DISPUTE RESOLUTION PLAYBOOK

The CCMA, *without the surprises.*

What happens when a South African employee disputes a dismissal, how long you have to respond, and the decisions that determine the outcome long before anyone reaches a hearing room.

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Jurisdiction
South Africa

For
International employers and their HR leads

START HERE

Most CCMA cases are decided before the referral is filed

The Commission for Conciliation, Mediation and Arbitration is not a court, and it was deliberately built to be quick, cheap and accessible to employees without lawyers. That design has one consequence international employers consistently underestimate: the process rewards the party with better records, not the party with better arguments.

By the time a matter is set down, the facts are already fixed. What the employer did or failed to do in the weeks before the dismissal determines almost everything. This playbook works backwards from that point.

30 days	12 months	24 months
To refer an unfair dismissal dispute, counted from the date of dismissal	Maximum compensation for an ordinary unfair dismissal, in months of remuneration	Maximum where the dismissal is automatically unfair

Is the CCMA even the right forum?

Three bodies hear employment disputes in South Africa, and referring to the wrong one costs time you may not be able to recover.

FORUM	WHEN IT HAS JURISDICTION
Bargaining Council	Where a council has been established for the sector and the employer falls within its registered scope. The council displaces the CCMA. Check scope before assuming the CCMA applies, because many sectors are covered.
CCMA	The default for dismissal disputes involving misconduct, incapacity and, in defined circumstances, operational requirements, plus unfair labour practice disputes, where no bargaining council has jurisdiction.
Labour Court	Automatically unfair dismissals, most large-scale retrenchments, dismissals relating to strikes, reviews of CCMA awards, and monetary claims by employees earning above the earnings threshold.

The earnings threshold sets the route for money claims

From 1 May 2026 the Basic Conditions of Employment Act earnings threshold is **R269,600.90 per year**, which is R22,466.74 per month. Under section 73A of the BCEA, a claim for an amount owing must first go to the CCMA for conciliation. If it is not resolved, an employee earning **below** the threshold may proceed to CCMA arbitration. An employee earning **above** it must take the claim to the Labour Court, and the employer cannot consent its way around that.

A dismissal has to be fair twice over

South African law asks two separate questions about every dismissal, and failing either one makes the dismissal unfair. Employers from common law jurisdictions with at-will employment routinely satisfy the first and ignore the second.

TEST	THE QUESTION	WHERE EMPLOYERS LOSE
Substantive fairness	Was there a valid reason to dismiss, and was dismissal an appropriate sanction for it?	Treating a first offence as dismissable, or applying a sanction inconsistently across employees.
Procedural fairness	Was a fair process followed before the decision was taken?	No written notice of the allegations, no opportunity to respond, no representation, or a decision-maker who is also the complainant.

Schedule 8 of the Labour Relations Act, the Code of Good Practice on Dismissal, is the reference point a commissioner will use. It is short, it is public, and it is worth reading in full before you write a disciplinary policy for a South African team.

Only three grounds are recognised

01 **Misconduct**

Conduct-based. Requires a rule that was known or reasonably expected to be known, a breach of it, consistent application, and a process in which the employee could state a case. Progressive discipline is the norm, so dismissal for a first offence needs the conduct to be serious enough to make the relationship intolerable.

02 **Incapacity**

Poor performance or ill health. Performance cases require that the standard was communicated, the employee was given a fair opportunity to meet it, and support or training was offered. Ill health cases require the employer to investigate the extent of the incapacity and to consider adapting the work or finding alternatives before dismissing.

03 **Operational requirements**

Retrenchment. Governed by section 189, with an enhanced process under section 189A for larger employers and larger retrenchments. Requires genuine consultation on a defined list of topics, including alternatives to dismissal and selection criteria, before any decision is finalised. Consultation after the decision is not consultation.

Probation is not a free pass

A probationary employee has fewer procedural protections, not none. Schedule 8 requires that the probation period be reasonable for the role, that performance standards be explained, that the employee receive evaluation, instruction and guidance during the period, and that they be given an opportunity to respond before any decision. Summary dismissal on the last day of probation without any of that is a losing case.

