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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 12 OF 2026

This is the twelfth 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:

- a big mistake that exemption and appeal authorities make is to apply an approach of balancing competing interests and determining a fair outcome that seeks, as far as possible, to reconcile those interests
- taking the registrar's certificate of representativeness (in the scenario where an application is brought for the extension of a collective agreement) on review
- the type of investigation that a registrar must conduct prior to the issuing of a certificate of representativeness
- the extent to which the minister of employment and labour must determine the correctness of a certificate of representativeness issues by the registrar

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: in terms of s32(2), the Minister of Employment and Labour must extend a collective agreement, as requested, by publishing a note in the Government Gazette, within 60 days of receiving a request, declaring that, from a specific date and for a specific period, the collective agreement will be binding on non-parties specified in the notice. In terms of s32(3) of the LRA, a collective agreement may not be extended unless the minister is satisfied that the registrar has determined, in terms of s49(4A)(a), that the majority of all employees who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are parties to the bargaining council. The registrar issued the relevant certificate of representativeness and the minister made the relevant decision to extend the collective agreement to non-parties of the bargaining council. With reference to the aforesaid statutory provisions and factual matrix, the following issues are of relevance:

- Within what time period must the review application be brought in respect of the registrar's decision to issue the certificate of representativeness if the applicant relies on the grounds of review contemplated in the Promotion of Administrative Justice Act 3 of 2000 (PAJA), read with s158(1)(a)(iii) and s158(1)(a)(iv), s158(1)(b) and s158(1)(g) of the LRA?
- Is it permissible for the applicant to adopt the stance that the determination of the registrar (or deputy registrar) is reviewable on the basis of legality (where there is no applicable period for such review) in addition to relying on PAJA, seeing that the action of the registrar constitutes an administrative decision?
- In the scenario where, in terms of the extended collective agreements, an applicant on review has already paid what is due in terms of such agreement, to what extent is the doctrine of mootness applicable, with reference to, *inter alia*, *Agribee Beef Fund (Pty) Ltd and Another v Eastern Cape Rural Development Agency and Another* 2023 (6) SA 639 (CC) and *Golden Arrow Bus Services (Pty) Ltd and Another v Minister of Employment and Labour and Others* (2023) 44 ILJ 1715 (LC)?
- What type of investigation must a registrar (or deputy registrar) conduct prior to the issuing of a certificate of representativeness?
- On what basis did the labour court recently determine that the issuing of a certificate of representativeness by the registrar, in the aforesaid circumstances, constitutes administrative action in terms of PAJA and is, therefore, reviewable in terms of PAJA?
- The Labour Relations Amendment Act 8 of 2018 amended various sections of the LRA, including s32 and s49. The purpose of the amendments was to make extensions of bargaining council agreements less onerous in order to achieve one of the primary objects of the LRA, namely, the promotion of sectoral bargaining. What is the impact of such amendments on, firstly, the responsibilities of the minister, secondly, the opportunity for disgruntled employers to frustrate the extension of collective agreements by demanding exacting and onerous standards for verification or authorisation of representativeness, thirdly, the factors indicative of determining representativeness and, fourthly, the obligations on the registrar or the deputy registrar?



- What are the two kinds of determinations of representativeness that are contemplated by s32, read with s49 of the LRA?
- To lawfully effect an extension of a collective agreement by means of s32, the registrar must determine the representativeness of the parties to the relevant bargaining council. To what extent must the Minister of Employment and Labour determine the correctness of such determination?
- When the registrar makes such a determination of representativeness, is it a requirement that the registrar must precisely state the section or subsections of the LRA in terms of which such a determination was made, taking into account the stance adopted in *Golden Arrow Bus Services (Pty) Ltd and Another v Minister of Employment and Labour and Others (supra)*, at para 24?

