

Understanding School Governance

Manual 7

The School as Employer



DEPARTMENT OF EDUCATION AND CULTURE
UMNYANGO WEMFUNDO NAMASIKO
DEPARTEMENT VAN ONDERWYS EN KULTUUR



PROVINCE OF KWAZULU-NATAL
ISIFUNDAZWE SAKWAZULU-NATAL
PROVINSIE KWAZULU-NATAL

Materials developed by the Media in Education Trust (MiET) for the KwaZulu-Natal Department of Education and Culture, under a subcontract with Aurora Associates International, Inc., Washington, D.C., for the U.S. Agency for International Development.

This Manual was compiled and published for the KwaZulu-Natal Department of Education by a team that included: Dr M L tter, Department of Education; Mr C Waddy, Education Consultant; Mr S Naicker, Education Consultant; and Mr F Goolam, USAID/South Africa.

Material may be reproduced if full credit is given.

This manual is based on an earlier version produced by the School Governance Unit, KwaZulu-Natal Department of Education and Culture.

Edited by:	K Jones
Translated by:	S Ngubane and L. Makhubu (isiZulu) L Venter (Afrikaans)
Illustrations:	L Sak
Design:	C vd Merwe & J Nicholson
DTP:	C vd Merwe



This publication was made possible through support provided by the U.S. Agency for International Development, under the terms of Contract No. 674-I-00-00-00007-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development.

CONTENTS

	Page
Glossary: The meaning of some words used in this manual	1
Introduction to the manuals	2
1. Introduction to human resource and labour issues	5
1.1 Defining an employer	6
1.2 Defining an employee	6
1.3 Employees of the governing body	6
1.4 An employer-employee relationship	6
2. Employing staff	7
2.1 Procedures for employing new staff	7
2.2 A staff selection committee	8
2.3 Reasons for appointing a new person	8
2.4 Matching a post to a person	9
3. Recruiting and selecting applicants	11
3.1 Procedure for recruiting applicants	11
3.2 Drawing up an advertisement	12
3.3 Selecting applicants	12
3.4 Checking the applications	13
3.5 Acknowledging receipt of applications	13
3.6 Reviewing the covering letter	14
3.7 Assessing curriculum vitae	15
3.8 Checking with referees	17
3.9 Shortlisting applicants	18
4. Interviewing the applicants	19
4.1 Interviews	19
4.2 When and where to interview	20
4.3 Preparing interview questions	20
4.4 Rating applicants	22
4.5 Choosing the successful applicant	22
5. Appointing new staff	23
5.1 Informing the successful applicant	23
5.2 Contract of employment	24
5.3 Writing an employee's contract	25
5.4 Different types of employment contracts	27
5.5 Induction	28
5.6 Inducting a new employee	29
5.7 Job description	30
5.8 Appraisal	32
5.9 Doing an appraisal	32
6. Labour Law	35
Points from:	
6.1 The Constitution and the Bill of Rights	35

6.2	Labour Relations Act	36
6.3	South African Schools Act. No. 86 of 1996 (as amended by the Education Laws Amendment Act No.100 of 1997 and Education Laws Amendment Act No. 48 of 1999)	37
6.4	Employment Equity Act	38
6.5	Basic Conditions of Employment Act	38
6.6	Skills Development Act	39
6.7	Skills Development Levies Act	39
6.8	Compensation for Occupational Injuries and Diseases Act	39
6.9	Unemployment Insurance Act 30 of 1966	40
7.	Duties of an employer	41
7.1	Duty to pay a wage or salary	41
7.2	Employee s tax	42
7.3	Pay as You Earn (P.A.Y.E)	42
7.4	Standard Income Tax on Employees (SITE)	43
7.5	Registering and collecting employee s tax	43
7.6	Remuneration	44
7.7	Taxable benefits	44
7.8	Calculating employee s tax	45
7.9	Paying employee s tax to SARS	45
7.10	Records of employee s tax	46
7.11	IRP 5 certificates	46
7.12	Preparing IRP5 certificates	47
7.13	Reconciling taxes	47
7.14	Unemployment Insurance Fund	48
7.15	Compensation Fund	48
7.16	Registering with the Compensation Fund	49
7.17	Skills Development Levy	49
7.18	Regional Services Levy	50
8.	Basic Rights of employees	51
8.1	Remuneration	51
8.2	Working only prescribed hours	52
8.3	Annual leave	53
8.4	Sick leave	53
8.5	Maternity leave and protection of mothers	53
8.6	Remuneration during maternity leave	54
8.7	Family responsibility leave	54
8.8	Prescribed days off	54
8.9	Termination of employment	55
8.10	Payments on termination	55
8.11	Freedom of association	55
8.12	Fair labour practices	56
8.13	Not to be unfairly dismissed	56
8.14	Certificate of service	56
8.15	Strike action	57
9.	Duties of employees	59
9.1	Discipline, good faith and the right to be controlled	59
9.2	Disciplinary code	60
9.3	Breach of good faith	60
9.4	Disciplining employees	61

10.	Dismissals	63
10.1	Dismissals according to the law	63
10.2	Automatically unfair dismissals	63
10.3	Fair dismissals	64
10.4	Substantive fairness of a dismissal	64
10.5	Fair procedure	64
10.6	Dismissal for operational reasons	65
10.7	Dismissal for incapacity	65
11.	Dealing with misconduct	67
11.1	Dismissing an employee for misconduct	67
11.2	Fair procedure for misconduct	68
12.	Example: Letter of appointment	69
13.	Example: Employment contract	70
Activities		74
Suggested answers		80
Index		



**A comprehensive index can be
found at the back of this manual.**

Glossary:

The meaning of some of the words used in this manual

Appraisal is the ongoing evaluation or assessment of the performance of an employee.

Contract of legal agreement between an employer and an employee.

The document that gives an employee's personal and work history. Commonly referred to as 'CV'.

Termination of a contract of employment with or without notice.

Person who works for another person for remuneration.

The tax on remuneration received that is payable to the South African Revenue Services.

The person who receives another person's service in exchange for remuneration.

The process of introducing the new employee to his or her duties and the working environment.

The school (as a juristic person) is the employer and the school governing body is its employing agent. The use of the terms school and school governing body is used in this context in this manual.

Labour Relations Act No.66 of 1995.

The process of attracting people to apply for a vacant position.

People who are prepared to support an applicant for a post and are able to comment on the applicant's suitability for the post.

The total payment received for services; includes wages/ salaries and other benefits.

The South African Revenue Services.

The process of going through all the applications for a vacant post and making a decision as to who will fill it.

Appraisal

Contract of employment

Curriculum vitae

Dismissal

Employee

Employee's tax

Employer

Induction

Juristic Person

LRA

Recruitment

Referee

Remuneration

SARS

Selection

INTRODUCTION TO THE MANUALS

What are these manuals for?

This series of manuals has been designed to help school governing bodies in their task of overseeing the governance of schools. The manuals give an overview of the main issues that all school governing bodies need to understand and put into practice in order to be effective.

The manuals are an accessible training and reference guide for governing bodies. They explain the key requirements of National and Provincial legislation, and some of the practicalities of putting them into practice.

These manuals replace earlier manuals produced by the KwaZulu-Natal Department of Education and Culture soon after the South African Schools Act of 1996 required all public schools to form governing bodies.

The Manuals

Manual 1:

Each manual deals with specific issues in school governance.

Manual 2:

Introduction to School Governance

Manual 3:

School Governing Body Elections

Manual 4:

Conducting Meetings and Keeping Records

Manual 5:

School Fund: Departmental Regulations

Manual 6:

Basic Financial Systems for Schools (Training manual)

Manual 7:

Discipline and Codes of Conduct for Learners

The School as Employer

Manual 7:

School as Employer

This manual offers guidance to a school that wishes to employ staff over and above those that are employed by the Department of Education and Culture. The manual gives an introduction to human resource management and to the requirements of labour law.

Human resource management is an important aspect of the governing body's responsibility as an employer. Governing bodies as employing agents of the school are guided in the recruitment, selection and appointment process, and in what systems need to be in place once staff have been appointed. The manual also covers the requirements of South African labour law. As an employer a school must be aware of the various labour laws that have implications on all its actions towards an employee. Failure to comply with the laws could prove to be costly as many employees are aware of their rights and may take legal action against an employer. With this understanding, a school should be able to promote labour peace and ensure that its actions are within the law.

How to use these manuals

As a reference tool

The manuals are designed to be an accessible reference for members of governing bodies. They have been written and designed so that citizens who are not experts, but who play a role in school governance can have their questions answered in a way that is easy to understand, and is applicable to their own situations.

Wherever possible, the approach that has been used features:

- non-technical language;
- a 'frequently asked questions' approach;
- brief and straight-forward answers;
- references throughout the text to legislation which applies to particular issues;
- additional information and examples that will assist you to apply the information;
- exercises which can be used by individuals or governing bodies to help consolidate information;
- format and templates to help in carrying out various tasks;
- a comprehensive index.

The approach in these manuals is specifically designed to help with immediate queries and to allow members to become familiar with governing body issues. For technical and legal matters it is essential that the manuals be read in conjunction with the relevant legislation, most of which can be found in the two volumes making up the 'Operations manual for Kwazulu-Natal schools' which is available in all schools.

As a training tool

The exercises at the back of this manual are designed to be used for training of new governing bodies and new members of governing bodies. Members can work through the exercises on their own, or as a group. Even members of governing bodies who are familiar with the information may find the exercises useful. Some of them are based on case study examples or areas where there is often confusion or difficulty with putting the legislation and regulations into practice.

As a reference tool

As a training tool

In this column you will find additional information in boxes. The boxes for different kinds of information look different from each other. They are explained on this page.



How is this manual designed?

This manual is designed in the same way as this page. A question which is often asked by members of school governing bodies is given. The question is answered directly below it. The answers are as brief and direct as possible. They usually explain what is required by law in a way that is easier to understand than the legislation itself.

Where there is information that is regulated by legislation, you will see a box like this.



This box will tell you where to find more information in another manual or part of this manual.

eg

This box will give examples.



This box will give you the definition or meaning of a word or concept.



The information in this box is an exception to the rule or a special case.



If there is more detailed information about how to do something it will be in a 'how to' box.



The information in this box is something that you should take particular note of.

1

INTRODUCTION TO HUMAN RESOURCE AND LABOUR ISSUES

Today most leaders and managers recognise that an organisation's people, its human resources, are its most important assets. Schools are no different from other organisations when it comes to human resources.

The cost of attracting and developing the right people is very high. It is therefore important for schools to apply their minds very carefully when employing staff. If the wrong people are selected, it can become a very costly mistake and labour laws make it very difficult to dismiss an employee without giving fair reasons.

The education department employs staff to run schools. But there may be some situations where the school may find that they are short of staff members (human resources) to carry out certain of the functions. In this case the school, through its employing agent the governing body, can employ its own staff over and above the staff members employed by the education department. Legislation allows schools to employ additional members of staff. All decisions about employment should be made after carefully analysing the school's staffing requirements and identifying positions that need to be filled. The school will also have to take a close look at its financial position to decide whether it can afford to employ members of staff.

If a governing body as the employing agent of the school, appoints additional members of staff it becomes an employer. The governing body pays these employees; therefore there is an employer-employee relationship between these members of staff and the governing body. As an employer the governing body must be aware of the various labour laws that regulate the employer-employee relationship.

Human resource management is about managing people.



Although the governing body recommends the appointment of State paid educators at the school, it is not the employer. The employer in this instance is the Department of Education and Culture.



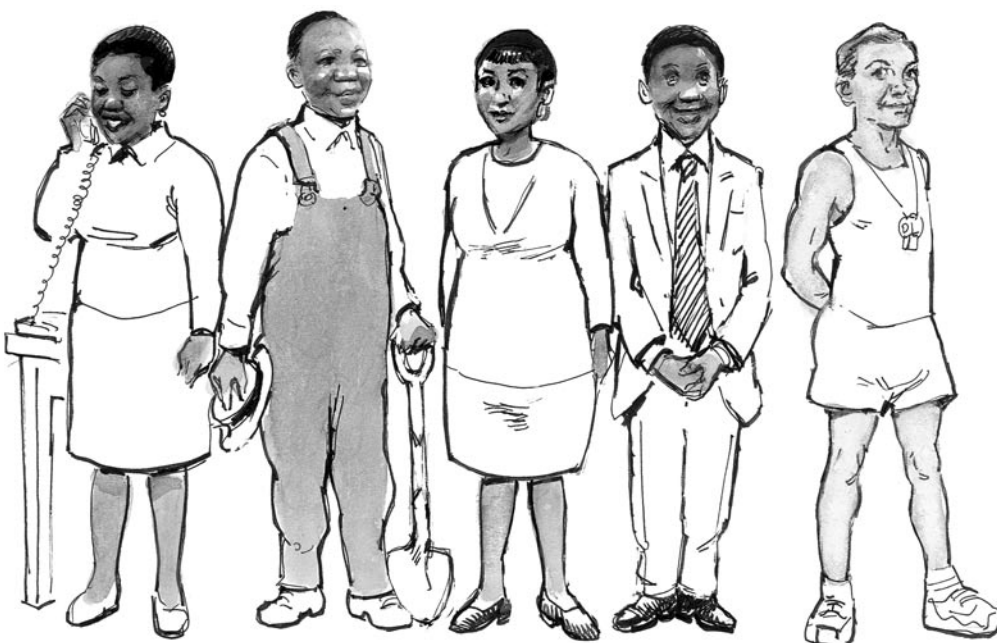
Education Laws Amendment Act 100 of 1997

eg

The school may employ educators, non-educators, such as clerks, secretaries, typists, cleaners, gardeners, sports coaches, or laboratory assistants.