From referral to award

01 **Referral**

The employee completes form LRA 7.11 and serves a copy on the employer, then files it with the CCMA with proof of service. Service and proof of service both matter, and a defect in either is worth checking for.

02 **Notice of set down**

The CCMA issues a notice giving the date, time and venue or platform. Keep your registered contact details current, because a matter heard in your absence still produces an award.

03 **Conciliation**

A commissioner attempts to broker a settlement within 30 days of the referral. It is without prejudice and off the record. Legal representation is generally not permitted. This is the cheapest exit available and it is routinely wasted by employers who attend without settlement authority.

04 **Certificate of outcome**

If the matter does not settle, the commissioner issues a certificate recording that the dispute remains unresolved and identifying the correct next forum.

05 **Arbitration**

Referred on form LRA 7.13. Evidence is led, witnesses are examined and cross-examined, and the commissioner decides the matter. The employer carries the onus of proving the dismissal was fair.

06 **Award**

Binding and enforceable. An arbitration award may be made an order of the Labour Court, and certified awards can be enforced like a court order.

Con-arb

In many matters the CCMA sets the case down as a con-arb, meaning arbitration begins immediately after conciliation fails on the same day. A party who wants the two stages separated must deliver a written objection at least seven days before the scheduled date. Disputes concerning probation are treated differently and the right to object does not apply to them in the same way. Practically, assume you may have to run the full arbitration on the day and prepare witnesses accordingly.

THE CLOCK

Time limits, and how the days are counted

DISPUTE	REFERRAL DEADLINE	RUNS FROM
Unfair dismissal	30 days	The date of dismissal, or the date the employer made its final decision if that is later, for example after an internal appeal.
Unfair labour practice	90 days	The act or omission complained of, or the date the employee became aware of it if that is later.
Unfair discrimination	6 months	The act or omission that allegedly constituted the discrimination.
Non-standard employment, section 198D	6 months	The act or omission concerned.
Referral to arbitration	90 days	The date the certificate of outcome was issued, or the expiry of the 30-day conciliation period.
Review of an award	6 weeks	The date the award was served on the party seeking review. Reviews go to the Labour Court.

How the CCMA counts days

Exclude the first day and include the last. The last day is only excluded if it falls on a Sunday or a public holiday. An employee dismissed on 6 August has a period that starts running on 7 August. Check the arithmetic yourself rather than accepting a date asserted in correspondence.

Condonation

A late referral is not automatically dead. The employee must apply for condonation under Rules 9 and 31 of the CCMA Rules and show good cause. A commissioner weighs the degree of lateness, the explanation offered for it, the prospects of success on the merits, the prejudice to each party, and any other relevant factor. Condonation is an indulgence rather than a right, but it is granted often enough that treating a late referral as a guaranteed win is unwise.

Where a condonation application is served on you, you have five days to respond by affidavit. Responding well matters. A short affidavit that engages the actual factors carries far more weight than a bare objection that the referral was late.

OUTCOMES

What a commissioner can order

REMEDY	DETAIL
Reinstatement	The default remedy where a dismissal is substantively unfair. It can be retrospective to the date of dismissal, which means back pay in addition to the job.
Re-employment	Re-engagement on new terms or in a different role.
Compensation	Must be just and equitable. Capped at the equivalent of 12 months' remuneration for an ordinary unfair dismissal, and 24 months where the dismissal is automatically unfair.
Costs	Rarely awarded at the CCMA, and their absence is part of why referral volumes are high.

Where a dismissal is procedurally unfair but substantively justified, reinstatement is unlikely and compensation is usually modest. That distinction is worth understanding before deciding whether to settle.

PREPARATION

The evidence pack

Assemble this before you need it. Reconstructing a paper trail after a referral arrives is visible to a commissioner and it damages credibility.

