

the

2023

amendments
to the CCMA rules
are out!

in association with



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2023 amendments



the last CCMA rules workshop: June 2022

In June 2022, the SALLR team presented a workshop dealing with the CCMA rules and the developments in this regard during the past three years. More specifically, the workshop dealt with relevant case law as well as amendments to the rules becoming effective from 1 January 2019 and 1 March 2020, respectively.

the 2023 amendments are out!

The amendments are mainly driven by the following considerations:

- the application of the Protection of Personal Information Act 4 of 2013 ('POPIA')
- case law development
- streamlining of the rules on the basis of administrative considerations
- online and virtual service delivery, largely driven by the needs created by the Covid-19 pandemic

A. amendments to the CCMA rules to be dealt with during the upcoming fast track sessions

In line with the aforesaid considerations, the following amendments have, *inter alia*, been introduced:

- a new rule dealing with the application of POPIA covering the scenarios where a party serves or files documents on the CCMA or the other party or processes documents that contain personal information
- **rule 1** – removing 'tele-fax' from the rule and re-introducing filing to be in compliance with rule 7
- **rule 2(1)** – reference to the head office and the regional offices has been removed to avoid the need to distinguish between such offices
- **rule 2(3)** – introducing the referral option of the official CCMA electronic referral online portals
- **rule 3** – the words 'on a day between 16 December and 7 January' have been removed, entailing that the period between such dates is not to be 'subtracted' for the purposes of calculating the days for the referral periods
- **rule 4** – permitting ratification of documents not signed or signed by a person who is not entitled to represent a party in terms of the rules



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- allowing for a signature to include an electronic signature and dealing with the fact that the CCMA electronic referral online platforms do not provide for the signature of a referring party
- **rule 5(4)** – a change as to how service may be ordered
- **rule 7** – an amendment as to how a document will be regarded as filed with the CCMA, to deal with an online referral or condonation application
- **rule 9(1)** – the amendment makes it clear that, when seeking condonation for a late referral and where applications have been delivered late, both the time periods set out in the applicable employment laws, as well as the time periods set out in the rules, are to be taken into account
- **rule 9(2)** – making it clear that an application for condonation can be made at referral or at any time of the proceedings
- **rule 10** – provision is to be made for online electronic referrals; the requirement that a referral must be signed has been removed, whilst proof of service and, if applicable, an application for condonation, is still required
- **rule 10(3)** – the current sub-rule has been deleted and, in terms of the new provision, where a referral is made out of time and if condonation has not been attached to it, the commissioner has the discretion to determine how condonation should be dealt with
- **rule 13** – redefining the consequences if any party fails to attend the scheduled conciliation
- **rule 13(1A)** – introducing the jurisdiction to establish picketing rules before the issuing of a certificate of non-resolution
- **rule 18** – dealing with the consequences when the request for arbitration is made by other means than the official CCMA electronic referral online portals; the preemptory requirement to sign a request is removed whilst proof of service and condonation are still required; where a request has been made out of time, and if condonation is not attached to the request, the CCMA has the jurisdiction to decide whether the condonation will be determined at the hearing or by written submissions received from the parties
- **rule 23** – a relook at the requirements governing postponement of an arbitration hearing by means of an agreement; considering whether or not a postponement application may be dismissed on papers; curing the situation where a party, upon requesting postponement, assumes that it is granted if no response is received from the CCMA



