# PART A
## REFERRING A DISPUTE
TO THE
METALS & ENGINEERING INDUSTRIES BARGAINING COUNCIL
CENTRE FOR DISPUTE RESOLUTION

### WHAT IS THE PURPOSE OF THIS FORM?
This form enables a person or organisation to refer a dispute to the Centre for Dispute Resolution for conciliation and con-arb.

### WHO FILLS IN THIS FORM?
Employer, employee, union or employers' organisation.

### WHERE DOES THIS FORM GO?
To the Provincial Office of the CDR in the province where the dispute arose. See details on this page.

### WHAT WILL HAPPEN WHEN THIS FORM IS SUBMITTED?
When you refer the dispute to the CDR, it will appoint a Council commissioner who must attempt to resolve the dispute within 30 days.

### OTHER INSTITUTIONS
Please note that if you are not covered by the Bargaining Council, you need to take the dispute to the appropriate body, e.g. the CCMA.

You may also need to deal with the dispute in terms of a private procedure if one applies.

Please contact our office for assistance if you are unsure.

### FURTHER INSTRUCTIONS
A copy of this form must be served on the other party. Proof that a copy of this form has been served on the other party must be supplied by attaching –

- A copy of a registered slip from the Post office
- A copy of a signed receipt if hand delivered;
- A signed statement confirming the service by the person delivering the form;
- A copy of a fax confirmation slip; or
- Any other satisfactory proof of service

### PROVINCIAL OFFICES OF THE CDR

#### GAUTENG, NORTH WEST, MPUMALANGA & LIMPOPO PROVINCES
1st Floor PO Box 9381 Tel: 011 834 4660
Metal Industries House Johannesburg Fax: 086 636 8699
42 Anderson Street 2000 Email:
Johannesburg 2001

#### WESTERN CAPE
1st Floor PO Box 6096 Tel: 021 421 6140
Harbour Place Roggebaai Fax: 086 636 8696
7 Martin Hammerschlag Way 8012 Email:
Foreshore Cape Town 8001

#### KWAZULU NATAL
11th Floor PO Box 5900 Tel: 031 305 4761
Sangro House Durban Fax: 086 636 8693
417 Smith Street 4000 Email:
Durban 4001

#### FREE STATE & NORTHERN CAPE
2nd Floor PO Box 30095 Tel: 057 352 4142
26 – 28 Heeren Street Moreskof Fax: 086 636 8697
Welkom 9462
9459

#### EAST LONDON (BORDER REGION)
Malcorness Park PO Box 13162 Tel: 043 743 7790
Office No. 7 Vincent Fax: 086 636 8691
St. George’s Road 5217 Email:
Southernwood
East London, 5201

#### PORT ELIZABETH (MIDLANDS)
6th Floor PO Box 12848 Tel: 041 586 1542
Old Mutual Building Centralhill Fax: 086 636 8694
64 Govan Mbeki Avenue 6006 Email:
Port Elizabeth 6001

#### TSHWANE
351 Schoeman Street P O Box 570 Tel: 012 320 2566
Pretoria Pretoria Fax: 086 648 3582
0002 0001

Visit the MEIBC website at:

http://www.meibc.co.za
1. DETAILS OF PARTY REFERRING THE DISPUTE

As the referring party, are you:

- An employee  
- A trade union  
- An employer  
- An employer’s organisation

(a) If the referring party is an employee or employer

First Name(s): ………………………………………………………………………………….

Surname …………………………..Identity number: ……………………………………….

Postal / Physical Address: ………………………………………………………………….

…………………………………………………………………..Postal Code: ………………….

Tel: …………………………………Cell: …………………………………………………..

Fax: …………………………………Email: ………………………………………………….

Alternate contact details of employee:

Surname: …………………………..First Names: ……………………………………….

Postal / Physical Address: …………………………………………………………………

…………………………………………………………………..Postal Code: ………………….

Tel: …………………………………Cell: …………………………………………………..

Fax: …………………………………Email: ………………………………………………….

