



REPRESENTATION AT THE CCMA

We have received a letter from the CCMA informing us that they will in future instruct all commissioners to insist that any and all representatives provide proof of legitimacy to represent parties regardless of whether or not the issue is challenged or raised. The afore-mentioned documents are to be placed in the relevant case file and the CCMA's national internal audit department will immediately commence random file checks to monitor compliance.

In future the following documents will be required by all commissioners:

1. copy of registration certificate of an employer's organisation or trade union;
2. copy of proof that the representative in their personal capacity is a member of the employer's organisation or an employee of such organisation or trade union.
3. copy of proof that the client is a member of the employer's organisation or trade union.

Only a natural person may represent an employer party on the basis that they are fellow members of an employers' organisation. Only employers may be a member of an employers' organisation and therefore, provided that they meet all the other requirements, it is only possible for sole proprietors who are themselves employers, to qualify to represent other employer parties on the basis of fellow membership of an employer's organisation.

In conciliation proceedings a party to the dispute may appear in person or be represented only by a director or employee of that party or by a member of a close corporation or any member, office bearer or official of that party's registered trade union or registered employers' organisation.

In any arbitration proceedings a party to the dispute may appear in person or be represented only by a legal practitioner, a director or employee of that party or a member of a close corporation or any member, office bearer or official of that party's registered trade union or registered employers' organisation.

If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for dismissal relates to the employee's conduct or capacity, the parties are not entitled to be represented by a legal practitioner in the proceedings, unless:

- i) The commissioner and all parties consent;
- ii) The commissioner concludes that it is unreasonable to expect a party to deal with the dispute without legal representation,

after considering –

- a) the nature of the questions of law raised by the dispute;
- b) the complexity of the dispute;
- c) the public interest; and
- d) the comparative ability of the opposing parties or their representatives to deal with the dispute.

If a party to the dispute objects to the representation of another party to the dispute or the commissioner suspects that the representative of a party does not qualify in terms of the CCMA Rules, the commissioner must determine the issue.

A representative must tender any documents requested by the commissioner in terms of the CCMA Rules, including constitutions, pay slips, contracts of employment, documents and forms, recognition agreements and proof of membership of a trade union or employers' organisation.

(GO)

East Cape Master Builders

Tel. 0860 622622 ~ Email: ecmba@global.co.za ~ Web: www.ecmba.org.za