

DIRECTIVE IN RESPECT OF ACCESS TO THE DISPUTE RESOLUTION PROCESSES OF THE NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT AND LOGISTICS INDUSTRY OFFICES DURING THE NATION-WIDE LOCKDOWN PERIOD

Subsequent to the CCMA Directive issued on **8th May 2020**, the NBCRFLI is issuing this Directive in order to align the CCMA Directive with NBCRFLI's environment as practical as possible.

This Directive will apply with effect from **25th May 2020** until NBCRFLI operations may be normalised and restrictions set out in the Regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2002 provide otherwise.

1. This Directive is issued in conformity with all Directives and Regulations issued by the Minister of Employment and Labour and the Minister of Co-operative Governance and Traditional Affairs, issued in terms of section 27(2) of the Disaster Management Act.
2. This Directive set out how and under what conditions, matters enrolled in the NBCRFLI will be dealt with during national-wide lockdown until such Directive is repealed. The Directive must be read together with the Rules for the Conduct of proceedings before the NBCRFLI, (hereinafter referred to as the "NBCRFLI Rules") and Labour Relations Act 66 of 1995, as amended (LRA).
3. This Directive grounded in the projection of a prolonged period of lockdown resulting from the COVID-19 pandemic. Albeit that the President of the Republic of South Africa may announce changes to the levels of lockdown, the extent to which the need for social distancing and other health and safety regulations will remain in place as it require strict efforts to minimise exposure to the infection.

REFERING DISPUTES TO THE NBCRFLI

4. The following applies to the referral of dispute to the NBCRFLI:
 - 4.1 The number of people who will be granted permission to enter the building at any given time will be strictly monitored and the public are requested to exercise patience in this regard.
 - 4.2 Parties are encourage to submit completed referral forms to the NBCRFLI by means of electronic mail. NBCRFLI Rule 14 allows, amongst other ways, for service of referrals by means of electronic mail (hereinafter referred to as “e-mail”) and facsimile.
 - 4.3 Parties that are unable to submit completed referral forms to the NBCRFLI by means of electronic mail they can submit physical copies (hard copies) of completed referral forms to the NBCRFLI.
 - 4.4 The use of any electronic signature or electronic confirmation process will be accepted, if such proof can be stored safely and retrieved and printed when needed.

CONCILIATION HEARINGS

5. Unnecessary physical contact among persons must be avoided. Thereby, only hearings that are compliant with the requirements of this Directive will be set down for physical hearings. The following applies to the resolution of disputes through Conciliation in terms of section 135 of the LRA.
 - 5.1 Where possible, the resolution of disputes through Conciliation, subject to different conditions that may apply to conciliation hearings linked to certain matters of mutual interest or public interest disputes, will take place telephonically or through a digital online platform that is to the satisfaction of the NBCRFLI or the Commissioner. Choice of the form of communication will also depend on that which is available to both parties and to the NBCRFLI.

- 5.2 In the event that the conciliation process could not take place within 30-days from date of referral and in the absence of any agreement reached by the Parties prior to the expiry of the 30-day period to extend this period, a certificate of outcome will be issued by the NBCRFLI and in terms of section 135(5) of the LRA.
- 5.3 Where Parties agree to settle the dispute, where possible, the terms of the settlement agreement will be recorded electronically and the settlement agreement will be sent to both Parties by electronic means for signature. Where a Party or both Parties do not have access to an electronic signature, the Parties and the Commissioner will agree on an acceptable way to record agreement on the content of the settlement agreement and such record will be filed with the NBCRFLI.

APPLICATION PROCEEDINGS (E.G CONDONATION, RESCISSION, VARIATION, LEGAL REPRESENTATION, ECT.)

6. The following Guidelines apply to Interlocutory and other application proceedings:
- 6.1 Application proceedings, unless directed otherwise by the Council or Commissioner will not be scheduled for oral hearings in an open hearing venue. Where applications proceedings cannot be dealt with in terms of written submissions, these will be dealt with by video conferencing facilities.
- 6.2 In circumstances where oral evidence is required and one or more Parties are unable to access one or more form of electronic communication, the NBCRFLI may direct that the matter be heard on a date when conditions related to the Covid-19 pandemic allow for the Parties to attend a hearing in person, or in a way that the Commissioner may prescribe.
- 6.3 The use of any electronic signature or electronic confirmation process will be accepted, if such proof can be stored safely and retrieved and printed when needed.
- 6.4 Where a Ruling is issued by the Commissioner, this will be sent to the Parties by electronic means. Where a Party wishes to collect a physical copy of the Ruling,

this will only be permitted if Regulations and Directives issued in terms of section 27(2) of the Disaster Management Act allow for this and the NBCRFLI is satisfied that occupational health and safety requirements are in place.

