

RESCISSION AND VARIATION APPLICATIONS

VARIATIONS AND RESCISSIONS

Section 144 of the Labour Relations Act (LRA) deals with the variation or rescission of arbitration awards and rulings. A variation application refers to a request to have a part of the award or ruling changed, for example a date or company name's spelling. A rescission refers to a request to have the whole award set aside or cancelled. Any award or ruling may be varied or rescinded by the commissioner who issued the award or ruling or by any other commissioner appointed by the Director to do so. A party may apply to have an award or ruling varied or rescinded only in the following instances:

- a) If the award or ruling was erroneously sought or erroneously made in the absence of any party affected by that award;
- b) If the award or ruling contains an ambiguity, or an obvious error or omission – the award or ruling may be rescinded or varied only to the extent of that ambiguity, error or omission;
- c) If the award or ruling was granted as a result of a mistake common to both parties to the proceedings; or
- d) If the default award or ruling was made in the absence of any party, on good cause shown.

The commissioner does not have the power to substitute the award or ruling with an entirely new one.

HOW TO APPLY FOR VARIATION OR RESCISSION

The application must be brought on notice and within fourteen (14) days of the date on which the applicant became aware of the arbitration award or ruling. The party applying for rescission or variation must sign the notice of application. The application must contain-

- The title of the matter;

- The case number;
- The relief sought;
- The address of the party delivering the document, i.e. where he/she will receive all notices and will accept service of all documents in the proceedings;
- A notice to the other party that if he/she intends opposing the application, an answering affidavit must be delivered within five (5) days after the application has been received;
- A schedule listing all documents that are relevant or material to the application; and
- The application must be supported by an affidavit which sets out (contains) the details of the parties and addresses, a statement of the material facts on which the application is based, with sufficient details to enable a person opposing the application to reply. As far as possible, the affidavit should include a statement of the legal issues arising from the material facts and the relief sought.

In some instances, a party may oppose the application by serving an answering affidavit within five (5) days after the application has been received.

The applicant may then, within three (3) days after the answering affidavit has been received respond to the answering affidavit by way of a replying affidavit.

A party may also oppose the application orally on the day of the hearing.

The matter may be set down for hearing and the CCMA will notify the parties of the date, time and place thereof. Alternatively, the commissioner may determine the application based on the written representation received from the parties. A ruling made by a commissioner will have the effect of a final order.

If a party does not comply with the time period as stipulated in the CCMA Rules, that party must, at the time of making or opposing the application, also make an application to condone the non-

compliance with the CCMA Rules. In an application for condonation, the applicant must address the following issues:

- The degree of lateness;
- The reason for the lateness;
- The prospects of success;
- Prejudice; and
- Any other relevant factors.

The condonation and variation or rescission application may be dealt with in one hearing at the discretion of the commissioner.

RELEVANT LEGISLATION

- Labour Relations Act 66 of 1995 as amended, section 144
- Rules for the Conduct Proceedings before the CCMA as amended, Rules 9, 31, 32 and 35.