- [ ] **Signed employment contract** with the written particulars required by section 29 of the BCEA
- [ ] **Disciplinary code and procedure**, with proof it was issued to and acknowledged by the employee
- [ ] **Job description** and any documented performance standards
- [ ] **Prior warnings**, dated, signed or with a record of refusal to sign
- [ ] **Notice of the disciplinary hearing**, showing the allegations and reasonable notice
- [ ] **Minutes or a recording of the hearing**, including the employee's response
- [ ] **The chairperson's written finding** and reasons for the sanction
- [ ] **Outcome letter** and any internal appeal record
- [ ] **Comparator evidence** showing how similar conduct was treated for other employees
- [ ] **Payslips and leave records** for the period in question
- [ ] **Final payment calculation**, including notice, leave pay and any severance
- [ ] **Witness availability** confirmed for the set-down date

Where international employers most often lose

ERROR	CONSEQUENCE
Treating employment as at-will	No valid reason and no process. The dismissal fails both tests at once.
The manager who investigates also chairs	Procedural unfairness on the face of the record.
Performance managed by conversation only	No evidence the standard was set, communicated or supported.
Retrenchment decided, then consulted	Section 189 requires consultation before the decision is finalised.
Inconsistent sanctions	One employee dismissed for conduct another was warned for. Difficult to defend.
Attending conciliation without authority	The cheapest settlement window closes unused.
Assuming a signed resignation ends it	An employee may claim constructive dismissal, and the enquiry then turns on the employer's conduct.
Missing the set-down	The matter may proceed in your absence and produce a binding award.

ON THE HORIZON

Reform that would change the arithmetic

On 26 February 2026 the Minister of Employment and Labour published the Labour Law Amendment Bill together with the Labour Relations Amendment Bill for public comment, in Government Gazette No. 54220. Comment closed on 28 March 2026. These are the most substantial proposed changes to South African employment legislation in more than a decade.

They are proposals, not law. Bills move through the State Law Advisor, parliamentary committees, the National Assembly, the National Council of Provinces and presidential assent, and their content can change at any stage. Nothing below is in force. It is here because the direction of travel affects how you should be structuring arrangements now.

PROPOSAL	WHY IT MATTERS
Severance doubling	Statutory minimum severance for operational requirements dismissals would rise from one week to two weeks' remuneration per completed year of service. The increase is proposed to apply prospectively, accruing only for years of service completed after commencement.
Severance disputes direct to arbitration	Where only the severance amount is in dispute and the fairness of the dismissal is not challenged, the matter could be referred straight to CCMA arbitration.
Broader definition of employee	An employee would be defined as a person performing work or providing services for another who is not conducting an independent trade, profession or business in which the recipient is a client or customer. This would pull more contractor arrangements into employment protection.
On-call and zero-hours work	A proposed new section 9B of the BCEA would set minimum protections for on-call, zero-hours and if-and-when arrangements at employers with more than ten employees, including maximum hours, availability periods and notice for cancellation of work.
Parental leave	An expanded, gender-neutral statutory framework, giving legislative effect to the direction set by the Constitutional Court in Van Wyk.

What to do about it now

Nothing urgent, and nothing that requires re-papering contracts. The useful response is to model your exit costs on the higher severance figure when planning any restructuring that may complete after enactment, and to review contractor arrangements against the proposed employee definition rather than only against the current one.

CLOSE

The short version

Fair reason, fair process, and a paper trail that proves both. Almost every CCMA loss traces back to one of those three being missing at the moment the decision was taken, not to what was argued at the hearing.

For an international employer without a South African entity, the practical difficulty is that these obligations sit with the legal employer, and they require someone in the country who understands the procedure well enough to run it correctly the first time. That is the layer an Employer of Record provides.

Employing in South Africa without a local entity

Employer of Record South Africa acts as the legal employer for teams hiring South African talent, covering compliant contracts, payroll in rand, statutory submissions and the HR process behind decisions like the ones in this playbook.

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Principal sources. Labour Relations Act 66 of 1995, including sections 145, 186, 188, 189, 189A, 191 and 194, and Schedule 8, the Code of Good Practice on Dismissal. Basic Conditions of Employment Act 75 of 1997, including sections 29 and 73A. Rules for the Conduct of Proceedings before the CCMA, including Rules 9, 13, 25 and 31. CCMA published guidance on referral time frames and condonation. Determination of the earnings threshold published by the Minister of Employment and Labour in April 2026, effective 1 May 2026. Labour Law Amendment Bill and Labour Relations Amendment Bill, Government Gazette No. 54220 of 26 February 2026.