

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



## **COLLECTIVE AGREEMENT 4 OF 2018**

**25 SEPTEMBER 2018**

### **THE APPOINTMENT AND CONVERSION OF TEMPORARY EDUCATORS TO POSTS ON THE EDUCATOR ESTABLISHMENT**

  
H.M

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COLLECTIVE AGREEMENT NO 4 OF 2018**

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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 of temporary educators; and
- 1.3. regulate the conversion of temporary educators to permanent educators.

**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 Trade Unions in the Education Sector; 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. ILO Convention 158 of 1998 of the International Labour Organisation (ILO) provides that adequate safeguards must 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.
- 3.2. Section 186 (b) of the LRA defines a dismissal to include the situation where an employee employed in terms of a fixed-term contract of employment reasonably expected the employer:
  - 3.2.1. to renew a fixed-term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or
  - 3.2.2. to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed-term

contract, but the employer offered to retain the employee on less favourable terms or did not offer to retain the employee.

**3.3. The provisions of Chapter 3 of the Employment of Educators Act and in particular the following:**

**3.3.1.** 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.

**3.3.2.** 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.

**3.3.3.** 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.

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

**4.1. The Appointment and Conversion of Temporary Educators**

Annexure A sets out:

**4.1.1.** the procedures for appointing temporary educators to a funded, substantive and vacant level 1 post at a public school;

**4.1.2.** justifiable reasons for the appointment of a temporary educator;

**4.1.3.** factors to be considered when deciding whether a temporary educator had a reasonable expectation as contemplated in section 186(1)(b) of the LRA; and

**4.1.4.** the requirements, eligibility, procedures and other provisions relating to the conversion of temporary educators.

**4.2. Amendment of PAM**

The parties request the Minister of Education to amend Chapter B of the PAM by including the provisions of this agreement into the PAM.

#### 4.3. Status of Provincial Collective Agreements

This national agreement shall take precedence over all existing provincial agreements regulating the appointment and conversion of temporary educators except where the provisions in existing provincial agreements provide for more favourable conditions to those contained in this national collective agreement.

#### 4.4. 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.

#### 4.5. Date of Implementation

This agreement will come into effect on date of signing.

#### 4.6. General

4.6.1. 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.

4.6.2. 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.

#### 4.7. Interpretation

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

4.7.1. the constitutional right to fair labour practices;

4.7.2. the objects and applicable provisions of the Employment of Educators Act and the PAM;

4.7.3. the promotion of quality teaching and learning at public schools; and

4.7.4. the objects of this agreement.

#### 4.8. Definitions

Unless the context indicates otherwise—


- 4.8.1. terms defined in the Employment of Educators Act and the LRA have the meaning assigned to them in those statutes;
- 4.8.2. the following terms will have the meaning assigned to them below and similar expressions of the term will have a corresponding meaning—
- 4.8.2.1. "**Council**" means the Education Labour Relations Council;
- 4.8.2.2. "**department**" means a department responsible for education in a province;
- 4.8.2.3. "**educator establishment**" means the establishment contemplated in section 5 (1)(b) of the Employment of Educators Act;
- 4.8.2.4. "**Employment of Educators Act**" means the Employment of Educators Act 76 of 1998, as amended;
- 4.8.2.5. "**first-time applicant**" means an applicant contemplated in section 6A of the Employment of Educators Act;
- 4.8.2.6. "**LRA**" means the Labour Relations Act 66 of 1995, as amended;
- 4.8.2.7. "**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);
- 4.8.2.8. "**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;
- 4.8.2.9. "**temporary educator**" means an educator contemplated in paragraph 1.1 who is appointed 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 retirement age; and

4.8.2.10. "this agreement" means this collective agreement and include its annexure.



### SIGNATURES OF THE PARTIES

Thus done and signed at Centurion on the 25 day of September 2018 by:

### ON BEHALF OF THE STATE AS EMPLOYER

DEPARTMENT	NAME	SIGNATURE
BASIC EDUCATION	H.M. MUNEI	

### ON BEHALF OF THE EMPLOYEE PARTIES

TRADE UNION	NAME	SIGNATURE
SADTU	MUGWENA MALULEKE	
CTU-ATU	JC KLOPPER	

## ANNEXURE A

### 1. THE PROCEDURES FOR THE APPOINTMENT OF TEMPORARY EDUCATORS

1.1. If a funded, substantive and vacant level 1 post needs to be filled urgently, then:

1.1.1. The school principal must obtain from the department's database the names of the following educators who are qualified and able to fill the post:

1.1.1.1. first-time applicants to whom the employer has a contractual obligation to appoint in terms of the bursary awarded to the applicant and who could act in the post;

1.1.1.2. any other first-time applicants; and

1.1.1.3. qualified unemployed educators.

1.1.2. Preference must be given to the educator in the order set out in paragraph 1.1.1 of Annexure A.

### 2. JUSTIFIABLE REASONS FOR THE APPOINTMENT OF TEMPORARY EDUCATORS

2.1. The employer may employ an educator in a temporary capacity if—

2.1.1. a temporary appointment is authorised or required by the Employment of Educators Act;

2.1.2. the work for which the educator is employed is of a limited or definite duration; or

2.1.3. there is any other justifiable reason for fixing the term of the employment contract.

