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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 11 OF 2025

This is the eleventh 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:

- permitting an employee to work beyond an advanced age, such as 72 years, and thereafter terminating the services of such employee on the basis that he or she reached the normal or agreed-upon retirement age
- in the above regard, what role does the following play:
 - the rules of the employer's provident/pension fund?
 - the number of employees who have retired in a particular category prior to the termination of the employee becoming an issue?
 - the collective agreements applicable within a specific bargaining council?
- some tricky issues of the recently-adopted rule 38(1) and rule 38(2) of the Rules of the Labour Court

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

- In the scenario where an employer permits an employee to work until 72 years of age, how did the labour court recently deal with the following issues where it is alleged that the employee's termination of services amounts to dismissal on the basis of age, thus constituting an automatically unfair dismissal in terms of s187(1)(g) of the LRA:
 - s187(2)(b) of the Act provides that, despite s187(1)(f), a dismissal based on age is fair if the employee has reached the normal or agreed retirement age for people in that capacity – is there an applicable timeframe within which dismissal should take place for such protection to exist?
 - if the employer permits the employee to continue working after reaching the retirement age, does the original employment contract terminate by effluxion of time?
 - in the above scenario, does s187(2)(b) contemplate a new tacit contract coming into existence between the employer and the employee, which then governs their employment relationship where the employee continues to work after reaching the normal or agreed retirement age?
 - does s187(2)(b) envisage a tacit amendment to the original employment contract, to the effect that the employee would continue to work indefinitely or, alternatively, that a new retirement age applies?
 - where an employer permits an employee to continue working beyond the agreed or normal retirement age, does this constitute a waiver of the right to dismiss the employee in terms of s187(2)(b) of the LRA?
 - with reference to *Cash Paymaster Services (Pty) Ltd v Browne* (2006) 17 (8) SALLR 1 (LAC); (2006) 27 ILJ 281 (LAC), under which circumstances will normal retirement age apply instead of an agreed retirement age?
 - with reference to *Rubin Sportswear v SA Clothing and Textile Workers Union and Others* (2004) 15 (9) SALLR 1 (LAC); (2004) 25 ILJ 1671 (LAC), under what circumstances will an agreed retirement age trump a normal retirement age?
- In terms of s187(2)(b), despite s187(1)(f), a dismissal based on age is fair if the employee has reached the normal or agreed retirement age for persons in that capacity. How is the term 'normal' to be established? How is the term 'capacity' to be established?
- To what extent may an employer rely on the rules of its provident/pension fund to establish a 'normal retirement age'?
- Under what circumstances may a retirement age, that is not agreed upon, become a normal retirement age? In this regard, what roles do the number of employees employed



in a particular category, who have been retired, as well as the period over which they have been retired, play in answering this question?

- With reference to *Solidarity obo Strydom and Others v State Information Technology Agency Soc Ltd* (2022) 43 ILJ 1881 (LC), to what extent can an employer or employee successfully rely on both a normal and agreed-upon retirement age, with reference to s187(2)(b) of the LRA?
- The scenario is as follows: the nature of the employer's business is that it falls within the registered scope of a specific bargaining council. The collective agreements within such bargaining council, that refer to a 'retirement age' are not applicable to the specific employee retired, seeing that such employee did not fall within the category of employees obliged to become a member of the relevant provident fund. With reference to these specific facts, what are the relevant considerations to be taken into account when determining what the normal retirement age is in the specific industry and so applicable to the said employee?
- To what extent is the employer entitled to utilise the 'retirement age' contained in the relevant collective agreements of the bargaining council as guidelines to impose retirement on employees?
- What are the factors to be considered when determining whether or not a resolution to place an employee on special leave, to allow for investigations into alleged misconduct, is lawful?
- Under the recently-adopted rule 38(1) and rule 38(2) of the rules of the labour court (GN50608 Government Gazette 3 May 2024), a party which applies for urgent relief must file an application that complies with the requirements of the rules regulating applications generally and must file, in addition, an affidavit in support of the application containing the reasons for urgency, why urgent relief is necessary and the reasons why the requirements of the rules were not complied with. What are the factors recently taken into account by the labour court when determining whether or not there has been compliance with these recently-adopted rules?
- In the scenario where allegations are made relating to the abuse of power by public officials, which may impact on the rule of law and may have a detrimental impact on the public purse, what are the factors to be taken into account to determine whether or not the relief sought should be considered on an urgent basis, with reference to *Apleni v President of the Republic of SA and Another* [2018] 1 All SA 728 (GP)?
- The importance of the rule of law in municipal governance, and, in particular, the need for municipal councils to conduct their affairs in line with the law, received special attention recently in the labour court. What is the approach to be adopted when resolutions do not comply with the relevant law, such as the Local Government: Disciplinary Regulations for Senior Managers?

