SCALES OF STRATEGY

LABOUR CONSULTING (PTY) LTD

A PRACTICAL GUIDE FOR EMPLOYERS

CCMA Referral

What to Do in the First 48 Hours

An employee has referred a dispute against your business to the CCMA.

The next two days matter more than you might think. This guide walks you through what to do, what to avoid, and when to bring in help.

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Calculated Moves. Balanced Results.

INTRODUCTION

A CCMA Referral Has Landed. Now What?

If you are reading this, there is a reasonable chance one of two things has just happened. Either an employee has formally referred a dispute to the CCMA and you have received the notification, or you are preparing in advance — quietly, sensibly — for the day it might happen.

Either way, good. The instinct to get ahead of it is the right one. South African employers who treat a CCMA referral as a routine administrative matter tend to regret it. Those who treat it seriously from day one are usually the ones who walk into conciliation well-prepared and walk out with a workable outcome.

This short guide is written for the business owner or manager who is not a labour law specialist, who has a business to run, and who suddenly has a legal process on their desk. It covers what a CCMA referral actually is, the concrete actions to take in the first 48 hours, what not to do, what happens next, and when it is worth bringing in professional representation.

> **A WORD ON THIS GUIDE**
>
> This is a general guide, not legal advice on your specific matter. SA labour law is nuanced and the right course of action depends heavily on the facts. If this is an active referral, do not rely on this document alone — get proper advice. Our contact details are at the back.

Let's start with the basics.

CHAPTER ONE

What Is a CCMA Referral?

The Commission for Conciliation, Mediation and Arbitration — the CCMA — is the statutory body that resolves most labour disputes in South Africa. It was established under the Labour Relations Act and is independent of government, employers, and trade unions.

A CCMA referral is the formal process by which an employee (or their representative) asks the CCMA to intervene in a dispute with their employer. The most common trigger is an alleged unfair dismissal, but referrals also cover unfair labour practices, discrimination, wages, benefits, and a range of other workplace issues.

How Will I Know a Referral Has Been Made?

You will typically receive a document titled LRA Form 7.11 — the official referral form. It sets out who the employee is, what dispute they are referring, the date of the alleged incident, and the relief they are seeking. It will also contain a date, time, and venue for a conciliation meeting.

The form may arrive by email, by hand, by post, or through your reception or HR function. It may arrive during office hours, or it may not. Whoever receives it in your business needs to understand that it is urgent and that it must reach the right person immediately.

> A COMMON MISTAKE
>
> A Form 7.11 left sitting on the wrong desk for a week is how well-defensible matters become indefensible. Make sure every person in your business who opens post or handles reception knows what one looks like and who to give it to.

CHAPTER TWO

Why the First 48 Hours Matter

The CCMA works on statutory timelines. Conciliation must take place within thirty days of the dispute being referred, and arbitration — if the matter is not resolved at conciliation — usually follows within sixty days. That sounds like plenty of time. It is not.

Here is why those first two days are disproportionately important:

- **Memory fades fast.** Witness recollections begin to degrade within days. What a supervisor remembers clearly on Monday becomes fuzzy by Friday. If a dismissal followed an incident two months ago, your witnesses' memories are already imperfect — and will be picked apart at arbitration.
- **Evidence goes missing.** Emails get deleted in routine housekeeping. CCTV footage is overwritten. Till rolls get binned. Documents get filed where nobody can find them. Every day that passes without a formal evidence preservation step, your position gets weaker.
- **Stories settle.** In the days after a dismissal or dispute, people talk. Employees compare notes with colleagues, managers vent to each other, versions harden into narratives. The sooner you capture what actually happened in writing, the more reliable it will be.
- **Settlement windows open and close.** Many disputes are resolvable early, before positions calcify, and before the employee has spent time and emotion preparing for a fight. The first 48 hours are often when the cheapest, cleanest resolution is still possible.
- **Procedural points are time-sensitive.** Certain responses and objections have deadlines attached. Missing them doesn't end your case, but it does restrict your options.

