

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



## **COLLECTIVE AGREEMENT XXX OF 2020**

**19 JUNE 2020**

**APPOINTMENT OF SUBSTITUTE EDUCATORS AND  
UTILISATION OF EDUCATORS ADDITIONAL TO THE  
ESTABLISHMENT IN PLACE OF VULNERABLE  
EMPLOYEES WITH KNOWN OR DISCLOSED HEALTH  
ISSUES OR COMORBIDITIES (COVID-19) OR WHO ARE  
ABOVE 60 YEARS OLD**

**EDUCATION LABOUR RELATIONS COUNCIL****COLLECTIVE AGREEMENT NO XXX OF 2020****1. PURPOSE OF THE AGREEMENT**

The purpose of this agreement is to:

- 1.1. provide directives on how to manage the appointment of substitutes and utilisation of educators additional to the establishment for educators employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), (EEA), in place of educators who are affected due to risk factors for severe COVID-19.
- 1.2. provide for the expedited appointment of Substitute Educators and the utilisation of Educators held additional to the Post Establishment, in terms of ELRC Collective Agreement 1 of 2016 in place of educators who are affected due to risk factors for severe COVID-19.

**2. SCOPE AND APPLICATION OF THIS AGREEMENT**

This agreement applies to and binds:

- 2.1 The Employer, as defined in the Employment of Educators Act 76 of 1998 as amended.
- 2.2 The registered Trade Unions in the Education Labour Relation Council and
- 2.3 All employees of the employer as defined in the Employment of Educators Act 76 of 1998, whether such employees are members of trade union parties to this agreement or not.

**3. THE PARTIES TO THE COUNCIL NOTE AS FOLLOWS:**

- 3.1 Employment of Educators Act, 1998 (Act No. 76 of 1998)
- 3.2 Section 27(2) of the Disaster Management Act, 2002
- 3.3 Consolidated Covid-19 Direction on Health and Safety in the Workplace (Government Notice R639 of 2020; Government Gazette no. 43400 of 4 June 2020).

- 3.4 Sub-regulations 5(5)(d) and (e) of the Regulations issued in terms of section 27(2) of the Disaster Management Act, 2002, specifically requires employers to adopt “*special measures for employees with known or disclosed health issues or comorbidities, or with any condition which or may place such employees at a higher risk of complications or death if they are infected with COVID -19*”; and “*special measures for employees above the age of 60 who are at a higher risk of complications or death if they are infected with COVID-19.*” (Government Gazette no. 43258 of 29 April 2020)
- 3.5 Provisions of Chapter G of the Personnel Administrative Measures (PAM)
- 3.6 ELRC Collective Agreement 1 of 2020
- 3.7 The provisions of Chapter 3 of the Employment of Educators Act and particularly the following:
- 3.7.1 The general principle set out in section 6 (3) of the Employment of Educators Act, which provides that any appointment, promotion or transfer to the post establishment of a public school must be made on the recommendation of the governing body of that school.
- 3.7.2 This principle is subject to the provisions of Chapter 3 of the Employment of Educators Act, the LRA or any collective agreement concluded by the Council.
- 3.7.3 Section 6 and or section 8(5) of the Employment of educators Act, provide that the employer may transfer an educator who is in addition to another post in the department that matches his/her skills in the department and experience to a school without the recommendation of the school governing body for a stated period.
- 3.8 ELRC Collective Agreement 2 of 2018
- 3.9 The provisions of Chapter 3 of the Employment of Educators Act and in particular the following:
- 3.9.1 The general principle set out in section 6 (3) of the Employment of Educators Act, which provides that any appointment, promotion or transfer to the post establishment of a public school must be made on the recommendation of the governing body of that school.
- 3.9.2 This principle is subject to the provisions of Chapter 3 of the Employment of Educators Act, the LRA or any collective agreement concluded by the Council.

Section 6B of the Employment of Educators Act provides that the Head of Department may, after consultation with the governing body of a public school, 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 without the recommendation of the governing body.

This agreement does not replace the recruitment and selection procedure as outlined in Chapter B of the PAM nor the withdrawal of SGB recommendation powers in terms of Section 20 (i) of the South African Schools Act No. 84 of 1996 (SASA). It provides for a temporary expedited procedure in the appointment of substitutes and educators additional to the staff establishment during COVID-19.

