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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 8 OF 2026

This is the eighth 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 application of rule 7(2) of the new labour court rules dealing with archiving of a file – with reference to the difference between the old and new regime as to the procedure to be followed by the registrar when archiving such file and the basis upon, in terms of the new regime, that there will be interference with such archiving by a litigant
- the duties of a commissioner when executing his/her arbitrating functions
- the difference between a dispute about the interpretation of a collective agreement as opposed to a dispute about the application of a collective agreement
- the time period within which a dispute regarding the interpretation or application of a collective agreement must be referred to a relevant bargaining council or the CCMA
- the basis upon which the labour court recently held that, when an unfair labour practice dispute or unfair discrimination dispute is continuous or repetitive, it is still necessary to apply for condonation if the referral took place outside of the relevant time period

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- In terms of clause 16.1 of the then-practice manual of the labour court (so repealed effectively on 17 July 2024), the registrar will archive a file in the case of referrals in terms of rule 6, when a period of six months has elapsed from the date of delivery of a statement of case without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed. In the scenario where the plaintiff does not comply with the said period of six months, but the registrar has not archived the file, on what basis will it be found that the matter is not deemed to have been withdrawn (in terms of the said clause 16.1)?
- The said practice manual of the labour court was repealed on 17 July 2024. The scenario is now regulated by rule 7 of the Rules Regulating the Conduct of the Proceedings of the Labour Court (new labour court rules) effective from 17 July 2024. Rule 7(2) of the new labour court rules provide as follows: 'if in a period of three months from the date on which the initiating document is filed, no further documentation is filed or other action taken by the initiating party, the file will automatically be closed and archived, provided that the registrar has afforded the initiator 15 days' notice in writing of the closure and archiving. Any file that is archived may be retrieved only in terms of an order of court, on good cause shown.'
- The said rule 7 must also be read with rule 69(2) of the new labour court rules. What is the difference between the old and new regime as to the procedure to be followed by the registrar when archiving such file and on what basis, in terms of the new regime, will there be interference with such archiving by a litigant?
- In *Health and Other Services Personnel Trade Union of SA obo Tshambi v Department of Health, KwaZulu-Natal* (2016) 37 ILJ 1839 (LAC) (*Tshambi*), the labour appeal court, with reference to *Commercial Workers Union of SA v Tao Ying Metal Industries and Others* [2009] 1 BLLR 1 (CC), determined the duties of a commissioner when dealing with a dispute to be arbitrated. How did the labour court recently apply these duties when dealing with a dispute referred to a bargaining counsel or the CCMA concerning the interpretation and/or application of a collective agreement?
- What is the difference between a dispute about the interpretation of a collective agreement as opposed to a dispute about the application of a collective agreement?
- On what basis is the preferred approach when dealing with the interpretation or application of a collective agreement, that these two terms are not disjunctive but must be read as being related?
- Section 24 does not prescribe the time period within which a dispute concerning the interpretation or application of a collective agreement must be referred to a bargaining counsel or the CCMA. With reference to, *inter alia*, *Tshambi (supra)*, on what basis did the labour court recently confirm that, in the absence of prescribing such time period, the yardstick is what a reasonable time for referral is and, furthermore, the norm for labour disputes to be referred to the dispute-resolution bodies is a 90-day time period?
(2025) 46 ILJ 1980 (LC)



- This scenario is as follows: the employees referred an unfair labour practice dispute relating to benefits, as defined in s186(2)(a), to the relevant bargaining counsel. The dispute was referred outside the 90-day period in terms of s191(1)(b)(ii) of the LRA and the employees did not apply for condonation in this regard. With reference to this scenario, the following issues are of relevance: the labour appeal court, in *Mngadi v Jenkin NO and Others* (2021) 42 ILJ 768 (LAC) (*Mngadi*) held that, if the employee referred an unfair discrimination dispute where it is alleged that such unfair discrimination was continuous or repetitive, it was not necessary to apply for condonation if the referral took place outside of the said 90-day time period, because the unfair discrimination was perpetrated afresh on each occasion that the unfair discrimination occurred, (i.e. the employee being paid a lower salary compared to his subordinates and, therefore, the unfair discrimination continued on a repetitive basis every month). How did the labour court recently interpret such approach?
- In *Amalungelo Workers Union obo Mayisela and Others v CCMA and Others* (2022) 43 ILJ 600 (LAC) (*Amalungelo*), the labour appeal court had to deal with a dispute referred to it in terms of s198D(3) of the LRA (a party to a dispute arising from the interpretation or application of s198A, s198B and s198C (other than a dispute about a dismissal in terms of s198A(4)), may refer same to the CCMA or bargaining counsel within six months after the act or omission occurred). The labour appeal court held that an 'act or omission' is clearly what gives rise to the dispute and such dispute only has one initial date on which it arose. On what basis did the labour court recently adopt this approach and not follow the approach in *Mngadi*?
- What are the types of factors to be taken into account in order to draw a justifiable conclusion that the applicant manipulated the alleged date upon which the dispute arose to utilise the 'continuous' approach in order to circumvent compliance with the 90-day period?
- In the above regard, with reference to the labour appeal court approach in *Amalungelo*, on what basis must the requirement of a dispute be treated differently from the requirement of an 'act or omission' and in what sequence must these two requirements be applied in determining whether there is compliance with the prescribed time period within which a referral must take place?
- Should the employer contend that it has another defence, such as *res judicata* (another competent forum determined the same cause of action as in the current dispute), what is the sequence to be applied when dealing with such defence as well as the alleged lack of jurisdiction of the CCMA or the bargaining counsel to deal with the matter because of the non-compliance with the prescribed time period and the absence of a condonation application in this regard.

