

CONCILIATION



WHAT IS CONCILIATION?

A conciliation hearing is a process where a commissioner (or a panellist, in the case of a bargaining council or agency) meets with the parties in a dispute explores ways to settle the dispute by agreement.

Conciliation provides for the quick and fair resolution of disputes. The conciliation process is uncomplicated, inexpensive and does not allow for any legal representation. The decision to settle is in the hands of the parties involved.

At conciliation meeting the employer may appear in person or maybe represented by a director or another employee, or employers organisation. The employee may be represented by an office bearer or official of that party's registered trade union.

CCMA Rule 7.2 states that:

"a conciliation hearing may only be attended by parties to the dispute, their representatives referred to in s135 (4) of the Act, and such other persons who, in the discretion of the commission, are allowed to attend".

If you are the applicant and fail to attend the conciliation hearing at the scheduled time, the matter will be dismissed. Should the applicant wish to continue, an application for rescission must be made.

WHAT HAPPENS AT THE HEARING?

The commissioner may start the process by meeting jointly with the parties and asking them to share information about the dispute.

Separate meetings between the commissioner and each party may also be held. Parties are allowed to bring any relevant documentation that might assist in clarifying issues together with any other documentary evidence.

At this stage witnesses are not necessary. Parties are encouraged to share information and to come forward with ideas on how their differences can be settled.

THE FUNCTIONS OF A COMMISSIONER

A commissioner is given a variety of functions at conciliation, which are:

- Determining which process the hearing could follow, it may include mediation, facilitation, or making recommendations in the form of an advisory award.
- A commissioner may subpoena persons and documents.
- The commissioner's role is to try and resolve the dispute within 30 days of it being referred to the CCMA.

If the dispute is settled, the commissioner will draw-up a settlement agreement which both signed by both parties sign and issue a certificate recording that the dispute is settled.

A conciliation agreement is final and binding on both parties. If either party fails to uphold the agreement, it can be made an award and thereafter certified as an order of court.

If the disputed is not settled, there are two options available:

Firstly, if the matter remains unresolved and relates to probation, the matter must continue as on CON-ARB basis.

If the matter relates to dismissal (conduct/incapacity) or unfair labour practice and the parties don't object to the process, the matter will continue on CON-ARB basis.

Secondly, the commissioner might issue a certificate of non-resolution and the applicant can then apply for arbitration.

Note: Once notice is received to attend the hearing, one should avoid requesting a postponement.

The CCMA Rules *do not* provide for postponement at conciliation, and generally an application for postponement will

not be considered. If parties require time to settle, the case might be postponed to another fixed date. If on that date the parties have not settled, a certificate of non-resolution will be issued. If parties have settled, a certificate of resolution will be issued.

ADVANTAGES OF CONCILIATION

The advantage of conciliation is that it extends the negotiation process and allows for settlement between the parties: for example, where a procedure requires that conciliation be attempted before industrial action can be undertaken, time is allowed for both parties to "cool off", for approach each other in a friendlier manner whilst seriously attempting to settle before engaging in industrial action which might eventually destroy the relationship

PRE CONCILIATION

The Commission or a commissioner may contact parties by telephone or other means, prior to the commencement of the conciliation, in order to seek to resolve the dispute.

RELEVANT LEGISLATION

CCMA Rules & the Labour Relations Act 1995, as amended s135.

Information sheet on CON-ARB

Rules 10 – 16 and rule 26-30