Labour laws are covered in section 6 of this manual.



The school as a juristic person means that the school is capable of entering into legal contracts and can sue or be sued. (SASA, section 15).

Basic Conditions Employment Act No. 75 of 1997, Definitions.



You can read more about the responsibilities of employers and the rights of employees in sections 7 and 8 of this manual.

Personnel: refers to workers, staff members, employees, recruits etc.



See section 6 of this manual.

1.1 Who is an employer?

An employer is any person who receives service from another person and pays or is responsible for that person's remuneration. A representative employer is any public officer (e.g. a principal), administrator or other person who has the authority to pay remuneration on behalf of an employer. The principal may be delegated by the Secretary of Education (the employer of state paid educators to take on the functions of the employer in a school on his or her behalf). The principal may be mandated by the governing body to act as the employer on its behalf.

1.2 Who is an employee?

An employee is any person who works for another person and who receives, or is entitled to receive, remuneration for their work. An employee can also be a person who assists in carrying on or conducting the business of an employer in any way. An independent contractor is not an employee.

1.3 Who does the school employ?

The governing body may employ:

- educators;
- administrative personnel such as clerks, secretaries, typists, receptionists etc.
- security staff;
- cleaning, gardening and maintenance workers;
- sports coaches, laboratory assistants etc.

1.4 What is an employer-employee relationship?

As soon as a governing body enters into a contract of employment with the person concerned (employee) a relationship between the employer (school) and employee comes into effect immediately. This relationship, called the employment relationship, is regulated by various laws that you must be aware of. You can read more about the laws that regulate the employment relationship in this manual.

Many governing bodies will find themselves in a position where they need to manage human resources. This means that they may have to advertise a position, recruit, select and appoint a new staff member. Sections 2 to 5 will assist you with this process.

2.1 How do we go about employing new staff?

The most important thing to remember is that you must follow the correct procedures to ensure that you are open and fair when you employ staff.

You will need to follow a process that has the following steps:

1. Analyse your current staffing (staff employed by the state and by the governing body), and decide whether you have additional staffing needs.
2. Analyse your operational needs.
3. Is there a budget for the post?
4. Plan the recruitment process.
5. Draw up a basic job description for any new staff.
6. Recruit new staff by advertising a position.
7. Select the most appropriate staff by assessing applications and holding interviews.
8. Write a letter of appointment to the successful applicant and letters to the unsuccessful applicants.
9. Draw up a contract.
10. Appoint the new staff members.
11. Induct and mentor the new staff members in their jobs and put into place plans for their development.
12. Keep basic staff records.

Recruitment is the process of acquiring applicants who are available and qualified to fill positions in the school.

Selection is the process of choosing from a group of applicants for a particular position.

Induction refers to process where the new employee is introduced into the organisation and is made aware of the details and requirements of the job.

A **mentor** is a senior or experienced member of staff (ideally someone in a management position for example, a head of department, deputy principal or principal) who provides guidance to a junior employee and helps him or her in his personal and professional development.



If the staff selection committee makes a wise decision the school will benefit. However, if the committee makes a wrong choice the school will suffer.

eg

The members of the staff selection committee could be made up of the following members: a representative from each of the:

- governing body;
- management team;
- relevant curriculum area (for example, Human and Social Sciences);
- parent body;
- union (the governing body has the right to decide whether it wishes to include one or more union representatives as observers).

2.2 What is a staff selection committee?

The governing body should appoint a staff selection committee to take on the responsibility of managing the recruitment and selection process. The staff selection committee is in fact a sub-committee of the governing body. The governing body must appoint one of its members to be the chairperson of the staff selection committee (the principal should be a member of this committee and co-opted members may be included). One person must be appointed as secretary to this sub-committee.

The selection committee must have a clear idea of the post to be filled and the criteria (standards) for finding the best person for the job. It is important that the staff selection committee is representative of the school community. Ideally the committee should consist of no more than five members as too many people could complicate the process.

It is important for each member of the staff selection committee to commit themselves to upholding confidentiality, which means promising not to repeat matters discussed in committee. There may be a need to do this formally by asking each member to sign a declaration of confidentiality.

2.3 Why appoint a new person?

You may have one of two reasons for appointing a new person:

Is it a similar appointment? (replacing a member of staff who has left)

- Do you want to appoint a person similar to the member of staff who has left?
- Do you want to put the job together in a new way? Maybe the school needs a new educator to take extra responsibilities after school hours or an administrative clerk to also maintain the school's financial records.

Is it a new appointment?

- Has the school grown so that it requires new members of staff to help it cope with the increased workload?

2.4 What kind of person are we looking for?

Before you begin the recruitment process you must have an idea of the features of the job that is to be filled:

- What is the job description or what are the key functions that the employee must perform?
- What are the qualities of the person that you are looking for?
- What skills, attitudes, values, knowledge and experience should he or she possess?



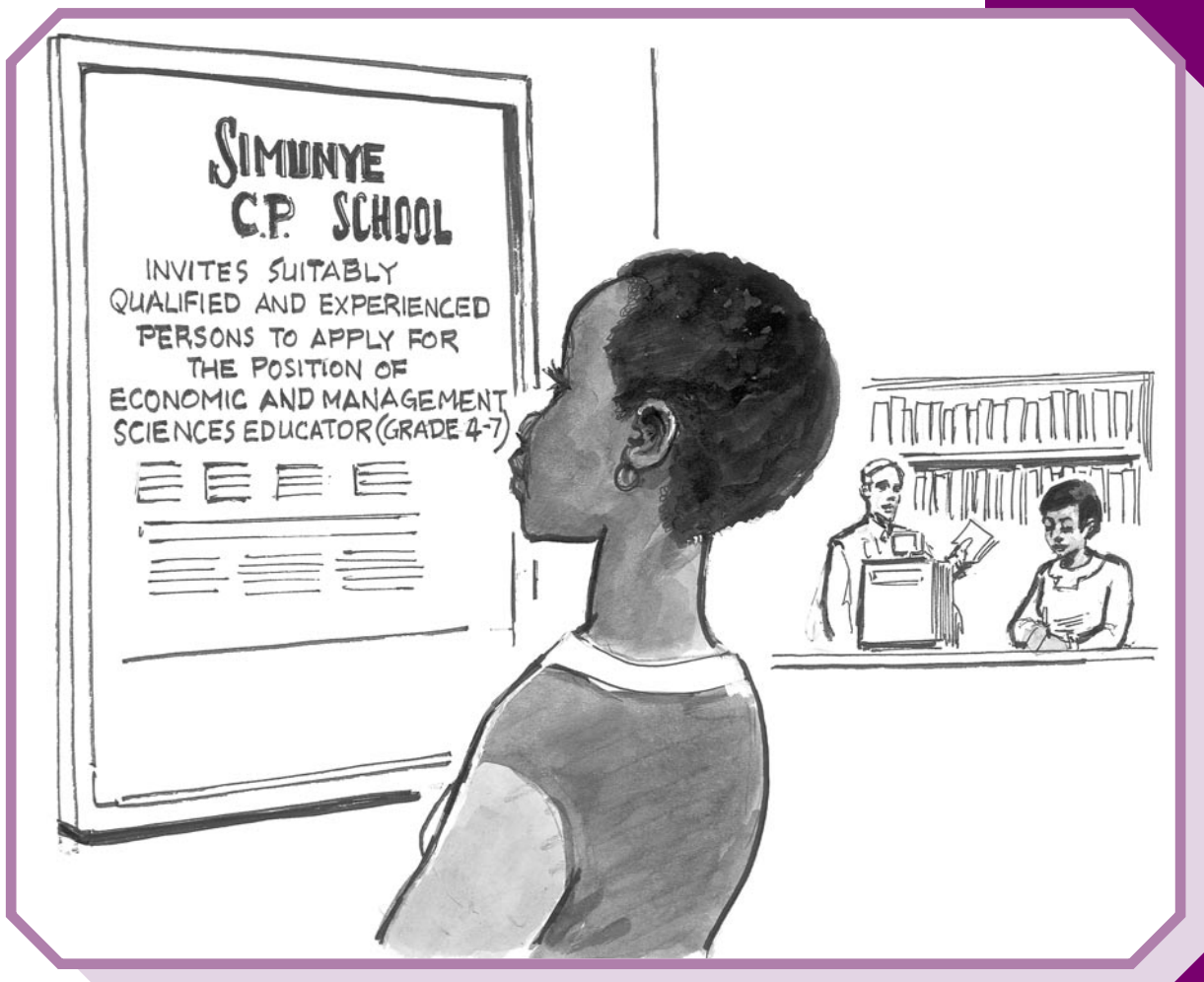
This is discussed in detail in section 5.7 of this manual.

NOTES

3.1 How do we recruit applicants?

After the staff selection committee has decided on the position that is to be filled, the job description and the description of the employee's personal characteristics, you need to recruit potential employees. To do this you may need to:

- draw up an advertisement;
- decide which newspapers to place your advertisements in. You may choose to advertise in local newspapers or national newspapers;
- display the advertisements in community centres, religious centres, local library, shopping centre, union offices etc;
- 'head hunt' which means to ask well known, capable people to apply for the position.





Labour law requires that all recruitment and selection procedures be applied consistently, transparently (openly) and fairly to all job applicants.

3.2 How do we draw up an advertisement for a vacant position?

The advertisement should be clear and specific. It should contain the following information:

- name and address of the school that is advertising the job;
- position that is vacant;
- minimum qualification and experience required;
- procedures to be followed when applying;
- names and contact telephone numbers;
- closing date for applications; and
- starting date for the job.

eg

Simunye C.P.School

invites suitably qualified and experienced persons to apply for the position of **Economics and Management Sciences Educator (grades 4-7)**.

Applicants must enjoy teaching and must be prepared to work hard. Tertiary qualifications in economics and accounting or business economics are required. Competence in curriculum development and computer literacy will be an advantage.

Letters of application, together with detailed curriculum vitae, copies of certificates and the names of two contactable referees must be forwarded to the Chairperson of the Staff Selection Committee, Simunye C.P. School, P.O.Box 999, Richmond, 4780 to reach us on or before 30 March 2001. Enquiries: (033) 2123436 (tel/fax).

3.3 How do we select applicants?

Selecting applicants to shortlist and interview is a difficult process that requires a great deal of planning and preparation. The staff selection committee should meet at least a few days after the closing date to do the following:

- Examine all the documents received.
- Acknowledge receipt of each application.
- Study each letter of application.
- Examine CV's carefully.
- Examine written references. Who are the referees?
- Decide which applications to proceed with.
- Finalise the 'short list'.
- Telephone the referees to confirm their comments.
- Keep the union/s informed (optional).

3.4 What should we look for in the applications?

Check that each application is complete. Does it have the following documents?

- A letter of application.
- A CV with referees.
- Copies of certificates.

If any of the applications are incomplete, the staff selection committee may decide to exclude it from further consideration.

3.5 How do we acknowledge receipt of each application?

The school should write a short letter of acknowledgement to each applicant.



You can read more about letters of application and CVs in sections 3.6 and 3.7 in this manual.



Simunye C.P. School
P.O.Box 999
Richmond
4780.

3 April 2001

Ms P.Zama
23 Princess Street
Richmond
3720

Dear Ms.Zama

Acknowledgement of application

We are writing to acknowledge your application for the position of Economic and Management Sciences Educator at Simunye C.P.School.

We will contact you within two weeks to indicate whether you have been short-listed to be interviewed for the position.

Yours sincerely



J.Ngubane
Chairperson: School Governing Body

3.6 What should we look for in the covering letter?

A covering letter is sometimes called a letter of application.

eg

23 Princess Street
Richmond
4780

10 March 2001

The Chairperson of the Staff Selection Committee
Simunye C.P. School
P.O.Box 999
Richmond, 4780.

Dear Sir/Madam

APPLICATION FOR POSITION AS ECONOMICS AND MANAGEMENT SCIENCES EDUCATOR

I am applying for the above position which was advertised in the Ilanga on 2 March 2001.

As you will see in my curriculum vitae I have served as an educator in Fundakuhle C.P. school as an educator in the senior primary phase where I was responsible for mathematics, economics and management sciences for five years. I have attended all the departmental courses in my learning area and have currently enrolled for a diploma in Outcomes Based Education at UNISA.

The reason that I wish to teach at your school is that I wish to be close to my parents who live in Indaleni. An opportunity to teach at your school will afford me the chance to fulfill my family obligation and at the same allow me to remain in my profession which I love.

I look forward to hearing from you.

Yours sincerely



Ms P. Zama

A good covering letter is one which:

- 'persuades' the school that he or she is the best person for the job;
- is short and does not repeat the information in other documents, for example, the curriculum vitae;
- creates a favourable first impression;
- is well presented; and
- has no mistakes.

You could ask the following questions to help you assess the covering letter:

- Is the letter persuasive enough?
- Does the applicant really want the job?
- Is the letter well presented?
- What does the letter say about the applicant?
- Does the covering letter suggest that the applicant meets the requirements for the post?
- What impression does the covering letter create?

3.7 How should we assess curriculum vitae?

Examine all the CV's carefully and check that the contents are valid. This means that you should check if the information is accurate and true. The following questions may help you to do this:

- Are the applicant's educational qualifications adequate and relevant?
- Is the applicant's previous employment relevant to this position?
- Is there gradual progression in the applicant's career? Does this person look stable and reliable? Why did the applicant leave the previous jobs to move onto the next job? Are there undisclosed reasons for leaving previous employers?
- Are there missing periods of time? For example, was the applicant unemployed at any time? If so, why?
- Have the referees' names and numbers been included? Who are they?
- Are there inconsistencies in salary history?

