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## SLIP AND TRIP ALERT NOTICE 10 OF 2024

- Section 25 of the LRA recognises agency shop agreements as a form of union security arrangements based on the majoritarian principle. The section does not provide for all kinds of manifestations of agency shop agreements. What are the types of respective rights, duties and responsibilities within this legislative framework that the parties may determine for themselves?
- Section 25 contains both prescriptive and proscriptive norms. What meaning did the labour appeal court recently attach to these norms?
- The legal philosophy behind making agency fees compulsory is to address the free-rider problem – those who receive a benefit should not do so without paying the concomitant fee. How did the labour appeal court recently deal with such reasoning when so applying the principles of fairness?
- In *National Manufactured Fibres Employers Association and Another v Bikwani and Others (Bikwani)*, the labour court held that non-members of the representative trade union are obliged to pay agency fees as a contribution towards the representative trade union's costs incurred in connection with collective bargaining. This judgment did not deal with a minority union that was a bargaining agent. The reasoning in *Bikwani* was approved by the labour appeal court in *Municipal and Allied Trade Union of SA v Central Karoo District Municipality and Others (2020) 41 ILJ 1918 (LAC)*. Again, this matter did not deal with a minority union that was a bargaining agent. Taking the above two cases into account, how did the labour appeal court recently deal with the scenario where members of a minority trade union, that is a bargaining agent, are obliged to pay agency fees?
- What are the factors to be taken into account to determine whether an agency shop agreement, even complying with the requirements of s25 of the LRA, is to be branded as unfair and therefore unenforceable?
- An 'implied term' is used to describe an unexpressed provision of a contract which the law imports thereon, as a matter of course, without reference to the actual intention of the parties. What are the requirements to be met, with reference to the approach adopted in *BP Refinery (Western Port) (Pty) Ltd v President, Councillors and Ratepayers of the Shire*





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of *Hastings* 1977 (52) ALJR 20 and applied recently by the labour appeal court when considering an agency shop agreement?

- With reference to *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), what is the approach recently adopted by the labour appeal court when interpreting a restraint of trade agreement?
- What are the factors recently taken into account by the labour appeal court when determining the territorial reach of a restraint agreement, in the scenario where such reach extends throughout the Republic of South Africa?
- What are the factors to be taken into account to determine whether or not a restraint of trade agreement is reasonable, with reference to *Basson v Chilwan and Others* 1993 (3) SA 742 (A) and *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA) and applied recently by the labour appeal court?
- With reference to the approach of the supreme court of appeal in *AB and Another v Pridwin Proprietary School and Others* 2019 (1) SA 327 (SCA), how did the labour appeal court recently deal with the scenario where the restraint of trade agreement is to be declared invalid as opposed to the scenario where it should simply not be enforced?
- The labour appeal court recently held that, in the final consideration, when considering a restraint of trade agreement, it entails a 'careful balancing exercise', balancing, on the one hand, the right of the employer to hold the employee to the agreement, on the basis of the principle of *facta servanda sunt* and, on the other hand, considering the employee's constitutional rights to apply his/her trade and engage in commerce. How should this exercise be undertaken?
- With reference to *Murray v Minister of Defence* 2009 (3) SA 130 (SCA), how did the labour appeal court recently identify the nature of a constructive dismissal?
- With reference to *Strategic Liquor Services v Mvumbi NO and Others* 2010 (2) SA 92 (CC), *National Health Laboratory Services v Yona and Others* (2015) 36 ILJ 2259 (LAC) and *Jordaan v CCMA and Others* (2010) 31 ILJ 2331 (LAC), what was the two-stage approach applicable to constructive dismissals so recently confirmed by the labour appeal court and how did it apply such approach?





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- How did the labour appeal court recently consider the fact that an employee suffers from mental ill-health when determining whether or not such employee has been constructively dismissed?

