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GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION

No. 1400

19 December 2001

I, Kader Asmal, Minister of Education, in terms of sections 4 and 35 of the Employment of Educators Act, 1998 hereby

1. repeal Regulations 33 to 63 of the Regulations Regarding the Terms and Conditions of Employment of Educators, published in Government Gazette No. 16814 of 13 November 1995.
2. determine the following conditions of service for educators for inclusion in the Personnel Administration Measures as set out in the Schedule:

Professor Kader Asmal, MP
Minister of Education
Date: 14 December 2001

Schedule

1. Chapter D of the Personnel Administration Measures is amended by the insertion of the following new paragraph 2.4
- 2.4 **Educators who perform educational supervisory duties at institutions for learners with behaviour problems or at special schools dealing with children committed in terms of the Child Care Act during institution closure periods that are outside of scheduled working time**
 - (a) For each day of at least seven hours that an educator performs duties in respect of the conducting of educational programmes or performing educational supervisory duties at an institution for learners with behaviour problems he or she shall be additionally remunerated at the rate of the educator's current annual salary, without benefits, divided by 365.
 - (b) The additional remuneration shall only apply in respect of duties performed on days during an institution closure period that is outside of the scheduled working timetable as determined by the Minister.
 - (c) Days on which an educator is required to perform duties for a shorter period than seven hours, a pro rata portion of the amount calculated in terms of the formula in paragraph (a), shall be applicable. For this purpose the number of full hours that the educator was required to work must be taken into account.
2. Chapter D of the Personnel Administration Measures is amended by the insertion of the following new paragraph 3:
- 3 **ACTING ALLOWANCES**
 - 3.1 An educator, complying with the minimum requirements in paragraph 2(2) of Chapter B of these measures, shall be appointed, in writing by the employer to act.
 - 3.2 An educator may only be appointed to act in a higher vacant and funded post that is one post level higher than his or her current position.
 - 3.3 Within fourteen days of notification by the employer, a School Governing Body or Council of a Further Education and Training Institution shall be requested to recommend to the employer, the educator to be appointed to act in the vacant post.
 - 3.4 In extraordinary circumstances, the employer may deviate from paragraphs 3.2 and 3.3 above (including instances where the Governing Body or Council fails to make a recommendation).
 - 3.5 An acting allowance will be paid only to an educator who acts:
 - (a) in a higher vacant and funded post; and

- (b) if the period of appointment is longer than six weeks; but limited to a maximum of twelve months.
- 3.6 Compensation shall be backdated to the date on which the educator commenced acting in terms of the appointment, provided that the acting is for a period of six weeks or longer.
- 3.7 The acting allowance that will apply is the difference between the acting person's current salary (without benefits) and the commencing notch (without benefits) that applies to the position in which the person is acting. Where the acting person's salary (without benefits) equals or exceeds the commencing notch applicable to the position in which the person is acting, the acting allowance that will apply is one salary notch.
- 3.8 Where the acting is to be performed at an institution or office that is geographically removed from the person's current place of work, an applicable subsistence and travel allowance shall be paid to him or her.
- 3.9 An educator who has been appointed to act in a certain post will be subject to all the responsibilities appropriate to the post for the period during which he or she is appointed.

3. Chapter E of the Personnel Administration Measures is amended as follows:

Paragraph 2.2(a) is amended by the addition of the following sentence at the end: "In the case of an examination paper set at national level, at most the equivalent of four examiners may be compensated."

Paragraph 4.2 (c) ii is amended by the insertion after the word "teaching" the words "or other curriculum-related"

4. The following new Chapter F is inserted in the Personnel Administration Measures:

CHAPTER F

LEAVE MEASURES

DEFINITIONS.

“education institution” is a public school, further education and training institution or adult basic education centre as defined in the Employment of Educators Act or any other institution that provides specialised tuition and where learning activities are discontinued during institution closure periods.

“institution closure period” is the scheduled period that education institutions close at the end of each term and during which period teaching and learning activities are discontinued.

“institution-based educator” means an educator who is employed at an education institution and whose normal duties are discontinued during institution closure periods.

“office-based educator” means an educator who is not an institution-based educator.

