

PROCEDURE TO ASSIST EMPLOYEES WHO QUALIFY IN TERMS OF THE MEANS TEST TO ENFORCE AWARDS IN ACCORDANCE WITH THE AMENDED SECTION 143 OF THE LABOUR RELATIONS ACT 66 OF 1995



INTRODUCTION

Section 143 of the Labour Relations Act (LRA) was amended in order to make the mechanisms for the enforcement of arbitration awards more effective and accessible.

The amendments have the effect of reducing the costs of enforcement proceedings in respect of an award for the payment of money.

The award can be enforced as if it was an order of the Magistrate's Court, and the fees applicable will be on the Magistrate's Court scale.

The amendment to section 143 is only applicable to awards issued after 01 January 2015 when the Amendment Act came into force.

THE LAW

Section 143(1) of the LRA as amended reads:

"An arbitration award issued by a commissioner is final and binding and it may be enforced as if it were an order of the Labour Court in respect of which a writ has been issued."

Section 143(5) reads further:

"Despite subsection (1), an arbitration award in terms of which a party is required to pay an amount of money must be treated for the purpose of enforcing or executing that award as if it were an order of the Magistrate's Court."

The implication of the above amendments is the following:

- There is no longer a need for employees who have had awards issued in their favour to approach the Labour Court for a writ of execution in the event of employer non-compliance with the award.

- An arbitration award that orders the payment of a sum of money, e.g., compensation, must be enforced or executed as if it is an order of the Magistrate's Court.

THE MEANS TEST

The Department of Labour (DoL) has made funding available to the CCMA to assist employees who have had awards issued in their favour, but cannot afford the costs of enforcing or executing the awards (the sheriffs' fees).

The CCMA has deemed these employees to be:

- Employees who earn below the BCEA threshold per annum (see Department of Labour website – www.labour.gov.za), irrespective of whether they were represented by a union or a legal representative in the arbitration proceedings.

The CCMA reserves the right in appropriate circumstances, to recover the sheriffs' costs from an employee who has successfully enforced or executed his/her award.

THE PROCEDURE

The procedure to be followed to enforce or execute the award is as follows:

- An employee who complains that an employer refuses to comply with the award issued, reports to the Front Desk of the Post-Hearing Department in a CCMA Regional Office.
- The Case Management Officer (CMO) assigned to the Front Desk assists the employee to complete the application for certification of awards (LRA 7.18 form).
- The CMO then presents the LRA 7.18 form and award to the Convening Senior Commissioner (CSC) or his/her delegate (in bigger regions).

- The CSC or his/her delegate then certifies the award by completing and signing the "Enforcement of award" letter. The CSC or his/her delegate will also be requested to sign the LRA 7.18 form.
- The employee must then approach the office of the sheriff with the documentation (award, LRA 7.18 Form and "Enforcement of award" letter).
- The sheriff must then proceed to the execution address and execute in accordance with the contents of the "Enforcement of award" letter.
- The CCMA must, finally, determine whether the employee is liable for all or any part of the costs of execution.
- If there is employee liability for the costs of execution, the CCMA must initiate the process for recovery of any amount/s due.

RELEVANT LEGISLATION

Labour Relations Act 66 of 1995 (as amended), s143.