

IMPORTANT EMPLOYMENT ANNOUNCEMENT

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THE IMPACT OF BUDGET CUT AT THE COMMISSION FOR CONCILIATION MEDIATION AND ARBITRATION ON EMPLOYEES AND EMPLOYERS.

The Commission for Conciliation Mediation and Arbitration “**the CCMA**” is a dispute resolution body which was formulated by the Labour Relations Act 66 of 1995. The CCMA’s compulsory statutory function in terms of Section 115 of the LRA is 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 goal of the CCMA is to assist in mediating disputes that arise in the workplace. The CCMA prides itself with resolving labour disputes between employers and employees speedily and in a manner that is cost effective for both employers and employees. One of the values of the CCMA is to restore the employment relationship between

employers and employees. Therefore, it is safe to say that the CCMA plays a vital role in society.

Employees who are aggrieved by the conduct of their employers may approach the CCMA to seek relief of reinstatement, reemployment or compensation amongst other remedies available. Employers may also approach the CCMA for interpretation/application of collective agreements, in essence the CCMA is not only formulated to assist employees but employers as well.

The purpose of this article is to give an opinion on how the recent budget cuts will impact employers and employees and in some instance lead to the complete breakdown of employment relationship.

In an article published by the Mail & Guardian on the 12th day of December 2020, it was said that the caseload of the CCMA has increased by 14.36 percentage in the year 2019 yet it only received funding of 1.32 percent. The article further raised concerns that in the year 2013 the CCMA had more commissioners compared to the year 2020 although it had a caseload of 30 percent of the CCMA case load for 2020. It is estimated that the CCMA will experience budget cut of R600 million over the next 3 years and this budget cuts will happen during the wave of job losses that will happen during the pandemic of Covid-19.

The CCMA has experienced a lot of influx disputes referred to the CCMA, where does that leave employees. In some cases, the CCMA has taken more than a year to allocate a date for arbitration. What is more alarming is that the CCMA has laid off part time commissioners who played a big role in resolving disputes.

The situation at the CCMA is dire and it raises fears on whether the CCMA will be able

handle the disputes referred to it. The article further reported that between December 2020 and March 2021, the CCMA will also not be using part-time commissioners, which the CCMA previously leaned on to help deal with its mounting caseload. One cannot help but infer that the financial constraints will impact on the services provided by the CCMA.

The financial constraint at the CCMA will have the impact of prolonging the finalization of matters. The delay in the finalization of matters does not only hurt employees but it also has the potential to hurt the pocket of employers.

It is important for employees to be aware that when they refer a dispute to the CCMA but a hearing date is not allocated within 30 (thirty) days they must refer the dispute to the CCMA within 90 (ninety) days after the lapse of the 30 (thirty) days. This process was confirmed in the case of *Vries v Lionel Murry Schwormstedt & Louw (2001) 22 ILJ 1150 (LC)* where the court said that in the event that the 30 (thirty) days expire since the CCMA received the referral form, and the dispute remains unresolved, a party must refer the dispute for arbitration. This means that a person does not have to be in possession of a certificate to refer the dispute for arbitration. If a party fails to comply with this requirement their matter will prescribed after 90 (ninety) days. If a matter prescribes, an employee must bring an application for condonation, keeping in mind that ignorance of the law is not an excuse.

Employees who approach the CCMA seeking a relief for reinstatement may be prejudiced by the prolonging of matters as they would be stuck at home without any form of income. Furthermore, the prolonging of matters will severely prejudice employees as it will lead to a delay in getting the relief sought, also keeping in mind how distressing it can be when one does not have any means of income.

The prolonging of matter can also cause strain in the relationship between client and attorney as some clients fail to understand that upon referring a dispute to the CCMA the responsibility will rest on the CCMA to allocate a date for a hearing. The limited resources at the CCMA may result in commissioners forcing parties to settle a dispute to avoid further delay on the matter and it can lead to miscarriage in justice.

The financial constraints will also have an impact on employers, some employers rely on the services of attorneys or advocates. If a matter is postponed or partly heard it can lead to employers incurring me legal fees.