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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 8 OF 2025

This is the eighth 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 scenario entailing a default arbitration award issued, the employer's rescission application dismissed and a trade union representing the relevant employees certifying the award
- the approach to be adopted when security of costs is considered when taking a matter on review
- considerations when determining whether or not the test for urgency has been complied with
- the effect of archiving papers in review applications

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

- The scenario is as follows: a default arbitration award was issued by the CCMA. The CCMA subsequently dismissed the employer's rescission application. Thereafter, the employer launched a review application and also sought a stay of execution of the award. Notwithstanding the review application, the trade union representing the employees went ahead and certified the award. As a result, the employer approached the labour court on an urgent basis seeking an order staying the arbitration award pending the outcome of the review application and, furthermore, that the employer be exempted from furnishing security in terms of s145(7), read with s145(8) of the LRA. With reference to the aforesaid scenario, how did the labour appeal court recently deal with the following issues:
 - what are the consequences when an applicant in a review application furnishes security to the labour court in accordance with section 145(8) of the LRA?
 - what is the approach to be adopted should an employer wish to be absolved from providing security or to provide security in an amount less than the threshold in s145(8)?
 - what is the nature of the discretion that the labour court has in terms of s145(8) of the LRA as to exempting an employer from paying security or reducing the quantum of security?
- The labour court, in *Emalahleni Local Municipality v Phooko NO and Others* (2021) 32 SALLR 42 (LC); (2021) 42 ILJ 2196 (LC) (*Phooko*) and *Marques Finance v Quinn and Another* [2023] JOL 60127 (LC) (*Quinn*) essentially held the viewpoint that an application in terms of s145(3) of the LRA is not dependent on the furnishing of security. In *City of Johannesburg v SA Municipal Workers Union obo Monareng and Another* (2019) 40 ILJ 1753 (LC) (*City of Johannesburg*), the labour court, in essence, took the viewpoint that s145(7) of the LRA does not mean that, if no security is furnished or no order is sought to be absolved from such security, an award may not be stayed pending a review application. With reference to the aforesaid case law, how did the labour appeal court recently deal with the following issues:
 - what approach is to be adopted in interpreting s145(3), read with s145(7) and s145(8)?
 - what are the two important objectives to be served by s145(7) and s145(8)?
 - on what basis was the stance adopted that there is no stand-alone application to which s145(3) applies, even if there is no review application instituted as yet?



- with reference to *National Department of Health v Pardesi and Another* [2016] ZALCJHB 492, on what basis was it decided that public sector employers must establish on the facts why they should be exempted from furnishing security?
- what are the type of factors to be taken into account when an employer applies for a reduction of the security in terms of s145(8) of the LRA?
- When considering an application brought on an urgent basis, the test for urgency consists of two legs. The first leg requires a court to assess whether or not the applicant will be able to obtain substantial redress in the ordinary course. The second leg requires the court to assess whether it would be in the interests of justice to consider other factors that might nevertheless preclude an urgent application – these factors are not limited to the issue of self-created urgency, any procedural prejudice that might befall the respondent and any prejudice to the administration of justice. What are some of the factors recently identified by the labour court to be taken into account when considering each leg of the aforesaid test?
- With reference to *Ziegler SA (Pty) Ltd v SA Express Soc Ltd and Others* 2020 (4) SA 626 (GJ), on what basis did the labour court recently decide that there are exceptions to the principle that financial hardship cannot found a basis for urgency?
- When the time period for filing a review application is deemed to have been withdrawn in terms of clause 11.2.3 of the Practice Manual. If all the papers in a review application are not filed within 12 months, then the review application will be archived and regarded as lapsed in terms of clause 11.2.7 of the Practice Manual. If an applicant fails to take any steps for a period of six months, then the registrar will archive the file and it shall have the same consequences as if the matter has been dismissed. In *Overberg District Municipality v Independent Municipal and Allied Trade Union obo Spangenberg and Others* (2021) 32 SALLR 24 (LC); (2021) 42 ILJ 1283 (LC), it was held that, whether the said clauses referred to 'withdrawn', 'lapsed' or 'archived', the same result flows. Consequently, the labour court recently referred to the term 'archived' as encompassing all three scenarios. With reference to the aforesaid scenarios, how did the labour court recently deal with the following issues:
 - is the effect of archiving that the review is neither dead nor alive and that the security bond remains effective unless and until the review application is finally dismissed, either on the merits or through an application to dismiss it to rule 11?
 - alternatively, is the effect of archiving that the review application is as dead as a doornail (a phrase originating from the opening paragraphs to Charles Dickens' *A Christmas Carol*, indicating that 'Marley was as dead as a door-nail') and, furthermore, as soon as it was dead, that the employee can execute the award notwithstanding the existence of a security bond and an application to have the file removed from the archives?

