



## DISMISSAL A LIFETIME SANCTION?

The Employment of Educators Act, 1998, deals amongst other matters, with misconduct, i.e:

- Section 17 deals with serious types of misconduct for which educators must be dismissed if found guilty.
- Section 18 deals with misconduct of which educators can be dismissed if the misconduct destroyed the employment relationship.

On 9 April 2021 the Department of Basic Education published a new schedule on preventing the re-employment of former educators discharged or deemed discharged for misconduct.

The purpose of the schedule is to regulate the period of prevention of re-employment of former educators dismissed or deemed dismissed for misconduct or deemed resigned and to provide for a procedure for the re-employment of these educators.

An educator appointed in a permanent capacity, who is absent from work for a period exceeding 14 consecutive days without permission of the employer, will be deemed to be discharged and will be prohibited from reappointment for a period of one (1) year after being discharged.

If the name of an educator is struck off the register of educators kept by the South African Council for Educators (SACE), the educator will be deemed to have resigned and will be prevented from being registered and re-appointed for a period of one (1) year after the discharge.

Any person found guilty of sexual offences against children and/or mentally disabled people (and his/her name appears on the National Child Protection Register and the National Register for Sex Offenders) will be prevented for employment in education until removal from the registers held by

## ONTSLAG 'N LEWENSLANGE SANKSIE?

Die Wet op Indiensneming van Opvoeders, 1998, bevat onder meer artikels wat oor wangedrag handel, nl:

- Artikel 17 handel oor ernstige vorme van wangedrag ingevolge waarvan opvoeders ontslaan moet word met skuldigbevinding.
- Artikel 18 handel oor wangedrag waarvolgens opvoeders ontslaan kan word indien die wangedrag die diensverhouding tussen die werknemer en die werkgever tot niet gegaan het.

Op 9 April 2021 het die Departement van Basiese Onderwys 'n nuwe skedule gepubliseer wat 'n verbod plaas op die herindiensneming van opvoeders wat voorheen ontslaan is of as ontslaan beskou word weens wangedrag.

Die skedule het ten doel om die tydperk van verbod op herindiensneming te reguleer en om voorsiening te maak vir 'n prosedure om hierdie opvoeders in diens te neem.

'n Opvoeder wat in 'n permanente hoedanigheid aangestel is en sonder toestemming van die werkgever vir langer as 14 aaneenlopende dae van die werk afwesig is, word geag ontslaan te wees. 'n Verbod op heraanstelling vir 'n periode van een (1) jaar is van toepassing op hierdie opvoeders.

Skrapping van 'n opvoeder se naam uit die register van opvoeders wat deur die Suid-Afrikaanse Raad vir Opvoeders (SARO) gehou word, word geag dat die opvoeder bedank het en sal die heraanstelling van hierdie opvoeders vir 'n tydperk van een (1) jaar verbied word onderhewig aan SARO herregistrasie.

Enige persoon wat skuldig is aan seksuele misdrywe teen kinders en/of verstandelik gestremde persone (indien sy/haar naam in die Nasionale Register vir Kinderbeskermingsregister en die Nasionale Register

the Department of Social Development and Department of Justice respectively.

Former educators discharged for misconduct relating to the following misconduct will be permanently prohibited from being re-appointed:

- Sexual relationship with a pupil;
- Sexual harassment involving learners;
- Serious or sexual assault of a student or other educator;
- Illegal possession of an intoxicating, illegal or stupefying substance; and
- A guilty finding in court of murder rape, indecent assault or assault with the intent to do grievous bodily harm or attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm.

Former educators discharged for misconduct relating to the following, will be prohibited from being re-appointed for a period of five (5) years after the discharged:

- In the course of duty endangers the life of the educator him-/herself or others by disregarding set safety rules or regulations;
- Misuses his/her position as educator in the department, school or adult learning centre to promote or to prejudice the interest of any person;
- Assault, or attempts to or threatens to assault another employee or another person;
- Incites other personnel to unprocedural and unlawful conduct;
- Bribery: including examination related acts,
- Accept compensation in cash or otherwise from a member of the public or another employer to perform duties without the written approval of the employer,
- Without permission of the employer perform work for compensation for another person or organisation either during or outside working hours;
- Carries or keep a firearm or other dangerous weapon at or on state premises without the written authorisation of the employer;
- Commits acts of dishonesty including the forgery of documents;
- Commits a common law or statutory offence;
- Victimises an employee for, amongst others, his or her association with a trade union.

