WERKSMANS
ATTORNEYS

EMPLOYMENT

Making the dies count

20 December 2023 *6 min read*

and Nombulelo Bashe – Candidate Attorney

On 21 April 2023 the Governing Body of the Commission for Conciliation, Mediation and Arbitration ("**CCMA**") published amended Rules for the Conduct of Proceedings before the CCMA ("**Rules**"). The Rules, which came into effect on 24 April 2023, are published in terms of section 115(2A) of the Labour Relations Act, 66 of 1995 (as amended) (**"LRA"**).

One of the most significant changes brought about by the Rules concerns, *inter alia,* the calculation of time periods for referrals, filing documents with the CCMA and the delivery of notices.

For purposes of calculating time periods in the Rules, Rule 3(1) states that a day means a calendar day, with the first day being excluded and the last day being included in the calculation of time periods. Certain days (referred to as *dies non*) are not calculated in the time allowed for the delivery of any pleading or notice.

Prior to the 2023 amendments to the Rules, Rule 3(2) provided for an extension of the time period by means of the application of the "last day" principle. In terms of the previous Rule 3(2), any period of time provided for in the Rules must be extended if the last day fell on a Saturday, Sunday, public holiday or a day during the period 16 December to 7 January (both days inclusive). The last day was accordingly excluded and the period was extended to the next day that did not fall on such a day.

The 2023 amendments to the Rules removed the reference to 16 December to 7 January as explicit *dies non.* In terms of the amended Rule 3(2), the last day of any period must only be excluded if it falls on a Saturday, Sunday or public holiday and will be the first working day following the Saturday, Sunday or public holiday. The effect of the amendment to Rule 3(2) is that the period between 16 December to 7 January is **not** subtracted for purposes of calculating the days for referrals, notices and delivery of pleadings.

The amendment to Rule 3(2) indicates that the CCMA has aligned its approach to the computation of days with the Labour Court, which also does not provide a *dies non* period between December and January.

The practical implications of the amendment to Rule 3(2) are illustrated by two scenarios below.

Scenario 1: CCMA Notifying Parties of Conciliation

In terms of Rule 11, the CCMA must notify the parties in writing of a conciliation at least 7 (seven) days prior to the scheduled date in matters relating to the right to strike and recourse to lockout in terms of section 64 of the LRA. If the CCMA notifies the parties of conciliation on 19 December 2023, the time period to determine when the matter will be conciliated is calculated as follows –

- The day that the CCMA sends the conciliation notice to the parties, i.e., 19 December 2023, is excluded;
- The 7-day time period is calculated from the very next day, i.e., 20 December 2023, and includes Saturdays, Sundays and public holidays until the 7th day;
- For purposes of this example, the 7th day falls on 26 December 2023;
- Since the 7th day falls on a public holiday (Day of Reconciliation in South Africa), the last day of the notice period is excluded;
- The calculation of days resumes on the first working day after the public holiday, i.e., 27 December 2023;
- If conciliation is due to take place on 27 December 2023, the CCMA must notify the parties on or by 19 December 2023.

While parties are not precluded from referring disputes, accessing the CCMA and filing documents, it is unlikely that the CCMA will schedule and hear cases between 16 December and 7 January, unless the parties have made prior arrangements with the senior case manager and a commissioner who is amenable to hear the matter during this period.

Scenario 2: Delivering Opposing Papers in a Condonation Application

In circumstances where a party seeks to oppose an application for condonation of the delivery of a document outside of the applicable time period prescribed by the LRA, applicable labour laws or the Rules, such a party must oppose the condonation application in terms of Rule 31.

Rule 31(5)(a) states that any party intending to oppose an application for condonation must deliver a notice of opposition and answering affidavit ("**opposing papers**") within 5 (five) days from the day on which the condonation application was served on that party. If a party receives an application for condonation on 19 December 2023, the time periods within which to serve and file opposing papers will be calculated as follows –

- The day that the application for condonation is served, i.e., 19 December 2023 is excluded;
- The 5-day time period within which to serve opposing papers is calculated from the very next day, i.e., 20 December 2023, and includes Saturdays, Sundays and public holidays until the 5th day;
- For purposes of this example, the 5th day falls on Sunday, 24 December 2023;
- Since the 5th day (the last day within which to serve and file opposing papers) falls on a Sunday, the last day is excluded and will be the first working day following the Sunday;
- This time period is further extended because Monday, 25 December 2023 and Tuesday, 26 December 2023 are both public holidays (Christmas Day and Day of Reconciliation in South Africa respectively). These *dies non* are excluded from the computation of time within which to serve the opposing papers;
- The calculation of days resumes on the first working day after the Sunday;
- The opposing papers in this scenario must be served on or by 27 December 2023.

Conclusion

Parties involved in disputes brought under the auspices of the CCMA must remain alert to the amendment to Rule 3(2) to avoid costly and time-consuming condonation applications. The CCMA remains open to receive and process matters and the prescribed time periods stipulated in the Rules will continue to run throughout the year. Time no longer comes to a standstill during the festive season.



Jacques van Wyk

Director

View Profile

Keep us close