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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 13 OF 2026

This is the thirteenth 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:

- in the absence of any statutory provision conferring jurisdiction on the labour court, both in respect of the employer's conduct alleged to be unlawful and in employment-related matters generally, there is no general rule to the effect that the labour court has jurisdiction to intervene in uncomplete disciplinary proceedings to restrain any alleged illegalities, irregularities or unfairness
- sectoral collective agreements and further procedural limitations on strike action not contemplated in s64(1) of the LRA
- the extent to which the interpretation of collective agreements is not on par with the interpretation of contracts of employment – i.e. the extent of deviation from *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA)

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 employer had been presented with a forensic report in which certain employees were implicated in acts of alleged misconduct – a recommendation was made in this report that disciplinary proceedings should be brought against these employees. On the basis of this, the employer suspended the employees, but, subsequent to this, there followed a period of inactivity of approximately two and a half years. Charges of wide-ranging misconduct, including breaches of supply chain policies (as well as breaches of the Public Finance Management Act 1 of 1999 (PFMA)) were then brought against the employees and they were given notice to attend a disciplinary inquiry. Some six months after the charges of misconduct had been brought, a disciplinary inquiry was duly convened. At the commencement of the inquiry, the employees took the viewpoint that the charges should be withdrawn on the grounds that there had been an unreasonable delay in bringing the proceedings to a head and, furthermore, that the employer had waived its right to bring these proceedings or alternatively, is estopped from doing so. The presiding officer dismissed such application and directed that the disciplinary proceedings proceed. With reference to such factual circumstances, how did the labour appeal court recently deal with the following issues:
 - in *Booyesen v Minister of Safety and Security and Others* (2011) 32 ILJ 112 (LAC) (*Booyesen*), the labour appeal court held that the labour court has jurisdiction to intervene in uncomplete disciplinary proceedings, on the basis that s157 of the LRA should be interpreted to give such court powers equal to that of the high court when it comes to employment and labour matters – meaning, it should enjoy the same powers as were previously exercised by the high court, including the power to interdict unlawful or unfair disciplinary proceedings in appropriate cases. The order granted was that the ‘labour court does have jurisdiction to grant appropriate relief in relation to pending disciplinary hearings’. On what basis did the labour appeal court recently determine that, since then, the interpretation given to the above judgment is that the labour court has jurisdiction to interdict or otherwise intervene in uncomplete disciplinary proceedings, limited only by the consideration of exceptionality?
 - since *Booyesen*, the constitutional court delivered a number of judgments that adopt a less expansive interpretation to s157 of the LRA. In *Steenkamp and Others v Edcon Ltd, National Union of Metalworkers of SA Intervening* (2016) 37 ILJ 564 (CC) (*Edcon CC*), the constitutional court held the view that, outside of the scope of any statutory provision that specifically confers jurisdiction on the court, the labour court has no jurisdiction in any general sense to make any determination as to the lawfulness or otherwise of an employer’s conduct. The aforesaid approach was recently confirmed in *Baloyi v Public Protector and Others* 2021 2 BCLR 101 (CC), at paras 23 to 24. In view of the above, on what basis did the labour appeal court recently find that, in the absence of any statutory provision conferring jurisdiction on the labour court, both in respect of the employer’s conduct alleged to be unlawful and in employment-related matters generally, there is no general rule, as the judgment in *Booyesen* might be construed, to the effect that the labour court has jurisdiction to intervene *in medias res*, to restrain any alleged illegalities, irregularities or unfairness in uncomplete disciplinary proceedings?



- applying the aforesaid development, on what basis did the labour appeal court recently determine that a declaratory order sought by employees as to uncomplete disciplinary proceedings on the basis of an alleged unreasonable delay in bringing the charges, as well as the employer's alleged waiver of its rights to pursue disciplinary proceedings (bringing into play estoppel principles) should not be granted?
 - in the above regard, what were the general requirements recently identified by the labour appeal court in order to establish the labour court's jurisdiction in matters like the above?
 - on what basis is it permissible to take on review preliminary rulings of a presiding officer made during an uncompleted disciplinary enquiry?
- An employer falls within the scope of a specific bargaining council. The terms and conditions of employment of the employees of the employer are governed by the main collective agreement of the bargaining council. Trade union parties to the bargaining council include several unions, but do not include the union whose members embarked on a strike. A specific annexure to the constitution of the bargaining council contains the dispute-resolution procedure. It specifically requires that if conciliation fails to resolve a dispute of interest that had been referred to the bargaining council and a certificate has been issued by the commissioner stating that the dispute is not being resolved, then, after a cooling-off period of 30 days from the date of such certificate (or any extension of this period agreed to between the parties), every employee involved in the dispute has the right to strike, in terms of s64 of the LRA, and may embark on such strike action subject to giving at least 48 hours' written notice of the commencement of such strike action to the employer. With reference to this factual matrix, the following issues are of relevance:
 - it is clear that the aforesaid provision in the main collective agreement of the bargaining council creates a further procedural limitation on strike action, not so contemplated by s64(1) of the LRA. In general, such procedural limitations on strikes are permissible (see, *inter alia*, *Air Chefs (Pty) Ltd v SA Transport and Allied Workers Union and Others* (2013) 34 ILJ 119 (LC) (*Air Chefs*) and *Fidelity Guards v PTWU and Others* [1997] 11 BLLR 1425 (LC) (*Fidelity Guards*)). What are some of the factors to be taken into account to determine whether the aforesaid limitation on the right to strike is indeed permissible?
 - it is settled that the correct approach to the interpretation of documents, including contracts, finds expression in the interpretive triad of language, context and purpose (*Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA), at para 18. However, collective agreements are not ordinary contracts and there are additional concerns at play. What should the approach be, based on, *inter alia*, *National Union of Metal Workers of SA v Motor Industry Staff Association and Others* (2025) 46 ILJ 109 (LAC)?

