

EDUCATION LABOUR RELATIONS COUNCIL
Established in terms of the LRA of 1995 as amended



COLLECTIVE AGREEMENT

NUMBER x OF 2018

DATE

**THE APPOINTMENT OF TEMPORARY
EDUCATORS TO POSTS ON THE EDUCATOR
ESTABLISHMENT**

Version 4 (Legal Task Team – 6 June 2018)

EDUCATION LABOUR RELATIONS COUNCIL

COLLECTIVE AGREEMENT NO x OF 2018

THE APPOINTMENT OF TEMPORARY EDUCATORS TO POSTS ON THE EDUCATOR ESTABLISHMENT

1. PURPOSE OF THE AGREEMENT

The purpose of this agreement is to—

- 1.1. regulate the appointment of temporary educators to posts on the educator establishment of public schools;
- 1.2. provide for the employment security for **temporary** educators;
- 1.3. provide safeguards for temporary educators as set out in, amongst others, ILO Convention 158, section 186 of the LRA and section 6B of the Employment of Educators Act; and
- 1.4. regulate the conversion of temporary educators to permanent educators.

2. SCOPE OF THE AGREEMENT

This agreement applies to and binds—

- 2.1. the employer;
- 2.2. educators who are members, or become members of the trade union parties to this agreement; and
- 2.3. educators who are appointed or become appointed to a post at a public school that is on the educator establishment of a provincial department of education during the period in which this agreement applies, and who are not members of the trade union parties to this agreement.

3. INTERPRETATION OF THE AGREEMENT

Any person interpreting or applying this agreement must interpret its provisions to give effect to—

- 3.1. the constitutional right to fair labour practices;
- 3.2. the objects and applicable provisions of the Employment of Educators Act and the Personnel Administrative Measures (PAM);

- 3.3. the promotion of quality teaching and learning at public schools; and
- 3.4. the objects of this agreement.

4. DEFINITIONS

Unless the context indicates otherwise—

- 4.1. all terms defined in the Employment of Educators Act and the LRA have the meaning assigned to them in those statutes;
- 4.2. the following terms will have the meaning assigned to them below and similar expressions of the term will have a corresponding meaning—
 - 4.2.1. **“advertisement”** means a notice or announcement publicizing a job vacancy.
 - 4.2.2. **“applicants returning after a break in service”** means applicants for appointment to a post at a public school that is on the educator establishment of a provincial department of education as contemplated in section 6A of the Employment of Educators Act;
 - 4.2.3. **“Council”** means the Education Labour Relations Council;
 - 4.2.4. **“department”** means a department responsible for education in a province;
 - 4.2.5. **“educator”** means an educator contemplated in the Employment of Educators Act who is employed in a post at a public school that is on the educator establishment of a provincial department of education;
 - 4.2.6. **“educator establishment”** means the establishment contemplated in section 5 (1)(b) of the Employment of Educators Act;
 - 4.2.7. **“employer”** means the Head of a provincial education department, and includes the person to whom appointment powers and functions are delegated; **Minister of Basic Education purposes of this determination**
 - 4.2.8. **“Employment of Educators Act”** means the Employment of Educators Act 76 of 1998, as amended;
 - 4.2.9. **“first-time applicant”** means an applicant for appointment to a post at a public school that is on the educator establishment

of a provincial department of education as contemplated in section 6A of the Employment of Educators Act;

- 4.2.10. “**ILO**” means the International Labour Organisation;
- 4.2.11. “**LRA**” means the Labour Relations Act 66 of 1995, as amended;
- 4.2.12. “**PAM**” means the Personal Administration Measures determined by the Minister of Basic Education in terms of section 4 of the Employment of Educators Act (GN 170 of 12 February 2016: Personnel Administrative Measures (PAM) in GG No. 39684);
- 4.2.13. “**permanent educator**” refers to an educator whose appointment is in terms of a contract of employment which is indefinite, except for the normal or agreed retirement age;
- 4.2.14. “**probation**” means the period in which the employer is given an opportunity to evaluate the suitability and performance of the educator before confirming the appointment;
- 4.2.15. “**temporary educator**” for purposes of this agreement an educator who is appointed to an approved substantive vacant Post Level 1 post in a specific school in a temporary capacity for a fixed term;
- 4.2.16. “**SACE**” means the South African Council of Educators;
- 4.2.17. “**this agreement**” means this collective agreement;
- 4.2.18. “**transfer**” means the appointment of an educator who occupies a post in a department to a higher, equivalent or lower post level within the same department or another department; and
- 4.2.19. “**vacant post**” is a post that is not occupied by a permanent educator, and is not a post that is occupied by a permanent educator who is temporarily unable to fill the post (such as a permanent educator who is on maternity leave or appointed in the post of an educator who is on any form of secondment to a trade union or another employer).

