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THE PRESIDENCY

No. 537

26 April 2004

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 1 of 2004: Education Laws Amendment Act, 2004.



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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 20 April 2004.)*

ACT

To amend the South African Qualifications Authority Act, 1995, so as to effect textual corrections; to make provision for an increase in the number of members of the Authority nominated by the organised teaching profession; and to provide for the extension of the term of office of members of the Authority; to amend the South African Schools Act, 1996, so as to provide for the prohibition of the payment of unauthorised remuneration to a state employee employed in terms of the Employment of Educators Act, 1998, or the Public Service Act, 1994, by a governing body; to amend the Employment of Educators Act, 1998, so as to effect textual corrections; and to provide for an appeal by the employer against the finding of the presiding officer of a disciplinary hearing; to amend the General and Further Education and Training Quality Assurance Act, 2001, so as to extend the definition of “Council”; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 4 of Act 58 of 1995, as substituted by section 1 of Act 53 of 2000

1. Section 4 of the South African Qualifications Authority Act, 1995, is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:
 “(1) The Authority shall consist of a chairperson who shall be appointed in terms of subsection (2), such members as shall be appointed in terms of subsections (3) and (4), and an executive officer who shall be appointed in terms of subsection [(7)] (8).”;
- (b) the substitution in subsection (3) for paragraph (n) of the following paragraph:
 “(n) [two] three members nominated by the organised teaching profession;”;
- (c) the addition of the following subsection:
 “(9) Despite subsection (6), the Minister may extend the term of office of any member of the Authority, but the extension may not exceed a period of two years.”.

Insertion of section 38A in Act 84 of 1996

2. The South African Schools Act, 1996, is hereby amended by the insertion after section 38 of the following section:

“Prohibition of payment of unauthorised remuneration, or giving of financial benefit or benefit in kind to certain employees

- 38A.** (1) Subject to subsection (2), a governing body may not pay or give to a state employee employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), any unauthorised— 5
- (a) remuneration;
- (b) other financial benefit; or
- (c) benefit in kind.
- (2) A governing body may apply to the employer for approval to pay a state employee any payment contemplated in subsection (1). 10
- (3) Such application must be lodged in writing in the office of the employer and must state—
- (a) full details of the nature and extent of the payment;
- (b) the process and resources that will be used to compensate or remunerate the state employee; and 15
- (c) the extent of compliance with section 20(5) to (9).
- (4) The governing body must make the application contemplated in subsection (2) at least four months prior to the finalisation of the school’s budget. 20
- (5) Despite subsection (1), a governing body may pay travel and subsistence expenses relating to official school activities but such expenses may not be greater than those that would be payable to a public servant in similar circumstances.
- (6) An employer must not unreasonably refuse an application contemplated in subsection (2). 25
- (7) In considering the application, the employer must take into account—
- (a) the implications for the employer in terms of the employment contract and labour law;
- (b) whether the service concerned in the application will interfere with the normal service delivery of the employee; 30
- (c) whether the service concerned in the application has already been paid for by the employer; and
- (d) whether the additional remuneration, other benefits or benefits in kind support the core activities and functions of the school. 35
- (8) The payment contemplated in subsection (1) must be reflected in the school’s budget, as presented to the general meeting of parents as contemplated in section 38(2).
- (9) If a governing body pays remuneration or gives any financial benefit or benefit in kind contemplated in subsection (1) to an employee without prior approval of the employer, the amount of money paid or benefit given must be recovered by the employer on behalf of the school from members of the governing body who took that decision, excluding a member of the governing body who is a minor. 40
- (10) A governing body may appeal to the Member of the Executive Council against— 45
- (a) the refusal by the employer of an application contemplated in subsection (2); or
- (b) the failure of the employer to provide a decision on an application contemplated in subsection (2) within three months after the lodging of the application in the office of the employer.”. 50

Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999 and section 11 of Act 50 of 2002

3. Section 8 of the Employment of Educators Act, 1998 (hereinafter referred to as the “Educators Act”), is hereby amended by the substitution for subsection (7) of the following subsection: 55

“(7) Despite section 6(3)(a) and subsection (2), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an educator, with his or her consent, to any suitable post on the educator establishment of a public school, a further education and training institution or an adult basic education and training centre.”. 5

Amendment of section 25 of Act 76 of 1998, as substituted by section 12 of Act 53 of 2000

4. Section 25 of the Educators Act, 1998, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) An educator or an employer has a right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding by the presiding officer of a disciplinary hearing **[that the educator has committed misconduct, as contemplated in section 17 or 18]**, and against the sanction imposed in terms of section 18(3)(e) to (i). 10

