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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 7 OF 2026

This is the seventh 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:

- an employer operating in the public sector wanting to take an arbitration award on review and the question as to whether or not a so-called 'security bond' is security in terms of s145(7) of the LRA
- the extent that the recent labour appeal court judgment dealing with security in the public sector is applicable to the private sector
- the validity of rulings made by an arbitrator in the scenario where the arbitrator recuses himself or herself
- the jurisdiction of a CCMA or bargaining council commissioner to make declaratory orders
- the jurisdiction of an arbitrating commissioner to declare disciplinary proceedings null and void
- the jurisdiction of the CCMA, relevant bargaining council, the labour court and the labour appeal court to declare pre-arbitration minutes null and void
- the jurisdiction of the labour court concerning the validity of settlement agreements

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

- In terms of an arbitration award, an employee is reinstated. The employer institutes review proceedings to have the review set aside. The employer operates in the public sector and the director-general of the relevant department issued a so-called ‘security bond’ holding the relevant department ‘firmly bound to the dismissed employee to discharge for and on behalf of the applicant the aforesaid remuneration and/or compensation’ – with reference to the requirements of s145(7) and s145(8) of the LRA. The labour court dealing with this scenario held that such security bond, although signed by the director-general as the accounting officer, was not an undertaking that the department had sufficient funds at its disposal to satisfy the award and, furthermore, that such security bond was simply a document that purported to bind the department for the payment of the award in due course. It was further held, by the labour court, that provision of security in terms of s145(7) of the LRA required that the department had to comply with s66 of the Public Finance Management Act 1 of 1999 (PFMA). On what basis did the labour appeal court recently disagree with the aforesaid viewpoint of the labour court?
- To what extent is the security placed for the purposes of staying the enforcement of an arbitration award on review not to be regarded as a future financial commitment, with reference to *Road Traffic Management Corporation v Waymark Infotech (Pty) Ltd* 2019 (5) SA 29 (CC) and so recently considered by the labour appeal court?
- In order for a security bond to be ‘good’ for the purposes of s145(7) of the LRA, is it a requirement that it must specify the exact amount of the security or, alternatively, what are the relevant principles that govern determination as to whether or not such security bond is acceptable?
- To what extent are the considerations set out in the questions *supra* applicable in the private sector?
- What are the factors to be taken into account when raising points of law for the first time on appeal and how were these recently applied by the labour appeal court?
- In *Sasol Infrachem v Sefafe and Others* (2015) 36 ILJ 655 (LAC), at para 49, the labour appeal court held that, if the arbitrator (or the judicial officer) ought to have recused himself or herself at the outset, the entire proceedings before him or her are vitiated by the failure to recuse himself or herself. This simply implies that all rulings made by such an arbitrator (or judicial officer) from the beginning of the proceedings were a nullity. On the other hand, the labour appeal court recently had to deal with the scenario where the recusal of an arbitrator was not due to bias, but rather because, according to the arbitrator, she had ‘ruled against the appellants on more than one occasion’. In such an instance, on what basis did the labour appeal court determine that rulings made by such arbitrator before she recused herself did not amount to a nullity?
- What is the status of evidence presented during arbitration proceedings before the CCMA in the period before the arbitrator recused him or herself – i.e. would such evidence be rendered inapplicable due to the *de novo* principle?



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- In terms of s138(9)(c) of the LRA, a CCMA Commissioner has the jurisdiction to make declaratory orders. The labour appeal court recently had the opportunity to consider such jurisdiction of a commissioner before proceeding to address the substantive merits of a dispute. What are the relevant principles governing such jurisdiction, with reference, *inter alia*, to *Food and Allied Workers Union v Buthelezi and Others* (1998) 19 ILJ 829 (LC), at para 16?
- With reference to *Tsengwa v Knysna Municipality and Others* (2015) 36 ILJ 2392 (LC), does an arbitrating commissioner have the power in terms of s138(9) of the LRA to declare disciplinary proceedings null and void?
- Does the labour court or the labour appeal court have jurisdiction to declare pre- arbitration minutes, concluded by agreement between the parties in terms of Rule 20 of the CCMA rules, invalid?
- Does the CCMA have jurisdiction to issue a declaratory order regarding the validity of pre-arbitration minutes?
- With reference to *Inspektex Mmamaile Construction and Fire Proofing (Pty) Ltd v Coetzee and Others* (2010) 31 ILJ 642 (LC), on what basis did the labour appeal court recently confirm the jurisdiction of the labour court concerning the validity of settlement agreements?
- In *MTamila v Samancor Western Chrome Mines and Others* [2023] ZALC 324 (*Samancor*), the labour court held that it had no inherent power of supervision over the CCMA and its processes – essentially, the scope of intervention of the labour court is limited to the remedy of review and, in a few instances, the remedy of appeal. What are the consequences of such an approach so recently dealt with by the labour appeal court?
- It is a well-established principle of our law that administrative decisions stand until set aside by a competent court. Amongst others, the rulings of an arbitrating commissioner constitute such administrative decisions. What are the consequences of the application of the aforesaid approach, so applied to, amongst others, the said rulings in view of *Taung Local Municipality v Mofokeng* (2011) 32 ILJ 2259 (LC) and so recently dealt with by the labour appeal court?
- With reference to, *inter alia*, *Member of the Executive Council for Finance KwaZulu-Natal and Another v Dorkin NO and Another* (2008) 29 ILJ 1707 (LAC) (*Dorkin*), what are some of the more important factors to be taken into account in determining whether, in making the decision to award costs or not to award costs, the labour court and the labour appeal court exercised their discretion judicially?