“scheduled working time” in respect of institution-based educators means -

- (i) all the time during a school/college term, both during and outside the formal school/college day, that institution-based educators must perform duties in terms of the measures in Chapter A; and
- (ii) days during an institution closure period that have been scheduled by the Minister, in accordance with the National Education Policy Act 27 of 1996, for these educators to report for administrative duties or by the head of a provincial department for these educators to report for in-service training in terms of paragraph 3.2 of Chapter A of these measures.

ANNUAL LEAVE

1. General Measures

- 1.1. Educators are entitled to annual leave with full pay during each leave cycle of 12 months, commencing on 01 January of each year.
- 1.2. An educator retains all her or his leave credit when she or he is transferred within a department or between State departments without a break in service.
- 1.3. Unless indicated otherwise in these measures, days of leave granted in respect of any category of leave, other than annual leave, shall not be deducted from an educator's leave provision in respect of annual leave.
- 1.4. An educator shall not be considered to be on leave if she or he:
 - a) must appear as a witness-
 - i) in any court;
 - ii) in misconduct proceedings or in a misconduct investigation in terms of any law;
 - iii) at inquest proceedings; or
 - iv) before a commission or committee appointed by the State or before any committee or institution instituted by or in terms of any Act;
 - b) appears as defendant or co-defendant in civil proceedings arising from his or her official duties and in which the State or any statutory body or institution has a direct interest;
 - c) is taken into custody or must appear in any court on a criminal charge and the offence he or she is charged with is withdrawn or if he or she is acquitted of such offence; or
 - d) Attends or participates in a training programme required by the employer or the professional body with whom s/he is required to register in order to remain

registered or with the approval of the employer attends or participates in a training programme or other activity that is in the employer's interest.

2. Annual leave entitlement of Institution-based Educators

- 2.1 An institution-based educator will be regarded as being on annual leave during institution closure periods that are outside of scheduled working time, provided that the measures regarding the workload, duties and responsibilities of educators may require such an educator to perform some of his or her normal duties, such as preparation for the new school term or the marking of internal examination scripts, during such periods. However, such an educator will not be required to report at any work place to perform any of these duties.
- 2.2 If, after sufficient notice, an institution-based educator is required by the employer to report for official duty during an institution closure period outside the scheduled working time, s/he will be remunerated additionally for the performance of such duties in terms of the applicable measures in Chapter D or E. Such remuneration will not apply in respect of the voluntary performance of duties by an educator during an institution closure period.
- 2.3 Save for leave accrued in terms of paragraph 5.1, an institution-based educator does not accrue any leave credit for purposes of payments, for carry over to a next leave cycle, or for extending other forms of leave.

3. Annual leave entitlements and measures in respect of Office-based Educators

- 3.1 The main purpose of annual leave is to provide periods of rest to an office-based educator but, subject to these measures, may also be used to extend periods of other categories of leave as provided in these measures.
- 3.2 An application for annual leave may not be unreasonably refused, taking into consideration service delivery requirements.
- 3.3 The full year leave entitlement of an office-based educator is --
- 3.3.1 22 working days in respect of an educator with less than 10 years service;

- 3.3.2 26 working days in respect of an educator with 10 or more years of service; and
- 3.3.3 28 working days in respect of an educator appointed prior to 1 July 1966.
- 3.4 An educator who is appointed after the commencement of an annual leave cycle or whose service is terminated during a leave cycle shall, in respect of such cycle, be entitled to annual leave calculated as one-twelfth of the full year entitlement for each completed month of service.
- 3.5 Temporary educators appointed for a fixed period shall be granted annual leave that is proportional to their term of employment at a rate of one-twelfth of their full year entitlement per month of service.
- 3.6 Educators appointed in a part-time or shared capacity shall be granted annual leave that is proportional to their appointment.
- 3.7 For each 15 consecutive days' leave taken without pay, the educator's annual leave entitlement is reduced by one-twelfth.
- 3.8 For the purpose of granting annual leave, working days mean Monday to Friday, excluding public holidays.
- 3.9 At least 10 working days must be taken as leave days during the annual leave cycle.
- 3.10 All leave not taken during a leave cycle must be taken no later than 6 months after the expiry of the relevant leave cycle, whereafter, unused leave credits shall be forfeited.
- 3.11 An employing department must inform office-based educators at the end of each annual leave cycle of the number of leave days that the educator has to his or her credit.
- 3.12 If due to the employer's service delivery requirements an office-based educator's application for leave is denied by the employer and not rescheduled, such leave must, upon request, in terms of paragraph 4, be paid out to the educator at the end of the 6 months' period referred to in sub-paragraph 3.10 above. An educator's request for payment of unused leave credits must be:
- 3.12.1 in writing;

3.12.2 accompanied by written proof of refusal of leave by the employer or of instruction to report for duty as the case may be; and

3.12.3 lodged by no later than the end of the relevant 6 months' period.

