

REGULATIONS, 2006

04/08/2006

**NATIONAL LABOUR COMMISSION REGULATIONS,
2006 L.I. 1822**

IN exercise of the powers conferred on the Commission under section 152 of the Labour Act, 2003 (Act 651) these Regulations are made this 1st day of February, 2006.

*Negotiation procedures****Negotiation in good faith.***

1. Parties to an industrial dispute shall negotiate in good faith in the first instance to resolve the dispute in accordance with the dispute settlement procedures established in their respective Collective Agreements or Contracts of Employment.

Time for concluding negotiations.

2. The Negotiation shall be concluded within seven working days after the occurrence of the dispute.

3. Records of Negotiation Process.

- 1. The parties shall keep written records of the negotiation process and outcome signed by both parties.*
- 2. Where the parties cannot agree to sign a consensus record together, each party may present its own record duly signed.*

Failure to resolve dispute by Negotiation.

4. If the dispute remains unresolved after seven working days, either party shall refer it to the Commission for the appointment of a mediator.

Failure to exhaust procedures in Collective Agreement.

5. Where the Commission is satisfied that the parties have not exhausted the procedures established in the Collective Agreement or have not agreed to waive those procedures, the Commission shall order the parties to comply with those procedures within the time as determined by the Commission.

*Mediation procedures****Complaint to be in writing.***

6. The Complainant shall submit a written complaint to the Commission or complete Form 'A' (Complainant Form) specified in the Schedule to the Regulations and submit it to the Commission.

Time within which to respond to Complaint.

7. (1) The Commission shall within three (3) working days serve the other party with a copy of the complaint and request the other party to the dispute to respond to the complaint in writing within fourteen (14) working days of the receipt of the Commission's request.

(2) Where a party to a dispute fails to respond to the request of the Commission within the stipulated period of fourteen working days, the Commission shall send a final notice to the party concerned to respond within a further seven working days after which the Commission shall proceed to determine the case.

Choice of Mediator

8. After receipt of the response in regulation 7. the Commission shall provide both

8. *After receipt of the responses in regulation 7, the Commission shall provide both parties the list of mediators for the parties to make a selection of a mediator or mediators.*

Appointment of Mediator

9. *The Commission shall appoint the mediator or mediators jointly chosen by the parties to mediate in the dispute.*

Failure to agree on choice of mediator

10. *Where the parties to a dispute fail to agree on a choice of mediator the Commission shall, within two (2) working days, appoint a mediator or mediators as the case may be to mediate the dispute.*

Time within which to conclude mediation

11. *The mediation shall be concluded within fourteen days after the date of appointment of the mediator.*

Dispute settled through mediation

12. *(1) Where at the end of the mediation there is a settlement of the dispute, the terms of settlement shall be recorded and signed by the mediator and the parties to the dispute.*

(2) A copy of the signed terms of settlement shall be lodged with the Commission.

Binding Settlement

13. *The settlement referred to in regulation 12 shall be binding on the parties.*

Duty to cooperate in mediation efforts

14. *The parties to the mediation process shall cooperate in the mediation efforts.*

Failure to settle through mediation

15. *Where there is no settlement at the end of the mediation process the mediator shall immediately declare the dispute as unresolved and refer the dispute to the Commission within three days for Voluntary Arbitration.*

16. *Conflict of interest.*

1. *A mediator shall disclose in writing, any interest whatsoever nature in a dispute referred for mediation.*
2. *Upon consideration of such interest by the Commission, the mediator may be changed unless the parties to the dispute consent in writing to retain the mediator.*

Voluntary arbitration

Reference to voluntary arbitration

17. *Where a dispute is referred to the Commission under regulation 15, the Commission shall with the consent of the parties refer the dispute to an arbitrator or an arbitration panel for voluntary arbitration.*

