



37 Church Street
Wynberg
Cape Town, Western Cape
South Africa

A. **TAKING A MATTER TO THE COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION (CCMA)**

At PASSOP, we are receiving many clients complaining about poor working conditions, bullying and racial discrimination and xenophobia in their work places. Many other clients approach us having been unfairly suspended and dismissed from work by their employers. If you are a worker in dispute with your employer over matters such as-

- Dismissal
- Wage disputes
- Working conditions
- Workplace changes
- Discrimination
- Sexual Harassment
- Violence

You may approach the CCMA to conciliate or even arbitrate in your dispute. A union employer's organisation may also initiate this action. Please be aware that **you do not need a lawyer or any other representative to take a matter to the CCMA.**

NB: The following disputes **cannot** be referred to the CCMA-

- Disputes involving an independent contractor
- Cases not dealing with an issue in the LRA or Employment Equity Act (EEA). (Basic Conditions of Employment Act (BCEA) issues may be linked to unfair dismissal disputes and unfair retrenchment disputes at the CCMA),
- Disputes where a bargaining council or statutory council exists for that sector,
- Disputes where a private agreement exists for their resolution (for example: private arbitration)

Steps for disputes at the CCMA

Step 1: If you have a problem with your employer, it is very important that you take these steps immediately. In the case of an unfair dismissal dispute, **you have only 30 days from the date on which the dispute arose to open a case; if the case is an unfair labour practice, you have only 90 days and, with discrimination cases,**

you have six months. It is important that you exhaust all other ways of settling the dispute by negotiation before you take the matter to the CCMA.

Step 2: If you have decided to lodge a dispute, you need to complete a CCMA case referral form (also known as LRA Form 7.11). These forms are available from the CCMA offices, Department of Labour and the CCMA website. (<http://www.ccma.org.za>). If you have problems completing the forms, ask the CCMA officials for assistance.

Step 3: Once you have completed the form, you need to make sure that a copy is delivered to the other party. You must be able to prove that a copy was sent. You can send the forms to your employer by faxing a copy (keep the fax report slip), sending it by registered mail (keep the postal receipt), by courier (keep proof) or deliver it in person (ask the person receiving it to sign for it).

Step 4: When you have delivered the forms to your employer, you need to send a copy to the CCMA. You may deliver it in person, fax it or post it. Make sure that a copy of the proof that the form had been served on the other party is also enclosed together with the forms.

Step 5: The CCMA will contact both parties to inform you as to the date, time and venue of the hearing.

Step 6: Usually the first meeting is called conciliation. The purpose of the hearing is to facilitate dialogue between the employee and the employer so that you can reach an agreement acceptable to both parties. If you are member of a trade union, your union should represent you. The employer can also be represented by an employers' organisation if they are a member of such an organisation. The hearing is chaired by a CCMA commissioner dealing with your case. Please note that legal representation is not allowed.

Step 7: If parties fail to reach an agreement, the matter proceeds to the mediation stage. At this stage, the CCMA Commissioner plays a more active role in trying to resolve the dispute. The Commissioner may propose solutions so that the parties may discuss them. If both parties agree to settle the dispute amicably, then the agreement is written as a **Settlement Agreement**.

Step 8: If no agreement is reached, the commissioner will issue a certificate stating that there was no agreement between the parties. Depending on the nature of the dispute, the case may be referred to the CCMA for arbitration, or straight to the Labour Court as the next step.

Step 9: In order to have an arbitration hearing, you have to complete a Request for Arbitration form, (also known as LRA Form 7). A copy must also be served to the other party (same as in step 3). Arbitration should be applied for within three months from the date that the commissioner issued the certificate.

Step 10: Arbitration is a more formal process. Evidence, including witnesses and documents, may be necessary to prove your case. Parties may cross-examine each other. **Legal representation may be allowed.** The

commissioner will make a final and binding decision, called an arbitration award, within 14 days after the date of the hearing.

Step 11: If a party does not comply with the arbitration award, it may be made an order of the Labour Court.

B. LODGING A COMPLAINT TO THE DEPARTMENT OF LABOUR

If you feel that you are not being paid enough or if you are working long hours, on weekends and on public holidays without pay, you can lodge a complaint at the Department of Labour offices. There are many Labour Centres in every District throughout the South Africa that deal with such complaints. There are also Provincial Offices providing the following services: handling UIF Benefits; labour complaints and other labour related enquiries. If you are not sure whether you are being underpaid/ exploited or not, you can come to PASSOP for advice and information. Please be advised that the Department of Labour only deals with pay-related complaints including the following:

- Underpayment
- Unpaid/paid leave days
- Illegal deductions
- Working on public holidays without double payment
- Working on Sundays without double payment
- Working overtime without pay
- UIF claims
- Compensation for injury at work

Steps for Complaints at the Department of Labour

1. Go to the nearest Department of Labour to report your case. You should specify that you want to lodge a labour complaint.
2. Complete the relevant Labour Complaint forms.
3. A Labour Inspector is assigned to investigate your complaint. Inspectors may visit your workplace to gather more information from the employer. This is done through examining records such as payslips, time sheets, talking to fellow employees etc.
4. If the employer is found to be guilty, a Compliance Order is issued. This forces the employer to pay the worker. If not, the complaint fails.
5. If the employer refuses to pay the worker, the matter may be taken to the Labour Court.

NB: You do not need to lodge a complaint with the Department of Labour. If you are also unsure whether you are being exploited or not, you can come to PASSOP offices for advice.