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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 6 OF 2025

This is the sixth 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:

- an application to amend pleadings
- the differences between income differentials, its s27 of the EEA, as opposed to s6 of the EEA
- the consequences of excluding white males from shortlisting for certain jobs
- a challenge to an employment equity plan not on the basis of its validity, but on the basis that its implementation does not meet the requirements of the principle of legality
- the consequences of a white employee classifying himself as an 'African'

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

- With reference to *Candy and Others v Coca Cola Fortune (Pty) Ltd* (2015) 36 ILJ 677 (LC), how did the labour appeal court recently formulate the purpose of a statement of case?
- With reference to *National Union of Metalworkers of SA and Others v Driveline Technologies (Pty) Ltd and Another* (2000) 21 ILJ 142 (LAC) and *Sondorp and Another v Ekurhuleni Metropolitan Municipality* (2013) 34 ILJ 3131 (LAC), how did the labour appeal court recently identify the principles applicable to an application to amend pleadings?
- What are some of the differences recently identified by the labour appeal court concerning income differentials ito s27 of the EEA as opposed to pursuing a claim for unfair discrimination ito s6(1) of the EEA?
- In the scenario where an employer, in terms of its employment equity plan, excludes the possibility of white males to be shortlisted for certain jobs, what are the factors to be taken into account to determine, firstly, whether such approach amounts to unfair discrimination on the basis of race and, secondly, whether same amounts to a quota system prohibited by s15(3) of the EEA?
- What are the requirements to be met to determine whether affirmative action measures fall within the ambit of s9(2) of the Constitution?
- Even though an employment equity plan may be valid, its application may still be challenged on the basis that it is unlawful. What are the considerations to be taken into account when evaluating such implementation in terms of the principle of legality?
- With reference to the approach adopted by the constitutional court in *SA Police Service v Solidarity obo Barnard (Police and Prisons Civil Rights Union as amicus curiae)* 2014 (6) SA 123 (CC) (*Barnard*), what is the primary distinction between numerical targets and quotas?
- If the employer adopts the approach that, despite the wording of its affirmative action policy that white males cannot be shortlisted for certain positions, in practice this did not amount to an 'absolute barrier' because, if a suitable candidate was not to be found from an underrepresented group, there was the possibility that such white male may be included in a second round of applications, alternatively, a motivation may be made for a particular white male to fill the position. Does this amount to either unfair discrimination on the basis of race or, alternatively, a quota system?
- What are the consequences if a white employee classifies himself as an 'African' when considering the issue as to whether or not, as a white employee, such person would have been excluded from a certain job, but as an 'African' is not so excluded?



- In the above scenario where a white employee categorised himself as an 'African' employee for the purposes of the application of an employment equity plan, does this self-description amount to deception, entailing that, on the basis of the 'clean hands doctrine', such white employee, if successful in a discrimination case, be precluded from awarded compensation?