Former educators discharged for misconduct relating to the following misconduct will be prohibited from

vir Seksmisdadigers verskyn) sal nie in diens geneem kan word nie totdat hul name verwyder is uit die registers wat deur die Departement van Maatskaplike Ontwikkeling of Departement van Justisie onderskeidelik gehou word .

Voormalige opvoeders wat ontslaan is weens die volgende vorme van wangedrag, se herindiensname sal permanent verbied word:

- Seksuele verhouding met 'n leerder;
- Seksuele teistering waarby leerders betrokke is,
- Ernstige of seksuele aanranding van 'n leerder of ander opvoeder,
- Onwettige besit van 'n onwettige dwelmmiddel; en
- 'n Skuldigbevinding deur die hof vir moord, verkragting, onsedelike aanranding of aanranding met die doel om ernstig te beseer of poging tot moord, verkragting, onsedelike aanranding of aanranding met die doel om ernstig te beseer.

'n Verbod op heraanstelling vir 'n tydperk van vyf (5) jaar, indien 'n opvoeder ontslaan word weens wangedrag met betrekking tot die volgende:

- In die uitvoering van pligte die eie lewe of die van ander in gevaar stel deur die vasgestelde reëls of regulasies te verontagsaam;
- Misbruik van sy / haar posisie as opvoeder in die departement van onderwys, skool of volwasse leersentrum om die belange van enige persoon te bevorder of te benadeel;
- Aanranding, poging tot aanranding of dreig met aanranding van 'n ander werknemer of 'n ander persoon;
- Aanhitsing tot onprosedurele en onwettige optrede van ander personeel;
- Omkoperij: insluitende eksamenverwante optrede;
- Kontant of andersins vergoeding aanvaar van 'n lid van die publiek of 'n ander werkgewer vir die uitvoering van pligte sonder skriftelike goedkeuring van die werkgewer,
- Sonder toestemming van die werkgewer gedurende of buite werksure, teen vergoeding, werk vir 'n ander persoon of organisasie verrig;
- Die dra of besit van 'n vuurwapen of ander gevaarlike wapens op die perseel van die staat sonder skriftelike toestemming van die werkgewer;
- Dade van oneerlikheid, insluitend vervalste dokumente;

being re-appointed for a period of four (4) years after being discharged:

- Sexual harassment of another employee;
- Unfair discrimination on a ground as listed in the Constitution.

Former educators discharged for misconduct relating to the following misconduct will be prohibited from being re-appointed for a period of three (3) years after being discharged:

- Mismanagement of school finances and damaging school property, including negligence;
- Unjustifiably prejudicing the administration, discipline or efficiency of the department, an office of the state, a school or adult learning centre;
- Without prior permission of the employer, to accept or demand in respect of the carrying out of or the failure to carry out the educator's duties, any commission, fee, pecuniary or other reward to which the educator is not entitled by virtue of the educator's office, or fails to report to the employer the offer of any such commission, fee or reward;
- While on duty being under the influence of an intoxicating, illegal, unauthorised or stupefying substance, including alcohol;
- Displaying disrespect towards others in the workplace or demonstrating abusive or insolent behaviour;
- Intimidating or victimising fellow employees, learners or students;
- Giving of false statements or evidence in the execution of his or her duties;
- Operating of any money-lending scheme for employees during working hours or from the premises of the educational institution or office where employed.

Former educators discharged for misconduct relating to the following misconduct will be prohibited from being re-appointed for a period of one (1) year after the discharge:

- Wrongful use the property of the state, a school, an adult learning centre, another employee or a visitor without the permission of the employer
- Fail to carry out a lawful order or routine instruction without just or reasonable cause;
- While on duty conducts him/herself in an improper, disgraceful or unacceptable manner;

- Pleeg van 'n gemeenregtelike of onwettige oortreding;
- Viktimisasie van 'n werknemer vir onder andere sy of haar verbintenis met 'n vakbond.

'n Verbod van vier (4) jaar op die herindiensneming van opvoeders wat skuldig bevind is op een van die volgende:

- Seksuele teistering van 'n ander werknemer;
- Onbillike diskriminasie op grond van een van die gelyste gronde soos vervat in die Grondwet.

