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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 14 OF 2026

This is the fourteenth 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 as our delicious and spicy PowerPoint presentation compiled on an annual basis.

The attached notice deals, amongst others, with the following 'prickly pear' issues:

- the consequences of the approach adopted by the labour appeal court that a plant level collective agreement and a sectoral level collective agreement is not a contract but rather a piece of legislation
- the consequences of a ruling made by an arbitrator at the CCMA or a bargaining council that some of the demands entail substantive issues that can only be negotiated at industry level through the bargaining council and that other demands were unreasonable or unlawful
- the parental rights as contained in s25, s25A and s25B of the Basic Conditions of Employment Proposed Amendment Act
- the right of a trade union to embark on strike action versus the right of such union and the employer to resolve a dispute regarding organisational rights by means of arbitration

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

- With reference to *Platinum Mile Investments (Pty) Ltd t/a Transition Transport v SA Transport and Allied Workers Union and Others* (2010) 31 ILJ or 37 (LAC) (*Platinum Mile Investments*), at para 46, holding that a plant level collective bargaining agreement or a sector level collective bargaining agreement is not a contract but rather a piece of legislation, to what extent did the labour court recently follow this approach when interpreting a collective agreement?
- The scenario is as follows: the employees and their trade union refer various issues to the CCMA or bargaining council. During the conciliation phase, the conciliating commissioner makes a ruling that some of the demands entail a substantive issue and could only be negotiated at industry level through the bargaining council and that the other demand was unreasonable or unlawful (the demand entailed the ‘removal’ of two employees). Conciliation, therefore, did not take place in respect of these two demands but indeed in respect of the other demands. With reference to *City of Johannesburg Metropolitan Municipality and Another v SA Municipal Workers Union and Others* (2011) 32 ILJ 1909 (LC) (*City of Johannesburg*), at para 15, on what basis did the labour court recently find that such jurisdictional rulings do not prohibit employees from embarking on strike action regarding these two issues?
- In the above circumstances, the net effect of the jurisdictional rulings is that the bargaining council (or the CCMA) has not conciliated those demands. However, the bargaining council cannot usurp the jurisdiction and powers of the labour court by issuing jurisdictional rulings of this kind. How are these disputes regarding the aforesaid two issues to be resolved when employees do embark on strike action to enforce their demands in this regard?
- The declaration made by the high court, that s25, s25A, s25B and s25C of the Basic Conditions of Employment Act 75 of 1997 (BCEA), dealing with maternity and parental leave, together with the corresponding s24, s26A, s27 and s29A of the Unemployment Insurance Act 63 of 2001 (UIA) are invalid and inconsistent with the Constitution to the extent that they unfairly discriminate between different classes of parents as to the length of parental leave available to parents and as to the unemployment benefits to which they are entitled and the periods for which unemployment benefits are paid was recently confirmed by the constitutional court. The constitutional court also declared that s25B(i) of the BCEA and s27(1)(c) of the UIA are invalid and inconsistent with the Constitution to the extent that they limit parental leave and the related benefits to the case where the adopted child is below the age of two. Importantly, declarations as aforesaid of constitutional invalidity are suspended for a period of 36 months from the date of the order of the constitutional court to afford Parliament an opportunity to remedy the constitutional defects giving rise to such constitutional invalidity. Pending the coming into force of such required remedial legislation, how should the impugned provisions of the BCEA be read?



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- The scenario is as follows: a trade union requests an employer to grant it organisational rights contemplated in s12, s13 and s14 of the LRA (s12 concerns access to the workplace for the trade union, s13 concerns the deduction of trade union subscriptions or levies and s14 concerns trade union representatives – all these organisational rights are afforded to a representative trade union, meaning a trade union sufficiently representative of the employees employed by the employer in a workplace). The employer refused to grant such organisational rights. Subsequently, the union referred a dispute concerning organisational rights to the CCMA for conciliation. The dispute could not be resolved at conciliation and the CCMA issued a certificate of outcome to that effect. On the same day that such certificate of outcome was issued by the CCMA, the employer made the request for arbitration. Thereafter, the union issued a notice to the employer to the effect that its members intended embarking on a protected strike regarding such dispute concerning the organisational rights that it demanded. With reference to the aforesaid scenario, the following issues are of relevance:
 - s21(7) of the LRA provides that, if a dispute (concerning an employer's refusal to grant organisational rights in terms of s11 to s15 of the LRA) remains unresolved after conciliation, either party to the dispute may request that the dispute be resolved through arbitration. In terms of s65(1) of the LRA, no person may participate in a strike or a lockout, or take part in conduct in contemplation or furtherance of such a strike or lockout, if the issue in dispute is one that the party has the right to refer to arbitration or the labour court in terms of the LRA or any other employment law. Section 65(2)(a) further provides that, despite s65(1)(c), a person may take part in a strike or a lockout, or in any conduct in contemplation or furtherance of a strike or lockout, if the issue in dispute is about any matter dealt with in s12 to s15 of the LRA. How did the labour court recently resolve the apparent conflict between s21(7) and s65(2)(a) of the LRA?
 - what are the requirements to be met for final relief to be granted, as set out, *inter alia*, in *Setlogelo v Setlogelo* 1914 AD 221, and followed in, *inter alia*, *Minister of Health v Drums and Pails Reconditioning CC t/a Village Drums and Pails* 1997 (3) SA 867 (N), at 872C?
 - as indicated, s21(7) provides that, if the dispute remains unresolved after conciliation, either party to the dispute may request that the dispute be resolved through arbitration. What is the content of the term 'dispute' in such statutory provision and how does such term differ from the term 'issue in dispute' contained in s65(1)(c) and s65(2)(a) of the LRA?