(3) In lodging an appeal, the educator or employer must comply with the procedure laid down in Schedule 2.”. 15

Amendment of section 34 of Act 76 of 1998

5. The following section is hereby substituted for section 34 of the Educators Act, 1998:

“Offences and penalties” 20

34. Any person who—

- (a) has been duly summoned under **[section 21(3)(a)] item 7(12) of Schedule 2** and who fails without sufficient cause—
- (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused by the disciplinary tribunal from further attendance; 25
- (b) has been called upon in terms of **[section 21(3)(b)] item 7(12) of Schedule 2** and who refuses to be sworn or to affirm as a witness; or
- (c) fails without sufficient cause—
- (i) to answer fully and satisfactorily any question lawfully put to that person under **[section 21(3)(c)] item 7(12) of Schedule 2**; or
 - (ii) to produce any book, document or object in that person’s possession or custody or under that person’s control which that person was required to produce in terms of the said **[section 21(3)(c)] item 7(12) of Schedule 2**, 30 35
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or both **[such]** a fine and such imprisonment.”.

Amendment of item 9 of Schedule 2 to Act 76 of 1998 40

6. Item 9 of Schedule 2 to the Educators Act, 1998, is hereby amended by the substitution for sub-items (1), (2) and (4) of the following sub-items respectively:

“(1) An educator or an employer may appeal against a finding or sanction by making an application in accordance with Form E attached to this Schedule.

(2) The educator or the employer must, within five working days of receiving notice of the final outcome of a disciplinary hearing, submit the appeal form to the Member of the Executive Council or the Minister, as the case may be. 45

(4) If the Member of the Executive Council or the Minister, as the case may be, chooses to allow further representations by the educator, **[or]** his or her representative or an employer, he or she must notify the educator or employer respectively of the date, time and place where such representations must be made.”. 50

Substitution of Form E of Schedule 2 to Act 76 of 1998

7. Schedule 2 to the Educators Act, 1998, is hereby amended by the substitution for Form E of the following form:

“FORM E**NOTICE OF APPEAL**

5

[DATE]

[NAME OF APPEAL AUTHORITY]

I,, [NAME OF EMPLOYEE OR EMPLOYER] hereby appeal against the FINDINGS and/or SANCTION that have been imposed in terms of the Disciplinary Code and Procedure on [DATE] at [PLACE]. 10

I attach a copy of the final outcome of the disciplinary enquiry. [THE APPEAL REQUEST IS NOT VALID UNLESS THIS DOCUMENT IS ATTACHED]

My reasons for appeal are: 15

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceedings.

SIGNATURE OF EMPLOYEE OR EMPLOYER 20

DATE

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

NB: Educators or employers may only appeal against the finding or sanction or both the finding and resultant sanction of— 25

1. suspension without pay for a period not exceeding three months;
2. demotion;
3. a fine;
4. a combination of the above sanctions together with warnings; or
5. dismissal.”. 30

Amendment of section 1 of Act 58 of 2001

8. Section 1 of the General and Further Education and Training Quality Assurance Act, 2001 (hereinafter referred to as the “Quality Assurance Act”), is hereby amended by the substitution for the definition of “Council” of the following definition:

“ ‘Council’ means Umalusi, the Council for General and Further Education and Training Quality Assurance [Council], established by section 4;” 35

Amendment of section 4 of Act 58 of 2001

9. The following section is hereby substituted for section 4 of the Quality Assurance Act, 2001:

“Establishment of Council

4. A juristic person to be known as Umalusi, the Council for General and Further Education and Training Quality Assurance [**Council**] is hereby established.” 5

Transitional arrangements

10. (1) The employer of a state employee may not for a period of one year after the commencement of this Act— 10

- (a) institute proceedings to recover unauthorised remuneration, financial benefit or benefit in kind as contemplated in section 38A(9) of the South African Schools Act, 1996, if such unauthorised remuneration, financial benefit or benefit in kind was paid or given or committed to be paid or given before the commencement of this Act; or 15
- (b) take disciplinary steps against any state employee who received any unauthorised remuneration, financial benefit or benefit in kind from a governing body.

(2) If a recurring payment or giving of remuneration, financial benefit or benefit in kind has come into existence between a state employee and a governing body prior to the commencement of this Act, such remuneration or benefits must be deemed to have been authorised by the employer for a period of one year after the commencement of this Act. 20

Short title

11. This Act is called the Education Laws Amendment Act, 2004.