(b) Name of the referring party if the referring party is an employer’s organisation or trade union, or if the employer’s organisation is assisting a member to the dispute

Name: ………………………………………………………………………………………

Contact person (if organisation): ………………………………………………………

Postal / Physical Address: …………………………………………………………………

…………………………………………………………………..Postal Code: ………………….

Tel: …………………………………Cell: …………………………………………………..

Fax: …………………………………Email: ………………………………………………….

2. DETAILS OF THE OTHER PARTY (PARTY WITH WHOM YOU ARE IN DISPUTE)

The other party is:

- An employee  
- A trade union  
- An employer  
- An employers organisation

Company Name: ……………………………………………………………………………

Contact person: ……………………………………………………………………………

Physical Address: ……………………………………………………………………………

…………………………………………………………………..Postal Code: ………………….

Tel: …………………………………Cell: …………………………………………………..

Fax: …………………………………Email: ………………………………………………….

Please turn over
3. NATURE OF THE DISPUTE

What is the dispute about (tick only one box)?

- Unfair dismissal
- Non-renewal of contract
- Mutual Interest
- Refusal to Bargain
- Unilateral change to terms & conditions of employment
- Severance Pay S41 BCEA
- Refusal to bargain
- Disclosure of information
- Interpretation or application of collective bargaining provisions
- Unfair labour practice (probation)

Other – please give details
-  
-  
-  

Unfair labour practices: If the dispute(s) concerns an unfair labour practice the dispute must be referred within 90 days of the act or omission which gave rise to the unfair labour practice. If more than 90 days has elapsed you are required to apply for conciliation.

Dismissal disputes: the date that you fill out must match the date in section B.

Unfair labour practice (other) – please give details
-  
-  

Summarise the facts of the dispute you are referring:
-  
-  
-  

4. DATE DISPUTE AROSE

The date of dismissal

(give the date, day, month and year)

The dispute arose where:

(give the City/Town in which the dispute arose)

5. DETAILS OF DISPUTE PROCEDURES FOLLOWED

Have you followed all internal grievance / disciplinary procedures before coming to the CDR?  

Yes  No

Describe the procedures followed:
-  
-  

6. RESULT OF CONCILIATION

What outcome do you require?

-  
-  

7. INTERPRETATION SERVICES

If you require an interpreter at the conciliation / con-arb? If yes, please indicate for what language:

Yes  No

Language

8. PLACE OF HEARING

All hearings are held in the Council’s regional offices. However, would you like it if this case is heard in one of the additional two venues listed below, only if the dispute arose there?

Middelburg  Yes  No

Polokwane  Yes  No
9. SPECIAL FEATURES / ADDITIONAL INFORMATION

Briefly outline any special features / additional information the CDR needs to note:

........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

10. DISPUTE ABOUT UNILATERAL CHANGE TO TERMS AND CONDITIONS OF EMPLOYMENT (s64 (4))

I/we require that the employer party not implement unilaterally the proposed changes that led to this dispute for 30 days, or that it restore the terms and conditions of employment that applied before the change.

Signed: ...........................................(Employee party referring the dispute)

11. OBJECTION TO CON-ARB PROCESS

I/we object to the arbitration commencing immediately after the conciliation in terms of Section 191(5A)(c).

Signed: ....................................................................................................................

If any party objects to the arbitration commencing immediately after the conciliation, that party must submit a written notice in terms of CDR Rule 11(2) at least 7 days prior to the scheduled date of the con-arb hearing. Regardless of whether a party makes this objection, they must attend the conciliation hearing.

12. IF THE MATTER REMAINS UNRESOLVED AFTER CONCILIATION

If the dispute is not settled at conciliation and it is an issue which may be referred to arbitration in terms of the LRA, do you wish to proceed to arbitration?

O Yes  O No  O Will decide at/after the conciliation

Note: - If you attend the conciliation hearing and sign the certificate of non-resolution, the matter will automatically be scheduled for arbitration.

If you DO NOT attend the conciliation hearing, you MUST complete a request for arbitration referral form (LRA 7.13), serve it on the company and to the CDR, with proof of service that you have done so.

