

**Short notes on:**

## **SUBPOENAS – DURING CCMA AND BARGAINING COUNCIL PROCEDURES**

### ***Introduction***

Many employees are unaware that similar to criminal or civil courts proceedings, the CCMA or Bargaining Council is allowed to compel witnesses to present themselves to testify or provide information. This usually happens when vital witnesses would not voluntarily present themselves for questioning or where the employer would not voluntarily provide the employee with the necessary documents for the employee's case.

It is common knowledge that employees would always like to maintain good relations with their employers. Therefore, they would not want to involve themselves in disputes against the employer, which could jeopardise their relationship. Furthermore, for fear of losing their jobs, employees would not voluntarily attend to testify. Finally, for the likelihood of prejudicing its case, the employer would not voluntarily provide the employee with information detrimental to its case. Therefore, subpoenas are the best mechanism available to an employee in this regard.

### ***Issuing a subpoena at the CCMA or bargaining council***

A subpoena is a command asking that you provide something or attend to adjudication to the body to give testimony. The person applying for the subpoena has to complete and submit a LRA Form 7.16 together with the statement in terms of Rule 37 of the CCMA setting out the reasons for the subpoena.

The subpoena does not necessarily have to be served via the Sheriff. It may be served delivered by hand, registered mail etc, at least seven (7) days before the hearing date.

### ***Who bears the cost of witness fees?***

The party requesting a witness to be subpoenaed bears the cost of the witness. Currently, the prescribed witness fee is R300.00 per day. However, in terms of Section 142(7)(c) LRA, the Commission on good cause shown may waive the witness against the party and pay the prescribed witness fee.

### ***Non-compliance with the subpoena***

A person who has been duly subpoenaed to appear before the Commission or Council, but refuses or fails to comply without good cause, will commit contempt of the Commission or council. The Commission or Council, in terms of Section 142(9)(b), may refer the finding of contempt to the Labour Court to make an order that it deems appropriate. Such order may include, amongst others, a fine or imprisonment.

### ***Conclusion***

Subpoenas allow parties to gather information to help prove or disprove elements of a party's case. It is one essential mechanism available to parties to compel witnesses to appear before the Commission or Council or provide information necessary for the party's case, which would otherwise not be voluntarily provided. Thus, parties should ensure that they have the necessary information to prove or disprove elements in their cases. One way to ensure this is with subpoenas.

For your Employment and Labour law related needs, contact SchoemanLaw Inc.