Curriculum vitae or CV's is a brief description of basic details about the applicant's professional, education and employment history.



Here is an example of a CV that accompanied the above letter.

eg

CURRICULUM VITAE- MS PUMSILE ZAMA

Full name	:	Pumsile Zama
Date of birth	:	14 February 1970
Residential address	:	23 Princess Street, Richmond, 4780
Telephone No	:	(033) 2124900 083 456 7890 (cell)
Nationality	:	South African
Education		
School	:	Matriculated at Indala High School, Indaleni, 1988
College	:	3 years Senior Teacher's Diploma, Gamalakhe College, 1991
University	:	B.Com UNISA, 1996 Accounting 3, Economics 3
Employment:		
1995 to present	:	Tanda Bantu Primary School Taught mathematics (grades 4-7) Taught general science (grades 4-5) Coached netball team (District champions 1995)
1991- 1995	:	Fundokuhle Primary School Taught Economic and Management Sciences (grade 7) Taught mathematics (grades 5-7) Tuck shop manager Coached netball team (one provincial representative)
Hobbies and interests	:	Member of Church Choir Netball
REFEREES		
Mrs A.Mwelase	:	Principal, Tandabantu Primary School, Telephone: (033) 5543671
Mr M.Mtolo	:	Principal, Fundokuhle Primary School, Telephone: (033) 5589010
Reverend Z.Mkhize	:	African Methodist Church, Tel. (033) 55234576

3.8 How do we check with referees?

Referees should be people who know the applicant very well and are able to comment on the suitability of the applicant for the post that he or she is applying for. The list of referees should include at least one person that the applicant has previously worked for. Sometimes applicants may present testimonials or character references as documents written by referees.

You should only contact referees when the applicant has been short-listed for an interview. Checking with every single applicant's referees can be time consuming.

You should always contact the referees and the people who have written character references of the shortlisted applicants. It is an important way to get information about:

- whether the applicant is suitable for the post;
- the accuracy of information that the applicant recorded in his or her CV, for example, years of service, qualifications, experience, etc.

In examining the references the selection committee should ask the following questions:

- Who are the referees? What is their relationship to the applicant?
- Are the referees in a good position to comment on the applicant's personal qualities and professional competence?
- What impression do you get about the applicant from the referee?

The staff selection committee must decide who will contact the referees. This person should make notes as he or she talks to each referee so that a report can be presented to the other members at the next meeting. Referees could be asked the following questions:

- Do you know the applicant personally? How long have you known him or her?
- What is the applicant's history of employment?
- Would you please comment on the applicant's personality?
- Can you comment on the applicant's health?
- Do you think that the applicant will be able to perform well in the job that was advertised?
- Is there anything else about the applicant that you think we should know about?

Referees are people who are prepared to support the applicant for the job.



3.9 How do we decide which applicants to shortlist?

Criteria refers to the standards, conditions or factors used in judging the applicants.

The staff selection committee may decide that in order to shortlist, it should rate each of the applicants, especially if there are many applicants. In order to rate applicants you will first have to decide what criteria you will use for the scoring. The criteria should include experience, and qualifications that you have included as requirements in the advertisement. The staff selection committee should discuss the scoring method and apply it fairly to all applicants. You would use the information in the CVs to do the scoring.

After the CV's have been rated the selection committee could select ten of the 'best' applicants (those with the highest scores) and contact their referees. Once this has happened, the staff selection committee should meet again to consider what the referees have said, and to finalise a list of applicants to be interviewed.

Here is an example of how you could score applicants.

eg	Maximum Score	Applicant's Score
Qualification:		
Primary Teacher's Diploma	5	5
B.A/ B.Com/B.Ed	5	5
M.A./M.Ed	5	
Ph.D/D.Ed.	5	
Total	20	10
Experience:		
0-5 years	5	
6-10 years	10	10
11-15 years	15	
16-20 years	20	

The column on the left is all the possible qualifications and experience that the applicant might have. A maximum score has been allocated for each. The applicant's score is calculated by working out which level of qualification and experience he or she has. In this example, the applicant has two degrees, which earn her 10 points. She also has between 6 and 10 years teaching experience which earn her another 10 points.

4

INTERVIEWING THE APPLICANTS

After you have short listed your ten 'best' candidates it is now necessary for your committee to meet them personally so that you can get a clearer picture and more detailed information of the people themselves.

Interviews are short meetings with people who have applied for a post.

4.1 What is an interview?

An interview will allow you to get a brief impression of an applicant, his or her personal qualities, abilities, skills, attitudes and knowledge related to the job that he/she has applied for. Based on your impressions in the interview you are trying to predict whether the applicant will perform well in the job. The purpose of the interview is to decide three things about the applicant.

- Does the applicant have the ability to do the job?
- Will the applicant be motivated to be successful?
- Will the applicant meet the needs of the school?



Is he or she suitable?

Although interviews are not always accurate and can be unreliable because they give wrong impressions, they are one of the most important parts of the selection process.

Before starting the interviews the staff selection committee must take note of the following:

- Set the date, time and venue for the interviews.
- Decide on the interview questions.
- Prepare each member of the interview panel.
- Scoring and ranking of the applicants.



4.2 When and where should we interview?



How do you prepare a timetable for the interview?

Give sufficient time for each interview (at least 30 minutes) as well as time for the panel to rate each applicant afterwards. A timetable for an interview may look like this:

eg

08:00 - 08:30	Applicant 1
08:30 - 8:45	Discussion and rating
08:45 - 9:15	Applicant 2
09:15 - 09:30	Discussion and rating
09:30 - 10:00	Applicant 3
10:00 - 10:15	Discussion and rating

The staff selection committee should choose the interview date carefully. The date should be suitable for all members of the interview panel and, if possible, the applicants. You should decide whether all the interviews should happen in one day or whether they should be spread over a number of days. If the number of applicants is manageable, it is always better to conduct the interviews in one day. This ensures that all the candidates have been exposed to similar interview conditions, and also makes it easier for the panel to compare candidates.

All the applicants who have been short-listed must be informed timeously that they need to attend an interview. This can be done in writing or telephonically.

You should use a room that is quiet and comfortable. A waiting room should be close to the interview room.

4.3 How do we prepare interview questions?

The selection committee needs to decide what questions, how many questions to ask and which member of the interview panel will ask each question. It is important that all applicants are treated fairly and equally. In order to do this you may decide to ask all of them the same questions.

Here are some of the issues that you could ask questions about:

Personal qualities:

- What are your interests?
- What do you see as your strengths and weaknesses?
- What are your values?
- Why do you think that you are suited for this job?
- Why would you like to work at our school?
- How do you spend your free time?

Previous work experience:

- What were your previous duties and responsibilities?
- How long did you serve in your last job?
- What have you learned in your last job?
- What professional and educational qualifications do you have?

Professional experience:

- What are your views on Outcomes Based Education?
- What workshops have you presented to fellow educators?
- What do you think about the developmental appraisal system?
- What is your experience with continuous assessment?

Community related issues:

- What is your involvement in your community?
- What are some of the challenges that you have overcome working in the community?
- What would you do to address the problem of vandalism at the school?

Some Do's and Don'ts for the interview



Do:

- make the applicant feel comfortable;
- greet him or her warmly;
- help him or her to relax;
- introduce all the members of the interview panel;
- listen to the applicant. Take a real interest in what he or she is saying;
- briefly outline the requirements of the job;
- explain the conditions of employment;
- encourage the applicant to ask questions;
- stay focused and keep to the main questions;
- keep to scheduled interview times;
- close the interview by thanking the applicant for coming to the interview;
- inform the applicant that he or she will be contacted within the next two weeks with the outcome of the interview; and
- keep some water and a glass in front of the interviewee.

Don't:

- keep the applicant waiting;
- allow distractions (no incoming calls; switch off cell phones);
- ask unnecessary personal questions;
- build false hopes;
- rush through the interview or go through the motions in a disinterested way; and
- give your opinions.

eg

4.4 How do we rate the applicants?

This is an example of a rating form. Each school will develop its own rating form to suit the position that it is filling. The criteria and weightings (factors to assess the candidate and the importance it is given) will differ from job to job.

Interview Rating Form

Applicant's name: _____

	Score (1-5)	Weighting (multiply Column 1)	Total
Criteria:			
e.g Community involvement	3	2	6
1.Expertise & knowledge in learning area		3	
2.Experience in teaching in learning area		3	
3.Planning skills		1	
4.Organisation skills		1	
5.Communication skills		2	
6.Interpersonal and social skills		2	
7.Community involvement		2	
8.Motivation		1	
9.Leadership skills		3	
10.Extra-curricular contributions		2	
Totals			
1= not suitable	Out of 50		Final
2= moderately suitable			Total out
3= suitable			of 100
4= very suitable			
5= exceptionally suitable			

One way to rate the applicant is to get each of the panel members to assess the applicant's answers and to write his or her scores on a rating form. After completing this the chairperson of the interview panel could get the members to give reasons for their scores. The panel could then finalise an overall score that most of the members agree upon.

4.5 How do we decide on the successful applicant?

After rating each of the applicants the interview panel should rank the scores from the highest to the lowest. You should then discuss your overall impression of the applicants and decide which of the applicants is most suited to the job. The interview score should be used as a guideline.

In making your decision you must consider:

- the applicant's letter of application;
- the CV;
- the referees' comments; and
- the interview.

The staff selection committee should discuss each candidate and ideally reach a unanimous decision ('one mind'). The staff selection committee will have to present a report to the governing body. The report should cover :

- the recruitment and selection process that has been used;
- the selection committee's recommendation with reasons.

The governing body must then decide whether to accept the staff selection committee's decision to appoint a particular applicant or ask the committee to review the process after giving it good reasons.



You should have a plan if the applicant does not accept the job. You could offer the job to the next best applicant or start the process all over again.

When any new staff member is appointed you will need to:

- inform him or her of the appointment in writing;
- draw up and sign an employment contract;
- induct him or her into their new job; and
- have a system of appraisal or evaluation in place.

5.1 How do we inform the successful applicant?

After your governing body has finalised the selection, you may decide to telephone the successful applicant and give him or her the good news. This should be followed up with a letter of appointment. Remember that the chairman of the school governing body must follow-up by writing to the unsuccessful applicants.

The letter of employment covers the following areas:

- The person's position (title and person he or she is responsible to).
- Salary/ wages (starting salary/wages, salary/wages review dates and bonuses etc).
- Annual leave.
- Sick leave.
- Public holidays.
- Medical aid (if any).
- Performance review (explains the purpose of the review and how often this will be conducted).
- Probationary period.
- Termination of employment (specifies the period of notice that must be given).
- Confirmation (applicant accepts the conditions by signing the letter of appointment).



For more information on the legal requirements of the employer - employee relationship you should read sections 6 to 8 of this manual.



Section 29, The Basic Conditions of Employment Act No.75 of 1997.



There is an example of a letter of appointment on page 69.

An employment contract comes into being when one person puts his or her labour potential (ability to work) at the disposal of another (employer) in exchange for some form of remuneration which entitles the employer to define the employee's duties and (usually) to control the manner in which the employee carries them out.

The Basic Conditions of Employment

Act No.75 of 1997 states that an employer must give the employee certain information in writing before he or she starts work.



For more information on the Basic Conditions of Employment Act see section 6.6 of this manual.

5.2 What is a contract of employment?

Now that you have employed a member of staff you need to enter into an employment contract. An employment contract is inherent in law. It is a binding agreement, and so the information that is in the contract should be carefully planned, discussed and written up.

As soon as a governing body (employer) enters into a contract of employment with the person concerned (employee) there is an employment relationship. The contract is the voluntary agreement between the employer and employee. By signing the employment contract:

- the employee agrees to carry out certain specified and/or implied duties for the employer; for an indefinite or a specified period;
- the employer agrees to pay a remuneration to the employee; and
- the employer gains a (qualified) right to be in charge of the employee as to the way in which he or she performs his/her duties.

Once the employee agrees to work and the employer agrees to remunerate him or her, the contract is complete and is effective.

The parties are not required by common law to observe any formalities. It might be useful to discuss the contract before it is signed in order to make sure that everything is clear and so that there are no disputes later on.

Part of the contract would be an agreement on the date when the employee would assume duty. The employer must allow the worker to start work on this day. Failure to do so would be a breach of the contract and would be considered an unfair dismissal under the LRA.

Remember that the school is a juristic person and that it enters into the employment relationship on its own. This means that the State plays no part in the contract.



The rules and regulations regulating the employment contract between the State as an employer and its employees do not apply to a governing body, for example the Educators Employment Act No. 76 of 1998.



The conditions of employment must never be less favourable than those provisions in the Basic Conditions of Employment Act. (BCEA) unless it is collectively agreed to. The terms, however, could be more favourable. Furthermore, the BCEA also requires that the employer provides employees with certain information in writing. Once this is done it would amount to a written contract.



5.3 What should a governing body write into an employee's contract?

The items that go into the contract are negotiated between the employer and employee and are always subject to the requirements of the law.

The BCEA requires that the employer supply the employees with the following information in writing:

- The full name and address of the employer.
- The name and occupation of the employee, or a brief description of the work for which the employee is employed.
- The place of work, and where the employee is required or permitted to work.
- The date on which the employment began.
- The employee's ordinary hours of work and days of work.
- The employee's wage or the rate and method of calculating wages;
- The rate of pay for overtime work.
- Any other cash payments that the employee is entitled to.
- Any payment in kind that the employee is entitled to and the value of the payment in kind.
- How frequently the remuneration would be paid?