13. CONFIRMATION OF ABOVE DETAILS

Signature of party referring the dispute: .................................................................

Signed at ......................................this day ..................................................

(place) (date)
<table>
<thead>
<tr>
<th>PART B</th>
<th>ADDITIONAL FORM FOR DISMISSAL DISPUTES ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. COMMENCEMENT OF EMPLOYMENT</strong></td>
<td></td>
</tr>
<tr>
<td>When did you start working at the company?</td>
<td>………………………………………………………………………………………………………</td>
</tr>
<tr>
<td><strong>2. NOTICE OF DISMISSAL</strong></td>
<td></td>
</tr>
<tr>
<td>When were you dismissed?</td>
<td>………………………………………………………………………………………………………</td>
</tr>
<tr>
<td>(IF THE DISPUTE CONCERNS A DISMISSAL, THE DATE INSERTED MUST BE THE SAME AS THAT SET OUT IN ITEM 4 OF PART A.)</td>
<td></td>
</tr>
<tr>
<td>How were you informed of your dismissal?</td>
<td></td>
</tr>
<tr>
<td>O By letter</td>
<td>O Verbally</td>
</tr>
<tr>
<td>O At/After a disciplinary hearing</td>
<td>O Constructive (resigned)</td>
</tr>
<tr>
<td>O Other (please describe)</td>
<td>………………………………………………………………………………………………………</td>
</tr>
<tr>
<td><strong>3. REASON FOR DISMISSAL</strong></td>
<td></td>
</tr>
<tr>
<td>Why were you dismissed?</td>
<td></td>
</tr>
<tr>
<td>O Misconduct</td>
<td>O Incapacity</td>
</tr>
<tr>
<td>O Operational Requirements (Retrenchment)</td>
<td>O Unknown</td>
</tr>
<tr>
<td>O Constructive</td>
<td></td>
</tr>
<tr>
<td>O Other (please describe)</td>
<td>………………………………………………………………………………………………………</td>
</tr>
<tr>
<td><strong>4. WAS THE DISMISSAL RELATED TO PROBATION</strong></td>
<td>O Yes</td>
</tr>
<tr>
<td><strong>5. FAIRNESS/UNFAIRNESS OF DISMISSAL</strong></td>
<td></td>
</tr>
<tr>
<td>(a) Procedural Issues</td>
<td></td>
</tr>
<tr>
<td>Was the dismissal procedurally unfair?</td>
<td>O Yes</td>
</tr>
<tr>
<td>If yes, why?</td>
<td>………………………………………………………………………………………………………</td>
</tr>
<tr>
<td>(b) Substantive Issues</td>
<td></td>
</tr>
<tr>
<td>Was the dismissal substantively unfair?</td>
<td>O Yes</td>
</tr>
<tr>
<td>If yes, why?</td>
<td>………………………………………………………………………………………………………</td>
</tr>
</tbody>
</table>
PART C
APPLICATION FOR CONDONATION ONLY

REFERRALS MUST BE SUBMITTED WITHIN 30 DAYS FROM THE DATE OF DISMISSAL. ONLY FILL THIS OUT IF THE CASE HAS BEEN REFERRED LATE, IE. OUTSIDE OF THIS TIMEFRAME

Case number (if already given): ………………………………………………………………………………………………………

Applicant Name: ……………………………………………………………………………………………………………………………

Respondent Name: ……………………………………………………………………………………………………………………………

AFFIDAVIT

I, the undersigned, …………………………………………………… (full name of applicant) do hereby make an oath and say:

1. BACKGROUND

1.1. I was dismissed on …………………………………………………………… (give date)

1.2. The employer refused to reinstate me on ……………………………………. (give date)

1.3. The dispute arose on ………………………………………………… (give date) after all attempts to negotiate or follow other internal procedure failed.

