



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

Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 1 OF 2026

This is the first alert notice of those issues that will cause YOU to slip and definitely trip in 2026.

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 our delicious and spicy PowerPoint presentation compiled on an annual basis.

The attached notice deals, amongst others, with the following 'prickly pear' issues:

- the requirements to be met in order to establish that an employer is in contempt of an arbitration award certified by the CCMA
- it appears that the labour appeal court recently found, in a contempt of court application, that it is not a defence that service was not effected on a municipal manager in his or her personal capacity, but, what is relevant, is that he or she knew full well about the arbitration award – there is accordingly no reason why this principle cannot be applied within the private sector environment
- the nature of an appeal to the labour court against the decision by the chief inspector in terms of the Occupational Health and Safety Act 85 of 1993, as amended (OHSA)
- it appears that, without the required certificate, as contemplated in section 28(2) of OHSA, persons seeking to exercise the functions of an inspector, in terms of sections 29 and 30 of OHSA, lack the required *locus standi* to do so
- the principles underlying the approach that, when an employee doubts whether an employer gives a lawful and reasonable instruction, such employee should 'obey now and grieve later'

We look forward to YOUR being part of the CCMA and SALLR continuing professional 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 'PRICKLY PEAR' ISSUES

- The scenario is as follows: an arbitration award is issued in favour of certain employees in terms of which the employer is ordered to place such employees into various grades and notches on a new salary scale with effect from a certain date. This did not happen. Subsequently, the arbitration award was certified by the CCMA. The employer failed to comply with this certified award and the employees launched a contempt of court application before the labour court against the employer in order to enforce the award.
- It is settled law that, in order to give rise to a contempt finding, non-compliance of the award/order must be wilful and *mala fides*. With reference to *Pheko and Others v Ekurhuleni* (2015) (5) SA 600 (CC), para 39, how did the labour appeal court deal with the requirement that, for a finding of contempt to be made, an essential element is that the service of the order must take place upon the employer?
- In *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* 2018 (1) SA 1 (CC) (*Matjhabeng*), the constitutional court held that, in general terms, in order to give rise to contempt, and officials' non-compliance with the court order, means that such officials personally must have deliberately defied the court order. Therefore, where a public official is cited for contempt in his personal capacity, such official himself or herself, rather than the institutional structures for which he or she is responsible, must wilfully or maliciously fail to comply. How is this approach to be reconciled with the approach adopted in *Pheko* (*supra*)?
- In terms of s35(3) of the Occupational Health and Safety Act 85 of 1993, as amended (OHSA), the appeal lies to the labour court against the decision by the chief inspector to confirm, set aside or vary such decision or substitute such decision with any other decision which, in the opinion of the labour court, the chief inspector ought to have taken. On what basis was it found that such an appeal is an appeal in the wide sense, namely, a complete rehearing of and fresh determination on the merits of the matter, with or without additional evidence or information?
- In terms of s28 of OHSA, the minister designates inspectors to enforce, *inter alia*, the regulations issued in terms of s43 of OHSA. What are the consequences when an inspector has not been issued a certificate?
- What are some of the consequences when an inspector, appointed in terms of OHSA, is unable to produce the certificate, so referred to in s28(2) of OHSA?
- What approach should be adopted when the provisions of s28(2) of OHSA (describing the requirement of a certificate stating that an inspector has been designated as an inspector) are construed and applied in the light of *National Credit Regulator v Opperman and Others* 2013 (2) SA 1 (CC), para 99.



- In terms of the facilities regulations (FR) issued in terms of s43(1) of OHSA (contained in GG 26636, dated 3 August 2024), a designated employer, is to determine whether or not the layout of the employer meets the objectives of regulation 8 of the FR, in the context of what is reasonably practicable, considering the confines and nature of the workplace (e g a retail store). The consideration of what is reasonably practicable features prominently throughout the OHSA. With reference to, *Pikitup (Soc) Ltd v SA Municipal Workers Union obo Members and Others* (2014) 35 ILJ 983 (LAC), at para 42, and *University of South Africa v Stapelberg NO and Others* (2019) 40 ILJ 2610 (LC), at para 48, what is the meaning to be attached to the term 'reasonably practicable'?
- It is trite that an employee is obliged to carry out a lawful and reasonable instruction.
- Within this environment, how did the labour appeal court recently interpret and apply the adage 'obey now and grieve later'?
- With reference to *Palluci Home Depot (Pty) Ltd v Herskowitz and Others* (2015) 36 ILJ 1511 (LAC), paras 23 and 33, how did the labour appeal court recently determine the factors to be taken into account to established whether a dismissal is an appropriate sanction for the refusal to obey a lawful and reasonable instruction?



Director: Brian van Zyl
Reg No: 2012/131276/07



SCAN TO VIEW FULL BROCHURE