



PO Box 12758, Centrahil, Gqeberha, 6006 • 13 Mclean Rd, Mill Park, Gqeberha, South Africa, 6001
Tel: 041 373 4322 • Email: pa@vanzyrudd.co.za • www.sallrseminars.co.za

Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 5 OF 2025

This is the fifth 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 inclusion in the scope of a trade union of other activities, industries or interest groups, as defined by the national executive committee or national office bearers (in terms of the union's constitution)
- the relevant factors when, firstly, the registrar of labour relations is considering registering a trade union and, secondly, when such registrar is considering to register an amendment to a union's constitution
- the extent to which a pre-arbitration minute limits the dispute between the parties as to whether or not the relevant employee is guilty of the allegations against him and such re-arbitration agreement does not require the arbitrator to determine whether the sanction of dismissal is the appropriate sanction

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

- The scenario is as follows: the registered constitution of a trade union provides for specific industries falling within the union's scope and further provides for the inclusion within such scope of any other activity, industry or interest group as defined by the national executive committee or national office bearers from time to time. With reference to the aforesaid scenario, how did the labour appeal court recently deal with the following issues:
 - whether or not a subsequent resolution passed to include a particular industry amounts to a change to the union's constitution as contemplated in s101(1) of the LRA?
 - on what basis did the labour appeal court determine that the approach taken by the constitutional court, in *National Union of Metalworkers of SA v Lufil Packaging (Isithebe) (A Division of Bidvest Paperplus (Pty) Ltd) and Others* (2020) 31 SALLR 138 (CC), is not applicable in the aforesaid described scenario?
 - had there been a change to the trade union's constitution, what were the statutory obligations on the Registrar of Labour Relations?
- Is the Registrar of Labour Relations (the registrar) correct to adopt the approach that a trade union, registered as a trade union under the LRA, as well as registered as a non-profit company to the Companies Act, is not entitled to have its amended constitution registered by the registrar?
- Section 111(3) of the LRA indicates that a person aggrieved by a decision of the registrar may appeal against such decision to the labour court. With reference to *Staff Association for the Motor and Related Industries v Motor Industry Staff Association and Another* (1999) 20 ILJ 2552 (LAC), what is the nature of such appeal?
- On what basis did the labour court recently find that the interpretive approach, as contained in *Natal Joint Municipal Pension Fund v Endumeni Municipality* (2012) 4 SA 593 (SCA) (*Endumeni*) and *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC) (*Cool Ideas*) is not applicable to the interpretation to be adopted to s95 and s96 of the LRA?
- What are the factors to be taken into account to determine whether a trade union is a genuine trade union, with reference to the actual process of the formation thereof, the composition and membership thereof and, last, but not least, the activities undertaken on behalf of trade union members?
- What are the consequences of the financial statements of a trade union audited in terms of the Companies Act and not audited in terms of the LRA, as a factor to be taken into account by the registrar when considering registration of such trade union?

