

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 60
YEARS OLD AND ABOVE**

**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 relating to 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 4 of 2016 in place of educators who are affected due to risk factors relating to 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 Public Finance Management Act (Act No 1 of 1999) as amended.
- 3.4 Consolidated Covid-19 Direction on Health and Safety in the Workplace (Government Notice R639 of 2020; Government Gazette no. 43400 of 4 June 2020).
- 3.5 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).

- 3.6 Provisions of Chapter G of the Personnel Administrative Measures (PAM).
- 3.7 ELRC Collective Agreement 1 of 2020.
- 3.8 The provisions of Chapter 3 of the Employment of Educators Act and particularly the following:
 - 3.8.1 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.
 - 3.8.2 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.
 - 3.8.3 Section 6 and or section 8(5) of the Employment of Educators Act, provides 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.
- 3.9 ELRC Collective Agreement 2 of 2018
- 3.10 The provisions of Chapter 3 of the Employment of Educators Act and in particular the following:
 - 3.10.1 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.
 - 3.10.2 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 pandemic.

- 3.10.3 The statutory provisions shall remain in place for the appointment of substitutes and utilisation of educators appointed additional to the staff post 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 relating to 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 relating to 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; and
- 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. Grievance Procedure

Any grievance arising from this process shall be dealt with in terms of Chapter G of the PAM.

5. 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.

6. DATE OF IMPLEMENTATION AND DURATION OF THE COLLECTIVE AGREEMENT

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

7. GENERAL

7.1.1. 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.

7.1.2. 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.

8. INTERPRETATION

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

- 8.1. the constitutional right to fair labour practices;
- 8.2. the objects and applicable provisions of the Employment of Educators Act and the PAM;
- 8.3. the promotion of quality teaching and learning at public schools; and
- 8.4. the objects of this agreement.

9. DEFINITIONS

Unless the context indicates otherwise—

- 9.1. terms defined in the Employment of Educators Act and the LRA have the meaning assigned to them in those statutes.
- 9.2. the following terms will have the meaning assigned to them below and similar expressions of the term will have a corresponding meaning—
 - 9.2.1. “**Council**” means the Education Labour Relations Council.
 - 9.2.2. “**Covid-19**” means Coronavirus 2019.
 - 9.2.3. “**department**” means a department responsible for education in a province.
 - 9.2.4. “**Disaster Management Act**” means the Disaster Management Act, 2002 (Act 57 of 2002)
 - 9.2.5. “**educator establishment**” means the establishment contemplated in section 5 (1)(b) of the Employment of Educators Act.
 - 9.2.6. “**Employment of Educators Act**” means the Employment of Educators Act 76 of 1998, as amended.
 - 9.2.7. “**LRA**” means the Labour Relations Act 66 of 1995, as amended.
 - 9.2.8. “**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).

- 9.2.9. “**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 on retirement age; and who is appointed in terms of the Employment of Educators Act.
- 9.2.10. “**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;
- 9.2.11. “**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.
- 9.2.12. “**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.
- 9.2.13. “**this agreement**” means this collective agreement and include its annexure A.

10. 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 post establishment in terms of ELRC Resolution 2 of 2001 to substitute in place of an educator affected by COVID-19.
- 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 and be registered with SACE.
- 1.5. The substitute educator meets the requirements of the post.
- 1.6. The recommendation of the SGB could be electronically obtained if required.
- 1.7. The appointment process of the substitute educator must be finalised within 14 calendar days.
- 1.8. The period of appointment of the substitute is subject to the period of the educator who has been granted a concession in terms of ELRC Collective Agreement 1 of 2020.
- 1.9. The appointment of the substitute is subject to the budgetary requirements of the department.

2. **JUSTIFIABLE REASONS FOR THE APPOINTMENT OF SUBSTITUTE EDUCATORS AFFECTED BY COVID-19 OR IN PLACE OF A VULNERABLE EMPLOYEE**

- 2.1. The employer may appoint a Substitute Educator in place of an educator affected by COVID-19 if:

- 2.1.1. An educator needs to work from home because he or she has been granted a concession in terms of ELRC Collective Agreement 1 of 2020.
- 2.2. 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.

