

18 NOVEMBER 2020

EMPLOYMENT ALERT

IN THIS ISSUE >

Financial strain on the CCMA may mean increased costs for parties to disputes

The Director of the Commission of Conciliation, Mediation and Arbitration (CCMA), Mr Cameron Morajane, announced that the CCMA will be receiving budget cuts amounting to R617 million. As a result, the CCMA will be unable to operate at full capacity and to offer complete services to the public.

FOR MORE INSIGHT INTO OUR
EXPERTISE AND SERVICES

[CLICK HERE](#) 



CLIFFE DEKKER HOFMEYR

Financial strain on the CCMA may mean increased costs for parties to disputes

Disputes which commence at conciliation are known to be more informal and it is easier for parties to negotiate the issues surrounding the dispute and to reach settlement with the guidance of the commissioner.

The Director of the Commission of Conciliation, Mediation and Arbitration (CCMA), Mr Cameron Morajane, announced that the CCMA will be receiving budget cuts amounting to R617 million. As a result, the CCMA will be unable to operate at full capacity and to offer complete services to the public.

Mr Morjane presented at the COSATU Collective Bargaining, Organising and Campaigns Conference on 11 November 2020, where he expressed his concern regarding the financial strain that the CCMA will suffer as a result of budget cuts. Mr Morjane suggested that one of the ways forward is that due to affordability the CCMA will consider not conducting conciliations but disputes will go straight to arbitration. We have also been told that due to budget cuts there has been a temporary suspension of part time commissioners and an uncheduling of cases scheduled for December 2020, presumably those scheduled in respect of part time commissioners.

The CCMA, as a statutory body created in terms of the Labour Relations Act 66 of 1995 (LRA) was designed as a grass roots dispute resolution institution whose purpose was to provide simple and

informal processes for dispute resolution. The CCMA's compulsory statutory functions in terms of Section 115 of the LRA are to resolve disputes through conciliation; arbitrate certain categories of disputes that remain unresolved after conciliation; establish picketing rules and facilitate the establishment of workplace forums and statutory councils. The LRA is built on the spirit of conciliation and resolving labour related issues in a speedily and cost-effective manner for the benefit of employers and employees, more particularly vulnerable employees.

Disputes which commence at conciliation are known to be more informal and it is easier for parties to negotiate the issues surrounding the dispute and to reach settlement with the guidance of the commissioner. The cost implications of conciliation are minimal, as no legal representation is permitted, and the dispute must be resolved within 30 days of referral. Thus, conciliation allows for a simple, quick and efficient procedure to resolve disputes, unlike arbitration proceedings which can become time consuming and expensive. Conciliation is therefore imperative for grass roots level dispute resolution and the speedily resolution of disputes.



SEXUAL HARASSMENT IN THE WORKPLACE

Including the virtual
world of work

A GUIDE TO MANAGING
SEXUAL HARASSMENT

The purpose of our 'Sexual Harassment in the Workplace – Including the Virtual World of Work' Guideline, is to empower your organisation with a greater understanding of what constitutes sexual harassment, how to identify it and what to do if it occurs.

[CLICK HERE TO ACCESS
THE GUIDELINE](#)

Financial strain on the CCMA may mean increased costs for parties to disputes...*continued*

It is important to bear in mind that if reinstatement is awarded at arbitration, it will be more burdensome for employers to refer matters to the CCMA for arbitration without the conciliation process.

Where matters are referred to arbitration without the conciliation process, this will result in a lengthy formal process of dispute resolution, in which parties will be required to hold a pre-arbitration conference prior to the arbitration hearing. The purpose of the pre-arbitration conference is in essence, for parties to limit the issues in dispute in order to ensure arbitration proceedings are as efficient as possible. Parties may be reluctant to negotiate settlement terms at the pre-arbitration conference without the guidance of the commissioner who is not present at such pre-arbitration conferences.

The implications of the financial strain on the CCMA, and the suggested approach to limit conciliation, will have a ripple effect on the administration of the CCMA as a whole as cases will be delayed and there will be a huge backlog in terms of the finalisation of matters.

