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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 2 OF 2026

This is the second 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 as our delicious and spicy PowerPoint presentation compiled on an annual basis.

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

- the different treatment of members of a trade union during a protected strike – the employer, for instance, dismissing employees for violating picketing rules and, on the other hand, dismissing employees for being in possession of dangerous weapons on the company property
- it appears that we have an ultimate test to determine definitively whether or not a constructive dismissal has occurred
- it also appears that we have a definitive approach to be adopted to determine whether or not the continued employment relationship is intolerable

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



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FURTHER DETAIL OF THE IDENTIFIED 'PRICKLY PEAR' ISSUES

- The factual matrix is as follows: during wage negotiations, the employer and the union were unable to reach an agreement. The union followed the relevant dispute processes to engage in protected strike action. The parties were unable to agree upon picketing rules and eventually such rules were established by the CCMA in terms of s69(5) of the LRA. The protected strike was immediately marred by violence. The employer approached the labour court to secure an interdict against the violence, which order was granted. Certain members of the union were dismissed for misconduct in that they violated the picketing rules and that they possessed, displayed and/or carried dangerous weapons while participating in a gathering, demonstration, industrial action, picket, march, protest action or organised labour activity. Another member of the union was also dismissed for misconduct for being in possession of a dangerous weapon on the company property. With reference to the aforesaid factual matrix, how did the labour court recently deal with the following issues:
 - the LRA grants a commissioner at arbitration a discretion to determine the most appropriate manner to conduct the arbitration, provided it is fair and quick and subject to the minimum of legal formalities. To what extent should the evidence of the background and/or context of the dispute be limited and, furthermore, what role does s3(1) of the Law of Evidence Amendment Act 45 of 1988 play in this regard?
 - what are the overarching principles governing inconsistency as formulated in, *inter alia*, *National Union of Metalworkers of SA and Others v Henred Fruehauf Trailers Ltd* 1995 (4) SA 456 (A)?
 - with reference to, *inter alia*, *SA Commercial Catering and Allied Workers Union and Others v Irvin and Johnson Ltd* 2002 (3) SA 250 (LAC) and *Southern Sun Hotel Interests (Pty) Ltd v CCMA and Others* (2010) 31 ILJ 452 (LC), in the scenario where there is a plurality of dismissals, what are the grounds upon which a wrong decision can only be unfair and, furthermore, what are the factors that may differentiate between employees who have committed similar transgressions?
 - what are the applicable legal principles regulating the issue of inconsistency and recently formulated by the labour court?
 - what is the effect of an employee admitting that he gave false evidence at a disciplinary hearing?
- In order to be successful in claiming a constructive dismissal, what are the three facts that an employee must prove?
- In determining whether or not an employee was constructively dismissed, what is the ultimate test to be utilised, with reference to *Mafoane v Rustenburg Platinum Mines Ltd* [2003] 10 BLLR 999 (LC), at para 49.2?
- In what way did the constitutional court clarify the aforesaid test for a constructive dismissal in *Strategic Liquor Services v Mvumbi NO and Others* 2010 (2) SA 92 (CC)?



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- With reference to *Pretoria Pretoria Society for the Care of the Retarded v Loots* (1997) 18 ILJ 981 (LAC) and *National Health Laboratory Service v Yona and Others* (2015) 36 ILJ 2259 (LAC), on what basis is it to be determined that the continued employment is intolerable?
- What are the three important issues identified by the supreme court of appeal in *Murray v Minister of Defence* (2008) 29 ILJ 1369 (SCA) in order to render the continued employment relationship intolerable?
- With reference to *Value Logistics Ltd v Basson and Others* (2011) 32 ILJ 2552 (LC), can an employee, who resigns and subsequently retracts the resignation, still claim a constructive dismissal?
- To what extent are the obligations contained in the Occupational Health and Safety Act 85 of 1993 and the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace relevant when considering whether or not an employer created a safe working relationship, the absence of which led to a claim of a constructive dismissal?
- In the scenario where an employee alleges that an employer is rendering the employment relationship intolerable, what is the extent of the duty on such employee to exhaust reasonable alternatives before resigning?



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