Section 29,
Basic
Conditions of
Employment Act
75 of 1997.



Your contract
should include
the following
details:

- Grievance procedure
- End date to a contract
- Dismissal clause
- Place the employee under the control of the principal
- A probationary period

You should consider asking a lawyer or labour law consultant to draw up your contract.

eg

The Education Labour Relations Council (ELRC) covers non-state employees as well.



See page 70 of this manual for an example of a contract of employment.

- Any deductions to be made from the employee's remuneration.
- The leave to which the employee is entitled.
- The period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate.
- A description of any council or sectoral determination which covers the employer's business.
- Any period of employment with a previous employer that counts towards the employee's period of employment.
- A list of any documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each can be obtained.

Any changes to the information in an employment contract must be recorded in writing.



Some important points to remember about employment contracts

- According to the LRA, you may not employ any person under the age of 15 years.
- When you enter into an employment contract it is always best to put down the terms of the contract in writing. This will help to prevent future disputes or may help to resolve any problems that may arise at a later date.
- The terms of the employment contract must never be less favourable than the provisions of the BCEA. The terms could however, be more favourable.
- Any term in the contract, which requires the employee not to join any trade union, is illegal and the contract is null and void.

5.4 Are there different types of employment contracts?

There are normally two types of employment contracts.

Fixed term contract

This type of contract runs for a specific job or piece of work.

Normally the start and end dates or the specific job are clearly indicated in the contract. At the end of the contract period or on completion of that specific job the contract is automatically terminated unless there is an understanding or clear agreement to continue with the contract. If the employee reasonably expected the employer to renew the contract on the same or similar terms, but the employer offered to renew it on less favourable terms or did not renew it, the LRA considers this to be a dismissal which may be unfair.

Unless otherwise agreed, the fixed-term contract cannot be terminated whilst it is in effect, without good reason. If the fixed contract is a contract of employment, the BCEA states that the prescribed period of notice must be given. However, where the contract clearly states that it is of a temporary nature or where adequate notice is given of the termination of a fixed-term contract, such termination would not normally be regarded as unfair.

Indefinite contract

In this contract there is no fixed period or specific piece of work that must be completed. The contract normally runs for an indefinite period until the contract is terminated lawfully by one of the parties or as a result of breach by one of the parties to the contract. This type of contract normally provides for a notice period with regard to termination of the contract. Both parties are free to agree on a fixed retirement age and when that age is reached the employer is entitled to demand that the employee takes his or her retirement.



Dismissals are discussed later in section 10 of this manual.

5.5 What is induction?

Induction is the process of introducing new employees to the goals of the organisation, its policies and procedures, its values, the co-workers as well as the activities or the tasks to be performed and the equipment to be used. Every good employer has an induction programme planned every time he or she employs someone new or someone takes up a new position. At the end of the induction process each newcomer must have a clear understanding about the way of life and culture, values and practices at the school. The principal may delegate the responsibility of induction organiser to a senior member of the staff.

The induction programme should answer these questions for the new staff member:

- How am I going to manage my immediate problems on the first day or two?
- Who is in charge and how do we communicate?
- What is good professional practice at this school?
- What is expected of me? (time, workload, and duties)
- How does this school operate?



5.6 How do we induct a new employee?

You should:

- ensure that the induction programme is presented in a simple and easy to understand manner;
- avoid giving the newcomer too much information at once;
- allow the newcomer to ask questions and make inputs;
- make sure that all of the induction material is easy to understand;
- give the newcomer an opportunity to absorb what they have learnt;
- have a 'buddy' to guide the newcomer through the process;
- ensure that the period of the induction is linked to the length of time it takes to become effective on the job.

Here are some ideas for an induction programme:

Social introductions

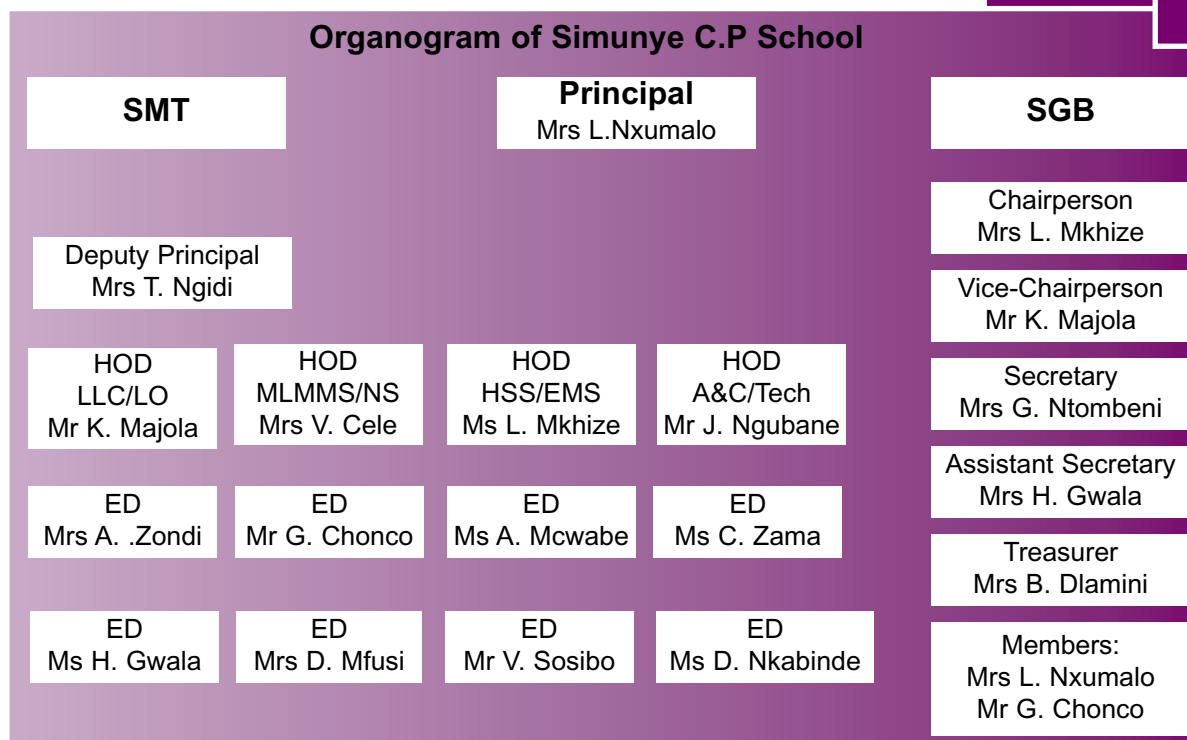
The induction organiser should organise two meetings:

- A meeting to introduce new members of staff to older staff members.
- A meeting to introduce the new member of staff to the governing body.

Organogram of the school

The Organogram is a diagram of the school's organisational structure and is particularly helpful for newcomers. It helps them to get to know who's who.

eg



General information about the school

The new employee should be given the full name of the school, physical and postal address, and all relevant telephone and fax numbers. Written information could also include a brief history of the school, school song etc.

A physical plan

The new employee should be taken on a conducted tour of the school and should be given a copy of the physical plan of the school showing administration rooms, staff room, toilets, the classrooms that he or she will teach in etc.

Useful documents

The following documents will help the new employee:

- School calendar and time-table.
- A copy of the school's prospectus (which would include the school's Vision and Mission Statement).
- The previous year's school magazine.
- Job description of other specific positions e.g. head of department, administrative clerk, sports coach, cleaner etc. This information will assist the new employer to ask the relevant people to perform any tasks that he or she wishes them to do.

Assigning a 'buddy'

This person should be of a similar age and post level as the newcomer and should assist him or her informally regarding questions as they arise. The buddy should stay in close touch with the newcomer for the first few weeks. This will help the newcomer to cope; he or she will know where to go, what to do, and who to ask for things.

5.7 What is a job description?

A job description is an important document that needs to be reviewed with all employees on a yearly basis. This needs to be carefully done as many employees are probably aware of their rights and may refuse to perform certain tasks that do not appear in their job descriptions. Job descriptions are also useful to recruit, interview, orientate new employees, train, evaluate and appraise and help in calculating wages and salaries.

A job description covers the following aspects:

- The title of the job.
- The title of the immediate supervisor.
- The location of the job (e.g Economics and Management Sciences Department, administrative department, cleaning and maintenance department etc.).
- Job summary (one-to-three line description of the essence of the job).
- Job duties and responsibilities (a detailed description of the job).
- Job specifications (minimum qualifications required for the job).

eg

**Job description: Economics and Management Sciences Educator
(Post Level 1)**

Job title: Educator

Position of Immediate Supervisor: Head of Department (Economics and Management Sciences)

The job description shall include, but not be limited to the following:

1. General Summary of the responsibilities
Plan, prepare, teach and evaluate economics and management sciences lessons to grade 4-7 learners as well as extra-curricular duties.
2. Specific job responsibilities:
 - Prepare and plan EMS lessons for grade 4-7 learners.
 - Evaluate learners' work and to give them timeous feedback.
 - Maintain discipline as embodied in the school's code of conduct.
 - Ensure that teaching standards are high and that the school's goal of excellence is vigorously championed.
 - Liaise with parents on matters concerning their children's progress at school.
 - Assist in fundraising drives.
 - Show pastoral care and attention to learners.
 - Be fully involved in the school's extra-curricular programme.
 - Maintain all records pertaining to learners under your care in your form class.
 - Assist the governing body in the collection of school fees.
 - Control all stock issued to your learners.

Additional duties:



The appraisal of educators will not be covered in this manual. If the governing body wishes to appraise an educator that it has employed it should refer to the Developmental Appraisal System Manuals published by the Department of Education. In this way all educators at the school will be subjected to a similar appraisal process. The section on appraisal in this manual could be used for non-educators.

5.8 What is appraisal?

Appraisal is the ongoing evaluation or assessment of performance at the workplace. It is about looking closely at what the worker is doing and how he or she is doing it.

Appraisal is not about judging an employee. Rather, it should be an attempt to identify what he or she is doing right or wrong. Appraisal should be developmental. This means that the purpose of appraisal is to help every employee to grow professionally. In order to do this well, appraisal needs to be carefully planned, conducted and followed-up.

Appraisals are used for the following purposes:

- To make decisions about pay.
- To make decisions about promotions or termination of services.
- To give the worker feedback about his or her performance.
- Directing future work performance.
- Identifying training and developmental needs.

5.9 How do you do an appraisal?

There are some legal requirements for the appraisal processes. Following these steps will give you some guidelines:

- Written appraisals should be conducted regularly for all employees.
- Supervisors should be trained thoroughly in appraisal procedures. The supervisors must be reliable and fair and must only appraise job-related standards (focusing on the actual work performance and not the person).
- Decide on performance requirements (what skills, outputs, activities) will be evaluated.
- Choose an appropriate appraisal method (There are several methods to appraise performance. You may speak to a Human Resource Consultant or read up on appraisals. You will find a simple method in the example box on page 34. Discuss the method of appraisal with the employee as well as which areas of performance he or she will be evaluated in. He or she would need to know how often this happens and its purpose.
- Appraise according to actual work performance.

- Problem areas should be detailed, made known to the employee and written down. This will help the employee to know exactly what work areas need to be improved.
- Discuss the appraisal with employees allowing for the opportunity to discuss areas of agreement and disagreement. Employees should be given a clear opportunity to respond to unfavourable or negative appraisals.
- Specific goals and timetables should be developed for the areas that have been identified for growth, development and improvement.
- Ensure that appraisals are fair. Before presenting the appraisal to the worker, another supervisor should have a look at it to identify errors such as unfair strictness, leniency etc.
- Have the employee sign and date the appraisal as proof that he or she has received it. If the employee does not wish to sign it, another supervisor may be called in as witness that the appraisal was handed to the employee.
- Check past performance appraisals, especially if termination for poor work performance is being considered. Check that the employee was adequately informed of his or her poor performance and was given the opportunity to meet the required standard.



The performance appraisal will be an important document in a dispute where the employee was dismissed on the grounds of poor work performance.

Graphic rating scale

Name: _____ Department: _____

Current job: _____

Performance Area	1 2 3 4 5	Comments
Accepts change		
Accepts responsibility		
Attendance		
Attitude		
Accuracy		
Co-operation		
Dependability		
Initiative		
Effective under stress		
Knowledge of work		
Leadership		
Planning		
Quality of work		

1= unacceptable 2= needs improvement 3= satisfactory 4= above average
5= outstanding

agree _____ disagree _____

Employee's signature _____ Date: _____

Supervisor's signature _____ Date: _____

NB: [you may wish to weight one or more of the above factors]

There are some important pieces of legislation which regulate employer-employee relationships. It is important that any SGB that is employing staff knows and understands the legislation.

6.1 What does the The Constitution and the Bill of Rights, Act 108 of 1996 say?

Section 23 of Chapter 2, the Bill of Rights looks at the rights of employees and employers. The provisions that are relevant to governing bodies are as follows:

- Everyone has the right to fair labour practices.
- Every worker has the right to;
 - ❖ form and join a trade union;
 - ❖ participate in the activities and programmes of a trade union;
 - ❖ strike.
- Every employer has the right to;
 - ❖ form and join an employers' organisation;
 - ❖ participate in the activities and programmes of an employer organisation.

The Bill of Rights also entrenches other rights which are of relevance to the employment relationship. Some of these are:

- The right to being treated equally and fairly.
- The right to be informed and to get information.
- The right to join anyone or any organisation and to be able to say what one wishes to say.
- The freedom to follow one's trade, profession or occupation.
- Protection against forced labour and discrimination.
- Protection for children against labour practices that take advantage of them.
- The right to work in an environment that assures the worker of his or her safety and good health.

