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Our ref: SALLRs' 36th annual seminar 2020/survey results(1)
Your ref: SALLRs' 36th annual seminar 2020/survey results(1)
Date: 18-09-2020

Transmitted per email:

Dear Delegate

Re: 36TH SOUTH AFRICAN LABOUR LAW REPORTS' ANNUAL SEMINARS: COMBINED SURVEY RESULTS

During the recent live broadcasts of the SALLRs' 36th annual seminar, held from Wednesday 12 August 2020 to Thursday 3 September 2020, the SALLR team conducted various surveys covering a variety of issues and, set out herein, are the combined results obtained from such five live broadcast sessions. Kindly note that the percentages have been rounded off.

Your rating of the live broadcasts

55% of delegates rated the seminar as excellent and 45% of delegates rated their experience as good! We simply could not have wished for better results in this regard.

The different provinces in which the delegates reside

36% of delegates reside in Gauteng, 23% in the Western Cape, 14% in KwaZulu-Natal and 12% in the Eastern Cape.

The shift to working from home

71% of delegates experienced the seminar from their respective homes whilst only 27% viewed the live broadcasts from their respective offices.

The consideration of CPD points when either appointing or promoting employees

A high number of delegates, namely 77%, do not consider CPD points in the above regard



and, obviously, this will reflect negatively in the preparedness levels of such employees to deal with current and future knowledge challenges.

The forum where delegates appear

77% of delegates represented either an employer or employee during the past 12 months at the CCMA. During this time period, a smaller number of delegates, namely, 20%, represented either an employer or employee, during the past 12 months, at various bargaining councils.

Representation of employers' organisations or trade unions

75% of delegates, during the past 12 months, represented either an employers' organisation or trade union at the CCMA, whereas this percentage in respect of representation at the various bargaining councils is much lower, namely, 25%.

Benchmark utilised to determine earnings levels in organisations

43% of delegates utilised corporate surveys, 16% utilised STATS SA surveys earnings and 41% utilised other benchmarks, such as bargaining council determinations and collective bargaining.

The current dominant business patterns of organisations

44% of all delegates are employed in organisations where the people business pattern is the dominant business pattern. In respect of the process business pattern, 28% of delegates are employed by organisations utilising this business pattern as its primary business pattern. It is significant to indicate that the place business pattern as a dominant business pattern appears to be losing relevance, seeing that only 9% of all delegates are employed in organisations where this is the dominant business pattern.

The type of restructuring currently contemplated by organisations attending SALLRs' 36th annual seminar

A high 59% of all delegates indicated that the organisations that they are associated with are contemplating transformational change, entailing a change in respect of culture, structure and process. A small percentage, namely, 20%, indicated that the organisations they are involved with are not contemplating either transformational change or incremental change.

Percentage of organisations' employment environment regulated by contractual rights and obligations

56% of all delegates indicated that more than 50% of the employment environment of the organisations they are associated with is regulated by contractual rights and obligations. This obviously increases these organisations' risk in respect of litigation, seeing that, basically, they are therefore exposed to at least two causes of action, namely, a cause of action based on breach of contract and, secondly, a cause of action based on statutory fairness.



The approach to conducting disciplinary enquiries

Despite the latest developments during the last 12 years, 28% of delegates still utilise the formal disciplinary enquiry route based on the criminal justice model. Only 33% execute disciplinary enquiries in line with Schedule 8 of the LRA. Even more alarming is that a whopping 40% combine the formal disciplinary enquiry process with Schedule 8 of the LRA.

Consultation with individual employees or non-majority unions

Despite *Association of Mineworkers and Construction Union and Others v Royal Bafokeng Platinum Ltd and Others* (2020) 31 SALLR 1 (CC) (on page 111 of the current workbook), a whopping 65% of all delegates indicate that their organisations still consult with individual employees or non-majority trade unions where they are not obliged to do so in terms of s189, read with s189A, of the LRA.

Process to effect changes in terms and conditions of employment

Despite the dangers indicated relating to an automatically unfair dismissal in terms of s187(1)(c) of the LRA (*Jacobson v Vitalab* (2019) 30 SALLR 175 (LC) (on page 133 of the current workbook), 40% of all delegates still adopt the viewpoint that collective bargaining is the preferred method to effect such change in terms and conditions of employment.

The requirement of a recorded and secret ballot in a union's constitution

Despite the obvious legal requirements in this regard, 55% of all delegates indicated that the unions they deal with have not amended their constitutions accordingly.

Rewarding non-striking employees for exceptional work delivered during a strike

The SALLR team holds the viewpoint that, in line with the latest approach adopted by the labour court in *National Union of Mineworkers obo Members v Cullinan Diamond Mine, a Division of Petra Diamonds (Pty) Ltd* (2019) 30 SALLR 184 (LC) (on page 176 of the current workbook), in future, more and more employers will consider this option. However, 68% of all delegates indicated that such rewarding does not currently take place.

Vicarious liability

In view of the further development identified by the supreme court of appeal in *Stallion Security (Pty) Ltd v Van Staden* (2019) 30 SALLR 191 (SCA) (on page 247 of the current workbook), it is interesting to note that delegates themselves regarded their organisation as having created a risk of harm in the following manner:

- 9% - by providing security services
- 12% - by providing transport solutions
- 26% - by providing health and safety solutions
- 29% - by providing employees as part of a service or product solution



We trust that you will find the above useful and, should you have any queries in this regard, do not hesitate to contact Brian van Zyl directly on 041 373 4322 or pa@vanzylrudd.co.za.

Kind regards

SALLR team