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- **rule 24** – a relook as to where conciliation or arbitration is to take place and as to which CCMA official has the requisite power in this regard
- **rule 29** – the amended rule caters for the requirement that a request for disclosure of information is to be made in terms of rule 31
- **rule 30** – introducing a commissioner's discretion to remove a matter from the roll when a party fails to attend arbitration proceedings; specifically catering for the re-enrolment of such matter by means of the applicable form; creating alignment with the judgment of, inter alia, *Solomons v Phokelo NO, the CCMA and Food Lovers Market Kempton Park*, handed down on 2 August 2021 (JR99/2021)
- **rule 31** – the rule now also applies to an application to disclose documents in terms of the amended rule 29; it has been clarified that this rule applies to any application, including the ones listed; applications may be determined on the papers; the introduction of a written statement as an alternative to the original affidavit (as an alternative to the founding, answering and replying affidavits)
- **rule 31C** – the new rule aligns the amended rule 30, allowing for the removal of a matter from the roll, with the further considerations for re-enrolment in line with the *Solomons* judgment
- **rule 32** – a relook of the circumstances upon which arbitration awards or rulings can be varied or rescinded in the light of a decision that may be taken by the CCMA or commissioner to remove a matter from the roll (ito s138(5)(a) of the LRA)
- **rule 34** – dealing with an enquiry in terms of s188A and taking into account various case law developments, such as *Nxele v National Commissioner of Correctional Services and Others* (2018) 39 ILJ 1799 (LC); *Letsoalo v Minister of Police and Others* (J556/16 and J557/16) and *Jacobs v National Commissioner for SAPS* (J1914/21)
- **rule 37** – making provision that subpoenas may be delivered by means of email; a re-look at witness fees
- **rule 40A** – payment of arbitration fees ordered in terms of s140 of the LRA by means of a cheque is removed and it is envisaged that the payment of such fees will only take place by means of electronic payment
- **rule 41** – in line with the introduction of POPIA, the further introduction of definitions inherent to the application of such Act, such as 'data subject', 'personal information', etc



2023 amendments



B. Amendments to LRA forms

The following 34 LRA Forms are part of the 2023 amendments and some of the implications of same have been incorporated into the fast track workbook

LRA Form 3.12	LRA Form 4.8B	LRA Form 7.13
LRA Form 3.13	LRA Form 4.8C	LRA Form 7.14
LRA Form 3.23	LRA Form 5.1	LRA Form 7.15
LRA Form 4.2	LRA Form 5.2	LRA Form 7.16
LRA Form 4.2A	LRA Form 7.1	LRA Form 7.18
LRA Form 4.3	LRA Form 7.2	LRA Form 7.18A
LRA Form 4.6	LRA Form 7.5	LRA Form 7.19
LRA Form 4.7	LRA Form 7.8	LRA Form 7.20
LRA Form 4.7A	LRA Form 7.11	LRA Form 7.21
LRA Form 4.8	LRA Form 7.12	LRA Form 7.22
LRA Form 4.8A	LRA Form 7.12A	LRA Form 7.23

A copy of the aforesaid forms will be made electronically available to delegates



2023 amendments



fast track PowerPoint presentation

The SALLR team, in association with the CCMA, has compiled a PowerPoint presentation, consisting of just over 400 pages, incorporating the aforesaid changes and their implications into the current case law and legislative environment.

pre-workshop questions

Once a delegate has registered and paid for the workshop, such delegate may, prior to the workshop, email no more than two questions that he/she wishes the presenters to deal with during the question and answer sessions of the workshop. If a delegate wishes to make use of this opportunity, then such questions must be forwarded, per email, to Taryn van der Merwe at pa@vanzyrudd.co.za, no later than Friday, 12 May 2023.

who should attend?

- employee relations practitioners
- human resources practitioners
- CCMA and bargaining council commissioners
- conciliators and arbitrators
- advocates, attorneys and candidate attorneys
- government officials
- trade union representatives
- employer organisation representatives
- academics and students



2023 amendments



fast track workshop details

Dates and Venues?

OPTION 1: IN PERSON AND FACE-TO-FACE

Monday, 15 May 2023

Johannesburg (Sandton)
The Maslow Hotel

Tuesday, 16 May 2023

Bloemfontein
Kopano Nokeng Hotel

Thursday, 18 May 2023

Durban
Sibaya Casino and Entertainment Kingdom

Monday, 22 May 2023

Gqeberha
The Boardwalk Hotel

Tuesday, 23 May 2023

Pretoria
Sun Time Square Hotel

Wednesday, 24 May 2023

Johannesburg (Boksburg)
The Birchwood Hotel

Friday, 26 May 2023

Cape Town
The Table Bay Hotel



2023 amendments



fast track workshop details

Dates and Venues?

OPTION 2: LIVE BROADCASTING

Friday, 26 May 2023

Cape Town

The Table Bay

The live broadcasting option has been maintained for those delegates who cannot be accommodated at the in person and face-to-face fast track workshop sessions or, alternatively, who wish to attend the workshop virtually.