6.2 What does the Labour Relations Act, No. 66 of 1995 (LRA) say?

The main features of the LRA are that it;

- aims to promote economic development, social justice, labour peace, and democracy in the workplace;
- provides the framework for the relationship between the employees and their unions on one hand and the employers and their organisations on the other;
- promotes the right to;
 - ❖ fair labour practices;
 - ❖ form and to join trade unions and employer organisations;
 - ❖ organise and to bargain collectively;
 - ❖ strike and to lock out;
- favours conciliation, mediation and negotiation as a way of settling labour disputes;
- seeks to reduce the level of workplace unrest;
- provides a simplified dispute resolution process that is quick, effective and cheap;
- established the Commission for Conciliation, Mediation and Arbitration (CCMA) to resolve disputes.



6.3 What does the South African Schools Act No. 84 of 1996 (as amended by the Education Laws Amendment Act No.100 of 1997 and Education Laws Amendment Act No.48 of 1999) say?

According to the SASA a governing body may establish posts for educators and non-educators over and above those provided by the State. When a governing body does employ these personnel it must take into account the requirements set out in the LRA and other relevant laws.

When the governing body employs its own personnel it must take note of the following:

- The educator must be registered with the South African Council of Educators (SACE).
- The ability and or suitability of the candidate.
- The principle of equity.
- The need to put right past injustices (redress).
- The need for representivity.

Furthermore, the governing body must provide details of the post(s) that it wishes to create, the estimated cost(s) and the manner in which these will be met, when it presents the annual budget to the parents. This means proper planning if new posts are to be established. The governing body can only fill a post if it is properly established and if it is budgeted for.

The Education Laws Amendment Act No. 48 of 1999 makes it clear that the State is not responsible for personnel employed by the governing body.

The governing body must note the amended definition of an educator as provided in SASA (as amended in the Education Laws Amendment Act No.48 of 1999). An 'educator' means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school. Personnel who are employed exclusively to perform extra-curricular duties such as sports coaches are not considered as educators as they do not teach anything else in the curriculum.

equity

means fairness

Representivity

refers to whether the composition of the school staff reflects the different groups that exist in the learner population.

6.4 What does the Employment Equity Act, No. 55 of 1998 (EEA) say?

The EEA has three broad aims:

- To promote equality and fair treatment in employment.
- To get rid of unfair discrimination.
- To reduce the effects of past employment injustices by implementing affirmative action.

Chapter 2 of the EEA focuses on unfair discrimination.

Employers must provide equal opportunities and the Act makes it possible for employees to sue employers if they are guilty of unfair discrimination. It also sets out the principles for medical testing of employees, for example, HIV/AIDS as well as principles regarding psychological testing of employees.

Chapter 3 of the EEA looks at implementing affirmative action to put right disadvantages in employment experienced by designated groups i.e. black people, women and people with disabilities, to ensure their fair representation in all occupational categories and levels in the workforce.

6.5 What does the Basic Conditions of Employment Act 75 of 1997 (BCEA) say?

The BCEA lays down the basic minimum conditions of employment which the government regards as acceptable.

The BCEA sets out to ensure that employees are:

- granted adequate breaks during the working day;
- given the prescribed annual and paid sick leave;
- granted maternity leave and this includes family responsibility leave;
- paid extra for overtime and work on Sundays and public holidays;
- accorded other basic rights and that the working hours do not exceed certain maxima.

The governing body as employer must note that the Act:

- requires them to maintain certain records;
- provides the means by which the rates of pay and working hours are to be calculated;
- regulates the minimum notice that must be given on termination of the contract.
- prohibits the employment of children.

6.6 What does the Skills Development Act No. 97 of 1998 say?

The Skills Development Act sets to develop the skills of South African workers. The purposes of this act are to:

- improve the quality of life of workers, their prospects of work and labour mobility;
- improve productivity in the workplace and the competitiveness of employers;
- encourage workers to participate in learnership and other training programmes;
- to encourage employers to;
 - ❖ use the workplace as an active learning environment;
 - ❖ provide employees with the opportunities to acquire new skills;
 - ❖ provide opportunities for new entrants to the labour market to gain work experience; and
 - ❖ employ persons who find it difficult to be employed.

6.7 What does the Skills Development Levies Act No. 9 of 1999 say?

The Skills Development Levies Act established a compulsory scheme for the funding of education and training as required by the Skills Development Act. Every employer who is registered with the South African Revenue Services (SARS) for employee's tax pays the skills development levy.



See
Section 7.17 of this
manual.

6.8 What does the Compensation for Occupational Injuries and Diseases Act 130 of 1993 say?

This Act provides for compensation for employees or their dependants who have been laid up due to injury whilst performing their duties. This compensation comes from a specially created fund to which the school as an employer contributes.



See
Section 7.15 of this
manual.



See
Section 7.14 of this
manual.

6.9 What does the Unemployment Insurance Act 30 of 1966 say?

The main aim of this Act is to provide payment of benefits to employees who have lost their employment through pregnancy or circumstances beyond their control. The employer and employee both contribute 1% of the worker's remuneration to the Unemployment Insurance Fund (U.I.F.).

As an employer you have a number of duties that you must perform. Many of these duties are required by legislation.

These duties are:

The duty to ...

- budget for the post established and have sufficient funds to pay such salaries and conditions of service attached to each post and post level;
- pay a wage or a salary;
- receive the employee into service on the day which the contract states as the start date;
- provide safe working conditions;
- comply with the employment contract, for example bonuses, sick leave, maternity leave, family responsibility leave, examination leave, etc.
- obey the provisions contained in the law, for example, prescribed hours of work, leave conditions, certificate of service on termination, the need to keep records as prescribed in the LRA and the BCEA etc.
- collect employee's tax for the South African Revenue Services (SARS);
- pay the employer and employee portion of funds to the Unemployment Insurance Fund (UIF);
- pay a skills levy to the SARS;
- pay contributions to the Compensation Fund;
- pay a Regional Services Levy.

7.1 What is the duty to pay a wage or salary?

As an employer the governing body is contractually obliged to pay salaries and wages to those persons it employs.

These are some important duties with regard to remuneration:

- The manner of calculating wages is set out in detail in Section 35 of the new BCEA.
- Payment must be made daily, weekly, or monthly, and in cash, by cheque or directly deposited into an account of the employee.



In terms of common law employers are obliged to provide their employees with reasonably safe and healthy working conditions. The Occupational Health and Safety Act 85 of 1993 provides the minimum requirements that an employer must meet with.



See section 5.3 of this manual.

An employer is defined as any person who pays or is liable to pay a person an amount by way of remuneration according to the Fourth Schedule of the Income Tax Act. Therefore schools that employ extra staff, subject to certain requirements, must register at the nearest office of the SARS as employers.



Contact SARS for information on how to deduct employee's tax for casual workers and those persons who are employed at more than one institution.

- If payment is made in cash or by cheque it must be paid at the school and within 15 minutes of the start or the end of the working day.
- No deductions other than those that are compulsory such as Pay As You Earn (PAYE), Unemployment Insurance Fund contributions (UIF) may be made without the employee agreeing in writing.
- Deductions other than those discussed above may be made if such a deduction is required or permitted by law, a court order or to reimburse the employer for losses caused by the fault of the employee only after he or she was given a fair hearing.

7.2 What is Employee's tax?

As an employer the school is responsible for ensuring that the school and not the State meets all requirements and regulations set out by the Income Tax Act with regard to employee's tax. The employee's tax is an amount of money which an employer must deduct from all regular or periodic remuneration which is due to an employee.

Any person who receives remuneration must pay employee's tax. Even if the employee is earning below the tax threshold and does not pay employee's tax the employer must submit a IT 3(a) return to SARS at the end of each tax year.

7.3 What is Pay As You Earn (PAYE)?

As an employer you are expected to deduct certain amounts of money as employee's tax from your employee's remuneration and pay these taxes to your local office of SARS.

There are two methods that SARS uses to collect employee taxes. The first method is called Pay-As-You-Earn (P.A.Y.E) which is applicable to all persons whose annual earnings are more than R60 000.

Here, the employer deducts taxes and pays them to SARS. However, at the end of the tax year the employer does not recalculate what the employee's tax liability is (that is whether he or she has to pay more taxes or has overpaid taxes). These employees are required by law to submit a tax return (IT 12) to SARS.

7.4 What is Standard Income Tax on Employees (SITE)?

The other method of collecting employee tax is SITE which stands for Standard Income Tax on Employees. SITE is not a separate tax but forms part of the well known Pay-As-You-Earn (PAYE) system. SITE applies to all persons whose annual earnings amount to less than R60 000. Here the employer recalculates the tax liability at the end of the tax year. If there has been a shortfall the employer must deduct the full outstanding amount from the employee's final salary (normally the February salary). On the other hand if more tax was collected than what should have been collected, the employer must refund this amount to the employee. The employee does not have to complete a tax return.

7.5 Should we register and collect employee's tax?

As an employer the school must:

- register as an employer with SARS;
- obtain a copy of the tax tables (IRP 10);
- obtain a set of tax certificates (IRP 5);
- must deduct an amount of money from each of your employees by matching their earnings in the income tax tables and noting the amount that is the tax deduction;
- must pay the tax deduction to SARS.

Schools should register for employee's tax if:

- the net remuneration of an employee exceeds R21 111 per annum or;
- the net remuneration exceeds R36 538 per annum for persons 65 years and over;
- an employee receives a fringe benefit or an allowance.

If the school qualifies for registration it must complete an IRP 101 form which is obtainable from SARS.



These amounts
apply to the
2000/2001 tax year.

7.6 What is remuneration?

Remuneration is any amount of income/reward which is paid/given to any person in cash or kind in respect of services rendered.

Examples of remuneration include:

- Salaries, wages
- Overtime pay
- Leave pay
- Bonuses
- Gratuities
- Commissions
- Annuities
- Fringe benefits
- Lump sum payments
- Allowances e.g.
 - ❖ entertainment
 - ❖ subsistence
 - ❖ travel allowance
 - ❖ transfer costs
 - ❖ bursaries
 - ❖ housing



School staff employed on a contractual basis will be subject to employee's tax if they are controlled and supervised and/or remunerated at regular intervals.



Taxable benefits must be reflected on the IRP 5 and may be revalued by SARS.



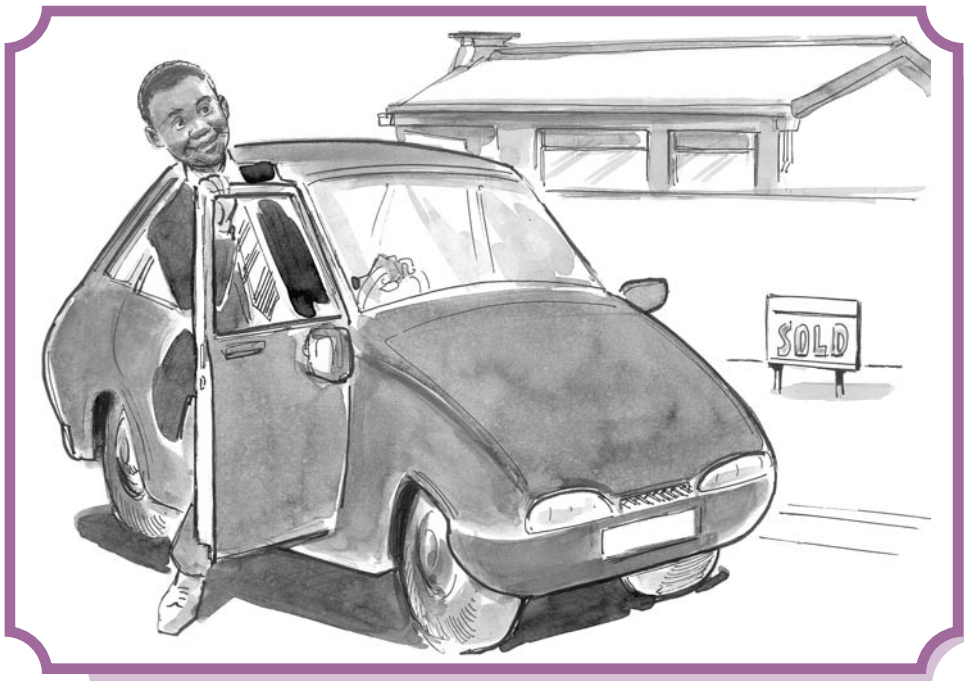
Contact your SARS office for information on how to assess the value of benefits that are taxable.

7.7 What are taxable benefits?

A taxable benefit is a benefit that is granted to an employee because of their employment. Some of the possible benefits the school may grant its employees include:

- Meals or refreshments.
- Free or cheap accommodation.
- Free or cheap services (discounted school fees for children of employees).
- Low or interest free loans.
- Subsidy in respect of interest on a home loan.
- Medical aid contributions paid on behalf of an employee.
- Right of use of a motor vehicle.

The above benefits must be valued by the employer and be subjected to employee's tax either in the period in which the allowance is received or spread over the balance of the year of assessment.



7.8 How is employee's tax calculated?



The Tax table IRP 10 is divided into 2 sections i.e. persons under 65 years and persons 65 years and over. The table is further divided into weekly, monthly and annual remuneration.

The employee's tax that should be deducted from the employee's remuneration is calculated on the net remuneration.

Net remuneration equals: Remuneration (i.e. salary, wages, etc.) less Pension fund contributions less Retirement annuity fund contributions less Medical aid fund contributions (**for persons 65 years and older**).

