

## EMPLOYMENT

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### WARNING FROM THE LABOUR COURT REGARDING ADHERENCE TO TIME FRAMES CONTAINED IN THE NEW LABOUR COURT PRACTICE MANUAL

The Practice Manual of the Labour Court of South Africa (Practice Manual) came into effect on 2 April 2013. Since it has been in effect for over a year, it comes as no surprise that its enforceability has been considered by the Labour Court.

In the case of *Tadyn Trading CC t/a Tadyn Consulting Services v Steiner and Others [2014] 5 BLLR 516 (LC)*, the Labour Court considered clause 11.2 of the Practice Manual which deals with applications to review and set aside arbitration awards and rulings.

#### Background facts

The employer (Tadyn Trading CC t/a Tadyn Consulting Services) assigned the employee (Steiner) to one of its major clients. Subsequent to the employee's assignment, the service level agreement between the employer and the client was cancelled. The employee was informed that her services would no longer be required.

Thereafter, the employee referred a dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). The arbitrating Commissioner awarded the employee reinstatement and compensation in finding that her dismissal was unfair.

The employer subsequently instituted an application to review and set aside the arbitration award that had been issued in the employee's favour.

On or about 13 May 2013, the Labour Court made the record of CCMA proceedings available to the applicant employer. The record was uplifted on 16 May 2013 but only served on the respondent employee on 21 August 2013.

The Practice Manual, in terms of clause 11.2.2, stipulates that the applicant in review proceedings must file the record within 60 (sixty) days of being advised by the Registrar that the record has been received by the Labour Court.

Therefore, having regard to clause 11.2.2, the Labour Court noted that the applicant employer was 10 days late in serving the record on the respondent employee.

In light of this, the applicant employer brought a condonation application. The respondent employee contended that the review application should be considered to have been withdrawn due to non-compliance with clause 11.2.2 of the Practice Manual. The respondent employee specifically relied upon clause 11.2.3 of the Practice Manual which provides as follows:



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"If the Applicant fails to file a record within the prescribed time period, the Applicant will be deemed to have withdrawn the Application..."

In essence, the respondent employee argued that the applicant employer had to be deemed by the court to have abandoned its review because it had filed the record of proceedings 10 days outside of the time limit set by the Practice Manual.

### Court's finding

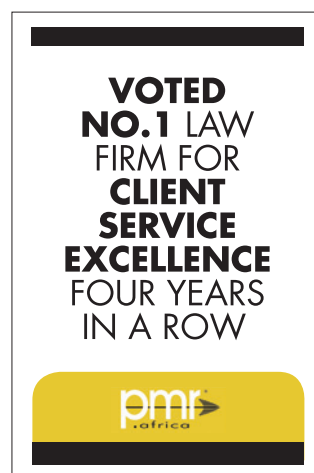
The Labour Court considered this provision but nevertheless held that although the Practice Manual makes no express provision for condonation in the case of non-compliance with time periods provided therein, the ability of an applicant to lodge a condonation application is inferred.

On good cause shown by the applicant employer, the Labour Court condoned the applicant employer's late filing of the record of proceedings.

The Labour Court specifically mentioned that although practice manuals issued by the various courts should be seen as guidelines, they should nevertheless be followed.

It is important to take cognisance of this judgment as it reaffirms the principle that although the Practice Manual provides for certain time limits in respect of review applications, if these time limits are not met, the defaulting party ought to bring an application for condonation to excuse non-compliance with those time limits.

*Shane Johnson*



## CONTACT US

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@dlacdh.com



**Johan Botes**  
Director  
T +27 (0)11 562 1124  
E johan.botes@dlacdh.com



**Mohsina Chenia**  
Director  
T +27 (0)11 562 1299  
E mohsina.chenia@dlacdh.com



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



**Gillian Lumb**  
Cape Town Regional Practice Head  
Director  
T +27 (0)21 481 6315  
E gillian.lumb@dlacdh.com



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



**Gavin Stansfield**  
Director  
T +27 (0)21 481 6314  
E gavin.stansfield@dlacdh.com



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



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

**Kirsten Caddy**  
Senior Associate  
T +27 (0)11 562 1412  
E kirsten.caddy@dlacdh.com

**Nicholas Preston**  
Senior Associate  
T +27 (0)11 562 1788  
E nicholas.preston@dlacdh.com

**Andrea Taylor**  
Senior Associate  
T +27 (0)11 562 1687  
E andrea.taylor@dlacdh.com

**Ndumiso Zwane**  
Senior Associate  
T +27 (0)11 562 1231  
E ndumiso.zwane@dlacdh.com

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

**Shungu Mariti**  
Associate  
T +27 (0)11 562 1475  
E shungu.mariti@dlacdh.com

**Inez Moosa**  
Associate  
T +27 (0)11 562 1420  
E inez.moosa@dlacdh.com

**Cedrick Moswana**  
Associate  
T +27 (0)11 562 1170  
E cedrick.moswana@dlacdh.com

**Zinhle Ngwenya**  
Associate  
T +27 (0)11 562 1119  
E zinhle.ngwenya@dlacdh.com

**Lauren Salt**  
Associate  
T +27 (0)11 562 1378  
E lauren.salt@dlacdh.com

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### BBBEE STATUS: LEVEL THREE CONTRIBUTOR

#### 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@dlacdh.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@dlacdh.com