5. THE PARTIES NOTE AS FOLLOWS THAT:

- 5.1. ILO Convention 158 of 1998 provides that adequate safeguards shall be provided against recourse to contracts of employment for a specified

period of time the aim of which is to avoid the protection provided against unfair dismissals;

- 5.2. Section 6 of the Employment of Educators Act, 1998 provides that any appointment, promotion or transfer to the post establishment of a public school may only be made on the recommendation of the governing body of that school;
- 5.3. Jurisprudence has determined that any appointment of an educator made at a public school without a recommendation from a school governing body as contemplated by section 6 of the Employment of Educators Act, is unlawful and invalid;
- 5.4. Section 6 of the Employment of Educators Act, 1998, provides that appointments, promotions and transfers to posts on the post establishment of a public school must be made in accordance with the procedures provided for in the Employment of Educators Act; Personnel Administrative Measures, and collective agreements;
- 5.5. Section 6 of the Employment of Educators Act is not always complied with when appointing educators on fixed term contracts, in that the collectively agreed procedures for appointment are not followed and the recommendation of the school governing body not obtained, with the result that the automatic conversion of such fixed term contracts into permanent appointments, would be in contravention of section 6 of the Employment of Educators Act and the South African Schools Act; and
- 5.6. Section 6B of the Employment of Educators Act, 1998 allows the Head of Department after consultation with the Governing Body of a Public School to convert the temporary appointment of an educator appointed to a post on the educator establishment of the Public School into a permanent appointment in that post.

6. AMENDMENT OF PAM AND REPEAL OF PROVINCIAL COLLECTIVE AGREEMENTS

- 6.1. [To request the Minister of Education to amend paragraph xxx of Chapter B of the Personnel Administrative Measures by including the attached document \(Annexure A\).](#)
- 6.2. This agreement repeals all provincial collective agreements concerning the appointment of educators in a temporary capacity [if such is less favourable than this collective agreement.](#)

7. DISPUTE RESOLUTION PROCEDURE

- 7.1. Any dispute about the interpretation or application of this agreement shall be dealt with according to the dispute resolution procedure of the ELRC.

8. DATE OF EFFECT

8.1. This agreement shall, in respect of parties, come into effect on the date it is signed in Council.

9. SIGNING OF THE COLLECTIVE AGREEMENT

Thus done and signed at _____ on the _____ day
of _____ 2018

ON BEHALF OF THE STATE AS EMPLOYER

DEPARTMENT	NAME	SIGNATURE
BASIC EDUCATION		

ON BEHALF OF THE EMPLOYEE PARTIES

TRADE UNION	NAME	SIGNATURE
SADTU		
CTU-ATU		

ANNEXURE A

10. CONVERSION OF FIXED TERM CONTRACT EMPLOYMENT INTO PERMANENCY OF SCHOOL BASED EDUCATORS

- 10.1. Section 6B of the Employment of Educators Act provides for the conversion of the appointment status of educators from temporary/contract to permanent.
- 10.2. For the purpose of this section a temporary educator is an educator who is appointed to an approved substantive vacant Post Level 1 post in a temporary capacity for a fixed term at a specific school.

