

CCMA's amended rules and forms

Questions & Answers

Question

Under the new rules, can a rescission application be heard by the same commissioner who rendered the initial arbitration award?

Answer

This is in fact the current position. Also prior to amendments. No changes made in this regard. See section 144 of LRA.

Question

In the past with Labour Court decisions attorneys were not able to sign conciliation and arbitration referral forms if they did not have jurisdiction to appear in that matter. What is the position with electronic referrals?

Answer

The amendments to Rule 4 deal with the issue. Rule 4(1A) reads as follows:

Where a document has not been signed or was signed by a person who is not entitled to represent that party in terms of the Act or these Rules, the intention of that party to submit that document may be confirmed by the subsequent appearance of the party at the convened proceedings before the commissioner or by any other method of confirmation that may be placed on record at the Commission.

Question

Electronic referral form only allows for one applicant and one respondent. How do we deal with that?

Answer

The CCMA's Business Analyst has informed that when a party submits via the online portal they will receive a link whereby they can upload additional information including the list of other applicants. In the online referral however, they could mention that for example: John and 5 others and then upload the list once they receive the link after submitting the referral..

Question

When submitting referrals online, does the submission automatically amount to "serving" on both CCMA and respondent, or must we still send proof of service to CCMA?

Answer

It would automatically be served on the other parties provided you inserted the correct details. You will see at the bottom of the online form a little box that shows who the forms were sent to (via email).

Question

Can an employee and employer set up a per-arbitration conference without the CCMA involvement if they agree to do so mutually?

Answer

Yes, and parties are encouraged to do so, and if both parties agree in terms of Rule 20(1)(b).

Question

Can you please give the difference between the disclosure of information in terms of section 16 of the LRA and rule 29 of the CCMA rules?

Answer

Rule 16 applies to the disclosure of information in relation to Collective Bargaining matters by majority unions unless a minority union has been granted the organisational right in terms of section 21(8A)(b) of the LRA. The other exception is within the context of section 189(4)(a). Rule 29 deals with disclosure of information between parties where there is a dispute at the CCMA and is not limited to majority unions.

Question

What is the interim arrangement for matters that were struck off the roll (March 2023) and a request for re-enrolment was filed/awaiting decision?

Answer

We are in the process of finalising guidelines on this. In short, we will continue to determine them as they are.

Question

Other than protected disclosure, can employee ask for section 188A hearing?

Answer

No, section 118A(11) is prescriptive and only deals with the one instance where an employee may apply for the process.