2.2. A justifiable reason for employing an educator in a temporary capacity includes, but is not limited to, the following—

2.2.1. the educator substitutes another educator who is temporarily absent from work;

2.2.2. the educator is employed on account of a temporary increase in the volume of work, which is not expected to endure beyond 12 months;

- 2.2.3. the educator is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter the teaching profession;
- 2.2.4. the educator is employed to work exclusively on a specific project that has a limited or defined duration;
- 2.2.5. the educator is neither a South African citizen nor a permanent resident and has been granted a work permit for a defined period;
- 2.2.6. the educator is employed in a position which is funded by an external source for a limited period; or
- 2.2.7. the educator has reached the retirement age.

### 3. RELEVANT FACTORS TO DETERMINE A REASONABLE EXPECTATION

In any dispute concerning whether an educator had an objectively reasonable expectation as contemplated in section 186 (1)(b) of the LRA, a person determining the dispute must take into account all relevant factors, including:

- 3.1. the purpose of and reason for the temporary contract;
- 3.2. the provisions of the employment contract and any other agreements;
- 3.3. the conduct of the employer, including whether the employer has acted consistently, the nature of any undertakings by the employer and whether the undertakings were given by a person with the requisite authority;
- 3.4. the law, practice or custom relating to the renewal of temporary contracts or the conversion of temporary contracts to permanent ones;
- 3.5. the extent to which there have been repeated renewals;
- 3.6. the availability of a post on the educator establishment;
- 3.7. the rights and entitlements of the governing body of the public school;
- 3.8. the public interest; and
- 3.9. the nature and scale of undertaking the provision of public schooling.



#### 4. THE CONVERSION OF TEMPORARY EDUCATORS TO PERMANENT EDUCATORS

##### 4.1. Application

This paragraph applies to temporary educators who are appointed on a fixed-term contract to a funded, substantive and vacant level 1 post at a public school that is on the approved educator establishment. It does **not** apply to temporary educators who substitute permanent educators who are, for whatever reason, absent from their posts.

##### 4.2. Eligibility for Conversion

4.2.1. A temporary educator may only be appointed permanently to funded, substantive and vacant level 1 post at a public school which is on the approved educator establishment if:

4.2.1.1. the temporary educator has been employed in a temporary capacity for a continuous period of at least three months at the time of conversion;

4.2.1.2. the temporary educator qualifies for the post in question;

4.2.1.3. the temporary educator is registered with South African Council of Educators (SACE); and

4.2.1.4. the temporary educator is a citizen or permanent resident of South Africa and is a fit and proper person as contemplated in the Immigration Act 13 of 2002, as amended and section 10 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as amended.

##### 4.3. Requirements

4.3.1. A temporary educator may only be appointed permanently to a funded, substantive and vacant level 1 post at a public school which is on the approved educator establishment.

4.3.2. A temporary educator may only be appointed permanently to such a post if the post cannot be filled by a:

4.3.2.1. permanent educator who qualifies for the post and who is in addition of the educator establishment;

- 4.3.2.2. first-time applicant to whom the employer has a contractual obligation to appoint in terms of the bursary awarded to the applicant; or
- 4.3.2.3. any other first-time applicant; and
- 4.3.2.4. the temporary educator is not excluded in terms of the provisions of paragraphs 4.3.3 to 4.3.5 of this Annexure.
- 4.3.3. The conversion of temporary educator to a permanent educator may be refused if:
- 4.3.3.1. the conversion would result in a contravention of the principles of equity, redress and representivity and the democratic values and principles referred to in section 7(1) of the Employment of Educators Act;
- 4.3.3.2. the Head of Department decides to follow the normal recruitment and selection processes;
- 4.3.3.3. the temporary educator's appointment was because of a temporary increase in the volume of work which is not expected to endure beyond 12 months; and
- 4.3.3.4. the procedures specified below have not been complied with.
- 4.3.4. Unless the Head of Department determines otherwise, a temporary educator may not be converted to a permanent educator if the temporary educator was previously 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.
- 4.3.5. The department may refuse to consider the conversion of a temporary educator to a permanent educator during the 90-day period following the department's determination of the educator establishment of public schools.
- 4.4. **Conversion Procedures**
- 4.4.1. The following procedure must be followed with regard to the conversion of a temporary educator to a permanent educator.

4.4.2. The school principal must submit in writing to the department's district office:

4.4.2.1. the profile of the funded, substantive and vacant level 1 post at the school which is occupied by a temporary educator who qualifies for conversion; and

4.4.2.2. all relevant information showing that the temporary educator qualifies for conversion.

4.4.3. The school principal and the governing body must submit written confirmation to the department's district office that there are no educators referred to in paragraph 4.3.2 of Annexure A who could be appointed to that post.

4.4.4. The department must then consider the conversion.

#### 4.5. **Non-favourable Treatment**

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.

#### 4.6. **General**

4.6.1. The normal 12-month probationary period applies to a temporary educator who is converted to a permanent educator.

4.6.2. A first-time applicant for permanent appointment does not lose the status of a first-time applicant because he or she had been employed as a temporary educator.

4.6.3. Temporary educators whose contracts have not expired as at the date of implementation of this agreement shall be considered for conversion to permanent educators in terms of this agreement.