11. EXCLUSIONS

- 11.1. Section 6B of the EEA does not apply to educators that:
- 11.1.1. Are appointed to vacant substantive promotion posts in an acting capacity, or to substitutes for permanently employed educators who are absent from duty, for whatever reason.
 - 11.1.2. Have already had the opportunity of an extensive career in education, those who have early retirement (in any category), been discharged because of ill-health or taken a severance package of whatever nature are excluded from the measures contained in this collective agreement. Subject to the following:
 - 11.1.2.1. For early retirees: permission from HOD to be considered for reappointment;
 - 11.1.2.2. For those been discharged for ill-health: provide proof of medical clearance and the approval of the HOD; and
 - 11.1.2.3. For those that have taken a severance package: permission form HOD to be considered for reappointment.
 - 11.1.3. Have resigned from the education profession (national or provincial). They may only be considered for the conversion on the proviso that 7.2 below is applied.
 - 11.1.4. Are excluded from the measures contained in this agreement in accordance with Section 10 of the Public Service Act:
 - 11.1.4.1. Foreign educators who do not have a SA citizenship or who are not permanent residents of South Africa as defined in the Immigration Act No. 13 of 2002; and

- 11.1.4.2. Foreign educators who are not fit and proper persons as intended in Section 10 of the Public Service Act.
- 11.2. The educator is employed on account of a temporary increase in the volume of work, which is not expected to endure beyond 12 months;
- 11.3. The general criteria established for the conversion of the appointment status of educators from temporary to permanent in terms of Section 6B of the EEA, 1998 stipulates that the following conditions must be met:
 - 11.3.1. Only funded vacant substantive posts identified for filling by the [Provincial Education Department](#) for conversion may be filled on this basis.
 - 11.3.2. The permanent appointment must be made to a vacant substantive Post Level 1 post and the post must reflect in the approved educator staff establishment of the school.

12. CONVERSION PROCEDURES TO FOLLOW:

- 12.1. The conversion process of educators will only be considered after 60 days and once the [Provincial Education Department](#) has issued staff establishments, declared educators additional to the staff establishments and followed a process of matching and placing of the latter. This process shall be finalised by 31 December of each year.
- 12.2. The conversion of an educator will only be considered if accompanied by confirmation in writing from the School Governing Body and Principal, [that the conversion was done with due regard to the following order of priority:](#)
 - 12.2.1. Educators [in addition to the staff establishment](#);
 - 12.2.2. Educators who have received departmental bursaries; and
 - 12.2.3. First time appointment.
- 12.3. Subject to the afore-mentioned provisions, the educator concerned must at the time of conversion have been employed in a temporary capacity for a continuous period of at least [six \(6\) months in a vacant substantive post](#) subject to the recommendation of the School Governing Body as contemplated in section 6B.
- 12.4. It will be the responsibility of school principals to profile the substantive posts occupied by temporary employees and submit such to the District for permanent conversion.
- 12.5. In addition to the general criteria established the following criteria need to be adhered to in order to be considered for the conversion of his/her temporary/contract status to permanent:

- 12.5.1. Be professionally qualified for the education profession;
 - 12.5.2. Meet the inherent requirements of the post in which his or her conversion of appointment will be made;
 - 12.5.3. Be registered with the South African Council of Educators (SACE); and
 - 12.5.4. Educators who resigned from the education profession (national or provincial) may only be considered for the conversion of their appointment status from temporary/contract to permanent after considering 7.2 above.
- 12.6. The conversion of a temporary appointment to a permanent appointment is subject to approval by the Head of Department.
- 12.7. The temporary educators whose status have been converted to permanent will be subjected to a probation period of a year (12 months) after being made permanent.
- 12.8. Where a vacant substantive post(s) needs to be filled urgently on a temporary or contract basis, [schools must obtain names of candidates from a provincial database of qualified unemployed educators](#), such appointment may not exceed a fixed period of 90 days.
- 12.9. Notwithstanding the afore-mentioned provisions, [Provincial Education Department](#) have discretionary power to advertise and fill such posts through the normal recruitment and selection process.

13. LESS FAVOURABLE TREATMENT IN APPLICATION OF CONVERSION OF FIXED TERM EMPLOYMENT INTO PERMANENCY OF EDUCATORS

- 13.1. Subject to the provisions of this collective agreement and Section 6B of the EEA, no educator shall be treated by [Provincial Education Department](#) less favourable than the others, in the conversion process of temporary appointment to a permanent appointment, unless there is an objective justifiable reason for such different treatment.

14. TRANSITIONAL ARRANGEMENTS

- 14.1. Educators currently appointed on a temporary/contract basis in substantive vacant Post Level 1 posts for 6 months or longer and whose contracts have not expired as at the signing of this agreement, qualify to be considered for conversion in terms of Section 6B of the EEA subject to the above provisions.