



September 2014

## An Unfair Dismissal

In order for a dismissal to be fair, an employees' employment must have been terminated for a fair reason (i.e. must be substantively fair) and executed in accordance with fair procedures (i.e. must be procedurally fair). Both elements need to be present in order for a dismissal to be fair in the true sense of the word. Thus if one or both of the elements are considered unfair, then the dismissal in general is considered to be unfair.

An unfair dismissal dispute must be referred to the Commission for Conciliation, Mediation and Arbitration (commonly known as the CCMA) within 30 calendar days from the date of dismissal.

The date of the dismissal is:

1. The date on which the contract of employment terminated;
2. The date on which the employee left the service of the employer;
3. The date on which an employer offered the less favourable terms on which to renew a fixed term contract or the date the employer notified the employee of the intention not to renew a contract.
4. The date on which the employer first refused to allow the employee to resume work.
5. The date on which the employer first refused to reinstate or re-employ an employee.

In calculating the 30 day period, the first day (i.e. the day on which the dismissal itself occurs) is excluded and the last day is included. Therefore, if an employee is dismissed on 3 September 2014, the 30 day period will begin to run on 4 September 2014 and the 30<sup>th</sup> day will end on 3 October 2014. Should the last day (i.e. the 30<sup>th</sup> day) fall on a Saturday, Sunday, public holiday or on a day during 16 December to 7 January, then the last day must be excluded. Thus it is important to ensure that you submit the referral before the weekend, public holiday or December recess period.

An aggrieved employee must refer a dispute to the CCMA by completing the prescribed LRA 7.11 form. The form may be downloaded from the CCMA website [www.ccma.org.za](http://www.ccma.org.za) or obtained from the offices of the CCMA directly.



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The completed form must be served on the employer or any person duly authorized to accept service thereof on behalf of the employer in one of 4 ways:

- a) by handing a copy of the LRA 7.11 form to the employer, the employer's representative who is authorized in writing to accept service on behalf of the employer or on a person who appears to be 16 years or older and in charge of the employer's place or residence, business or place of employment premises at the time or on a person identified by the rules of the CCMA.;
- b) by leaving a copy of the document at an address chosen by the person to receive service or any premises allowed by the rules of the CCMA;
- c) by fax or telefax to the persons' fax or telefax number or a number by the employer to receive service; or
- d) by posting a copy by registered post or telegram to the address of the employer or an address chosen by the employer to receive service.

The CCMA prefers service by fax or registered mail.

Once the form is served, the registered slip or fax transmission sheet or any other proof of service must be attached to the original LRA 7.11 form whereafter the form is filed at the CCMA.

Within 14 days after filing the form at the CCMA you will receive a date advising you to attend a conciliation hearing, or possibly a con/arb hearing at the CCMA. The CCMA process will then begin.



Attorneys  
*notaries*  
*conveyancers*