3.13 Heads of Department shall, at the end of the relevant 18 months' period, report to the relevant legislature on the number of educators denied annual leave, reasons for such denial and the amount paid in this regard.

4 PAYOUT OF UNUSED LEAVE CREDIT

4.1 Office-based educators shall be paid the cash value in respect of unused leave credit upon termination of service and in terms of sub-paragraph 3.12 above. Other than in cases of termination of service referred to in sub-paragraph 5.2, the payment will be limited to a maximum of 22 working days.

4.2 Payment of annual leave credits shall be calculated using the educator's basic salary (with the exclusion of benefits).

4.3 When an office-based educator's employment is terminated for any reason other than a reason referred to in paragraph 5.2 and at the expiry of the 6 months period mentioned in paragraph 3.10 above, leave payouts shall be computed in terms of the following formula:

$$\frac{\{(A - B) + (C - D)\} \times E}{261}$$

Where:

A = Educator's pro rata leave entitlement in respect of the previous leave cycle

B = Leave taken in the previous leave cycle

C = Pro rata leave entitlement in the current leave cycle

D = Leave taken in the current leave cycle

E = Educator's annual basic or pensionable salary as at the last day of duty or at the end of the 6 months period mentioned in 3.10 above, whichever is applicable.

Note: (a) If an educator has been in service for the full leave cycle, his or her pro rata leave entitlement will be equal to the full year entitlement.

(b) After 30 June, $A - B = 0$.

5. ANNUAL LEAVE ACCRUED PRIOR TO 1 JULY 2000 AND DURING THE PERIOD 1 JULY 2000 TO 31 DECEMBER 2001

5.1 Educators shall retain all audited leave credits accrued prior to 1 July 2000. The number of accrued leave days prior to 1 July 2000 shall be converted to working days by multiplying such accrued leave days by 5, divided by 7. During the periods 1 July 2000 to 31 December 2000 and 1 January 2001 to 31 December 2001 all institution-based educators accrued 5 and 10 working days leave respectively or a pro rata number of such days calculated in accordance with paragraph 3.4. Any of these days that were not granted to such an educator since 1 July 2000 shall be added to the number of leave days accrued prior to 1 July 2000.

5.2 The payouts in respect of such leave credits shall be made in the event of:

5.2.1 Death;

5.2.2 Retirement, including early retirement; or

5.2.3 Medical boarding.

5.3 The leave payout of leave credits in respect of an educator whose service is terminated in terms of 5.2 above is calculated as follows:

$$\frac{\{(A - B) + (C - D) + F\} \times E}{261}$$

Where –

A = Educator's pro rata leave entitlement in respect of the previous leave cycle

B = Leave taken in the previous leave cycle

C = Pro rata leave entitlement in the current leave cycle

D = Leave taken in the current leave cycle

E = Educator's annual basic or pensionable salary as at the last day of duty

F = Accrued leave credits in terms of sub-paragraph 4.1 above less all leave taken from these accrued leave credits since 1 July 2000.

Note: (a) If an educator has been in service for the full leave cycle, his or her pro rata leave entitlement will be equal to the full year entitlement.

(b) After 30 June, $A - B = 0$.

(c) The sum total of $A - B$ and $C - D$ may not exceed 22 days.

5.4 The Head of Department shall determine whether there are periods which are unaudited and in such instances, the educator's leave payout shall be paid on the basis of 6 days per completed year of service up to a maximum of 100 days in respect of the unaudited leave period. The formula in calculating the payout in respect of these days shall be as per sub-paragraph 4.3 above.

5.5 The Head of Department shall determine procedures and measures in keeping with service delivery needs, on how educators will be allowed to utilise their leave credits accrued prior to the applicable dates referred to in paragraph 5.1 above over and above the normal vacation entitlements.