None of this means you need to panic. It means you need to move deliberately, in the right order, starting today.

CHAPTER THREE

The 48-Hour Action Checklist

Work through this list in order. Tick items off as you complete them. If you cannot complete an item — for example, because the person who holds key information is unavailable — note it and return to it before the 48 hours are up.

Hour 1 — 6: Immediate Triage

- ☐ Identify the correct internal owner of this matter. This should be the business owner, MD, or HR head — not the manager directly involved in the underlying dispute.
- ☐ Read the Form 7.11 carefully and record: the employee's name, the nature of the dispute, the date of the alleged incident, the relief sought, and crucially the date, time and venue of the scheduled conciliation.
- ☐ Check when the referral was received and how. Was it within the 30-day time limit from the date of dismissal or alleged unfair conduct? Late referrals may be procedurally challengeable.
- ☐ Diarise the conciliation date immediately. Block out the preceding day for preparation.
- ☐ Confirm receipt with whoever served the form if applicable. Do not dispute or engage on the substance — just confirm receipt.

Hour 6 — 24: Evidence Preservation

- ☐ Issue a written instruction — an internal "legal hold" — that all documents, emails, messages, CCTV, and records relating to the employee and the incident must be preserved and not deleted, overwritten, or altered.
- ☐ Pull the employee's full file. Employment contract. Signed policies. Disciplinary record. Performance reviews. Any warnings, final warnings, or prior hearings.
- ☐ Gather all documentation of the specific incident or conduct at issue: the notice to attend, the charges, the evidence bundle presented at the hearing, the chairperson's outcome letter, the dismissal letter.
- ☐ Secure copies of relevant CCTV, timekeeping records, access logs, or electronic evidence before routine deletion policies apply.
- ☐ Identify every witness to the underlying events. Get their current contact details. Do not yet interview them about substance — just confirm they are reachable.

Hour 24 — 48: Capturing the Record

- ☐ Ask the manager or chairperson most familiar with the matter to prepare a written chronology of events, in their own words, dated and signed. This is for your internal use and will sharpen their recollection if they are called as a witness.
- ☐ Prepare a clean timeline covering the date of hire, the date of the incident, the date of the hearing, the date of dismissal, and the date the referral was received.
- ☐ Confirm whether the employee was represented at the internal hearing, and if so by whom. This affects the fairness analysis.
- ☐ Identify whether any aggravating factors apply that the CCMA commissioner will want to understand — prior warnings, length of service, nature of the misconduct, operational impact.
- ☐ Decide who will attend conciliation on behalf of the business. This should be someone with authority to settle. A junior representative without mandate is a wasted day.
- ☐ Decide whether you need external representation. See Chapter Five for the considerations.
- ☐ If you intend to engage a labour consultant or attorney, make contact now. The earlier they are briefed, the better they can prepare.

> **IF YOU DO NOTHING ELSE**
>
> Preserve evidence, gather the file, and pick up the phone to get advice. Even a 30-minute conversation with a labour consultant in the first 48 hours can shape the trajectory of the whole matter.

CHAPTER FOUR

What NOT to Do

Knowing what to avoid is sometimes more important than knowing what to do. These are the common missteps we see when small and medium businesses encounter a CCMA referral for the first time.

Don't contact the employee to "sort it out"

Once a matter is formally referred, the correct channel for communication is through the CCMA process or through legal representatives. Well-meaning conversations with the employee — by the business owner, a friendly manager, or HR — almost always make things worse. They can be construed as intimidation, as admissions, or as settlement offers that constrain your later position.

Don't discipline anyone else connected to the matter

If the dispute involves allegations against a manager who is still employed, resist the urge to act on those allegations during the CCMA process unless it is strictly necessary. New disciplinary action taken in the middle of a referral can be painted as retaliation, which is separately actionable.