3.9.3 The provisions shall remain in place for the appointment of substitutes and utilisation of educators appointed additional to the staff establishment AND who are not affected by COVID-19.

#### **4 THE PARTIES TO THE COUNCIL THEREFORE AGREE AS FOLLOWS:**

4.1 The Appointment of Substitutes in place of educators who are affected due to risk factors for severe COVID-19 and the Utilisation of Educators held additional to the Post Establishment is set out in Annexure A.

Annexure A, therefore, sets out:

- 4.1.1 the procedures for appointing Substitute Educators where applicable, in place of vulnerable employees who are at a higher risk of COVID-19 infections and are unable to perform their duties as prescribed.
- 4.1.2 the Utilisation of Educators held additional to the Post Establishment in place of educators who are affected due to risk factors for severe COVID-19
- 4.1.3 justifiable reasons and factors to be considered for the appointment of such substitute educators or the utilisation of any educator placed under the same district office's jurisdiction held additional to the post establishment.
- 4.1.4 the requirements, eligibility, procedures, and other provisions relating to the appointment of Substitute Educators and the utilisation of Educators held additional to the Post Establishment.

#### **4.2 Dispute Resolution**

Any dispute arising from the application or interpretation of this collective agreement shall be referred to the *Council* for resolution in terms of its dispute resolution procedures.

### 4.3 Date of Implementation and Duration of the Collective Agreement

This agreement will come into effect on date of signing and shall remain in force for the duration of the COVID-19 Pandemic.

### 4.4 General

- 4.4.1 No amendment, modification or agreed cancellation of this agreement will be of any force or effect unless in writing and signed by or on behalf of the parties.
- 4.4.2 No party will be bound by any express or implied representation, term, warranty, promise or the like, not recorded in this agreement or reduced to writing and signed by the parties.

### 4.5 Interpretation

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

- 4.5.1 the constitutional right to fair labour practices.
- 4.5.2 the objects and applicable provisions of the Employment of Educators Act and the PAM.
- 4.5.3 the promotion of quality teaching and learning at public schools; and
- 4.5.4 the objects of this agreement.

### 4.6 Definitions

Unless the context indicates otherwise—

- 4.6.1 terms defined in the Employment of Educators Act and the LRA have the meaning assigned to them in those statutes.
- 4.6.2 the following terms will have the meaning assigned to them below and similar expressions of the term will have a corresponding meaning—
- 4.6.2.1 “**Council**” means the Education Labour Relations Council.
- 4.6.2.2 “**Covid-19**” means Coronavirus 2019.
- 4.6.2.3 “**department**” means a department responsible for education in a province.
- 4.6.2.4 “Disaster Management Act” means the Disaster Management Act, 2002 (Act 57 of 2002)

- 4.6.2.5 “**educator establishment**” means the establishment contemplated in section 5 (1)(b) of the Employment of Educators Act.
- 4.6.2.6 “**Employment of Educators Act**” means the Employment of Educators Act 76 of 1998, as amended.
- 4.6.2.7 “**LRA**” means the Labour Relations Act 66 of 1995, as amended.
- 4.6.2.8 “**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).
- 4.6.2.9 “**permanent educator**” refers to an educator whose appointment is in terms of a contract of employment which is indefinite, except for the compulsory or agreed retirement age; and who is appointed in terms of the Employment of Educators Act.
- 4.6.2.10 “**Substitute Educator**” means an educator contemplated in paragraph 1.4 who is appointed in the place of a permanent Educator in terms of a contract of employment that terminates on the occurrence of a specified event, the completion of a specified task or a fixed date, other than an employee’s normal or agreed on retirement age;
- 4.6.2.11 **Substitute educator in place of an educator who is affected due to risk factors for severe COVID-19** means an educator who is appointed in terms of a vulnerable educator with known or disclosed health issues or comorbidities (COVID-19) or who are above 60 years old.
- 4.6.2.12 “**vulnerable employee**” means any employee, as contemplated in the Department of Health guidelines -
- a) with known or disclosed health issues or comorbidities or any other condition that may place the employee at a high risk of complications or death than other employees if infected with Covid-19; or
  - b) and above the age of 60 years of age who is at a high risk of complications or death if infected.
- 4.6.2.13 “**this agreement**” means this collective agreement and include its annexure A.

