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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 5 OF 2026

This is the fifth 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 respective obligations of the employer and employee in terms of a reinstatement order and the consequences if they respectively do not comply with these obligations
- the approach to be adopted to a vexatious litigant
- the consequences where an employee and an employer representative conclude a settlement agreement and the employee has been brought under the impression that such representative has the authority to conclude such agreement, but it turns out subsequently that the representative lacks the authority
- the difference between private and public sector consequences in the above scenario
- appeals against the decision of the Registrar of Labour Relations to not register a relevant trade union
- 'modern' trade unions and the exercise of their right to freedom of association when considering the Registrar of Labour Relations' decision not to register such union(s)

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

- With reference to *National Union of Metalworkers of SA on behalf of Fohlisa and Others v Hendor Mining Supplies (a division of Marschalk Beleggings (Pty) Ltd* (2017) 38 ILJ 1560 (CC) (*Hendor*) and *Kubheka and Others v Ni-Da Transport (Pty) Ltd* (2021) 42 ILJ 499 (LAC), paras 23 to 24 and 35 to 38 (*Kubheka*), it is now well established that a reinstatement order does not restore the contract of employment and reinstate the unfairly dismissed employee. What are the respective obligations of both the employer and employee in terms of a reinstatement order and what are the consequences if they respectively do not comply with these obligations?
- When does a contractual claim that results from a reinstatement order accrue?
- The recovery of a debt that arises from an unfair dismissal commences with a dispute being referred to conciliation. Such process interrupts prescription. A creditor can prosecute his claim under that process to a final executable judgment, not only when the process and the judgment constitute the beginning and end of the same action. Under what circumstances will the same result be achieved, where the process initiates an action or judgment in which finally some elements of the claim are disposed of, but the remaining elements are disposed of in a supplementary action instituted pursuant to and dependent upon that judgment?
- How is actual or prospective litigation brought or threatened against a person who has persistently and without any reasonable ground instituted legal proceedings?
- With reference to *MEC, Department of Department of Co-operative Governance and Traditional Affairs v Maphanga* 2021 (4) SA 131 (SCA), how are the requirements contained in s2(1)(b) of the Vexatious Proceedings Act 3 of 1956 to be interpreted and complied with in order to declare a person a vexatious litigant?
- What are the consequences of the Vexatious Proceedings Act 3 of 1956 not affording protection against existing vexatious proceedings or an abuse of process in respect of legal proceedings that have already been instituted?
- In the private sector, when an employee and an employer conclude a settlement agreement, to what extent is the representative of the employer bound by the impression that he/she has the authority to conclude such an agreement?
- In *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd* 2008 (3) SA 1 (SCA) (*RPM Bricks*), quoted with approval in *Merifon (Pty) Ltd v Great Lataba Municipality and Another* 2022 (9) BCLR 1090 (CC) (*Merifon*), the supreme court of appeal distinguished between two categories of cases involving the exercise of power by state functionaries, such as a local government. The first category pertains to an act beyond, or in excess of, the legal powers of a public authority (i.e. the failure by such body to comply with provisions which the legislature has prescribed for the validity of the specific transaction). In contrast, the second category pertains to the irregular or informal exercise of power granted – i.e. in this category, persons contracting in good faith with the statutory body or its agents are not bound, in the absence of knowledge to the contrary, to inquire whether the relevant internal arrangements or formalities have been satisfied, but are entitled to assume that all the



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necessary arrangements or formalities have indeed been complied with. With reference to the aforesaid exposition, on what basis did the labour appeal court recently:

- determine that, in respect of the first category, the principle of legality is manifestly implicated and estoppel cannot be upheld because that would give validity to a transaction that is unlawful and therefore *ultra vires*?
- on what basis did the labour appeal court recently confirm the legal position that, in respect of the second category, such persons may rely on estoppel if the defence is that the relevant internal arrangements or formalities were not complied with?
- In terms of s59 of the Local Government: Municipal Systems Act 32 of 2000 as amended (Systems Act) a delegation or instruction in respect of appropriate powers, must be in writing. Does this requirement also apply to the sub-delegation of authority by a municipal manager?
- What is the nature of an appeal to the labour court under s111(3) of the LRA, against a decision of the Registrar of Labour Relations in respect of its decision to register or not register a relevant trade union?
- With reference to, amongst others, *inter alia*, *Registrar of Labour Relations and Another v Justice for All Workers of SA* (2025) 36 SALLR 443 (LAC); (2025) 46 ILJ 351 (LAC) (*Justice for All Workers*), how did the labour appeal court recently determine, under the above circumstances, the labour court's entitlement to receive evidence not presented to the said registrar and whether or not to show deference to the views of the registrar?
- Freedom of association is given expression to in s8 of the LRA, which provides that every trade union and employers' organisation, subject to Chapter VI, has the right to determine its own constitution and rules and hold elections for its office-bearers, officials and representatives. In the scenario where a so-called 'modern' trade union applies for registration, where it is formed by workers in non-standard and often precarious employment, and has its roots in a local advice office, what approach did the labour appeal court recently follow when interpreting this right to freedom of association?
- The scenario is as follows: the above-described 'modern' trade union adopts, *inter alia*, the approach not to employ officials and all organisational work is done by its members. It, furthermore, includes in its constitution a clause to the effect that it is served by a standing committee appointed by the majority vote at the annual general meeting. As no officials are employed by the union, any member or volunteer may be nominated as an office-bearer for the purposes of the LRA, the CCMA rules or the rules of any bargaining council. The union thus contends that its structure, as reflected in its constitution, is intentionally flat and non-hierarchical. It argues that legislative provisions, which attempt to regulate the details of the internal functioning of workers' organisations, poses a serious risk of interference by the public authorities. On the other hand, the register considers the provisions of s95 to be peremptory. With reference to this factual matrix, how did the labour appeal court recently deal with the following issues:
 - do the requirements contained in s95 create an unjustifiable inroad into the union's autonomy or present undue obstacles to registration?



- s95(5)(i) requires that the constitution of a trade union, that intends to register, must establish the office of secretary and define its functions. Can it be said that an office of secretary has been established where a different secretary may be elected at each meeting and whether the requirement that its functions are defined is met by noting that the secretary records the decisions in a minute book?
- s95(5)(j) of the LRA, requires that the constitution must provide for other office-bearers, officials and trade union representatives and define their respective functions. Apart from the aforesaid *ad hoc* appointment of a secretary and a chairperson at a meeting, the constitution sought to be registered makes no provision for the appointment of a person to be employed in such capacity or in any other capacity which falls within the definition of an official, seeing that the union's constitution to be registered does not provide for office-bearers, officials and trade union representatives, neither does it provide for its functions (the relevant clause of the union's constitution indicates that it does not employ officials – all organisational work is done by members). On what basis is it found that the labour court, when it dealt with the matter, incorrectly followed the approach that all this meant was that these issues had to be addressed in the union's constitution and there was no requirement that the positions mentioned in s95(5)(j) had to be established as a precondition for the registration of the trade union's constitution?
- in terms of s95(5)(l), the constitution must prescribe a procedure for appointing or nominating and electing officials, and, furthermore, in terms of s95(5)(m), such constitution must also establish the circumstances and manner in which office-bearers, officials and trade union representatives may be removed from office. In the scenario where the constitution does not describe such a procedure (ito s95(5)(l)), or establish the circumstances and manner of removal (ito s95(5)(m)), what are the consequences of same when the registrar considers registering such trade union?
- to what extent is the union's approach justifiable on the basis that it intends to keep decision-making powers in the hands of those members affected by the decision in question, with all work done by the members and no person remunerated for any work done?

