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SLIP AND TRIP ALERT NOTICE 3 OF 2024

- Is an employee entitled to an order compelling an employer to change its records reflecting the status of such employee as 'dismissed' to 'resignation' where the employee resigned during a disciplinary enquiry and where, during the period of resignation, he was dismissed by the employer?
- How did the labour court recently interpret the approach that it has no general jurisdiction in employment matters, with reference to *Baloyi v Public Protector and Others 2022 (3) SA 321 (CC)*?
- Is an employer entitled to unilaterally extend a notice period so as to cater for the outcome of an appeal against an original internal decision to dismiss an employee?
- Section 41(4) of the BCEA reads as follows:
'(4) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of subsection (2).'
- In terms of s41(2), an employer must pay an employee, who is dismissed for operational requirements, or whose contract of employment terminates, or is terminated in terms of s38 of the Insolvency Act 24 of 1936, severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, calculated in terms of s35 of the BCEA. How did the high court recently deal with the following issues?
 - does the high court have jurisdiction to entertain an application where the employees dismissed for operational requirements claim severance pay under the circumstances where their employer refuses to pay them severance pay and such alleged severance pay is above the minimum statutory amount?





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- is the defence contained in s41(4) available to an employer if the claim is pleaded in contract?
- if the s41(4) defence is available to an employer, can the high court determine the employees' entitlement to severance pay as provided for in terms of s41(6) of the BCEA?
- How did the labour appeal court recently identify and describe the essence of a s197 transfer?
- The labour appeal court recently specifically identified that, for s197 of the LRA to be applicable, the protection against the risk of job losses must be located in the objective existence of a commercial reality, i.e. a business as a going concern having been transferred. In 'concrete' terms, what meaning did the labour appeal court attach to such requirement?
- What is the test, reconfirmed and applied by the labour appeal court, as to whether or not a discrete business unit existed in the hands of the former 'owner'?
- What is the effect of the mere lapsing of a commercial agreement, and the subsequent take-up by another service provider, on the question as to whether or not s197 of the LRA is applicable?

