

What is a conciliation hearing and what is an arbitration hearing?

The Labour Relations Act 66 of 1995 (LRA) provides for a number of statutory dispute resolution procedures in order to effectively deal with disputes arising out of the employment relationship. Of these, the conciliation hearing and the arbitration hearing are the more commonly used procedures.

What is a conciliation hearing?

This is a hearing before the CCMA or applicable bargaining council where the commissioner will attempt to assist an employee and an employer to reach a voluntary resolution in a labour dispute. The procedure is informal, uncomplicated, and inexpensive. The commissioner will ask both parties to briefly explain their side of the 'story' and will then focus on ways in which the parties may find a solution. The parties will negotiate with each other, under the guidance of the commissioner, but they remain free to settle or not. If conciliation fails to resolve the dispute, the employee will seek finality by referring the dispute to an adjudicative process (arbitration). Should the parties agree to settle the dispute, the commissioner will assist the parties to draft a settlement agreement. The commissioner will also issue a certificate indicating that the matter has been settled. The settlement agreement can be enforced as if it is an order of Court.

[See Information Sheet: Summary of the Stages in a Conciliation Hearing](#)

[See Flow Diagram: Stages in a Conciliation Hearing](#)

Pre-conciliations have been introduced by the CCMA in an attempt to resolve disputes without employers, and sometimes the employees too, having to attend a conciliation hearing in person.

[See Flow Diagram: Telephonic Conciliation Process](#)

[See Information Sheet: What is a pre-conciliation process](#)

What is an arbitration hearing?

Should a dispute not be settled at conciliation, an employee may refer the dispute to arbitration. Unlike a conciliation hearing where the parties decide on and influence the outcome of the process, with an arbitration hearing, it is the commissioner who determines the outcome in the form of a final and binding decision given in writing. The commissioner will base his/her decision on the evidence produced and arguments raised by the parties to the hearing. The parties can bring witnesses to the hearing and can cross-examine the other parties' witnesses. The parties can submit documentation or any other evidence that will assist them to prove their case. After hearing all the evidence and legal argument, the commissioner will issue an arbitration award.

[See Information Sheet: Summary of the Stages in an Arbitration Hearing](#)

[See Flow Diagram: Stages in an Arbitration Hearing](#)

[See Table: What is the Difference between Conciliation and Arbitration](#)

Conciliation and arbitration have traditionally been two disconnected events, often separated by a few weeks or months.

Con-arbs were introduced by the 2002 amendments to the LRA as a 'one-stop', expedited dispute resolution process. As the name implies, this process involves a combination of conciliation and arbitration into one process. Unless the right to object to a con-arb is utilised, if the conciliation is not resolved, the commissioner will go straight into the arbitration of the matter. The intention behind the con-arb process is to save the employee and the employer, as well as the CCMA time and resources by holding the two processes at one sitting.

