

REVIEW APPLICATIONS IN TERMS OF SECTION 145 OF THE LRA

REVIEW APPLICATIONS

A party is able to take an arbitration award or ruling on review for an alleged defect in the proceedings, award or ruling.

A defect means that -

- the commissioner committed misconduct in relation to his or her duties as a commissioner;
- he or she committed a gross irregularity in conducting the proceedings;
- he or she exceeded his or her powers as a commissioner; or
- the award or ruling was improperly obtained.

An award may also be reviewed if the decision reached by a commissioner is one which a reasonable decision maker could not reach.

The Labour Court may not review any decision or ruling made during conciliation or arbitration proceedings before the issue in dispute has been finally determined by the CCMA or Bargaining Council, except if the Labour Court is of the opinion that it is just and equitable to do so.

REVIEW APPLICATION PROCEDURE

Reviews are initiated by means of a notice of motion, supported by a founding affidavit. The founding affidavit must set out the grounds on which the applicant relies to have the award or ruling reviewed successfully.

Reviews can only be instituted by a party listed in the award or ruling, or a representative as defined in section 161 of the LRA.

Review proceedings must be initiated within six weeks of receiving the award or ruling if there is an allegation of corruption, within six weeks of discovering the corruption.

The Labour Court must be approached (not the CCMA or Bargaining Council).

A case number must be obtained from the Registrar of the Labour Court.

The application must be served on all the respondents (including the CCMA or Bargaining Council) and on the Labour Court.

Once the application for review is served on the CCMA, the CCMA must forward the record of the proceedings to the Labour Court within ten (10) court days.

The party seeking the review of an award or ruling must apply for a court date within six (6) months of applying for a review. The court may condone a late application on good cause shown.

The other party has the right to oppose the review application.

EFFECT OF REVIEW PROCEEDINGS

The enforcement of the award may be stayed until a decision regarding the review application has been made. However, the notice to bring a review application alone does not stay the enforcement of the award unless security is furnished by the party applying for the review.

In the case of an award for reinstatement or re-employment, the security to be provided must be equivalent to 24 months' remuneration, and in the case of an award for compensation, it must be equivalent to the amount of compensation awarded.

The institution of review proceedings interrupts the running of prescription in terms of the Prescription Act in respect of the award.

The above only apply to review proceedings instituted after 01 January 2015 (the promulgation of the amendments of the LRA) and awards issued after 01 January 2015.

If the award is set aside, the Labour Court may determine the dispute in a manner it deems appropriate and it may make any order that it considers appropriate in relation to the procedure to be followed in determining that dispute.

RELEVANT LEGISLATION

- The Labour Relations Act 66 of 1995, as amended.
- The Prescription Act 68 of 1969.