7.9 How do we pay the employee's tax to SARS?

Normally SARS will forward a special form (IRP201) to the employer prior to the end of each month. Within seven days after the end of the month in question you must fill in the total amount of taxes deducted from all your employees for the month in the respective column of the IRP201 form and hand this form together with the total amount of money in cash or cheque, to SARS. SARS will machine imprint a receipt number on the IRP 201 form and give you the tear off portion.

Should the employee's tax not be paid within the prescribed period, interest will be charged and in addition a penalty of 10% of the outstanding amount may be imposed.

The net remuneration is the amount due to the employee after certain other contributions have been deducted.

eg

If Mr Xaba earns R500.00 per week, and his pension and retirement annuity contributions amount to R50.00, his net remuneration equals R450.00 (R500-R50.00). Look up the SARS table (IRP 10) and find R450.00 in the weekly deduction tables. This shows that a tax of R7.95 must be deducted from his wages and paid to SARS.



Remember to keep your receipt carefully filed as SARS may demand proof of payment. Failure to produce this receipt may result in you being asked to pay the amount to SARS again.

7.10 What records should the school keep for employee tax purposes?

The school must keep the records showing:

- the gross remuneration paid to each employee;
- the amount of employee's tax deducted or withheld per employee;
- any other amounts deducted e.g. U.I.F, medical aid deductions etc.

The salaries or wages register must be kept for a period of five years from the date of the last entry and must be available for inspection purposes by officers of SARS. Bank statements, cancelled cheques and audited books may also be requested for inspection purposes.

eg

Extract of salaries / wages register

Period	Name of Employee	Gross Remuneration	DEDUCTIONS			Total Deductions	Nett	Signature
			PAYE	U.I.F	Medical Aid			
1/9/00-30/9/00	P. Zama	R6 000	R1 000	R60	R940	R2 000	R4 000	

7.11 What is an IRP 5 certificate?

An IRP 5 certificate is issued to every single employee and it covers the period of the tax year.

You must issue an IRP 5 certificate to all employees from whom employee's tax has been deducted. This certificate provides a summary of all income paid by the employer and the taxes that were deducted. If you are unable to issue an IRP 5 certificate for a valid reason, you must issue an IT 3(a) return instead.

These certificates must be issued:

- within 60 days after the end of the tax year;
- within 14 days after an employee has left the employer's service;
- within 7 days after the employer has ceased to be an employer.

7.12 How do you prepare an IRP 5 certificate?

The following steps will help you in preparing a schedule that will assist you to complete an IRP 5 certificate.

- Firstly draw up a schedule for each employee with columns reflecting the amount of his or her gross (total) remuneration for each payment period (week or month) and all the deductions you have made from his or her remuneration.
- Check that the correct amount of tax has been deducted by cross checking against the tax tables (IRP 10).
- Total the various columns (gross remuneration, PAYE, U.I.F etc.)
- Once you are satisfied that the amounts and details on the schedule are correct, transfer this information to an IRP 5 form.
- Towards the end of the year, SARS will send you a special form IRP 501 for reconciling the taxes.

7.13 How do you reconcile the taxes that you paid to SARS?

At the end of the tax year you are required to reconcile all the amounts that you have withheld from the employee's income for the year with the actual amounts that you have paid to SARS during the tax year.

SARS will send you a special IRP 501 form for reconciling the taxes you paid with the total amount that you actually deducted from your employees. In this form there is space for twelve receipt numbers and amounts (one for each month that payment was supposed to be made).

You then should total the amount of taxes deducted from the employees for the tax year.



Add up the total SITE and PAYE columns on every IRP 5 certificate that you have issued for the tax year in question and then total all your receipts (IRP 201). These two amounts should be equal to each other. If they are not equal you should find out the reason and correct the situation.



The IRP 5 form must be free of erasures and alterations. Should you make a mistake write the word cancelled between two lines and then write out a fresh IRP 5 certificate.



The tax year runs from 1 March of the current year to 28 February of the following year.

Reconcile means to balance the accounts, that is to find out the difference between what was deducted as taxes from the employee's salaries or wages and the actual amount that was paid to SARS.



The entire reconciliation process must be completed within sixty days from the close of the tax year. This includes forwarding and handing over the necessary documents to SARS. If you fail to comply with the provisions of the Income Tax Act No. 58 of 1962 you may be charged and this could result in a fine or prison sentence being imposed.



Obtain a copy of Volume 39: Guidelines for Employees; Tax and IRP 10 tables and brochures from your local SARS offices.



The U.I.F fund may be contacted on the telephone number 012-3371802 or you may write to U.I.F, Pretoria, 0052.

After you have completed the reconciliation form (IRP 501)you should:

- make a photocopy of IRP 501 for your records;
- hand the original IRP 5 tax certificate to the employee; it is a good idea to make him or her sign that he or she has received the certificate;
- forward the first copy (2nd form in the set of three) together with the original IRP 501 form to SARS;
- retain the second copy (remains in the book) for your records.

7.14 What is the Unemployment Insurance Fund?

As an employer you are also required to deduct a certain amount of money from your employee's remuneration and pay these amounts to the Unemployment Insurance Fund (U.I.F). However you are also required to contribute an equal amount in respect of each employee to the Fund. Currently the rate of contribution is 1 % of the employee's gross salary.

You must firstly register with the U.I.F fund and when payment is made this must be accompanied by a special form.

eg

Mr Dlamini earns R1000.00 per month. The deduction from his salary will be $R1000.00 \times 1\%$ which is equal to R10.00. You as the employer will also pay R10.00 ($R1000.00 \times 1\%$).

The total contribution to the fund in respect of Mr Dlamini will be:

Deduction from Mr Dlamini's salary:	R10,00
Employer's contribution:	<u>R10,00</u>
Total contribution:	R20,00

7.15 What is the Worker s Compensation Fund?

The compensation fund has the following objectives:

- To compensate workers for disabilities caused by injuries or diseases that arise in the course of their employment.
- To compensate the worker's family for death resulting from such injuries or diseases.
- To provide care and benefits for occupational illness or injury in employment.
- To promote a healthy and safe work environment.

The employer is protected against all civil claims that may be brought against him or her in the event of an injury on duty, even in the event of alleged negligence.

7.16 Who must register with the Worker s Compensation Fund?

All persons who employ one or more persons in connection with their business are required to register and to pay annual assessments to the Compensation Fund. These amounts may not be deducted from the employee's wages or salaries. As an employer you must register with the compensation fund.

After you have registered, you will be informed annually of the rate that you should contribute to the Compensation Fund. Employers who fail to pay assessments or fail to submit wage returns are penalised at a rate of 10% of the assessment.

7.17 What is the Skills Development Levy?

The Skills Development Levies Act No. 9 of 1999 established a compulsory levy scheme for the funding of education and training as set out in the Skills Development Act, No. 97 of 1998. The Skills Development Levies Act became law on 1 September 1999. From 1 April 2001 the percentage that an employer must pay towards the skills levy is 1 % of the workers remuneration (this includes wages, salaries, bonuses, allowances, gratuities etc.).



The school must register as an employer with the Compensation Commissioner, P.O.Box 955, Pretoria 0001. Telephonic enquiries may be made on the Telephone Number 012-3199111, Fax : (012) 326 7889 for the amount that your school should pay towards Compensation Fund.

eg

Simunye C.P School employs the following persons:

Employee Name	Monthly Remuneration	Skills Levy (1%)
F.Zaca	R2000.00	
L.Mkhize	R3000.00	
C.Mthembu	R1700.00	
Total amount of remuneration	R6700.00	R67.00

Note that even though Mrs C.Mthembu is earning R1700.00 which is below the income tax threshold her remuneration must be included in the total payroll to determine the skills levy that is payable.

The school must pay the skills levy to SARS which is responsible for the collection and administration of the levy.



Contact
your local SARS
office.



Contact
your regional
council for more
information. Schools
in the Durban
Metropolitan Council
area can contact
The Regional Levies
Department on
(031) 3681278 or
P.O.Box 1520,
Durban, 4000.



If the school is not registered with SARS for employees tax because the remuneration it pays to its employees is below the income tax threshold, (R1759.25 per month or R21 111.00 per annum below age 65 and R3044.83 per month or R36 538.00 per annum age 65 and over, for the 2000 tax year), it does not pay the skills levy fee. Note that should its total annual payroll exceed R250 000.00 it must pay the skills levy.

7.18 What is the Regional Services Levy?

As an employer you are also required to pay a levy to your Regional Council. The Regional Services Levy is calculated on remuneration paid to persons employed within the Region.

The Basic Conditions of Employment Act No. 75 of 1997 protects the rights of workers in several areas. As an employer you must become aware of these rights to ensure that your workers are treated fairly and that you follow the provisions that are laid out in the BCEA.

Employees have the right to:

- remuneration due to them;
- safe working conditions. The employer has a duty to ensure that the work environment assures workers this right;
- work only prescribed hours;
- annual leave;
- sick leave;
- maternity leave;
- family responsibility leave;
- prescribed days off;
- notice of termination of employment;
- payments on termination;
- freedom of association;
- fair labour practices;
- not to be unfairly dismissed;
- certificate of service;
- right to strike.

8.1 What is the right to remuneration due ?

As long as workers tender service, they are entitled to be paid their wages and other benefits. Only non-performance by employees of their contractual duty other than during periods of sick or annual leave or after hours, entitles the employer to withhold their wages. The principle of no work no pay applies to strike action.

The employee has a right to:

- payment which may be in money or kind.
(remuneration daily, weekly, fortnightly or monthly. If in money, it must be paid in cash, by cheque or by direct deposit into a bank account);



What happens when you fail to honour employee rights?

If you fail to honour any of the employee rights then you will have broken the law. You could be charged and in addition your employee could bring a civil claim against you or use the process that is provided in the Labour Relations Act, that is, the Commission for Conciliation Mediation and Arbitration (CCMA), the Labour Court and the Labour Appeal Court.



The employee must be provided with details in respect of deductions, for example employees tax, Unemployment Insurance Fund, medical aid contributions etc.

- being paid in cash or cheque at the workplace during working hours in a sealed envelope together with information relating to the period for which payment is made.
- agree to deductions before they are made, other than those that are required by law.



8.2 What does the right to work only prescribed hours mean?

According to the BCEA no worker may work longer than:

- 45 hours a week or 9 hours a day if the employee works five days or fewer per week;
- 8 hours per day if the employee works more than 5 days a week.

All work beyond this period is overtime work and this must be with the employee's agreement. This agreement must be renewed annually. Employees are also entitled to a meal break of one continuous hour after five hours' work. The employer and employee may agree in writing to reduce the meal interval to no less than 30 minutes.



The rate for overtime is one and one-half times the normal wage (not remuneration). On the other hand the employee may be given 30 minutes off on full pay for every hour of overtime worked at normal rates or 90 minutes time off if the overtime was not paid.

8.3 What does the right to annual leave mean?

The minimum annual leave that you must grant to your employee is not less than 21 days leave in each annual leave cycle. A leave cycle is a period of 12 months after the commencement of duties by the employee, or the end of the previous cycle. Schools meet this requirement as they are closed for at least 21 days during the winter and summer holidays.



During the school holidays the employees normal salary or wage must be paid.



Section 20 of Basic Conditions of Employment Act No. 75 of 1997.

8.4 What is the right to sick leave ?

An employee is entitled to 6 weeks x the number of working days in a week in a sick leave cycle. A sick leave cycle is a period of 36 months.



Section 23(1) of The Basic Conditions of Employment Act No.75 of 1997.

If an employee is absent for more than 2 consecutive days or more than 2 occasions during an 8 week period the employer may request a medical certificate stating that the employee was unfit for work as a result of injury or ill health. If the employee is unable to produce a medical

certificate the employer is entitled not to pay the employee for those days he or she was absent.

eg

In the case of educators the sick leave is: 6×5 (number of working days in the week) = 30 days during a sick leave cycle of 36 months. In the case of a non-educator, for example a cleaner or gardener, the sick leave is: 6×6 (number of working days in the week if he or she works 6 days) = 36 days during a sick leave cycle.

8.5 What does the 'right to maternity leave and protection of mothers mean?

The employer has a duty to provide 4 consecutive months' maternity leave to employees. The leave may begin at any time from 4 weeks before the date on which the child is expected to be born. A medical practitioner or a midwife can prescribe a different date depending on the health of the employee or the unborn baby.

The employee may not resume work for a period of 6 weeks after delivery. Here again, should a medical practitioner or midwife find that she is fit to resume duties before the expiry of the 6 week period, a certificate to that effect must be issued.



Section 26 of The Basic Conditions of Employment Act No.75 of 1997.



For the employee to qualify for U.I.F benefits during maternity leave both the employer and employee must contribute to U.I.F.



Family responsibility leave is restricted to a total number of 3 days unless you have negotiated otherwise (i.e. more than 3 days- you cannot negotiate for less).



Section 27 of Basic Conditions of Employment Act No. 75 of 1997.



Section 16 and 18 of Basic Conditions of Employment Act No. 75 of 1997.

8.6 Is the employer required to pay remuneration during maternity leave?

As the employer you are not required to pay your employee, as the wages of new mothers are carried by the State in terms of the Unemployment Insurance Act 30 of 1966.

When entering into a contract with an employee it is best to negotiate the terms of maternity leave and include this in the written contract.

8.7 What does the right to family responsibility leave mean?

Employees who have been in employment for longer than 4 months and who work for a minimum of 4 days per week, qualify for family responsibility leave. The leave cycle for family responsibility leave is 12 months and the employee is entitled to 3 days' paid leave which can be utilised:

- when an employee's child is born;
- when the employee's child is ill;
- where a spouse, life partner, parent, grandparent, child, grandchild or sibling dies.

