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Dear SALLR colleague

RE: SLIP AND TRIP ALERT NOTICE 17 OF 2026

This is the seventeenth 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 extent to which a restraint of trade agreement is enforceable where an employee's employment contract is terminated on an unlawful or unfair basis
- the enforceability of restraints of trade where the employee is hired and fired with the sole object of imposing such restraint of trade
- bad faith on the part of the employer when enforcing restraints of trade
- the protectable interest of the employer weighed up qualitatively and quantitatively against the interest of the employee not to be economically inactive and unproductive
- trade secrets and trade connections within the restraint of trade environment
- the weighing up of requiring the parties to a contract to comply with their contractual obligations against the principle that a citizen should be free to engage or follow a trade, occupation or profession of his or her choice

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 agreed-upon restraint of trade, an employee undertook that, whilst employed by the employer and for a period of 12 months from termination of employment, such employee will not, directly or indirectly: (a) compete with the employer (and/or any of its subsidiaries), or be interested in any business which trades in any field of activity which is substantially similar to any of the fields of activity, as set out below, within the areas of restraint as set out below; (b) persuade, induce, encourage or procure any employee of the employer (and/or any of the companies falling within the group) who was an employee of the employer at any time during a 12-month period preceding the termination date, to become employed by, or interested in, any business which trades in the field of activity which is substantially similar to the field of activity, as set out below, or to terminate his employment with the employer (and/or any entity within the group) other than in the proper execution of his duties as an employee of the employer; (c) the aforesaid fields of activity in respect of which the restraint applies are, respectively, that of marketing, sale, and/or distribution of corporate and promotional products; and (d) the area of the restraint is every province of the Republic of South Africa, every other territory in which the employer (and/or any of the other entities in the group) carries on business at the termination date and any other territory which the board of the employer has resolved that the group of entities should enter within six months of the termination date. Within a year of employment, the employee was dismissed. He referred his dismissal to the CCMA, but abandoned his claim before conciliation could take place. With reference to this scenario, how did the labour appeal court recently deal with the following issues:
 - with reference to *Reeves and Another v Marfield Insurance Brokers CC and Another* 1996 (3) SA 766 (A), to what extent is a restraint of trade agreement enforceable where an employee's employment contract is terminated consequent to an unlawful or unfair dismissal?
 - how do the above considerations apply within the following entirely different factual matrix: firstly, if the employee is hired and fired with the sole object of imposing a restraint of trade or, secondly, termination of the employment amounts to a wrongdoing on the part of the employer, which is wilful (i.e. it involves bad faith on the employer's part)?
 - it is crucial when dealing with restraints of trade that a party wishing to enforce such a restraint of trade must establish a protectable interest. Furthermore, such party must show that such interest is being prejudiced by the other party. Obviously, such established protectable interest that is being prejudiced by the other party (i.e. the employee) must be weighed up qualitatively and quantitatively against the interest of the other party not to be economically inactive and unproductive. With reference to *Basson v Chilwan and Others* 1993 (3) SA 742 (A) (*Basson*), how did the labour appeal court recently utilise the test formulated in *Basson* to determine the reasonableness or otherwise of a restraint of trade provision?
 - there are two types of confidential information, namely, trade secrets and trade connections. How did the labour appeal court recently take these types of confidential information into account in determining whether there is compliance or not with the test formulated in *Basson* (*supra*)?



- with reference to *Reddy v Siemens Telecommunications* 2007 (2) SA 486 (SCA) (*Reddy*) and the confirmation of its approach in *Ball v Bambalela Bolts (Pty) Ltd and Another* (2013) 34 ILJ 2821 (LAC), para 14, how should disputes of fact be resolved in restraint of trade matters and, furthermore, how should the issue of reasonableness be dealt with when facts disclose that the restraint is reasonable, or, alternatively, when such facts show that the restraint is unreasonable?
- in *Reddy*, the supreme court of appeal further held that the reasonableness of a restraint is a value judgment that involves a consideration of two policy considerations, namely, the public interest (requiring that parties to a contract must comply with their contractual obligations) and the principle that the citizen should be free to engage or follow a trade, occupation or profession of his or her choice. How did the labour appeal court recently deal with this approach formulated in *Reddy*?
- where the labour court makes the finding that an employee has breached a valid restraint of trade, does the labour court have jurisdiction to grant ancillary relief to the employer against the employee, so directly or indirectly relating to the conduct of the employee in respect of the said restraint of trade (e g in circumstances where the employee is threatening the employer's employees and assets)? The following are two important considerations in answering this question. By the time such ancillary relief is normally sought, there is no employment relationship between the parties but, on the other hand, the labour court is a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a court of a division of the high court has in relation to a matter under its jurisdiction (s151 of the LRA) and, furthermore, in terms of s158(1)(j) of the LRA, the labour court has jurisdiction to deal with all matters necessary or incidental to performing its functions in terms of the LRA or any other employment law.



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