READ THIS FIRST ⬇ LRA Form 7.11.	PART A REFERRING A DISPUTE TO THE BARGAINING COUNCIL RESTAURANT CATERING AND ALLIED TRADES FOR CONCILIATION (INCLUDING C0N-ARB)

WHERE TO SEND THIS FORM TO:

3rd Floor   P.O. Box 30822
21 Kruis **Street**   **BRAAMFONTEIN**
JOHANNESBURG   2017
2001

Fax No's (011) 832 1192
              (011) 832 1191

Tel: (011) 832 1180 (Administration)
       (011) 832 1180 (Dispute Resolution)

A copy of this form must be served on the other party. Proof that a copy has been served on the other party must be attached, such as -
- A copy of a registered slip from the Post office; or
- A copy of a signed receipt if hand delivered; or
- A signed statement confirming the service by the person delivering the form; or
- A copy of a fax confirmation slip; or
- A copy of an email confirmation slip ; or
- Any other satisfactory proof of service

Tick the correct box ☑

The name of the employee or an employer that is referring the dispute must be filled in (a).
If there is more than one employee to the dispute and the referring party is not a trade union, then each employee must supply their personal details and signature on a separate page, which must be attached to this form.

The name of the trade union or employer's organisation that is referring the dispute or assisting a member to refer a dispute must be filled in (b). If there is more than one party, please provide all the details of each party on a separate page which must be attached to this form.

1.   DETAILS OF PARTY REFERRING DISPUTE

As the referring party, are you:

O **An employee**   O **Trade union**
O **An employer**   O **An employers' organization**

(a)   If the referring party is an <u>employee</u> or <u>employer</u>

First Name(s)………………………………………………………………………………
Surname ………………………………….....**Identity number**…………………………….
Occupation (if employee) …………………………………………………………..
Length of service ………………………………
Salary Gross ………………..   **Salary Net** …………………..
Gender (M/F) ………..   **Age** ………   **Nationality** …………………….
Postal Address: ………………………………………….…………………………………
…………………………………………………………**Postal Code**: ….…………………..
Physical Address: …………………………………………………………………………
Tel: …………………………………………**Cell:** ………………………………………..
Fax: …………………………………….**Email:** …………………….…………………

(b)   Name of the referring party who will represent the applicant (name of official) if the referring party is an employer's organization or trade union, or if the employer's organization is assisting a member to the dispute

Name: (party)………………………………… **(Official)**…………………………………..
Contact person (if organization): …………………………………………………………..
Postal Address: …………………………………………………………………………..
…………………………………………………………Postal Code ……………….…....
Physical Address: …………………………………………………………………………
Tel: ……………………………………………**Cell**: …………………………………..
Fax: ……………………………………….**Email:** …………………………………..

Tick the correct box ☑	**2. DETAILS OF THE OTHER PARTY (PARTY WITH WHOM YOU'RE IN DISPUTE)**

The other party is:

O **An employer**   O **An employers' organization**
O **An employee**   O **an trade union**

Name: ………………………………………………………………………………..
(if company or close corporation, the name of the company or close corporation):
Contact person: ………………………………………………………….
Postal Address: …………………………………………………………………..
………………………………………………………Postal Code ……………………..
Physical Address: …………………………………………………………………………
Tel: ……………………………..Cell: …………………………………………….
Fax: …………………………………Email: …………………………………..…
Company or close corporation registration number: ………………………….
Number of employees employed by employer: ………………………………….

3.   NATURE OF THE DISPUTE

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

O **Unfair dismissal (s 191)**

Unfair Labour Practice
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 condonation.

O **Mutual Interest**	O **Refusal to Bargain (s64(2))**
O **Unilateral change to terms & conditions of employment (s64(4)**	O **Severance Pay S41 BCEA**
O **Disputes by Essential Services employees (s 74)**	O **Disputes about Freedom of Association (s 9)**
O **Interpretation or application of collective agreement (s 24)**	O **Unfair labour practice (probation) (s 186(2)(a))**
O **S198 LRA**	O **Unfair labour practice (other) (s 182(2))– *please give details:* ....**
O **S198A(Labour Broker)**	....
O **S198B(Fixed Term Contract)**	....
O **S198C(Part-time Employment)**	
O **Other – *please give details***	

....
....

