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## GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

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### DEPARTMENT OF BASIC EDUCATION

NO. 331

9 April 2021

#### TERMS AND CONDITIONS OF EMPLOYMENT OF EDUCATORS DETERMINED IN TERMS OF SECTION 4 OF THE EMPLOYMENT OF EDUCATORS ACT, 1998

I, Angie Matsie Motshekga, Minister of Basic Education have, in terms of section 4 of the Employment of Educators Act 1998 read with section 35 of same, determined the terms and conditions of employment of educators as set out in the Schedule below:



**AM MOTSHEKGA**  
**MINISTER OF BASIC EDUCATION**

**DATE:** [02/02/2021](#)

#### SCHEDULE

#### PREVENTION OF RE-EMPLOYMENT OF FORMER EDUCATORS DISCHARGED OR DEEMED DISCHARGED FOR MISCONDUCT OR DEEMED RESIGNED

##### 1. SCOPE OF PLICABILITY

These regulations are applicable to all educators as defined in the Employment of Educators Act, 1998. There may, in respect of the matters regulated herein, be no deviation from the prescribed measures: Provided that should there be cases not covered in the measures contained herein or should there be any doubt as to the application of the provisions in individual cases, or should there be cases that could justify a deviation from a measure, particulars thereof shall be submitted to the Department of Basic Education, with a view to a decision regarding such application or possible deviation by the Minister of Basic Education.

## 2. Definitions

Unless the context otherwise indicates, in these Regulations a word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned to it.

## 3. PURPOSE

- 3.1 To regulate the period of prevention of re-employment of former educators dismissed or deemed dismissed for misconduct or deemed resigned.
- 3.2 To provide for a procedure for the re-employment of former educator dismissed or deemed dismissed for misconduct or deemed resigned.

## 4. PERIOD OF PREVENTION OF THE RE-EMPLOYMENT OF FORMER EMPLOYEES DISCHARGED FOR MISCONDUCT OR DEEMED DISCHARGED OR DEEMED RESIGNED

- 4.1 A former educator dismissed in terms of sections 17(1) or 18(1) of the Employment of Educators Act 76 of 1998(as amended) or deemed discharged in terms of section 14(1) (a) or deemed resigned in terms of section 15 (2) of the EEA shall not be re-employed during the applicable period of prevention from the date of discharged or deemed discharged or deemed resigned in relation to the acts of misconduct indicated in the table below.
- 4.2 An educator who is dismissed for more than one act of misconduct in the same process, the prevention of re-employment shall run concurrently.
- 4.3 The date of discharge or deemed discharged or deemed resignation shall be used in determining the period of prevention.

4.4 Before any person can be appointed or re-appointed to work with children, the prospective employer or delegated official shall ensure that the prospective employee:

4.4.1 meets the prescribed minimum requirements as stipulated in the Personnel Administrative Measures (PAM);

4.1.2 is vetted against the National Child Protection Register referred to in section 111 of the Children's Act, 38 of 2005; and

4.1.3 Has a Clearance certificate from the Registrar referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.

## **THE ROLE OF THE PROSPECTIVE EMPLOYING DEPARTMENT FOR RE-EMPLOYMENT OF FORMER EDUCATORS DISCHARGED OR DEEMED DISCHARGED FOR MISCONDUCT OR DEEMED RESIGNED**

### **4.5 APPLICATION FOR RE-EMPLOYMENT**

4.5.1 When a discharged educator applies, intends applying or is an applicant for a post and for re-employment, the following documents must be attached to the application;

5.1.1 The discharge or deemed discharged or deemed resigned a resignation letter; and

5.1.1.1 In the case of an educator who has been struck off the roll, proof of re-registration with the South African Council for Educators and any conditions attached thereto.

5.1.1.2 Letter establishing or not the applicant's name appears in Part B of the Register administered by the Department of Social Development; and

5.1.1.3 Clearance certificate from the Registrar referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 indicating that the applicant appears or does not appear on the register contemplated in the above mentioned act.

## 5.2 REQUEST FOR APPLICATION

5.2.1 The request for the application for a vacant post shall be facilitated by the prospective employing Department;

5.2.2 The former employing Department must assist in the confirmation of the details relating to the discharged or deemed discharged or deemed resignation of the former educator;

5.2.3 The prospective employing Department shall request a System Control Change (SCC) from the National Treasury, to amend the "service termination type" of a former employee dismissed for misconduct or deemed discharged or deemed resigned by operation of the law only after the discharged or deemed discharged educator has been recommended for appointment;

5.2.4 The re-employment shall be effective after the expiry of the applicable period of prevention and after acceptance of the offer.