2.3. Educators Declared Additional to the Post Establishment:

2.3.1. The following provisos apply:

- 2.3.1.1. Provincial Education Departments are required to first consider the appointment or transfer of additional educators for educators who have been granted a concession in terms of ELRC Collective Agreement 1 of 2020.
- 2.3.1.2. An educator declared additional to the staff post establishment may be utilized at the same institution in place of an educator affected by COVID-19.
- 2.3.1.3. An educator declared additional may be placed at another school in the same or another district and within a reasonable distance similar to his/her travelling distance between his/her home and current school and where his/ her profile meets the operational needs of that post at the other institution.
- 2.3.1.4. If the educator refuses to accept such reasonable placement, and unless the Employer directs otherwise, been deemed to have been discharged from the service on account of misconduct.
- 2.3.1.5. If an educator who has deemed to be discharged under paragraph 2.3.1.4. above, the Employer may, on good cause shown approve the reinstatement of the educator in the educator's former post or in any other post on such conditions relating to the period before the discharge of the educator.

2.4. District Director Approval of the Placement

- 2.4.1. Due to the temporary nature of the appointment and the abnormal circumstances created by the advent of Covid-19, School Governing Body recommendations provided in terms of Section 6 of the Employment of Educators Act, No. 76 of 1998 may be electronically obtained if required.

- 2.4.2. The temporary placement may be approved by the District Director and or his/her delegatee.

2.5. Procedure to Appoint Substitute Educators' in place of COVID-19 related Educators

- 2.5.1. Should a suitable educator declared additional to the staff post establishment not be obtained to fill the post in a substitute capacity in place of a COVID-19 affected educator, the post should be filled in the following 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.
- 2.5.2. The principal must obtain a list from the relevant provincial education department's database of names of the educators mentioned above (2.5.1.) and who are qualified to fill the post.
- 2.5.3. The substitute educator is still required to complete an application form and present his or her qualifications and SACE certificate.
- 2.5.4. The substitute educator is required to present either a declaration from the police or relevant authority or a medical report from a registered doctor indicating that he/she does not have a high-risk comorbidity as per the Department of Health guidelines on vulnerable employees. The declaration or medical report must accompany or be submitted with the application form.
- 2.5.5. Educators 60 and above may also not be considered for substitute appointments in this instance only.
- 2.5.6. The substitute educator must meet the requirements of the post.
- 2.5.7. The recommendation of the SGB may be electronically obtained.
- 2.5.8. The period of appointment of the substitute may not be longer than 14 days for isolation and quarantine.
- 2.5.9. The period of appointment of the substitute in place of an educator that has been granted the concession in terms of ELRC Collective Agreement 1 of 2020, must be aligned to the concession of the vulnerable educator.
- 2.5.10. Unless the Head of Department determines otherwise, an educator that has previously been employed as a permanent educator and the educator's permanent employment was terminated as a result

of early retirement, ill-health or voluntary retrenchment where the educator received a severance package may not be considered for a substitute appointment.

2.6. Appointment of Teaching Assistants

- 2.6.1. To ensure continued service delivery during the national state of disaster following the outbreak of the COVID-19 pandemic and the financial strain the pandemic has on provincial education departments budgets, departments may consider the appointment of teaching assistants to provide the necessary “*in classroom*” support to educators with comorbidities.
- 2.6.2. Their appointments would be in terms of the Public Service Act.
- 2.6.3. Their job functions would be:
- To facilitate the lesson plans drafted by the educator; and
 - To provide support in the classrooms.

2.7. Leave during COVID-19 period

- 2.7.1. **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.
- 2.7.2. **Quarantine leave:** Educators who test positive for Covid-19 will be granted quarantine leave as per the provisions of Chapter H of the PAM.

2.8. Violation of COVID-19 Regulations

- 2.8.1. The World Health Organisation has advocated basic measures for individuals to follow in order to reduce the risk of contracting COVID-19. These include frequent washing of hands with the recommended sanitiser or soap, correct coughing and sneezing techniques and avoiding contact with sick individuals. Every employee which includes educators, is also obliged to wear a face mask and to comply with the Occupational Health and Safety Measures.
- 2.8.2. Chapter 3 section 27(3) of the Disaster Management Act: 2002 read together with subsection (2) Regulations made in terms of subsection (2) permits the employers to include regulations prescribing penalties for any contravention of the regulations.
- 2.8.3. Any contravention by either the employee or employer of the measures provided by the Occupational Health and Safety or any

other Law or Regulation relating to COVID-19 is concerned, shall constitute a misconduct.

2.9. Reducing the Retirement Age of Educators

2.9.1. Amendment to section 10 (1)(a) of the Employment of Educators Act, Act No 76 of 1998.

“Subject to the provisions of this section, an educator shall have the right to retire, and shall be so retired, on the day on which the educator attains the age of 60 years”.