If it is an unfair dismissal dispute, tick the relevant box

O **Misconduct**	O **Incapacity**
O **Unknown Reasons**	O **Constructive Dismissal**
O **Poor work performance**	O **Dismissal relates to probation**

O **Operational Requirements (Retrenchments)**
O **where I was the only employee dismissed**
O **where the employer employs less than ten (10) employees**
O **Other**

If it is an unfair labour practice, state whether it relates to probation.
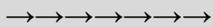
4. **SUMMARIZE THE FACTS OF THE DISPUTE (Use additional paper if necessary):**

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

5. **DATE AND WHERE DISPUTE AROSE:**

   The dispute arose on: ……………………………………………………….
   (give the date, day, month and year)

   The dispute arose where: ……………………………………………………
   (give the City/Town in which the dispute arose)

6. **DATE OF DISMISSAL(if applicable)** _____

7. **FAIRNESS OR UNFAIRNESS OF DISMISSAL(if applicable)**

   (a) Procedural Issues
   Was the dismissal procedurally unfair? Yes O No O
   If yes, why? ....

   ………………………………………………………………………………

   (b) Substantive Issues
   Was the reason for the dismissal unfair? Yes O No O
   If yes, why? ………………………………………………………………

   …………………………………………………………………………….

8. **RESULT REQUIRED**

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

9. **OBJECTION TO CON-ARB PROCESS(Only complete this part if you object to the arbitration commencing immediately after conciliation)**

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

   _____
   Signature of person objecting to con-arb

Parties may, at their own cost, bring interpreters for languages other than the official South African languages. Please indicate this under "other".	**10. INTERPRETER SERVICES** Is an interpreter required? Yes/No O Afrikaans O IsiNdebele O IsiZulu O IsiXhosa O Sepedi O SeSotho O Setswana O IsiSwati O Xitsonga O Sign Language O Tshivenda O Other ………………………..

Special features might be a reason for the urgency of the matter, the large number of people involved, important legal or labour issues, etc.	**11. SPECIAL FEATURES / ADDITIONAL INFORMATION**
	
	    Briefly outline any special features / additional information Sarpbac needs
	
	    to note:……………………………………………………………………………………
	
	    ………………………………………………………………………………………………..
	
	    ………………………………………………………………………………………………..
	
	    ………………………………………………………………………………………………..

	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 the employment that applied before the change.** **Signed ……………………………(employee party/representative referring the dispute**

	12. CONFIRMATION OF ABOVE DETAILS
	
	    Form submitted by:
	
	    …………………………………………………………………………..
	                     (Please print name)
	
	    Signature: …………………………………………………………..
	
	     Position: ………………………………………………………………
	
	     Date: ……………………………………………………………………
	
	     Place: ……………………………………………………………….
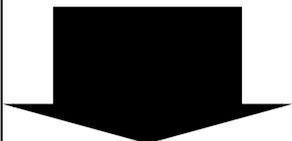
READ THIS FIRST ▼	**PART B** **TO BE COMPLETED FOR DISMISSAL DISPUTES <u>ONLY</u>**

Dismissal disputes must be referred within 30 days of dismissal. If the dismissal was more than 30 days ago, you are required to apply for condonation on section C of this form.	**1. COMMENCEMENT OF EMPLOYMENT** When did you start working at the company? …………………………………………….. **2. NOTICE OF DISMISSAL** When were you dismissed? …………………………………………………………… How were you informed of your dismissal?
Tick the correct box ☑	O By letter O Verbally O At/After a disciplinary hearing O Constructive (resigned) O Other (*please describe*) ………………………………………………….. **3. REASON FOR DISMISSAL** Why were you dismissed?
Tick the correct box ☑	O Misconduct O Incapacity O Operational Requirements O Unknown (Retrenchment) O Other (please describe) …………………………………………………… **4. FAIRNESS/UNFAIRNESS OF DISMISSAL** **(a) Procedural Issues** Was the dismissal procedurally unfair? O Yes O No If yes, why? …………………………………………………………………….. …………………………………………………………………………………… …………………………………………………………………………………… **(b) Substantive Issues** Was the dismissal substantively unfair? O Yes O No If yes, why? ……………………………………………………………………. …………………………………………………………………………………… ……………………………………………………………………………………

PART C
CONDONATION APPLICATION –
TO BE COMPLETED IF YOUR REFERRAL IS OUT OF TIME
NOTE: Condonation applications will be dealt with on papers only unless there is a written request to give oral evidence

ONLY FILL THIS OUT IF THE CASE HAS BEEN REFERRED LATE :

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

Applicant Name: …………………………………………**Occupation:**…………………………………………………..

Respondent Name: …………………………………………**Position:**…..……………………………………………

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)*
……….…...
……
....

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.

……..
……..
……..
……..
……..
……..

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

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

Occupation 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 gives 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 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 C 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 reasons 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. Reasons 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 or public interest, 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 document that supports your application.

THE RESPONDENT (Employer)

Should you wish to respond to the applicant's affidavit, it must reach the offices of the Bargaining Council **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.

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 Bargaining Council. **AS CONDONATION IS DEALT WITH ON PAPERS, THE PARTIES ARE REQUIRED TO GIVE AS MUCH INFORMATION AS POSSIBLE.**