**SIGNATURES OF THE PARTIES**

Thus done and signed at \_\_\_\_\_ on the \_\_\_\_\_ day of  
 \_\_\_\_\_ 2020 by:

**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

### 1. APPOINTMENT OF SUBSTITUTE EDUCATORS AND UTILISATION OF EDUCATORS ADDITIONAL TO THE ESTABLISHMENT IN PLACE OF VULNERABLE EMPLOYEES WITH KNOWN OR DISCLOSED HEALTH ISSUES OR COMORBIDITIES (COVID-19) OR WHO ARE ABOVE 60 YEARS OLD

- 1.1. The school principal/manager must obtain the approval of the relevant department before he/she may appoint a substitute educator and/or utilise an educator additional to the establishment in place of vulnerable employees with known or disclosed health issues or comorbidities (COVID-19) or who are above 60 years old.
- 1.2. Preference must be given to an educator who has been declared additional to the staff establishment in terms of ELRC Resolution 2 of 2001.
- 1.3. Thereafter, the post should be filled in the following order of preference:
  - I. First-time applicants to whom the employer has a contractual obligation in terms of a bursary awarded to the applicant.
  - II. Any other first-time applicants; and
  - III. Qualified unemployed educators.
- 1.4. The relevant substitute educator is still required to complete an application form and present his or her qualifications.
- 1.5. The substitute educator meets the requirements of the post.
- 1.6. The recommendation of the SGB is not required in this instance.
- 1.7. The appointment process of the substitute educator must be finalised within a period of 14 calendar days.

### 1. JUSTIFIABLE REASONS FOR THE APPOINTMENT OF SUBSTITUTE EDUCATORS

- 1.1. The employer may employ a Substitute Educator if—
  - 1.1.1. a temporary appointment is authorised or required by the Employment of Educators Act.
  - 1.1.2. the work for which the educator is employed is of limited or definite duration; or
  - 1.1.3. there is any other justifiable reason for fixing the term of the employment contract.



- 1.2. A justifiable reason for employing a suitably qualified educator as a substitute includes, but is not limited to, the following—
- 1.2.1. The substitute educator is employed additionally in the place of the permanent educator who is temporarily working from home or remaining at home.
  - 1.2.2. the substitute educator is employed on account of a temporary increase in the volume of work or assists in the management of the workload of a vulnerable educator.
  - 1.2.3. the substitute educator is employed to work exclusively on a specific project or task that has a limited or defined duration.
  - 1.2.4. the substitute educator is neither a South African citizen nor a permanent resident and has been granted a work permit for a defined period.
  - 1.2.5. the substitute educator is employed in a position which is funded by an external source for a limited period; or
  - 1.2.6. the permanent educator has not reached the compulsory retirement age.
  - 1.2.7. The substitute teacher who had taken early retirement is still below compulsory retirement age.
  - 1.2.8. The substitute educator resigned previously but there is no other suitable qualified Funza Lushaka or bursary holder who meets the post requirements; and
  - 1.2.9. The substitute educator declares that he/ she is not a high risk for Covid-19 or does not fall in the category of “vulnerable employee”.
- 1.3. The same provisions listed above apply to educators appointed additional to the staff establishment in place of a vulnerable employee with known or disclosed health issues or comorbidities (COVID-19) or who are above 60 years old.
- 1.4. **Educators declared additional:**
- 1.4.1. The following provisos also apply:
  - 1.4.2. An educator declared additional to the staff establishment may be utilized at the same institution for the duration of Covid-19.

1.4.3. An educator declared additional may be placed at another school in the same district where his/ her profile meets the operational needs of that institution.

1.5. **District Director issue a placement letter.**

1.5.1. Due to the temporary nature of the appointment and the abnormal circumstances created by the advent of Covid-19, School Governing Body approval provided in terms of Section 6 of the Employment of Educators Act, No. 76 of 1998 will not be required.

1.6. **Leave during COVID-19 period**

1.6.1. **Isolation leave:** As a precautionary measure, an employee may be granted no more than fourteen (14) Special Leave with full pay for isolation purposes should the employee have displayed symptoms during screening or has been exposed to someone who tested positive for COVID-19.

1.6.2. **Quarantine leave:** Educators who test positive for Covid-19 will be granted quarantine leave as per the provisions of Chapter H of the PAM.