6 NOMINATION OF BENEFICIARIES AND LEAVE PAYOUTS

6.1 An educator may, if he or she so desires, designate one or more beneficiaries to whom their leave credits may be paid in the event of their death.

6.2 If an educator dies and has not nominated a beneficiary, the leave credits may be paid:

6.2.1 In full to the spouse/life partner of that educator; or

6.2.2 If there is no spouse/life partner, in equal shares for the benefit of minor and other children (including legally adopted

children) of the deceased who, at the time of her or his death, were fully dependent on the educator; or

6.2.3 If there are no children, to the educator's estate.

7 ANNUAL LEAVE WITH FULL PAY GRANTED IN EXCESS

- 7.1 An educator may not be granted annual leave with full pay in excess of that which the educator has to his or her credit, including leave credit in terms of paragraph 5.1 above.
- 7.2 If due to a *bona fide* error, an educator has been granted annual leave with full pay in excess of that which stood to her or his credit at that time, such excess grant must be deducted from the subsequent leave cycle.
- 7.3 If an educator who has been granted excess annual leave with full pay exits the service of the State, such leave granted in excess of what stood to the educator's credit on such last day of duty must be regarded as an overpayment that must be recovered from her or him.

8 NORMAL SICK LEAVE

- 8.1 Educators are entitled to 36 working days sick leave with full pay over a three-year cycle. Unused sick leave shall lapse at the expiry of the three-year cycle.
- 8.2 If an educator is unable to report for duty due to sudden illness, she or he must immediately notify his/her immediate supervisor of her or his inability to report for duty.
- 8.3 Educators who apply for three or more sick leave days must submit a certificate from a registered and recognised medical practitioner as defined by the Health Professionals' Council of South Africa, citing the reason for and duration of absence.
- 8.4 In instances where a pattern in the utilisation of sick leave has been established, a certificate may be required for absences of less than three working days. Notwithstanding the submission of a certificate, the employer may, on the grounds of further medical advice, refuse to grant sick leave for any absence from duty to which the certificate relates, and the absence shall be considered as leave without pay.

- 8.5 For every 15 consecutive days' leave taken without pay, an educator's sick leave entitlement shall be reduced by $1/36^{\text{th}}$ per sick leave cycle.
- 8.6 If an educator falls ill whilst on annual leave with full pay, such leave may be converted to sick leave provided that a certificate from a registered medical practitioner is submitted within 30 days to substantiate the indisposition.
- 8.7 Vacation leave without pay may not be converted into sick leave.

9 TEMPORARY INCAPACITY LEAVE

- 9.1 An educator who has exhausted her or his sick leave credit in a three-year cycle and who, according to the relevant medical practitioner, requires to be absent due to incapacity that is not permanent may be granted additional sick leave with full pay.
- 9.2 Such a condition must have been certified in advance by the attending medical practitioner as a temporary incapacity except where conditions do not permit.
- 9.3 The Head of Department may require the educator to obtain a second opinion before granting approval for additional sick leave. Expenditure in this regard will be met from the departmental budget.
- 9.4 The Head of Department may grant a maximum of 30 consecutive working days leave with full pay during which period an investigation must be conducted into the nature and extent of the incapacity. The investigation shall be conducted in accordance with item 10(1) of Schedule 8 of the Labour Relations Act, 1995.
- 9.5 On the basis of medical evidence, the Head of Department may approve the granting of additional sick leave days on conditions that she or he shall determine.
- 9.6 If the educator is of the view that she or he has been unfairly treated as regards the granting of additional sick leave, she/he has the right to follow the grievance procedure and the relevant dispute resolution procedures in order to settle the matter.