As an employer you may request proof of the event, for example, medical, birth or death certificate. Unused family responsibility leave lapses at the end of the leave cycle and cannot be carried forward to the following year.

8.8 What does the right to prescribed days off mean?

Sundays and public holidays are rest days for employees. Sunday work is remunerated at double the normal rate for each hour worked by an employee or at time and a half if the employee ordinarily works on a Sunday. An employer may not, except by agreement, require employees to work on a proclaimed public holiday. If an employee works on a public holiday he or she will be paid double their ordinary rate.

8.9 What is the right to notice on termination of employment ?

The BCEA provides for the following periods of notice that must be given before an employee's services are ended:

- At least a week's notice in the first four weeks of employment.
- Two week's notice until the completion of the first year of employment.
- At least four week's notice after the completion of the first year of employment.

The BCEA also states that the notice period may not run at the same time as any period of annual, sick or maternity leave. The employee may also be paid instead of the notice period if the employer does not require his or her services during the notice period.

8.10 What is the right to payments on termination ?

When an employer terminates the services of an employee he or she must pay the employee:

- for annual leave that he or she had accumulated;
- for annual leave during the incomplete leave cycle, if the employee has worked for longer than four months, at the rate of at least one day's remuneration for every 17 days on which the employee was entitled to be paid; and
- severance pay of at least one week's remuneration for each completed year of continuous service, if he or she is dismissed for operational requirements.

8.11 What does the right to freedom of association mean?

The Labour Relations Act (LRA) entitles the employee to participate in the formation of a trade union and to join a trade union. Furthermore the employee has the right to freely participate in a trade union's lawful activities. The employer cannot discriminate against employees for exercising their rights.



Section 37,
Basic
Conditions of
Employment Act
No. 75 of 1997.



The employer is permitted to terminate the contract without notice for any cause recognised by law that is a failure by the employee to honour his or her contract with the employer.

Operational requirements refer to the situation where the employer no longer requires the services of an employee for example, the post is being abolished, the employer can no longer afford to retain the employee etc. This will be discussed in the section on dismissal in this manual.

8.12 What does the right to fair labour practices mean?

All employees have the right to be treated fairly by their employers. The LRA lists the following as unfair labour practices:

- Unfair discrimination, either directly or indirectly against an employee on the grounds of race, colour, gender, sex, political opinion, ethnic or social origin, age, disability, religion, conscience, belief, culture, language, family responsibility, or marital status or any other arbitrary ground.
- Unfair conduct by an employer relating to the promotion, demotion or training of an employee or the provision of benefits to an employee.
- The unfair suspension of an employee or any other disciplinary action short of dismissal in respect of an employee.
- The failure or refusal of an employer to reinstate or re-employ a former employee in terms of an agreement.



Schedule 7
(Part B) Labour
Relations Act
No.66 of 1995.



See
section 10 of this
manual for details
on unfair dismissals.



Section 42 of
the Basic
Conditions of
Employment Act
No.75 of 1997.

8.13 What does the right not to be unfairly dismissed mean?

The LRA seeks to ensure that the employee will remain in employment for as long as he or she wishes unless there is some good reason for termination. The LRA specifies that in all cases there must be a good reason for dismissal and makes dismissal for certain reasons automatically unfair.

8.14 What is the right to a certificate of service ?

When the employee leaves your employment, you must provide him or her with a certificate of service stating;

- the employee's full name;
- the name and address of the employer;
- a description of any council or sectoral employment standard by which the employer's business is covered;
- the date of commencement and date of termination of employment;

- the title of the job or a brief description of the work for which the employee was employed at date of termination;
- the remuneration at date of termination; and
- if the employee so requests, the reason for termination of employment.

8.15 What does the right to strike mean ?

The LRA grants employees the right to strike and distinguishes between protected and unprotected strikes:

- A protected strike is one in which participants enjoy protection against dismissal as their actions are in compliance with the Act.
- An unprotected strike is one where employees may face dismissal as they did not follow the procedures and if the dispute could have been settled by arbitration as laid out in the LRA.

Arbitration is the process where an independent party makes a ruling in a dispute.



NOTES

Just as the employer has certain duties that he or she has to follow because of the law, employees have certain obligations too.

These duties include:

- To enter and remain in service. Under common law an employee who does not tender service is not entitled to receive wages.
- To maintain reasonable efficiency.
- To further the employer's business and to act in good faith towards the employer.
- To be respectful and obedient.
- To avoid acts of misconduct.
- To avoid revealing confidential information.

9.1 What is discipline, good faith and the right to be controlled?

The employee's duty to obey is the most important aspect of the employment relationship. Obedience implies discipline, discipline involves rules and for rules to be effective there must be penalties. The employer has the right to maintain discipline in the workplace. This duty is recognised in the LRA's Code of Good Practice: Dismissal.

- The employer has the right to control and reasonably instruct the employee (obviously within the scope of the employment). This right comes from common law and has been accepted by employers, employees, trade unions and other employee representatives.
- Should the employee disobey any lawful or reasonable instruction or command (related to the business of the employer), the employer has a right to discipline the employee.



Failure to render service may include absenteeism and lack of punctuality.



Under the LRA absence from work may be treated either as a form of misconduct or as incapacity. These are discussed in section 11 of this manual.



The Labour
Relations Act
1995

recommends that
you do so.

9.2 What is a disciplinary code?

It is very important that you adopt a disciplinary code detailing the conduct required from your employees. The disciplinary code normally serves as a guideline to both the employer and the employee and will be of great assistance when you need to determine whether or not to discipline the employee.

Your disciplinary code could include the following; (remember that these are only suggestions.)

- Employees are required to be punctual.
- Employees must be prepared to carry out all reasonable and lawful instructions of the school.
- Employees may not commit any illegal or dishonest act.
- Employees may not use the school property for their own purposes without the necessary permission.
- Employees may not leave their classrooms and learners unattended to when they are required to teach.
- Non-teaching staff must not abandon their workstations or neglect their duties during working hours. In order to leave the working areas, permission must be sought from the supervisor.
- Alcohol or drugs may not be brought into or consumed at the workplace.
- Educators and other staff members could be required to refrain from smoking in classrooms or in the presence of or in the vicinity of learners.
- Use of vulgar language will not be permitted.
- Employees are required to dress according to a specified dress code.

9.3 What is a breach of good faith?

Any misconduct that results in the employment relationship becoming intolerable (unbearable or impossible) or unworkable or that undermines the trust and confidence between employer and employee is regarded as a breach of good faith. A breach of good faith is sufficient to justify dismissal. According to Basson et al, Individual Labour Law, 1998, the following acts by employees constituted a breach of duty to act in good faith (as per court decisions):

- Theft.
- Assaulting the employer, a supervisor or a co-employee.
- Insubordination.

- Failure to obey a reasonable and lawful order.
- Drunkenness, if it affects the employee's work, or is persistent, or results in prejudice.
- Absence without leave.
- Repeated absence.
- Misappropriation of company property.
- Timekeeping or clock-card offences.
- Unfair competition with the employer.

9.4 How do we discipline our employees?

If your employee contravenes a rule or disobeys a reasonable instruction, it is accepted that you have the right to discipline the employee. In this regard, the Labour Relations Act, 1995 says the following:

- All employers should adopt disciplinary rules that set out the standard of conduct that is required by their employees.
- The form and content of disciplinary rules will obviously vary according to the size and nature of the employer's business.
- These rules must be in a language that is easily understood by the employees.
- An employer's rules must create certainty and consistency of discipline. This requires that the standards of conduct are clear and made available to employees in a manner that is easily understood.
- Some rules or standards may be so well established and known that it is not necessary to communicate them.
- Efforts should be made to correct employee's behaviour through a system of graduated disciplinary measures such as counselling and warnings.
- Repeated misconduct will warrant warnings which themselves may be graded according to degrees of severity.
- Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline.
- More serious infringements or repeated misconduct may call for a final warning, or other action short of dismissal.



Section 3 of Schedule 8 to the Labour Relations Act 66 of 1995. Disciplinary measures short of dismissal.



If the employee cannot read and understand these rules the employer should read and explain these rules to the employee concerned.

- The courts have endorsed the concept of corrective or progressive discipline. This approach sees the purpose of discipline as a means for employees to know and understand what standards are required of them.

eg

What does progressive discipline mean?

Suppose your employee comes late to work one day. Should you dismiss your employee? The penalty of dismissal is too great in comparison to the wrongdoing. Progressive discipline requires that you enquire into the circumstances of the late arrival and if necessary, you could advise your employee in regard to late coming. However, should the same employee continue the practice of late arrival at work then a progressive discipline system should be used, for example, after your initial discussion the following could be adopted:

- 1st Offence - verbal warning
- 2nd Offence - 1st written warning
- 3rd Offence - 2nd written warning
- 4th Offence - Final warning in writing.

In your final warning you could mention that further offences will result in dismissal. Note however, that there are certain requirements that must be met with and procedures that must be followed before you dismiss an employee. Dismissal is discussed in section 10 of this manual.



The example given above on late coming is an example of graduated or progressive disciplinary measures.

- Dismissal should be reserved for cases of serious misconduct or repeated offences and should be used as a last resort. You should look at every possible way of correcting the problem before deciding on dismissal.

eg

Your employee, Mr Happy Cele, arrives at work one day, under the influence of liquor and is unable to perform his tasks as financial officer. Should you fire him? Remember that drunkenness is only considered a breach of faith if the employee is unable to perform his duties or is persistently drunk or whose action prejudices the employer. In this case, it will probably be expected of you to enquire into the circumstances of the employee's drunken state. Your enquiries may reveal that he is experiencing marital problems resulting in this drunken situation. In this case, should the matter go to the Labour Court, the court will probably decide that you should have, as employer, guided your employee. You should have referred him or her to a marriage counsellor or the Alcoholics Anonymous in an attempt to rectify the situation before you decided on dismissal.

10.1 What is dismissal according to law?

Dismissal as defined in the LRA means:

- an employer has terminated a contract of employment with or without notice;
- non-renewal of a fixed term contract where the employee had a reasonable expectation that his or her contract would be renewed on the same or similar terms;
- refusal to allow an employee to resume work after maternity leave on the same terms and conditions;
- selective re-employment of dismissed employees;
- an employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee.

10.2 What are automatically unfair dismissals?

The LRA provides that a dismissal is automatically unfair if the reason for the dismissal is one of the following:

- It goes against the basic rights of employees and trade unions.
- The participation by the employee in a legal strike.
- The intended or actual pregnancy of the employee.
- The employee exercised his or her rights in terms of the LRA act.
- The employer unfairly discriminated against the employee.

If the dismissal is not automatically unfair the employer must show that the reason for the dismissal is for one of the following reasons. These types of dismissal are recognised by the LRA as being legitimate to justify the termination of the employment.

These are:

- Misconduct.
- Incapacity.
- Operational requirements of the employer's business.



Section 5 of the Labour Relations Act No.66 of 1995.



Section 188 of the Labour Relations Act No.66 of 1995.



If the employer fails to prove that the reason for the dismissal falls into one of these three categories, or if the employer fails to prove that the dismissal was effected in accordance with a fair procedure, the dismissal is unfair.

10.3 What is a fair dismissal?

The LRA includes two basic principles of a fair dismissal namely, substantive fairness and procedural fairness. For a dismissal to be fair, it must, besides being lawful, also be substantively and procedurally fair.

10.4 What is substantive fairness of a dismissal?

There must be a good reason for dismissing an employee i.e. 'a fair reason'. We have seen that an employee's conduct or capacity or the employer's operational requirements could be fair reasons. Other reasons may be automatically unfair. In addition the employer has a duty to give the employee the required notice.

There are 3 categories of reasons that make a dismissal substantively fair:

- a) Misconduct on the part of the employee.
- b) Where the employee does not or is not capable of performing to the standard required by the employer (Incapacity).
- c) Where the employer's business nature or changes in surrounding circumstances require it (Dismissal for operational reasons).

10.5 What is a fair procedure?

Fair procedure relates to the manner in which the employee is dismissed. In some cases the employer has to give the employee an opportunity to state his or her case or an opportunity to defend himself or herself. In other cases, the employer must consult with the representatives of the employees, such as trade unions.

The procedure for dismissal in each of the 3 categories of substantive fairness is different. We will deal with these respective procedures very briefly.

10.6 What is dismissal for operational reasons?

Operational reasons refer to the economic, technical, restructuring or similar needs of the employer. In terms of the LRA there are a number of steps involved that you should consider before dismissing an employee for operational reasons. These include consulting with the employee or his or her trade union or representative on matters such as:

- avoiding the dismissal;
- minimising the number of dismissals;
- changing the timing of the dismissal;
- mitigating the adverse effects of the dismissal;
- the methods of selecting the employee to be dismissed;
- severance pay, etc.

10.7 What is dismissal for incapacity?

Incapacity refers to a situation where the employee is incapable of performing or is not performing in accordance with employer's standard. This may happen because of incompetence (the employee is unable to perform his or her duties according to the required standard) or because the employee is incapable of doing the work for medical reasons (ill health or injury).

Before dismissing such an employee (especially a permanent employee) the employer is obliged to:

- give the employee appropriate evaluation, instruction, guidance and counselling;
- allow the employee a reasonable period for improvement;
- conduct an investigation with a view to establishing the reasons for the unsatisfactory performance, if the employee still performs unsatisfactorily;
- consider other ways, short of dismissal, to remedy the matter;
- give the employee an opportunity to be allowed to state a case and in doing so be assisted by a trade union representative or a fellow employee.

eg

If your school's enrolment drops and you cannot afford to continue to employ an educator, you may consider retrenching him or her for operational reasons.



