

Time limit on referring matters to the CCMA

According to the guidelines governing CCMA cases, an employee has 30 days to refer a matter to the CCMA, and thereafter they are deemed to be "out of time".

"This is not always so," says Leslie-Anne Bennett of LABER, who explains that very often employees that refer a matter outside of the 30 day period are successful in getting their matter heard.

Why is this?

"Recently I was involved in a matter where the Applicant (the employee) was well out of time, and the matter was set down for a "point in Limine". In simple terms this meant that it was first necessary to ascertain whether the CCMA had jurisdiction to hear the matter as the Applicant was outside of the 30 day period," says Bennett.

"An application was made for "condonation" – meaning a request to still have the matter heard, and the Respondent (my client and the Employer) arrived and presented his case as to why the matter should not go any further."

Bennett explains that the Commissioner considered 3 things:

- 1) The degree of lateness (how much out of time was the Applicant?)
- 2) His prospects of success (what was the likelihood of the Applicant succeeding?)
- 3) Prejudice if the matter was not heard.

"The Respondent then had to prepare an "Objection to Condonation" affidavit, wherein the above matters were addressed. The Commissioner however felt that the matter should go ahead, as there was some prospect of success for the Applicant."

"Once condonation is granted," says Bennett. "the matter goes straight to arbitration and the process of conciliation is eliminated. The outcome of this ruling is binding on both parties."

So, in short "out of time" does not mean you are "out of the woods".
There may be a way to go yet!

Bennett offers the following valuable hint in conclusion: "Pay settlements on voluntary separation agreements 30 days later, which assists in assuring that the other party will be out of time to refer the matter to the CCMA, should they so choose. They then have the inconvenience in applying for condonation. Also, make the settlement a "full and final" one, with a waiver to the CCMA."

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