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SLIP AND TRIP ALERT NOTICE 12 OF 2024

- South Africa has about 5000 registered pension funds with approximately 17 702 000 total members and an aggregate of total assets of R4.3 billion. Pension funds are important, not only for individuals to make decisions regarding their work and retirement, but also for the economy as a whole. The constitutional court had the opportunity to consider important issues regarding amendments to pension fund rules. What were the considerations recently taken into account by the constitutional court to determine whether a pension fund may process a member's claim for a withdrawal benefit in terms of a rule amendment that has not yet been registered by the registrar of pension funds?

- In the scenario where a rule amendment impacts accrued or vested pension fund benefits, may it act retrospectively?

- With reference to *Meyer v Iscor Pension Fund* 2003 (2) SA 715 (SCA), how did the constitutional court regard the relationship between the board of trustees and the members of a pension fund?

- On what basis is it regarded that pension fund rules are a type of delegated domestic legislation?

- The constitutional court recently held that a pension fund's power to amend its rules is not unfettered and identified a number of requirements to be complied with in this regard – what are these requirements and how are they relevant to the ultimate question as to whether or not the registrar will approve same?

- What is the difference between the concepts of retrospectivity and retroactivity with reference to the amendments to pension fund rules?

- The scenario is as follows: an employer makes provision for the termination of an employment contract, subject to the provisions of the LRA and, after consultation between the parties, by giving one month's written notice. How did the labour appeal court recently view such notice of termination without the employer embarking on a consultation process, in answering the question whether or not such termination was lawful or not?

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- On what basis did the labour appeal court recently confirm that the primary remedy where a contract has been unlawfully terminated is specific performance (i e restoration of the *status quo ante*)?

- The labour appeal court recently had to deal with the scenario where the labour court found the termination of employment unlawful, did not unconditionally restore the *status quo ante*, but made a qualified order to the following extent: 'in order that due consultation can take place as to the early termination of the five-year contract between the parties'. On what basis did the labour appeal court find, with reference to, *inter alia*, *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC), that such remedy was not permissible?

- The scenario is as follows: an employer allegedly unlawfully makes deductions from an employee's gross salary. The employee in motion proceedings seeks an order declaring such deductions unlawful and in contravention of s34 of the Basic Conditions of Employment Act 75 of 1997 (BCEA). What is the approach recently applied by the labour appeal court to determine whether or not such an order should be granted where there are disputes of fact between the parties in the above regard and the employer's denial was not bold nor uncreditworthy, neither raised fictitious disputes of fact, nor was it palpably implausible, far-fetched or clearly untenable (with reference to the *Plascon-Evans Paints* principles)?

Director: Brian van Zyl • Reg No: 2012/131276/07