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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 12 OF 2025

This is the twelfth 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 consequences of a party failing to maintain the required threshold for admission to a bargaining council
- the right of individual employees to utilise s24 of the LRA, dealing with interpretation and application of collective agreements – it appears that such individual employees no longer lack the required *locus standi* to refer a s24 dispute to the labour court
- the obligation of municipalities to recover unauthorised, irregular or fruitless and wasteful expenditure

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



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FURTHER DETAIL OF THE IDENTIFIED TRICKY ISSUES

- When reviewing a decision of an arbitrator concerning a dispute regarding the application and interpretation of a collective agreement, is the correctness or reasonableness test applicable?
- In the scenario where the constitution of a bargaining council indicates the threshold for admission is a level of representivity of 5%, does membership of such bargaining council automatically terminate where a party fails to maintain 5% representivity? If such membership does not automatically terminate on the failure to achieve the threshold of 5%, how is the party, which no longer enjoys the required minimum membership, to be dealt with?
- What are some of the obvious differences between a collective agreement and a commercial contract?
- With reference to *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration* 1974 (3) SA 506 (A) and *Bezuidenhout v Otto and Others* 1996 (3) SA 339 (W), how did the labour appeal court recently apply the distinction between tacit terms and implied terms?
- What is the approach to be adopted when a tacit term is sought to be imported into a contract, specifically a collective agreement?
- Where there is no express term in the constitution of a bargaining council that deals with the consequences if a party fails to maintain a threshold required for joining such bargaining council as a party, what is the approach followed by the labour appeal court as to how such dispute should be dealt with?
- In terms of s24(2) of the LRA, if there is a dispute about the application and interpretation of a collective agreement, such dispute must be resolved through conciliation and, if the dispute remains unresolved, subsequently it must be resolved through arbitration. In *Arends and Others v SA Local Government Bargaining Council and Others* (2013) 34 ILJ 2560 (LC) and *SA Police Service v Du Preez and Others: in re Du Preez v SA Police Service* [2019] ZALCPE 3 (8 March 2019), the labour court held that individual employees lack the required *locus standi* to refer a s24 dispute and it was only trade unions that could do so. On what basis did the labour court recently determine that these two decisions were wrongly decided and that individual employees, with a direct and substantial interest in a dispute relating to the interpretation and application of a collective agreement, indeed have the required *locus standi* to refer a dispute in terms of s24 of the LRA?
- What is the fundamental difference between the required *locus standi* of a claimant to bring a claim and the jurisdiction of a forum to adjudicate on the relevant cause of action?



- Are employees, who are not parties to a collective agreement, or who are not members of an employers' organisation which is a party to a collective agreement, permitted to refer s24 of the LRA disputes?
- In terms of s32(1) and s32(2) of the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA), municipal officials and political office-bearers (who are not involved in the day-to-day running of the municipality) are statutorily liable for unauthorised, irregular or fruitless and wasteful expenditure, in addition to any liability under the common law or any other legislation. In this regard, what meaning is to be attached to 'irregular expenditure', 'unauthorised expenditure' and 'fruitless and wasteful expenditure'?
- To what extent is a municipality obliged to recover such unauthorised, irregular and fruitless and wasteful expenditure?
- Under which circumstances is a municipality not obliged to recover the aforesaid expenditures?
- In respect of a municipality's claim in terms of s32(1) and s32(2) of the MFMA, is it a consideration that the municipality did not suffer loss or damage?
- In respect of the aforesaid claim by a municipality, is it a consideration for such claim to be successful, in terms of the said s32, that the municipality received significant value for work done?
- Section 176(1) of the MFMA protects, *inter alia*, a municipality and its officials against liability to third parties, for loss or damage that results from the *bona fide* exercise of a power or the performance of a function under the MFMA. In terms of s176(2) of the MFMA, a municipality is authorised to recover loss or damage it suffered from the official concerned, where that loss or damage has been caused deliberately or negligently. To what extent does s176 of the MFMA affect the recovery of unauthorised, irregular or fruitless and wasteful expenditure from municipal officials or relevant political functionaries in terms of s32 of the MFMA?