Voormalige opvoeders wat ontslaan is weens die volgende vorme van wangedrag, word verbied om heraaangestel te word vir 'n tydperk van drie (3) jaar na ontslag:

- Wanbestuur van skoolfinansies en beskadiging van skoleiendom, insluitend nalatigheid;
- Die administrasie, dissipline of doeltreffendheid van die departement, 'n kantoor van die staat of 'n skool- of volwasse leersentrum onregverdig te benadeel;
- Sonder voorafgaande toestemming van die werkgewer, aanvaar of eis ten opsigte van die uitvoering of versuim om die pligte van die opvoeder uit te voer, enige kommissie, fooi, geldelike of ander beloning waarop die opvoeder nie geregtig is nie, of versuim om die aanbod van sukkelende kommissie, fooi of beloning aan die werkgewer te rapporteer;
- Terwyl aan diens, onder die invloed van 'n dwelmmiddel, onwettige, ongemagtigde middel, insluitend alkohol, is;
- Minagting toon teenoor ander in die werkplek of beledigende of onbeskofte gedrag openbaar;
- Intimidasie of viktimisasie van mede-werknemers, leerders of studente;
- Lewering van vals verklarings of getuienis tydens die uitvoering van sy of haar pligte;
- Bedryf van enige geldleningskema vir werknemers gedurende werksure of vanaf die perseel van die onderwysinstelling of kantoor waar werksaam is.

Voormalige opvoeders wat ontslaan word weens die volgende vorme van wangedrag, word verbied om vir 'n tydperk van een (1) jaar nadat hulle ontslaan is, weer aangestel te word:

- Onbehoorlike gebruik van die eiendom van die staat, 'n skool, 'n sentrum vir volwassenes, 'n ander werknemer of 'n besoeker sonder die toestemming van die werkgewer;

- Preventing other employees from exercising their rights to freely associate with trade unions in terms of any labour legislation;
- Refusing to obey security regulations;
- Participating in unprocedural, unprotected and unlawful industrial action;
- Failure or refusal to follow a formal programme of counselling as a sanction after an incapacity of poor work performance meeting;
- failure or refusal to be subjected to a medical examination as a procedure for ill health or injury;
- failure or refusal to attend rehabilitation or follow a formal rehabilitation programme as a procedure for ill health or injury.
- Sleeping on duty without authorisation;
- Absent from work without a valid reason or permission;
- Poor or inadequate performance for reasons other than incapacity.

#### APPLICATION FOR RE-EMPLOYMENT

When a discharged educator applies for reemployment, intends to apply or is an applicant for a post, the following documents must be attached:

- Discharge or resignation letter
- Proof of reregistration with SACE;
- Letter confirming the applicant's name does not appear in Part B of the Register administered by the Department of Social Development; and
- Clearance certificate from the Registrar referred to in the Criminal Law (Sexual offences and Related matters) amendment Act, 32 of 2007.

- Versuim om 'n wettige opdrag of roetine-opdrag uit te voer sonder 'n redelike rede;
- Terwyl aan diens op 'n onbehoorlike, skandelige of onaanvaarbare manier op te tree;
- Voorkom dat ander werknemers hul regte uitoefen om vryelik met vakbonde om te gaan ingevolge enige arbeidswetgewing;
- Weiering om veiligheidsvoorskrifte te gehoorsaam;
- Deelname aan onprosedurele, onbeskermd of onwettige industriële optrede;
- Versuim of weiering om 'n formele beradingsprogram as 'n sanksie te volg na afloop van 'n ongeskiktheids- of swak werkverrigtingsvergadering;
- Versuim of weier om hom / haar aan 'n mediese ondersoek te onderwerp as 'n prosedure vir swak gesondheid of besering;
- Versuim of weiering om rehabilitasiesentrum by te woon of 'n formele rehabilitasieprogram te volg as 'n prosedure vir swak gesondheid of besering;
- Sonder toestemming aan diens slaap;
- Afwesig van die werk sonder 'n geldige rede of toestemming;
- Swak of onvoldoende prestasie om ander redes as ongeskiktheid.

#### AANSOEK OM HERDIENSNEMING

Wanneer 'n opvoeder wat ontslaan is, aansoek doen vir herindiensneming, beplan om aansoek te doen of aansoek doen vir 'n pos, moet die volgende dokumente aangeheg word:

- Ontslag- of bedankingsbrief;
- Bewys van herregistrasie by SARO;
- Brief wat bevestig dat die naam van die aansoeker nie in Deel B van die Register wat deur die Departement van Maatskaplike Ontwikkeling geadministreer word, verskyn nie; en
- Klaringsertifikaat van die Registrateur waarna verwys word in die Strafreg Wysigingswet 32 van 2007 (Seksuele misdrywe en Verwante aangeleenthede).

