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## **FROM THE OFFICE OF THE DIRECTOR OF THE CCMA**

### **SUMMARY OF THE DIRECTIVE IN RESPECT OF ACCESS TO THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION DURING THE COVID-19 PANDEMIC**

1. This Directive will apply with effect from 01 August 2020 and serves to regulate public access to the CCMA, the manner in which the organization conducts its statutory dispute resolution functions, and delivers related interventions and services to the public during the Covid-19 pandemic.
2. This Directive serves to amend the Directives regulating access to the Commission for Conciliation, Mediation and Arbitration that were issued by the CCMA Director on 08 May 2020 and to repeal the subsequent Directive that was issued by the CCMA Director on 14 May 2020.
3. The Directive upholds all Covid-19 Regulations, particularly those issued by the Minister of Employment and Labour and the Minister of Public Service and Administration, issued in terms of section 27(2) of the Disaster Management Act, and is issued in terms of the authority vested in the Director of the CCMA in terms of section 118(2) (b) of the Labour Relations Act 66 of 1995, as amended (hereinafter referred to as the "LRA").

4. This Directive must be read together with the Rules for the Conduct of Proceedings before the CCMA, as amended (hereinafter referred to as the “CCMA Rules”), and all applicable statutes.

#### **REFERRING DISPUTES TO THE CCMA, SERVICE OF RELATED DOCUMENTS, AND SUBMISSION OF ARBITRATION AWARDS AND RULINGS**

5. The following applies to the referral of disputes to the CCMA:

- 5.1 Until directed otherwise by the CCMA, Parties are not permitted to visit any of the CCMA offices for purposes of making enquiries, submitting or collecting referral forms, or dropping off referrals and other related documents.

- 5.2 Instead, Parties may refer their disputes, in one or more of the following ways:

- 5.2.1 service of referrals by means of electronic mail (hereinafter referred to as “e-mail”); or

- 5.2.2 by facsimile; or

- 5.2.3 by registered mail; or

- 5.2.4 through the CCMA’s online referral platform which allows for applications for conciliation and arbitration hearings and applications for condonation of the late application of alleged unfair dismissal, alleged unfair labour practice and alleged unfair discrimination disputes. The online referral platform is accessible through the CCMA’s website [www.ccma.org.za](http://www.ccma.org.za), the CCMA Facebook page, and directly by typing the following web link in an internet browser <https://cmsonline.ccma.org.za>.

- 5.3 Parties wishing to track the progress of their cases are encouraged to download the free-to-use #CCMAConnect App for this purpose.

6. The following applies to the submission of arbitration awards and rulings:

- 6.1 The CCMA will submit copies of arbitration awards and rulings to Parties by electronic mail or by post.

- 6.2 Where a party wishes to collect a physical copy of the award or ruling, this will only be permitted by prior arrangement with the Provincial Office where the case was referred.

#### **HEARING OF DISPUTES, FACILITATING LARGE-SCALE RETRENCHMENT DISPUTES (SECTION 189A OF THE LRA) AND CONDUCTING CAPACITY BUILDING AND RELATED INTERVENTIONS**

7. The use of hearing venues within CCMA offices will be minimised and at the discretion of the Commission.

8. Cases and processes that have been scheduled to be heard at CCMA venues will remain so, unless directed otherwise by the relevant Provincial office of the CCMA.
9. As of 01 August 2020, the resolution of disputes that have not already been scheduled to be heard at a CCMA venue (as per item 8 above), in order of preference, will be undertaken through one of the following:
  - 9.1 a digital online platform that is to the satisfaction of the CCMA or the Commissioner; or
  - 9.2 at a suitable external venue<sup>1</sup> (e.g. the employer's premises); or
  - 9.3 at a CCMA office.
- 9.3 In addition, preference may be given for conciliation hearings to take place telephonically.
10. Where Parties do not agree to have a dispute, other than conciliation of rights-based disputes where telephonic conciliation may be preferred, heard through a digital online platform or at a suitable external venue (e.g. the employer's premises), the reasons for such non-agreement must be submitted to the CCMA in writing. The CCMA will then decide on the appropriate means through which the hearing or facilitation will proceed. Factors that will be considered are based largely on fairness and equity and include, but are not limited, to the following –
  - 10.1 For usage of online digital platforms, the extent to which both Parties have access to online digital platforms and the financial means to purchase sufficient data.
  - 10.2 For usage of external venues, the extent to which both Parties are able to physically access the venue, the suitability of the venue in terms of health and safety requirements, and any other reasonable factor that may be directly related to the dispute at hand (e.g. an applicant who claims to have been sexually harassed at work may not wish to have his or her dispute heard at the employer's premises).



**MR CAMERON SELLO MORAJANE**

**DIRECTOR OF THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION**

<sup>1</sup> External venues utilised for CCMA hearings, processes and interventions, must conform with the occupational health and safety standards set out in Covid-19 Occupational Health and Safety Measures in Workplaces Covid-19 (C19 OHS), 2020 GG 43257 published in terms of section 27(2) of the Disaster Management Act (57/2002).