2. THE DEGREE OF LATENESS

2.1. The referral is ………………………………days late.

2.2. I did the following to pursue my rights after my dismissal:

• I went to my union / the department of Labour / Community advice centre / Legal advice centre (delete which is not applicable) on …………………………………………………………. (give date)

• I telephoned ……………………………………… (give name) on ……………………… (give date)

• I signed the referral form ………………………………………………………………………………… (give date)

3. REASONS FOR LATENESS

The reason that I referred the matter late is ………………………………………………………………………………………………………

……………………………………………………………………………………………………………………………………

……………………………………………………………………………………………………………………………………

……………………………………………………………………………………………………………………………………

4. PROSPECTS OF SUCCESS

I believe that I have a good case because (you must explain with good reasons why you will win your case at the CDR)

………………………………………………………………………………………………………………………….……...

……………………………………………………………………………………………………………………………………
5. **PREJUDICE**

5.1. As the **employee party**, if condonation is not granted, I will be prejudiced because-

   ………………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………………

5.2. As the **employer party**, if condonation is granted, I will be prejudiced because -

   ………………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………………

   ………………………………………………………………………………………………………………………………………

6. **GENERAL**

Please give any other information that will support your application.

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   ………………………………………………………………………………………………………………………………………

Signature of applicant: ……………………………………………………

Name of applicant: …………………………………………………………

Commissioner of oaths: ……………………………………………………

Signed before me on …………………………… at ………………………….by the deponent who acknowledges that he / she knows and understands the contents of the affidavit, has no objection to taking the oath / affirmation and considers it binding on his / her conscience.

Name: ……………………………………………………………………………………………………………………………

Address: ……………………………………………………………………………………………………………………………

Capacity: ……………………………………………………………………………………………………………………………

**NOTE:** Please attach any documentary proof that supports your application. If there is insufficient space under any of the above questions, please attach additional pages of information.
GUIDELINES TO COMPLETING AND RESPONDING TO
CONDONATION APPLICATIONS

The Labour Relations Act and the CDR Rules give timeframes for the submission of referrals, applications
and other documents. A condonation application needs to be completed where the timeframes for
submissions are not met. The most common type of condonation application is for the late submission
of the referral form (i.e. the referral is served on the CDR more than 30 days after the date of dismissal or
after 90 days after the alleged unfair labour practice).

If you refer your case outside of the timeframes which are indicated, you will need to complete Section D
of this referral form and send it together with your referral form. These guidelines should assist you.

THE APPLICANT (REFERRING PARTY)

The application must be in the form of a sworn affidavit, and the application form is in this format to assist you.

The following issues must be dealt with in your application:

1 The degree of lateness and the reason(s) for the delay.

You must give reasons for the lateness that account for the full period that the referral was late. It is for example,
not sufficient to say you were in hospital for a week if the referral is 6 weeks late. This would explain only the one
weeks’ lateness and not the other 5 weeks.

Proof is also required. For example, just stating you were in hospital without proof does not carry much weight. If
proof cannot be supplied, give reason why not.

If the referral has been incorrectly made to the CCMA or another bargaining council, the reason for the mistake
must be given.

2 Prospects of success

You must state why there is a good chance of your case being successful should it eventually go for arbitration or
to the Labour Court. Enough detail must be given to allow the employer to respond. For example, just stating
that the chair of the disciplinary hearing was biased is not enough. Reason for and, if available, proof of the
allegation must be given.

3 Prejudice

Personal circumstances and whether you have obtained other employment are important. Any other
circumstances must also be mentioned.

4 The importance of the matter

If the matter is important from a general policy viewpoint, such as potential unrest, it must be stated.

5 Any other information that is important

You can give any other information that you think supports your application. Please attach any documents that
support your application.

THE RESPONDENT

Should you wish to respond to the applicant's affidavit, it must reach the offices of the CDR within 14 days
of receiving the application. It should deal with the issues raised in the application and must also be in the form of
an affidavit. Proof of service must be attached.

The applicant then has 7 days to respond to the respondent's affidavit.

The CDR may request additional information or it may call the parties to a hearing if there is insufficient
information or if it will assist the Council in making an appropriate decision.

NOTE: Any party experiencing difficulty with the process must obtain assistance from a knowledgeable person or
organisation. The council is not legally permitted to assist with the substance of your application. If you have
any queries on the process, you may contact the CDR.