10 PERMANENT INCAPACITY

- 10.1 Educators whose degree of incapacity has been certified by a competent medical practitioner as permanent shall, with the approval of the Head of Department, be granted a maximum of 30 working days paid sick leave, or such additional number of days required by the employer to finalise processes mentioned below.
- 10.2 The employer shall, within 30 working days, ascertain the feasibility of:
- 10.2.1 Alternative employment; or
 - 10.2.2 Adapting duties or work circumstances to accommodate the educator.
- 10.3 An educator, whose degree of incapacity has been certified as permanent but who can still render a service, may, in terms of the applicable measures, be redeployed horizontally with retention of her or his benefits.
- 10.4 If the redeployment necessitates reallocation to a job of a lower grading, such action should be explained well in advance and the continued utilisation of such an educator should, in this regard, be with her or his consent.
- 10.5 In instances where the educator's redeployment entail retraining, the employer shall take requisite resources (time and financial) and potential returns into consideration before approving redeployment.
- 10.6 The redeployment of an educator's services should ensure the optimal utilisation of her or his competencies and should not compromise service delivery.
- 10.7 If the employer or the educator is convinced that the educator will never be able to render an effective service at her or his level or rank, the educator may proceed with an application for termination of service due to ill health.

11 LEAVE FOR OCCUPATIONAL INJURIES AND DISEASES

- 11.1 Educators who, as a result of their work, suffer occupational injuries or contract occupational diseases, shall be granted occupational and disease leave for the duration of the period they cannot work.

11.2 If an educator suffers a work-related injury as a result of an accident involving a third party, the Head of Department shall grant her or him occupational injury leave provided that the educator:

11.2.1 Brings a claim for compensation against the third party.

11.2.2 Undertakes to use compensation (in terms of the Compensation for Occupational Injuries and Diseases Act of 1993) received to recompense as far as possible for the employer's contribution to the cost arising from the accident.

11.3 The Head of Department shall take reasonable steps to assist an educator to claim compensation according to sub-paragraph 11.2 above.

12 SPECIAL LEAVE FOR QUARANTINE PURPOSES

12.1 Special leave with full pay may be granted to an educator who has been exposed to a medical condition that requires such person to be placed under quarantine.

12.2 Application for such leave must be accompanied by a certificate from a medical practitioner stating the period of quarantine as well as the reasons necessitating such leave.

13 MATERNITY LEAVE

13.1 An educator is entitled to 4 consecutive months' maternity leave on full pay to commence at least 14 days prior to the expected date of birth but not later than the actual date of birth in a case of a premature confinement.

13.2 Maternity leave may be extended upon application by one or more of the following:

13.2.1 the granting of sick leave as a result of a medical complication;

13.2.2 the granting of up to 184 consecutive days unpaid leave; and

13.2.3 the granting of annual leave, including leave accrued in terms of paragraph 5.1, if applicable.

13.3 An Educator who experiences a miscarriage, still birth or termination of the pregnancy after starting paid maternity leave, shall be eligible for six consecutive weeks paid maternity leave, where-after sub-paragraph 13.2.1 shall apply in the event of a medical complication.

13.4 For at least six weeks after the birth, no educator may commence with normal official duty unless the attending practitioner certifies that the educator is fit to do so.

13.5 Where it is practically feasible and subject to paragraph 13.4, an employer may allow an educator to interrupt her maternity leave by letting her return to work temporarily if the baby is hospitalised for a period longer than a month during the maternity leave due to premature birth or illness.

14 ADOPTION LEAVE

14.1 An educator who adopts a child that is younger than two years, qualifies for adoption leave to a maximum of 45 working days where-after sub-paragraphs 13.2.2 and 13.2.3 shall apply.

14.2 If both spouses or life partners are employed in the Public Service, both partners qualify for adoption leave provided that the combined leave taken does not exceed 45 working days.

15 FAMILY RESPONSIBILITY LEAVE AND SPECIAL LEAVE FOR URGENT PRIVATE AFFAIRS

15.1 An educator shall be granted 3 working days leave per annual leave cycle if:

15.1.1 the educator's spouse or life partner gives birth; or

15.1.2 the educator's child, spouse or life partner is sick.

15.2 An educator shall be granted 5 working days leave per annual leave cycle if:

15.2.1 the educator's child, spouse or life partner dies; or

15.2.2 the educator's immediate family member dies.

