0)11 562 1108
E tamsanqa.mila@cdhlegal.com



Thabang Rapuleng
Director
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2020 8933/MAY



CLIFFE DEKKER HOFMEYR