Don't delete, edit, or "tidy up" documents

Even if a document is unhelpful to your case, tampering with it is catastrophically worse than producing it as it stands. Commissioners and judges are experienced at spotting selective disclosure and altered records. Preserve everything. You can decide later what to rely on.

Don't ignore the conciliation date

Non-attendance at conciliation does not make the matter go away. The CCMA can issue a certificate of outcome in your absence, and the employee can then refer the matter to arbitration where they are likely to succeed by default. Attend. Even if you have no intention of settling, attend.

Don't assume a "verbal warning" or "off-the-record" process will hold up

If your disciplinary record is thin or informal, be honest with your representative about that now. Labour consultants can work with imperfect records. They cannot work with surprises.

CHAPTER FIVE

What Happens Next

Here is the procedural road ahead, in simplified form. The exact timing depends on the nature of the dispute and on CCMA workload, but this is the broad shape.

Stage One: Conciliation

Conciliation is the first formal meeting. It is informal, confidential, and facilitated by a CCMA commissioner. Both sides present their view of the dispute, and the commissioner tries to help them reach a settlement. Most matters are either resolved here or settled informally around this point.

There is no formal evidence-taking at conciliation. Nothing said at conciliation can be used against you in a later arbitration. This makes it a genuinely useful space to explore a commercial resolution without committing to a legal position.

Stage Two: Certificate of Outcome

If the matter does not settle at conciliation, the commissioner issues a certificate of outcome. This confirms that conciliation was attempted and failed. The employee then has a defined window to refer the matter to arbitration.

Stage Three: Arbitration

Arbitration is formal. It is a hearing, evidence is led, witnesses testify under oath, documents are submitted, and the commissioner issues a binding award. This is the stage at which preparation — or the lack of it — becomes most visible.

An arbitration award can be reviewed by the Labour Court on narrow grounds, but the threshold for review is high. In practical terms, the arbitration outcome is usually the end of the line.

> **TIMING IN BROAD TERMS**
>
> Conciliation is generally scheduled within thirty days of the referral. If it fails and the matter proceeds to arbitration, the hearing is typically within another sixty days, though commissioner and venue availability can push this out. From referral to award, budget for roughly three to six months on a standard unfair dismissal matter.

CHAPTER SIX

Who Can Represent You?

Representation at the CCMA is governed by specific rules that differ from the ordinary courts. This catches many first-time employers by surprise.

At Conciliation

You can be represented by a director, a manager, a fellow employee, an official of an employers' organisation of which you are a member, or a legal practitioner. Representation at conciliation is generally unrestricted.

At Arbitration

Here the rules tighten. For unfair dismissal disputes based on misconduct or incapacity, legal practitioners are generally not automatically entitled to appear. The commissioner has a discretion to allow legal representation, having regard to factors including the complexity of the matter, comparative capability of the parties, and public interest considerations.

For other disputes — such as operational requirements dismissals, contractual matters, and certain discrimination claims — legal representation may be permitted as of right.

Labour Consultants

Qualified labour consultants who are not legal practitioners can represent parties in CCMA matters under certain conditions, including where they are registered with recognised bodies. This is often the most practical route for small and medium businesses: you get specialist labour expertise and advocacy at CCMA forums, without the representation restrictions that sometimes apply to attorneys.

> **PRACTICAL TAKEAWAY**
>
> For most SME employers facing a standard unfair dismissal referral, the most effective team is: one internal person who knows the facts and has authority to settle, plus an experienced labour consultant or labour attorney briefed early. The internal person provides the evidence; the external representative provides the strategy.

CHAPTER SEVEN

Key Documents You Will Need

If and when you brief a representative, or if you attend conciliation or arbitration yourself, these are the documents that you should have gathered, labelled, and ready.

