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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 10 OF 2025

This is the tenth alert notice of those issues that will cause YOU to slip and definitely trip in 2025. These notifications have been compiled largely on the basis of queries that our call-centre receive, as well as the solutions provided thereto by our fast-tracking team.

Some of these alert notice issues will eventually be incorporated into our mouth-watering annual seminar workbook, as well as our delicious and spicy PowerPoint presentation compiled on an annual basis.

The attached notice deals, amongst others, with the following tricky issues:

- the correct interpretation to a bargaining council's scope of registration
- inherent requirements of a job for the purposes of s187 of the LRA
- the duty on an employer to reasonably accommodate an employee who is a member of the Seventh Day Adventist Church and thus forbidden to work on the Sabbath, meaning from sunset on Friday to sunset on Saturday

We look forward to YOU being part of the CCMA and SALLR continuing learning events – to secure YOUR seat, kindly register by completing the attached registration form.

Your hardworking CCMA and SALLR teams



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



SCAN TO VIEW FULL BROCHURE

FURTHER DETAIL OF THE IDENTIFIED TRICKY ISSUES

- A bargaining council's scope of registration as it appears in its certificate of registration indicates such bargaining council to cover the industry where employers and their employees are associated for carrying on one or more of the following activities for hire or reward, namely:

- [i] the transportation of goods by means of motor transport;
- [ii] the storage of goods, including the receiving, opening, unpacking, packing, despatching and clearing of or account for such goods where these activities are ancillary or incidental to [i] above.

With reference to the aforesaid scenario:

- is the correct interpretation that logistics/warehousing must be ancillary or incidental to [i] of the scope of the bargaining council to fall within the said industry?
 - alternatively, should a purposive interpretation be applied, entailing that, without reference to [i] of the said certificate of registration, such logistics/ warehousing activities constitute one of the activities referred to in [ii] of the said certificate of registration?
- What are some of the important factors to be considered when determining whether or not a demarcation award is reasonable?
 - The employee is a member of the Seventh Day Adventist Church and he was thus forbidden to work on the Sabbath, meaning from sunset on Friday to sunset on Saturday. The employer dismissed the said employee for incapacity, in the form of his inability to fulfil the required weekend work obligations. The employer conceded that there was discrimination on the basis of religion against the employee in the above dismissal, but contends that such discrimination was fair, on the basis of s187(2)(a) of the LRA. With reference to the aforesaid scenario, how did the labour appeal court recently deal with the following issues:
 - what constitutes an inherent requirement of the job for the purposes of s187 of the LRA, as formulated in *TFD Network Africa (Pty) Ltd v Faris* (2019) 40 ILJ 326 (LAC)?
 - what efforts must an employer make to reasonably accommodate an employee in the aforesaid scenario?
 - the constitutional court, in *Damons v City of Cape Town* (2022) 43 ILJ 1549 (CC), held the viewpoint that, once it has been established that the specific requirement, like physical fitness, was an inherent requirement of a job, there was no obligation of



reasonable accommodation on the part of the employer – according to the constitutional court, such an obligation to accommodate would entail an obligation on an employer to create new positions in order to accommodate employees who did not meet the inherent requirements of a different job altogether. How is this viewpoint to be reconciled with the viewpoint previously adopted by the labour appeal court in the *TFD Network* judgment?

