

## **Which institutions can resolve workplace disputes?**

An employee may challenge a decision taken by an employer following a disciplinary hearing or incapacity enquiry.

Disputes must be referred to the right place. Depending on the type of dispute, there are a number of institutions where disputes may be referred.

A number of Dispute Resolution Institutions exist, some which were established in terms of labour legislation, and others which have powers to determine employment related disputes. In brief, these institutions are:

- The Constitutional Court;
- The Supreme Court of Appeal;
- The Labour Appeal Court;
- The Labour Court;
- The Commission for Conciliation, Mediation and Arbitration (CCMA);
- Bargaining Councils;
- Accredited Private Agencies; and
- The Department of Labour.

### **The Constitutional Court**

- The main function of the Constitutional Court is to ensure that the supremacy of the Constitution is upheld.
- The Constitutional Court may review any decisions of the Labour Court or Labour Appeal Court or the Supreme Court of Appeal that are unconstitutional.
- Decisions of the Constitutional Court are binding on all other courts.

### **The Supreme Court of Appeal**

- The Supreme Court of Appeal hears and determines appeals against any decision of a High Court.
- Decisions of the Court are binding on all lower courts.
- Decisions of the High Courts are binding on Magistrates' Courts within the respective areas of jurisdiction of the High Courts.

### **The Labour Appeal Court**

- The Labour Appeal Court is superior to the Labour Court, and both courts are superior to the CCMA and bargaining councils.
- The Labour Appeal Court is the final court of appeal in respect of all judgments and orders made by the Labour Court in respect of the matters that fall within its jurisdiction.
- A decision of the Labour Appeal Court is binding on the Labour Court.



- On constitutional issues an appeal will go to the Supreme Court of Appeal (SCA) with final confirmation of decisions on a constitutional issue being taken to the Constitutional Court.

## **The Labour Court**

The intention of the drafters of the Labour Relations Act 66 of 1995 (LRA) was to assign more complex and human rights related labour disputes to the Labour Court.

The Labour Court has the following functions and powers:

- It may determine any dispute that is specifically referred to it in terms of the LRA, the Basic Conditions of Employment Act 66 of 1997 and the Employment Equity Act 55 of 1998.
- It may determine certain appeals and reviews.
- It may make appropriate orders such as: granting interdicts; awarding compensation, damages and costs; and declaratory orders.

## **The CCMA**

- The CCMA plays a major role in labour dispute resolution.
- In terms of the LRA disputes can be referred to the CCMA or applicable bargaining councils for resolution.
- One of the main functions of the CCMA is to conciliate and arbitrate labour disputes.
- The CCMA is a 'creature of statute'. This means that the CCMA was created by the LRA and can only function within its parameters and the parameters of other labour statutes (which give it specific powers).
- The CCMA therefore cannot resolve any disputes or perform any functions that the LRA or other related statutes do not allow it to perform.
- Rulings and awards issued by CCMA commissioners may be taken on review, or appeal in limited circumstances, to the Labour Court.
- The CCMA is bound by decisions of the Labour Court, the Labour Appeal Court and the Constitutional Court.

[CCMA Website](#)

## **Bargaining Councils**

- Bargaining councils are made up of one or more trade unions and one or more employers' organisations in a specific sector or industry.
- The main purpose of bargaining councils is to promote collective bargaining and facilitate dispute resolution in the sector concerned.
- In terms of the LRA certain disputes between parties to a bargaining council must be referred to the bargaining council for resolution (see s 51(3) footnote 11 of the LRA).

- In those instances the bargaining Council performs the same dispute resolution functions as the CCMA.
- Awards made by bargaining council arbitrators may be taken on review, or appeal in limited circumstances, to the Labour Court.
- Bargaining councils are bound by decisions of the Labour Court, the Labour Appeal Court and the Constitutional Court.

### Bargaining Councils

## **The Department of Labour**

The Department of Labour was established in 1994 (replacing the previous Department of Manpower) and its functions include the following:

- developing and formulating labour market policy and proposals;
- administering the Unemployment Insurance Fund and Compensation for Occupational Injuries and Diseases system;
- administering and monitoring occupational health and safety; and
- developing, enforcing and administering labour legislation.

### Department of Labour

## **The National Economic Development and Labour Council (NEDLAC)**

- While NEDLAC is not a dispute resolution institution per se, it is one of the institutions created to facilitate the transformation of relationships in the labour market.
- The NEDLAC Act 35 of 1994 was passed in 1994 after having been agreed to unanimously by all political parties represented in Parliament.
- NEDLAC was launched in 1995 and is “a representative and consensus-seeking body where parties will seek to reach agreement through negotiation and discussion based on proper mandates”.
- The four NEDLAC constituencies are organised labour, government, organised business and the community.
- All proposed labour legislation, regulations and codes of good practice, as well as socio-economic related legislation are considered by NEDLAC before they are introduced to Parliament.

See Flow Diagram: SA Dispute Resolution Institutions [3.1F]

In addition to the above, section 73A (3) of the Basic Conditions of Employment Amendment Act 7 of 2018 provides that an employee or worker who earns above the threshold of payment determined by the Minister from time to time (section 6(3) of the Basic Conditions of Employment Act 75 of 1997 [BCEA]) may institute a claim concerning the failure to pay any amount owing to that employee or worker in terms of the BCEA, the National Minimum Wage Act 9 of 2018 (NMWA), a contract of employment, a sectoral determination or

a collective agreement, in either the **Labour Court, the High Court** or, subject to their jurisdiction the **Magistrates' Court** or the **small claims court**.