Core Employment Documents

- ☐ Signed employment contract
- ☐ Job description in force at the time of the incident
- ☐ Signed acknowledgement of policies, disciplinary code, and code of conduct
- ☐ Salary records and last payslip

The Dispute Itself

- ☐ The original LRA Form 7.11 referral
- ☐ Any correspondence with the CCMA about the matter
- ☐ Notice of the disciplinary hearing
- ☐ Charge sheet or allegations letter
- ☐ Evidence bundle presented at the internal hearing
- ☐ Chairperson's ruling and reasons
- ☐ Dismissal letter or notice of sanction
- ☐ Any appeal lodged internally and the outcome

Supporting Evidence

- ☐ Prior warnings — verbal, written, final — with dates and signatures
- ☐ Prior performance reviews if performance is in issue
- ☐ Witness statements (if taken), CCTV, access logs, messages, emails relevant to the incident
- ☐ Chronology of key dates prepared by internal HR

> **ORGANISE AS YOU GO**
>
> Label each document clearly, date it, and keep a master index. A representative who receives an organised bundle can prepare twice as effectively as one handed a box of loose papers the morning before conciliation.

CHAPTER EIGHT

When to Bring in Professional Help

Not every matter requires external representation. Some SMEs handle straightforward conciliations internally and do well. The question is whether yours is one of those matters.

Here are the signals that point to bringing in a labour consultant sooner rather than later:

- **The amount at stake is significant.** Compensation in unfair dismissal matters is capped, but the caps are material — up to twelve months' remuneration for ordinary unfair dismissal, twenty-four months for automatically unfair dismissal. If the employee was senior, the cap translates to meaningful rand amounts.
- **The internal process was imperfect.** If you suspect the hearing was procedurally wobbly, the charges were poorly drafted, or the chairperson was not properly independent, you need help navigating the substantive defence rather than relying on procedural strength.
- **The employee is represented.** If the referral has been made by or through a trade union, an attorney, or an experienced labour consultant, the playing field is not level. Match that expertise on your side.
- **The matter involves allegations beyond simple misconduct.** Discrimination claims, automatically unfair dismissal claims, protected disclosure issues, and restructuring-related disputes all carry different legal tests and heavier potential consequences. Don't tackle these alone.
- **You have no prior CCMA experience.** The rules of evidence, the etiquette of the hearing, and the commissioner's expectations all matter. One bad first arbitration costs far more than getting representation.
- **You don't have time to prepare properly.** The running of a business does not pause because a referral has been made. If you cannot realistically devote the hours required to prepare, delegate that work to someone who can.

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CHAPTER NINE

How Scales of Strategy *Can Help*

Scales of Strategy Labour Consulting is a specialist South African labour law and HR advisory firm. We work with organisations of all sizes — from small owner-managed businesses to larger corporates — to manage employment risk, ensure compliance, and represent them at CCMA and Bargaining Council forums.

For employers facing a CCMA referral specifically, we provide:

- Early-stage matter assessment and strategy within the first 48 hours
- Preparation of evidence bundles, witness briefs, and legal argument
- Qualified representation at conciliation and arbitration
- Settlement negotiation and advisory
- Post-matter review to strengthen your processes against future referrals

BOOK A FREE CONSULTATION

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IMPORTANT NOTICE

About This Guide

This guide is a general overview of CCMA referral procedure in South Africa. It is intended as practical orientation for business owners and managers who are not themselves labour law specialists. It is not legal advice. It does not create an advisor-client relationship between you and Scales of Strategy Labour Consulting (Pty) Ltd.

Labour law is fact-specific. The correct course of action in any given matter depends on the particular circumstances, the evidence, the history between the parties, and procedural posture. Any decision that could affect your rights or liabilities should be taken with advice that is tailored to your situation.

Legislation, rules, and case law change. This guide reflects the author's general understanding at the time of writing. Before relying on anything in this document in an active matter, please confirm it against current sources or seek advice.

If you are currently facing a live CCMA referral, call or WhatsApp Stacey on 071 582 1325. An early conversation is free and often changes the trajectory of the matter.

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