Failure to agree on choice of arbitrator

18. *Where the parties to a voluntary arbitration fail to agree on the appointment of an arbitrator or an arbitration panel, the Commission shall, within three working days, appoint an arbitrator or arbitration panel.*

19. *Disclosure of interest.*

1. ***An arbitrator shall disclose in writing, any interest whatsoever nature the arbitrator may have in a dispute referred for voluntary arbitration.***
2. ***Upon consideration of such interest by the Commission, the arbitrator may be changed unless the parties to the dispute consent in writing to waive this option.***

Time within which to submit statement of issues or questions in dispute

20. ***Within three (3) working days after the appointment of an arbitrator or arbitration panel, the parties to an industrial dispute shall submit to the arbitrator in writing a statement of the issues or questions in dispute signed by one or more of the parties or their representatives.***
21. ***Failure or refusal to sign a statement of issues or questions in a dispute.***
 1. ***Where a party to a dispute fails or refuses to sign a statement as required in regulation 20, the statement may be submitted without that party's signature.***
 2. ***A statement pursuant to sub-regulation (1) shall state that the other party has failed or refused to sign the statement and the Commission shall authorize the arbitrator to proceed with the arbitration despite the fact that only one party has signed the statement of the issue.***

Failure to appear before an arbitrator

22. ***If any party fails to appear before the arbitrator or arbitration panel after the expiration of seven (7) working days after being notified, the arbitrator or arbitration panel shall proceed to hear and determine the dispute.***

Time within which to conclude voluntary arbitration

23. ***The voluntary arbitration process shall be concluded within fourteen (14) working days from the date of appointment of the arbitrator or arbitration panel or within the extra time determined by the Commission.***

Voluntary Arbitration award binding

24. ***The decision of the arbitrator or a majority of the arbitrators shall be binding on all the parties.***

Arbitration award to be communicated

25. ***The arbitrator or arbitration panel shall within seven working days of the last sitting make an award and communicate the award to the parties and the Commission within seventy-two hours.***

Compulsory arbitration

Compulsory arbitration by the Commission

26. ***If a dispute remains unresolved within seven (7) working days after the commencement of a strike or lock out, the dispute shall be settled by compulsory arbitration by the Commission.***

Content of notice to be served by the Commission

27 (1) Where a dispute is referred to the Commission under Clause 26, the Commission shall serve a notice on the parties;

(a) stating what in its opinion the unresolved issues are between the parties and

(b) asking the parties whether they agree to those issues

(2) the parties shall respond within three (3) working days.

Composition of Compulsory Arbitration Panel

28. A compulsory arbitration shall comprise three members of the Commission, one member each representing Government, Organized Labour and Employers Organization.

Time within which to conclude compulsory arbitration

29. The compulsory arbitration process shall be concluded within fourteen (14) working days after service of the notice in regulation 27.

Compulsory Arbitration Award binding

30. The award of the majority of the arbitrators in a compulsory arbitration shall be binding on the parties.

Publication of compulsory arbitration award in Gazette

31. A compulsory arbitration award shall immediately on completion, be published in the Gazette and other state media by the Commission and copies shall be given to the parties to the dispute.

Appeals against compulsory arbitration award

32. Appeals against a compulsory arbitration award shall lie to the Court of Appeal on questions of law only within seven (7) working days after the publication of the award under regulation 31.

33. Summary settlement of dispute by the Commission.

(1). After the receipt of a complaint in accordance with regulation 6 and a response to the complaint in accordance with Clause 7, the Commission may, after giving the parties to the dispute the right to be heard, settle the dispute summarily without recourse to mediation or arbitration.

(2). Where a party to a dispute fails to respond to a complaint in accordance with regulation 7, the Commission may determine the complaint without recourse to that party and the decision of the Commission shall be binding on the parties to the dispute.

(3) The Commission may re-open a dispute which has been determined under sub-regulation (2) if a party to the dispute on application within fourteen working days after the determination of the case provides reasonable explanation for the failure to respond to the complaint.