The platform is something totally different from the webinars that most people are used to. The best way to describe it is that it is just like watching television – this year, it entails the live broadcast of the in person and face-to-face workshop to be held in Cape Town on Friday, 26 May 2023.



2023 amendments



workshop programme for the live broadcasting and in person and face-to-face workshops

- 07h00 to 08h00 – registration
- 08h00 to 08h05 – welcome and opening address
- 08h05 to 10h30 – CCMA rules 1 to 19, LRA Forms relevant to such rules and pre-workshop questions posed in this regard
- 10h30 to 11h00 – first tea and coffee break
- 11h00 to 12h30 – CCMA rules 20 to 30, LRA Forms relevant to such rules and pre-workshop questions posed in this regard
- 12h30 to 12h45 – second tea and coffee break
- 12h45 to 14h00 – CCMA rules 31 to 41, LRA Forms relevant to such rules and pre-workshop questions posed in this regard
- 14h00 to 14h10 – concluding comments

delegates receiving the workshop material?

- Delegates attending the live broadcasting of the workshop will receive the workshop material by email, on the day before their attendance. In the past, we have distributed recordings of our workshops and seminars. However, because of the large scale abuse that has taken place where these recordings have been placed in possession of people who have not attended our workshops and seminars, we have made the decision to no longer distribute such recordings.
- Delegates who attend the in person and face-to-face workshops will receive the printed workshop material on the day of attending the workshop.

registration fee for attending either the live broadcasting or in person and face-to-face fast track workshops?

Registration tier	Registration fee per delegate (excluding VAT)
Standard registration	R3 450.00
2 to 5 delegates	R3 250.00
6 to 10 delegates	R3 150.00
11+ delegates	R2 900.00
Non-profit organisations	R2 900.00

Special package rates will be considered for bookings over 16 delegates

workshop enquiries?

All workshop enquiries, including registration enquiries, are to be addressed to Taryn van der Merwe (041 373 4322 or pa@vanzyrudd.co.za).



2023 amendments



ABOUT THE PRESENTERS?



Adv Cameron Morajane

Advocate Cameron Morajane is the Director of the CCMA and a Professor of Practice at the University of Johannesburg ('UJ'). He is an Advocate of the High Court and is registered as a practising Advocate with the Legal Practice Council ('LPC'). Adv Morajane is an accomplished and seasoned executive leader with extensive experience in corporate law, labour law, dispute resolution, dispute management and prevention, public service and organisational management.

Before joining the CCMA, he was in private practice for 10 years and later joined the National Education, Health and Allied Workers Union ('NEHAWU') as the national legal co-ordinator. Adv Morajane is a Thought Leader and a sought-after speaker, both locally and internationally, in labour law matters. At the CCMA, he oversees all disputes that are strategic and of precedent setting nature. He is the recipient of the Leadership Award from the Law Society of South Africa. He holds the degrees BJuris, LLB and LLM as well as various diplomas. He is currently pursuing his doctorate of law degree (LLD) at UJ. Lastly, but not least, Adv Morajane has been the driving force behind the latest CCMA rules amendments.



Dr Brian van Zyl

Brian is the co-author of various publications, including the following: *The Final Codes on Broad-Based Black Economic Empowerment: An Analysis*, Part 1 and Part 2; *The Business of Restructuring, Guide to the CCMA Rules*, 1st and 2nd editions. Brian has also published the best seller *Changes to Employment Laws*. In 2019, he produced *The CCMA Rules, including Rules of Various Courts*, 4th edition. Brian has been the presenter and chief architect of *The South African Labour Law Reports'* annual seminars since 1990. He

is an admitted advocate and regularly appears in the civil and labour courts, as well as the CCMA and various bargaining councils.