ARBITRATION PROCEEDINGS AND INQUIRIES BY ARBITRATOR (VIDEO CONFERENCE HEARINGS)

7. The following Guidelines apply:

7.1 Prior to scheduling Arbitration hearings, and subject to NBCRFLI Rule 22, the Parties must be directed to hold a pre-arbitration conference to reach consensus on those issues listed in NBCRFLI Rule 22(2), and the following-

- 7.1.1 Whether the Parties are prepared to proceed with the arbitration hearing at employer's premises or any other venue.
- 7.1.2 Whether the Parties are prepared to proceed with the arbitration hearing by means of a video conferencing facility.
- 7.1.3 Should the parties not agree to the options set out in 7.1.1 and 7.1.2 the reasons for such non-agreement are to be included in the pre arbitration minute.
- 7.1.4 Acceptance of shorter periods of notice of set-down, if required.
- 7.1.5 The applicable video conferencing facility to be utilised for arbitration hearing.
- 7.1.6 The admission of evidence remotely using the video conferencing facility
- 7.1.7 In the event that a witness does not have access to video conferencing facilities, agreement on how such evidence will be adduced.
- 7.1.8 Admission of evidence by affidavit or by statement that may be confirmed if so required by the Commissioner.
- 7.1.9 Any other information the NBCRFLI or a Commissioner may require in order to exercise a discretion as to how the matter is to be dealt with and that will eliminate or limit the risk of physical proximity among the persons involved.

7.2 Agreements reached in terms of 7.1 must be recorded in writing and submitted to the NBCRFLI.

- 7.3 As per NBCRFLI Rule 21, the NBCRFLI may direct the requesting Party to deliver a statement of case that sets out the material facts upon which the Party and the legal issues that arise from the material facts; and may direct the responding Party to deliver an answering statement within a specified time period. Parties may also be requested to attempt to reach an agreement on what oral evidence may be delivered by statement, or where possible, by affidavit. Such statements or affidavits must be submitted electronically to the NBCRFLI seven (7) days prior to the scheduled date of arbitration hearing, unless a shorter period of time is agreed to in writing by the Parties.
- 7.4 The NBCRFLI shall communicate via e-mail, or any other means available, with the Representatives, or in the absence of Representatives, with the individual Parties concerned, and, having regard to the arrangements the Parties have made or are capable of making, exercise a discretion as to how the matter is to be disposed of and the presiding Commissioner may give *ad hoc* Directive.
- 7.5 Where a Party requires the presence of a witness, and the said Party is entitled to administrative assistance provided in terms of section 115(2)(bA) of the LRA from the NBCRFLI, a Commissioner may direct any Party to be present and/or available on a time and date as determined by the Commissioner. This may only happen if the Commissioner is satisfied that the other requirements for a person to be served has been met.
- 7.6 NBCRFLI Rule 39(5) allows for the applicant who has brought the application for subpoena, to serve the subpoena on the witness and such service may be done electronically.
- 7.7 The NBCRFLI will keep a record of any instruction related to the subpoena and means by which the instruction was served on the witness.
- 7.8 Where an arbitration hearing is completed, the arbitration award will be sent to the Parties by electronic means within the timeframes stipulated by section 138 of the LRA. Where a Party wishes to collect a physical copy of the award, this will only be permitted if Regulations and Directives issued in terms of section 27(2)

of the Disaster Management Act allow for this and the NBCRFLI is satisfied that occupational health and safety requirements are in place.

- 7.9 The above will also apply to an Inquiry by Arbitrator in an arbitration process, where applicable.