- 15.3 An institution-based educator may, during a scheduled working period, be granted special leave to attend to an urgent private matter, the nature of which is such that, in the opinion of the employer, it warrants such an educator's absence from work.
- 15.4 The number of leave days taken in terms of sub-paragraphs 15.1 and 15.2 shall, in respect of an office-based educator, not exceed five working days in an annual leave cycle.
- 15.5 The number of leave days taken in terms of sub-paragraphs 15.1 to 15.3 shall, in respect of an institution-based educator, not exceed 12 working days in an annual leave cycle.
- 15.6 An educator who has used all his or her leave in respect of sub-paragraphs 15.1 to 15.3 may apply to:
- 15.6.1 Use available annual leave, including leave accrued in terms of paragraph 5.1; or
- 15.6.2 Use up to 184 calendar days of unpaid leave.

16 SPECIAL LEAVE FOR PROFESSIONAL AND PERSONAL DEVELOPMENT AND FOR RELIGIOUS OBSERVANCES

- 16.1 Special leave with full pay may be granted to an institution-based educator
- (a) to engage in activities aimed at his or her professional development;
 - (b) to engage in activities aimed at his or her personal development where such personal development is also in the interest of the employer; or
 - (c) for a religious observance.
- 16.2 The total number of leave days granted to an institution-based educator in terms of paragraph 16.1 may not exceed 3 working days per annual leave cycle.

17 SPECIAL LEAVE FOR STUDY PURPOSES

- 17.1 Special leave may be granted to an educator for an approved course of study and for a period approved by the employer, on conditions as approved by the employer, including leave with full or partial pay or without pay.
- 17.2 If special leave with full or partial pay for study purposes is granted to an educator in terms of sub-paragraph 17.1 the employer may call

for periodic progress reports in respect of the educator's studies and such educator shall enter into an agreement with the employer in a form approved by the employer in terms of which he or she undertakes to serve the employer immediately after completion of the period of special leave for study purposes for a period (hereinafter referred to as the service period) equal to at least the period for which special leave for study purposes on full pay has been granted to him or her, or for a service period proportional to the person's pay during the period of special leave for study purposes, as the case may be.

18 SPECIAL LEAVE FOR EXAMINATION PURPOSES:

An educator may be granted special leave for examination purposes with full pay for each day on which such educator sits as a candidate for an examination approved for this purpose by the employer plus one additional day of special leave for study purposes for each such day of examination which may be taken on the working days immediately prior to the days of examination.

19 SPECIAL LEAVE FOR PARTICIPATING IN SPORTING, CULTURAL AND OTHER EVENTS

Special leave for a period and on conditions approved by the head of a department, in terms of policy of such department, may be granted to an educator for participating in sports, cultural, local council and other relevant activities. Participation for which leave may be granted may include representation of the country, province or other comparable level as an actual participant, referee, adjudicator, course or group leader, or for participating in or attending a relevant conference, meeting or other event approved for this purpose by the employer.

20 SPECIAL LEAVE IN EXTRAORDINARY CIRCUMSTANCES

20.1 Subject to section 14 of the Act and notwithstanding any disciplinary measures that may apply, unauthorised absence by an educator shall be regarded as special leave in extraordinary circumstances and shall be without pay unless the employer in a specific case determines otherwise.

20.2 If, in the opinion of the employer, circumstances justify it, it may grant or place an educator on special leave in extraordinary circumstances for any reasonable purpose and for any reasonable period, and such leave shall be without pay unless the employer determines otherwise.

21 UNPAID LEAVE

- 21.1 If an educator has utilised all her or his accrued annual leave, the Head of Department may grant her or him unpaid leave up to a maximum of 184 consecutive days.
- 21.2 Absences from work due to arrest, imprisonment or appearance in court on a criminal charge that leads to a conviction must be recorded as unpaid leave.

22 UNPAID LEAVE FOR CONTINUITY OF SERVICE

- 22.1 Unpaid leave for a maximum of 120 consecutive days may be granted to an institution-based educator who was previously employed as an institution-based educator by the same or another education department for the purpose of retaining the continuity of the educator's service.
- 22.2 The unpaid leave shall commence on the day immediately following the date on which the educator last received salary from his or her previous employer and shall expire on the day preceding the date of assumption of duty with the present employer.
- 22.3 The limitation of 120 days referred to in sub-paragraph 22.1 shall not apply to an educator in cases where the period concerned extends from the day immediately following the last day of a term to the day immediately preceding the first day of the term after a full term has elapsed.
- 22.4 Where unpaid leave for continuity of service has been granted to an educator, the service of the educator is regarded as continuous for all purposes of determining his or her period of service.
-