



# Out With The Old, In With The New: Amendments To The CCMA Rules 2023

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The long-awaited amendments to the Rules for the Conduct of Proceedings (Rules) before the Commission for Conciliation, Mediation and Arbitration (CCMA) came into effect on 24 April 2023. These amendments were long overdue as there were concerns that the previous rules did not adapt to present-day technological advances in what are now widely accessible modes of service and communication. In some instances, the previous rules were not aligned to newly enacted legislation, such as the Protection of Personal Information Act (POPIA).

One important aspect of the new rules is that they modify methods of service. Rule 1 for example has been modified to exclude “tele-fax” as a method of service. There are various amendments that mainly address administrative issues (see a table summarizing the amendments below).

Some of the administrative amendments put in place have been clarifications on the timeframes for condonation. The amended Rule 9(1) authorizes the CCMA to consider both the timeframes in the rules and the Labour Relations Act 66 of 1995 (LRA) when determining condonation.

It is paramount that the stipulated time periods for service and filing are complied with. For instance, if a dispute arises under unfair labour practice such dispute must be referred to the CCMA within 90 days by delivering the referral form at the CCMA by hand or via registered post. Notably in the new amendments, the Rules also make further provision for electronic referrals online or by email. Moreover, it is important to note the provisions of the POPIA together with Rule 41 when serving and filing documents containing personal information even when serving electronically.

Electronic referrals may be done at any time, any day of the week and within the stipulated time periods. Specific regard must be made to the amended Rule 3 which provides that the period between 16 December and 7 January is to be included when calculating a referral period. Failing to comply with the time periods may result in a party having to apply for condonation.

Rule 9(2) provides that an application for condonation may be delivered together with the referral or may be made during the time of proceedings. The Commissioner is granted discretion by the amended Rule 10(3) on how to deal with a late referral where an application for condonation has not been applied to it. The Commissioner may require the referring party to file a condonation application prior to the proceedings.

While the amended Rules are accommodating of electronic filing and have widened the definition “of signature” with Rule 4 being inclusive of electronic signatures, proof of service and application for condonation are still required. Once all the papers have been served and filed it is paramount that the parties attend the matter on the date and the venue issued by the CCMA as per Rule 24.

Two critical amendments, Rule 30 and Rule 31C, that have been introduced to stipulate new conditions under which the commissioner can establish non-attendance. These two amendments are based on the judgement of *Solomons v NO*, the CCMA and *Food Lovers and Market Kempton Park (JR99/2021) [2021] ZALCJHB 192* which dealt with non-attendance by the referring party at arbitration. In the decision of *Solomons* at paragraphs 12, 13 and 14, Judge Moshwana, advocated for the words “dismiss the matter” contained in section 138(5) LRA for non-appearance in arbitration proceedings to be reconsidered.

Justice Moshwana stated that the word “dismissed” for non-attendance of arbitration proceedings has unintended consequences. The main consequence was that a matter that was dismissed in terms of the old Rule 30(1) (a) by the CCMA for non-attendance resulted in a default judgement and could not be re-enrolled for arbitration. Thereby unintentionally establishing an unconditional rule that could disadvantage clients based on some reasonable circumstances for not attending arbitrations.

The result is that many matters were referred to the Labour Court for review. The above judgement resulted in the word “dismissed” being replaced with the word “removed”. This amendment of Rule 30(a) provides the affected parties may re-enrol a matter that was removed due to non-attendance.

It is imperative that clients of the CCMA, both employees and employers, become aware of the amended rules of the CCMA and their implications. This will ensure timeous and proper compliance with the rules and, in the long run, minimize client costs and time.

Overall, these new amendments may ensure expeditious processing of disputes and cases at the CCMA and may stand to improve the Commission's operations and services in fulfilling its statutory functions under the LRA.