CASES WHERE PARTIES APPEAR IN PERSON (PHYSICAL ATTENDANCE)

8. In those matters where a Party appears in person, the following applies:

- 8.1 The NBCRFLI shall abide by all Regulations and Directives that are issued in terms of section 27(2) of the Disaster Management Act. Thus, it is only in terms of such Regulations and Directives that the NBCRFLI may convene physical hearings at one or more of its premises or at a venue agreed to by the Parties and the NBCRFLI in writing
- 8.2 Representatives and Parties who are required to travel to the NBCRFLI premises mentioned in 8.1 above, must comply where applicable with any restrictions that exist or that may be imposed from 01 May 2020 related to nation-wide lockdown.
- 8.3 Anyone seeking access into the NBCRFLI buildings or the designated other venue to be utilised for hearing, must submit to compulsory screening, must wear a face mask, must apply hand sanitizer, and must adhere to applicable social distancing rules.
- 8.4 Only the Parties, where they do not exceed ten (10) in number, subject to the size of the venue, taking into consideration the compulsory social distancing rule and their Representative shall enter the NBCRFLI buildings or designated other venues.
- 8.5 Should any Party object to have the matter dealt with under the conditions described above, that Party must submit the notice of objection and reasons for such objections in writing and serve same on the other party and on the NBCRFLI. The Commissioner or a Dispute Resolution Manager, after consideration of the submissions and of possible reasonable alternatives, must decide whether the matter should proceed or be postponed.

COMMUNICATION AND ACCESS TO NBCRFLI OFFICES

9. During the nation-wide lockdown period when public access to the NBCRFLI office are restricted, all communication between the Parties and the NBCRFLI must be sent by electronic means where such communication may be printed out to be copied, or could be saved electronically. The Parties are requested to utilise the following e-mail addresses to communicate with the NBCRFLI.

Head Office Region

29/31 De Korte Street

Private Bag X 69

Braamfontein

2017

E-mail: disputes.ho@nbcrfi.co.za

Tel: (011) 703-7000

Fax: (011) 403-1644/2029

Gauteng Region

29/31 De Korte Street

Private Bag X 69

Braamfontein

2017

E-mail: disputes.gauteng@nbcrfi.co.za

Tel: (011) 703-7000

Fax: (011) 403-4379/2060

Cape Town Region

Absa Building

141 Voortrekker Street

Parow

7499

E-mail: disputes.cpt@nbcrfi.co.za

Tel: (021) 930-7720

Fax: (021) 930-6032

KwaZulu Natal

5th Floor

Old Mutual Building

300 Smith Street

4000

E-mail: disputes.kzn@nbcrfi.co.za

Tel: (031) 307-6070

Fax: (031) 307-6071

10. **NB: All the NBCRFLI's Offices are operational as from Monday 25 May 2020, however the following offices are still in preparation for the opening and they will only be ready by 29 May 2020:**

Cape Town Region	Head Office Region
Clanwilliam George	Klerksdorp Kimberley Bloemfontein Port Elizabeth East London

PROTOCOL TO BE FOLLOWED IN VIDEO CONFERENCE HEARINGS

11. While section 138 of the LRA gives Commissioners discretion in the conduct of arbitration hearings, it is strongly recommended that the following protocol be applied for the orderly conduct of Video Conference Hearings:

11.1 Participants shall ensure that there is no ambient noise in the room, which can interfere with audio quality during the hearing.

11.2 In general, subject to any ad hoc Directives given by the Commissioner and/or Council, the participants shall mute their microphones when not actually speaking.

11.3 The Commissioner shall invite participants to speak and everyone shall be alerted to the Commissioner's directions in this regard.

11.4 Participants shall remain in the hearing and leave it only when the proceedings have concluded, or as directed by the Commissioner.

11.5 The Commissioner shall give instructions as to the recording of the proceedings.

11.6 Where the NBCRFLI is not the host of the video conference and thus not able to record the proceedings using the chosen online facility, the Party hosting the video conferencing session must record the session and submit the audio file at close of proceedings to a stipulated e-mail address for retention by the NBCRFLI. A signed statement of confirmation that the recording has not been tampered with in any way must accompany the recording.

Failure to comply with these directives may lead to your matter not being heard and/or refusal to access the NBCRFLI building.

Musa Ndlovu

NBCRFLI National Secretary

(This document has been sent electronically and is therefore not signed)