6. The table below indicates the act of misconduct and the mandatory period of prevention from re-employment:

No.	ACT OF MISCONDUCT	MANDATORY PERIOD OF PREVENTION
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		<b>FROM RE-EMPLOYMENT</b>
1.	Section 14(1) (a) Deemed discharged employees' in Terms of the Employment of Educators Act.	One year
	Section 15 (2) deemed resignation	Until re-registered by SACE One year
2.	Any person found guilty of sexual offences against children and mentally disabled people and his/her name appears on the National Child Protection Register and the National Register for Sex Offenders	Prevented from employment until removed from the registers held by the DSD or Department of Justice respectively
3.	<p>Section 17(1)</p> <p>(b) Committing an act of sexual assault on a learner, student or other employees; or</p> <p>(c) Having a sexual relationship with a learner of the school; or</p> <p>(d) Seriously assaulting, with the intention to cause grievous bodily harm to, a learner, student or other employee; or</p> <p>(e) Illegal possession of an intoxicating, illegal or stupefying substance; or</p> <p>(f) Causing a learner to commit any of the above</p>	Indefinite
	Sexual harassment involving learners.	
	Court finding and conviction for murder, attempted- murder, rape, indecent assault or assault GBH	
4.	<p>Section 17(1)</p> <p>(a) Theft, bribery, fraud or an act of corruption with regard to examinations or promotions or</p>	Five years

	promotional reports	
5.	<p>Section 18(1)</p> <p>(dd) Committing a common law or statutory offence of theft, bribery, fraud or an act of corruption</p>	Five years
6.	<p>Section 18(1)</p> <p>(e) in the course of duty endangers the lives of himself or herself or others by disregarding set safety rules or regulations;</p> <p>Section 18(1) (h), accepts any compensation in cash or otherwise from a member of the public or another employee for performing his or her duties without written approval from the employer;</p> <p>Section 18(1) (m) without the written approval of the employer, performs work for compensation for another person or organisation either during or outside working hours; and</p> <p>Section 18(1) (x) carries or keeps firearms or other dangerous weapons on State premises, without the written authorisation of the employer;</p>	5 Years
7.	<p>Section 18(1)(g), misuses his or her position in the Department of Basic Education or a school or adult learning centre to promote or to prejudice the interests of any person.</p> <p>Section 18(1) (r), assaults, or attempts to or threatens to assault, another employee or another person</p>	5 years

	<p>Section 18(1)(s) incites other personnel to unprocedural and unlawful conduct;</p> <p>Section 18(1) (aa) falsifies records or any other documentation;</p>	
	Section 18(1) (ee), commits an act of dishonesty	Five years
	Section 18(1)(ff), victimises an employee for, amongst others, his or her association with a trade union, and	
	Sexual harassment involving another employee	Four years
	<p>Section 18(1)(k) unfairly discriminates against other persons on the basis of race, gender, disability,</p> <p>sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, Four years' disability, religion, conscience, belief, culture,</p> <p>language, birth, family responsibility, HIV, status, political opinion or other grounds prohibited by the Constitution</p>	Four years
8.	<p>Section 18(1)(b), willfully or negligently mismanages the finances of the State, a school or an adult learning centre;</p> <p>Section 18(1) (d), willfully, intentionally or negligently damages or causes loss to the property of the State or a school</p> <p>Section 18(1) (f), unjustifiably prejudices the administration, discipline or efficiency of the Department of Basic Education, an office of the</p>	Three years

	<p>State or a school</p> <p>Section 18(1) (n), without prior permission of the employer accepts or demands in respect of the carrying out of or the failure to carry out the educator's duties, any commission, fee, pecuniary or other reward to which the educator is not entitled by virtue of the educator's office, or fails to report to the employer the offer of any such commission, fee or reward;</p> <p>Section 18(1) (p), while on duty, is under the influence of an intoxicating, illegal, unauthorised or stupefying substance, including alcohol;</p> <p>Section 18(1) (t), displays disrespect towards others in the work-place or demonstrates abusive or insolent behaviour;</p> <p>Section 18(1) (u), intimidates or victimises fellow employees, learners or students;</p> <p>Section 18(1) (w) operates any money-lending scheme for employees for his or her own benefit during working hours or from the premises of the educational institution or office where he or she is employed; and</p> <p>Section 18(1) (z) gives false statements or evidence in the execution of his or her duties;</p>	
9.	<p>Section 18(1)(c), without permission possesses or wrongfully uses the property of the State, a school, an adult learning centre, another</p>	One year



	<p>employee or a visitor;</p> <p>Section 18(1) (i), fails to carry out a lawful order or routine instruction without just or reasonable cause;</p> <p>Section 18(1) (j), absents himself or herself from work without a valid reason or permission;</p> <p>Section 18(1) (o) without authorisation, sleeps on duty;</p> <p>Section 18(1) (l), performs poorly or inadequately for reasons other than incapacity;</p> <p>Section 18(1) (q), while on duty, conducts himself or herself in an improper, disgraceful or unacceptable manner;</p> <p>Section 18(1) (v), prevents other employees from exercising their rights to freely associate with trade unions in terms of any labour legislation;</p> <p>Section 18(1) (y), refuses to obey security regulations;</p> <p>Section 18(1) (bb), participates in unprocedural, unprotected or unlawful industrial action;</p> <p>Section 18(1) (cc) fails or refuses to-</p> <p>(i) follow a formal programme of counselling as contemplated in item 2 (4) of Schedule 1;</p> <p>(ii) subject himself or herself to a medical</p>	
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	<p>examination as contemplated in item 3 (3) of Schedule 1 and in accordance with section 7 of the Employment Equity Act, 1998 (Act No. 55 of 1998); and</p> <p>(iii) attend rehabilitation or follow a formal rehabilitation programme as contemplated in item 3 (8) of Schedule 1.</p>	
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