Procedure for resolving disputes from essential services

PROCEDURES FOR RESOLVING DISPUTES FROM ESSENTIAL SERVICES

Dispute Resolution in Essential Services

34. ***Parties to an industrial dispute in essential services shall endeavour to settle the dispute within three (3) days after the occurrence of the dispute by negotiation.***

Referral to the Commission after failure to resolve dispute

35. ***If the dispute remains unresolved after the expiration of the three (3) days referred to in regulation 34, the parties shall within the next working day refer the dispute to the Commission for settlement by compulsory arbitration.***

Compulsory arbitration by the Commission

36. ***The Commission shall, not later than three (3) working days after the dispute has been referred to it, constitute a compulsory arbitration panel to settle the dispute by compulsory arbitration within fourteen working days.***

Strikes and lockout procedures

Notice of intention to strike or lockout

37. ***Where***

***(a) the parties fail to agree to refer a dispute for voluntary arbitration, or
(b) a dispute remains unresolved at the end of the arbitration proceedings, either party intending to take a strike action or lockout, shall give written notice of the intended action to the other party and the Commission shall, within seven (7) working days after the failure of the parties to agree to refer the dispute to another arbitration, terminate the arbitration proceedings.***

Time within which strike or lockout action can be undertaken

38. ***Strike action or lockout may be undertaken after the expiration of seven (7) working days from the date of the notice referred to in regulation 37 and not at anytime before the expiration of that period.***

Effective date of notice of strike or lockout

39. ***The seven (7) working days referred in regulation 38 shall begin to run from the date of receipt of the notice by the Commission.***

Prohibition of strike or lockout in respect of essential services

40. ***An employer carrying on, or a worker engaged in an essential service shall not resort to a lockout or strike in connection with or in furtherance of an industrial dispute in which workers in the essential service are involved.***

Cooling-off period

41. ***A party to an industrial dispute shall not resort to a strike or lockout during the period when negotiation, mediation or arbitration proceedings are in progress.***

Procedures for maintaining a database of mediators and arbitrators and fees

List of mediators and arbitrators

42. ***The Commission shall maintain a list of industrial relations mediators or arbitrators who meet the criteria of the Commission.***

Application to be listed as mediator or arbitrator

43. ***A person who seeks to be listed as a mediator or arbitrator shall complete and submit an application form which may be obtained from the Commission.***

Mediators and Arbitrators not employees of Commission

44. ***A person appointed as mediator or arbitrator of the Commission does not become employee of the Commission.***

Disqualified mediator or arbitrator

45. ***A person appointed as a mediator or arbitrator is not qualified to serve in that capacity if the person has a financial or other interest in the undertaking or employers' or workers' organization involved in the dispute, unless the parties to the dispute agree to the appointment in writing despite the disclosure of the interest.***

Removal from the list of mediators and arbitrators

46. ***A person listed as a mediator or arbitrator may be removed from the list by the Commission on the grounds that the person;***

(a) no longer satisfies the criteria for admission

(b) has been repeatedly or flagrantly delinquent in submitting reports to the Commission

(c) has refused to make reasonable and periodic reports in a timely manner to the Commission concerning activities relating to mediation or arbitration.

(d) has been the subject of complaints by parties who use the services of the Commission after appropriate enquiry has established a just cause for cancellation, or

(e) has died

Notice for removal of mediators and arbitrators

47. ***A mediator or arbitrator listed on the database may only be removed after thirty days notice.***

48. ***Voluntary withdrawal from list of mediators or arbitrators.***

A person listed as a mediator and or arbitrator by the Commission may withdraw from the list at any time by giving the Commission thirty (30) days notice in writing.

49. Mediation and voluntary arbitration fees

Fees shall be in conformity with Government Consultancy rates obtained from the Ministry of Finance and Economic Planning.

SCHEDULE

(Regulation 6)

NATIONAL LABOUR COMMISSION

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