The suspension of part time commissioners will also pose a huge administrative burden on the CCMA and delays in the resolution of disputes. At present, the CCMA has 772 commissioners - 65% of the commissioners work at the CCMA as part-time commissioners. It is safe to say that there are more part time commissioners than full time commissioners and less matters will be allocated to the majority of the commissioners if the conciliation process is not used at the CCMA and less or no part time commissions are employed.. Moreover, during the lockdown period (April – June 2020), over 23 800 cases were referred to the CCMA, a dramatic increase the number of referrals received prior to lockdown and a pre-COVID-19 economic context. Therefore, the capacity of the CCMA to offer efficient labour services will be compromised owing to the financial strain. Budget cuts and strained administrative services have also unfortunately come at a time of increased unemployment, which currently stands at a rate of 30.8%.

Parties may, as an alternative, opt to use private arbitration services for a quicker and more efficient process to resolve disputes. However, private arbitration services will have higher cost implications for both the employer and the employee. It may also be difficult for parties to determine who will bear the costs of private arbitration. Parties may agree that the unsuccessful party will pay the costs, in which case either the employer or the employee will be prejudiced by the cost implications of a private arbitration, creating an unsustainable set of circumstances for small business and low-level employees.

It is important to bear in mind that if reinstatement is awarded at arbitration, it will be more burdensome for employers to refer matters to the CCMA for arbitration without the conciliation process. Further, employers need be cautious of cost implications of arbitrations versus private arbitration and to seek advice from a legal representative on the preferred method of dispute resolution depending on the complexity of the dispute.

The role of the CCMA in dispute resolution for labour related issues is important because it allows for grass roots dispute resolution through the conciliation process and allows the CCMA to not be overburdened with disputes that are referred to arbitration which can easily be resolved through the conciliation process or through settlement.

The CCMA released a media statement on the 17th of November 2020 in which it stated that the CCMA is unable to respond to all questions from the media regarding the CCMA's budget constraints and implications thereof on its operation. A further statement will be released by the CCMA.

Hugo Pienaar, Riola Kok and Nomathole Nhlapo

POPI AND THE EMPLOYMENT LIFE CYCLE: THE CDH POPI GUIDE

The Protection of Personal Information Act 4 of 2013 (POPI) came into force on 1 July 2020, save for a few provisions related to the amendment of laws and the functions of the Human Rights Commission.

POPI places several obligations on employers in the management of personal and special personal information collected from employees, in an endeavour to balance the right of employers to conduct business with the right of employees to privacy.

[CLICK HERE](#) to read our updated guide.

Our Employment practice is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2020.

Fiona Leppan is ranked as a Leading Individual in Employment in THE LEGAL 500 EMEA 2020.

Aadil Patel is recommended in Employment in THE LEGAL 500 EMEA 2020.

Gillian Lumb is recommended in Employment in THE LEGAL 500 EMEA 2020.

Hugo Pienaar is recommended in Employment in THE LEGAL 500 EMEA 2020.

Michael Yeates is recommended in Employment in THE LEGAL 500 EMEA 2020.

Jose Jorge is recommended in Employment in THE LEGAL 500 EMEA 2020.

Imraan Mahomed is recommended in Employment in THE LEGAL 500 EMEA 2020.



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.

Imraan Mahomed 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.



EMPLOYMENT

RETRENCHMENT GUIDELINE

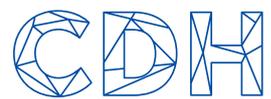


[CLICK HERE](#) for the latest thought leadership and explanation of the legal position in relation to retrenchments, temporary layoffs, short time and retrenchments in the context of business rescue.

CDH'S EMPLOYMENT LAW PRACTICE CONTINUES TO BLAZE ITS TRAIL,

expanding on its strong offering to clients by attracting a new suite of esteemed employment law experts to the team.

[CLICK HERE](#) for further detail regarding each expert and their areas of expertise.



CLIFFE DEKKER HOFMEYR

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



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



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



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



Imraan Mahomed
Director
Employment
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com



Bongani Masuku
Director
T +27 (0)11 562 1498
E bongani.masuku@cdhlegal.com



Phetheni Nkuna
Director
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com



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



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



Hedda Schensema
Director
T +27 (0)11 562 1487
E hedda.schensema@cdhlegal.com



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



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



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



Jean Ewang
Consultant
M +27 (0)73 909 1940
E jean.ewang@cdhlegal.com



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



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



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



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



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



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



Jaden Cramer
Associate
T +27 (0)11 562 1260
E jaden.cramer@cdhlegal.com



Jordyne Löser
Associate
T +27 (0)11 562 1479
E jordyne.loser@cdhlegal.com



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

BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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.

PLEASE NOTE

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 cdh Stellenbosch@cdhlegal.com

©2020 9566/NOV