OPTION 1

IN PERSON REGISTRATION FORM

Post/E-mail/Fax to: Van Zyl, Rudd and Associates SA (Pty) Ltd
P O Box 12758
Centrahil 6006

Enquiries: Taryn van der Merwe
Tel: 041-373 4322
Fax: 041-373 4323

2023 amendments

<input type="checkbox"/> JOHANNESBURG (SANDTON) THE MASLOW HOTEL MONDAY, 15 MAY 2023	<input type="checkbox"/> BLOEMFONTEIN KOPANO NOKENG HOTEL TUESDAY, 16 MAY 2023
DETAILS OF DELEGATE(S) 1. Full name of delegate: Email address: Cell no: 2. Full name of delegate: Email address: Cell no: 3. Full name of delegate: Email address: Cell no:	DETAILS OF DELEGATE(S) 1. Full name of delegate: Email address: Cell no: 2. Full name of delegate: Email address: Cell no: 3. Full name of delegate: Email address: Cell no:
<input type="checkbox"/> DURBAN SIBAYA CASINO THURSDAY, 18 MAY 2023	<input type="checkbox"/> GQEBERHA THE BOARDWALK HOTEL MONDAY, 22 MAY 2023
DETAILS OF DELEGATE(S) 1. Full name of delegate: Email address: Cell no: 2. Full name of delegate: Email address: Cell no: 3. Full name of delegate: Email address: Cell no:	DETAILS OF DELEGATE(S) 1. Full name of delegate: Email address: Cell no: 2. Full name of delegate: Email address: Cell no: 3. Full name of delegate: Email address: Cell no:
<input type="checkbox"/> PRETORIA SUN TIME SQUARE HOTEL TUESDAY, 23 MAY 2023	<input type="checkbox"/> JOHANNESBURG (BOKSBURG) THE BIRCHWOOD HOTEL WEDNESDAY, 24 MAY 2023
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<input type="checkbox"/> CAPE TOWN THE TABLE BAY FRIDAY, 26 MAY 2023	note: Upon receipt of the completed registration form by VZR, the seminar fee <i>per</i> delegate will be due and payable. note: Should a delegate register for a seminar and not be able to attend, for whatever reason, such cancellation must be in writing and received by VZR at least 15 calendar days before the date of the seminar. If such cancellation conditions are not met, the delegate will be held liable for the full seminar fee.
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PAYMENT DETAILS

PAYMENT OPTION 1

Please debit my credit card account number

Visa

Master

Expiry

CVV code

(three digits on back of card)

PAYMENT OPTION 2

EFT payment (note: VZR's banking details will be supplied with your invoice.
Please use your invoice number as your payment reference)

PAYMENT OPTION 3: INTEREST FREE INSTALMENT TERMS

Registration fee amount to be paid in three equal instalments, interest free: first instalment due before **Monday, 15 May 2023**, second instalment due before **Wednesday, 31 May 2023** and third instalment due before **Thursday, 15 June 2023**. Note: In the event of non-payment, the delegate will be personally responsible for collection of the outstanding amount and legal costs incurred

Authorised signature:..... Name & surname of person signing: Date:.....

INDIVIDUAL, ORGANISATION & BILLING INFORMATION

KINDLY INSERT YOUR VAT NUMBER IN RESPECT OF INVOICING:

Banking details of Van Zyl, Rudd and Associates SA (Pty) Ltd: ABSA - Newton Park - Account No: 40 8094 0399 Branch code: 632-005

KINDLY COMPLETE THE FOLLOWING SO THAT VZR WILL BE ABLE TO ISSUE THE RELEVANT INVOICE AND STATEMENT:

Individual / Organisation: Postal address:.....

ID no: Company reg no:

Relevant order no:

Postal code: Tel: Fax:.....

Name and surname of person responsible for payment of this account:

Email address and landline of person responsible for the payment of this account:

Date:..... Name and surname: Signature:

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NOTE: UPON RECEIPT OF THE COMPLETED REGISTRATION FORM BY VZR, THE SEMINAR FEE PER DELEGATE WILL BE DUE AND PAYABLE.

NOTE: SHOULD A DELEGATE REGISTER FOR A SEMINAR AND NOT BE ABLE TO ATTEND, FOR WHATEVER REASON, SUCH CANCELLATION MUST BE IN WRITING AND RECEIVED BY VZR AT LEAST 15 CALENDAR DAYS BEFORE THE DATE OF THE SEMINAR. IF SUCH CANCELLATION CONDITIONS ARE NOT MET, THE DELEGATE WILL BE HELD LIABLE FOR THE FULL SEMINAR FEE.



CAPE TOWN

THE TABLE BAY
FRIDAY, 26 MAY 2023

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12. Full name of delegate:
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Cell no:
13. Full name of delegate:
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14. Full name of delegate:
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