Section 189 of the Labour Relations Act No.66 of 1995.



You must plan carefully before you employ any person. Furthermore, you must ensure that you have sufficient funds. If your governing body employs without sufficient funds you will be held liable in a personal capacity for such costs.



Section 8 of Schedule 8 to the Labour Relations Act, No. 66 of 1995.



If the incapacity of the employee is based on ill-health the following aspects must be considered:

- Whether or not the employee is capable of performing the work.
- The extent to which the employee is able to perform the work.
- The extent to which the employee's working circumstances may be adapted to accommodate disability or if the duties could be adapted.
- Whether there is any suitable alternative work.

How do we know if it is fair?

There are certain guidelines given in the LRA to determine whether a dismissal for poor work performance is unfair.

These include:

- Did the employee fail to meet a performance standard?
- If the employee did not meet the required standard -
 - ❖ Was the employee given a fair opportunity to meet the required standard?
 - ❖ Was the employee evaluated, instructed, guided and counselled?
- Was dismissal the appropriate action?
- Was it possible to remedy the matter in other ways i.e. probably by allocating different tasks to the employee.



In the case of educators it is doubtful whether the allocation of different duties will resolve the problem. Consider the following.

You employed an educator Mr Mkhize, to teach Human and Social Sciences to your grade 8 learners. After writing the first major test, all the learners fail. The failure is as a result of Mr Mkhize's poor work performance. Allocating Mr Mkhize the task of teaching Language, Literacy and Communication may not resolve the problem.

At your school you may have to deal with incidents and cases of misconduct. It is important for your SGB to be able to determine the seriousness of the misconduct and ensure that the procedures that you use to deal with it are fair.

Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is so serious that it makes a continued employment relationship intolerable. Each case should be judged on its merits. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements of Section 188 of the LRA.

11.1 Can we dismiss an employee for misconduct?

If the misconduct is very serious, even for a first offence you could dismiss your employee immediately. This is called summary dismissal. It is said that the employee has been dismissed summarily. In these cases, provided that the dismissal is substantively fair (that means you must have very good reasons for the dismissal) you do not have to give the employee notice of dismissal but you must inform him or her of the action of dismissal and the reason for the dismissal. You must adhere to a fair and reasonable procedure during the misconduct hearing.

In order to decide whether or not a dismissal for misconduct was substantively fair a number of questions must be asked:

- Did the employee break a workplace rule?
- Was the rule reasonable?
- Was the employee aware of the rule?
- Has the rule been applied regularly?
- Is dismissal an appropriate penalty for breaking the rule?

There are other factors that also play a role in deciding the substantive fairness of a dismissal for misconduct:

- The seriousness of the misconduct.
- The nature of the job and the nature of the workplace. In the school situation the nature of the job is obviously very important. Here the proper education of learners is the focus and employees are expected to adhere to certain basic requirements - for example, not smoking in the presence of learners, not using abusive language, working according to agreed standards etc.

eg

Examples of serious misconduct are;

- Gross dishonesty.
- Willful damage to the property of the employer.
- Willful endangering of the safety of others.
- Physical assault on the employer, a fellow employee, learner etc.
- Gross insubordination.

eg

Remember the earlier example of Mr. Happy Cele arriving at school completely under the influence of intoxicating liquor? Imagine Mr. Cele using offensive language to the learners, getting into an argument with an educator and punching him on the nose. There is obviously no question as to the seriousness of the behaviour. In fact, this would probably justify Mr. Cele being summarily dismissed.



Schedule 8 of
The Labour
Relations Act
No. 66 of 1995

eg

For example, if three persons are guilty of stealing computers from the computer room. It will be inconsistent if one is dismissed and the other two are merely reprimanded. In this case the dismissal in terms of the Labour Relations Act 1995, would be unfair.



The procedural fairness for misconduct is dealt with in section 4 of Schedule 8 to the Labour Relations Act, 1995.



The disciplinary process may be formal or informal. The formal process usually takes the form of a disciplinary hearing.

- The circumstances of the employee and the employer. In deciding on the penalty you wish to impose, it is important that you take note of the employee's personal circumstances. Consider for example, the employee's length of service, his or her previous disciplinary record, his or her standard of performance and his or her personal circumstances.
- Circumstances of the infringement itself. You must take note of the infringement itself. Although it is accepted that a serious misconduct can result in dismissal it is important to determine whether there were factors that will have a mitigating effect. Consider the earlier example where Mr Cele punched an educator on the nose. Such action could lead to dismissal. However, if Mr Cele attacked under extreme provocation, then obviously dismissal would not be the appropriate action.
- It is important to be consistent. You must apply the penalty of dismissal every time for a similar offence. Also, where two or more employees are guilty of a similar offence, there should be consistency in the penalty imposed on all those persons.

11.2 What is a fair procedure for misconduct?

Very briefly, according to the LRA, for the procedure to be fair an investigation must be conducted (especially where you think that there are grounds for dismissal).

How do you hold a disciplinary hearing?



- A tribunal (of at least three people) needs to be appointed of which one person will serve as a presiding officer. All three must be open-minded and commit themselves to giving the employee a fair hearing. The tribunal should keep minutes of the hearing.
- The employee must be notified of the allegations as well as the results of the investigation in a form and language that he or she can understand.
- The employee must be allowed reasonable time to respond and to prepare a response to the charge.
- The employee must be entitled to state his or her case in response.
- The employee is entitled to representation by a trade union representative or a fellow employee.
- After the enquiry, the employer should communicate the decision to the employee, preferably in writing.
- Should the employer decide on dismissal, the employee must be given a reason for the dismissal.
- You have a duty to remind the employee of his or her rights to refer the matter to the CCMA or a council, and also the fact that a Labour Court could hear the matter.

12

EXAMPLES

Letter of appointment

Simunye C.P. School
P.O.Box 999
Richmond
4780

15 April 2001

Ms P.Zama
23 Princess Street
Richmond
3720

Dear Ms Zama

LETTER OF APPOINTMENT

We have pleasure in offering you an appointment as Economics and Management Sciences Educator, Post Level 1 at Simunye C.P School.

The appointment is on a full-time basis to take effect from 1 May 2001, subject to a one-year probationary period. Briefly, the terms of appointment are as follows, and will be explained more fully in the formal contract of employment.

1. Salary : You will receive a salary of R3 500.00 per month which will be paid into your banking account on the 25th of each month. Your salary is subject to employee's tax and Unemployment Insurance Fund but medical aid is optional. Your salary will be reviewed annually. A bonus at the discretion of the governing body may be paid.
2. Hours of Work: you will be required to be at school on weekdays from 07:30 - 15:00. You will also be required to participate in the school's extra-curricular activities on two afternoons per week.

Please take careful note of the conditions of work as laid out in your Contract of Employment (which will be given to you when you visit the school). If you agree to these conditions, please sign and date this letter, as well as the Employment Contract. This needs to be done by 21 April 2001, failing which this offer of appointment will be withdrawn.

Yours sincerely

J.Ngugane
Chairperson, School Governing Body

Example of an employment contract

Simunye C.P. School
P O Box 999
Richmond
4780

Employment Contact

Employee's name: P.Zama (Ms)

Position: Educator (Full-time) Economics and Management Sciences

1. **PROFESSIONAL CONDUCT:** All educators are expected to conduct themselves in accordance with the Professional Code of Conduct accepted by the school community and that of the South African Council of Educators (SACE).

Date of commencement: 1 May 2001.

2. **HOURS OF WORK:**

- 2.1. Teaching time : A full-time educator is expected to teach a minimum number of hours per week determined from time to time by the governing body in accordance with nationally accepted norms. One month's notice will be given of any major change in working hours.
- 2.2. Working days: All full-time educators must work five (5) days a week and occasionally on Saturdays in respect of extra-curricular activities.
- 2.3. Extra-mural Duties: All full-time educators must do extra-mural duties of 4 hours per week in accordance with the Extra-Mural Policy as approved by the governing body.
- 2.4. Preparation: The educator is expected to devote time to preparation, evaluation, professional development and enrichment of the curriculum in order to maintain the high standards at the school.
- 2.5. Professional development: The educator is expected to participate in staff development activities as negotiated with the governing body.

3. **SALARY:**

- 3.1. The governing body shall pay the educator according to a salary scale determined by the governing body.
- 3.2. The educators will be appointed to a specific notch on the salary scale which will be indicated in the letter of appointment.
- 3.3. An annual bonus of one month's full salary is payable in December at the discretion of the governing body. Staff who have joined during the course of the year are paid on a pro-rata basis. No 13th cheque is paid to a member of staff who leaves before the end of the year or who is dismissed.
- 3.4. Salary increment dates will be at the end of each calendar year. Increments will be at the discretion of the governing body.

- 3.5. Additional increments: Extra increments may be granted on the grounds of scarcity value of specific skills, improved qualifications, and on compassionate grounds. Increments may be for a limited time only.
- 3.6. Full-time educators who have children enrolled at the school will have their school fees reduced by a percentage as determined by the governing body.
- 3.7. The salary will be paid on the 25th day of each month.
- 3.8. PAYE and UIF contributions will be deducted according to the prescribed rates.
- 3.9. UIF benefits will become payable on maternity leave as per the terms and conditions governing the UIF fund.

4. **LEAVE:**

- 4.1. Official leave: The educator has a right to 21 working days' vacation leave per year which shall be taken during school holidays.
- 4.2. School holidays: The educator shall be entitled to those portions of school holidays when not required at the school by the governing body. The teacher shall be entitled to full pay while on official school holidays, but not to additional payment for attendance at school or other duties during said holidays.
- 4.3. Maternity leave: Maternity leave will be 4 weeks before the expected date of delivery as certified by a medical practitioner and extend for 3 (three) calendar months following the date of confinement.
- 4.4. Sick leave: Ordinary sick leave is 30 working days over a three-year cycle. If absence from work is more than 2 consecutive days a doctor's certificate will be required. A doctor's certificate is also required if there is an absence of more than two occasions during an 8 week period. If such certificate is not produced, the absence will be considered to be leave without pay. Special sick leave may be granted in the event of major illnesses or operations. Approval of such leave is subject to confirmation by a specialist physician.
- 4.5. Examinations leave: Leave on full pay may be granted to any educator who sits for an approved and authorised examination. The educator is entitled to leave on the day before the examination as well as on the day of writing. The Principal must be informed at the beginning of the year by educators who anticipate writing examinations at the end of the year.
- 4.6. Family responsibility leave: Employees who have been in employment for longer than 4 months qualify for family responsibility leave. The employee is entitled to three days' paid leave which can be utilised when:
 - 4.6.1. an employee's child is born;
 - 4.6.2. the employee's child is ill; or
 - 4.6.3. a spouse, life partner, parent, grandparent, child, grandchild or sibling dies.

5. **TERMINATION OF SERVICE:**

- 5.1. The educator may terminate employment with the governing body by giving one month's calendar notice in writing to the governing body. In

this latter event the educator shall forfeit all benefits which may have otherwise been allowed under this Contract during the notice period.

- 5.2. The Contract may be terminated by either party on notice of not less than:
 - a) 1 week, if the employee has been employed for 4 weeks or less.
 - b) 2 weeks, if the employee has been employed for more than 4 weeks but not more than 1 year.
 - c) 4 weeks, if the employee has been employed for 1 year or more.
- 5.3. The governing body may terminate this Contract by giving the educator one month's notice or in lieu of notice, may pay the educator the equivalent of one month's salary. The educator shall be paid benefits accrued up to the termination of the agreement period for which payment is made.

6. **DISCIPLINARY PROCEDURE:**

- 6.1. The objective of this procedure is to provide a fair and equitable process to be applied when the work performance or behaviour of the educator is deemed to be unacceptable. Each will be treated on its own merits so that any disciplinary action taken is fair and is seen to be fair.
- 6.2. Disciplinary action shall only be taken after the issue has been raised by the governing body with the educator concerned, the complaint clearly put, and the educator concerned has had an opportunity to make representation in his/her defence.
- 6.3. Disciplinary action appropriate to the alleged misconduct may take the form of: verbal reprimand, formal written warning/s, final written warning, dismissal.
- 6.4. Where formal disciplinary action may be taken, the educator concerned shall be informed in writing of the alleged misconduct and shall be given adequate time to prepare before attending a disciplinary meeting.
- 6.5. An educator who has had formal disciplinary action taken against him/her will have the right of appeal against the action taken. Such appeal shall be directed to the governing body who will review the case, hear any new representation on the matter, and then make a final decision which shall be put in writing.
- 6.6. The governing body may suspend an educator on full pay while the above procedures are being implemented.
- 6.7. The following examples of misconduct may lead to dismissal:
 - a) serious misconduct, e.g. theft, assault, bribery;
 - b) persistent poor time-keeping;
 - c) wilful refusal, or neglect, in obeying a lawful order or directive of the governing body or the management of the school;
 - d) material breach of the Contract of Employment or written regulations issued by the governing body;
 - e) negligent, indolent, or incompetent discharge of duties.
- 6.8. An educator who is dissatisfied with a governing body decision has the right to declare a dispute and to proceed with the matter in terms of the relevant provisions of the Labour Relations Act.

7. **GRIEVANCE PROCEDURE:**

- 7.1. A grievance is a feeling of injustice or dissatisfaction affecting an educator

which arises out of the work or employment situation.

7.2. The lodging of a grievance shall not prejudice an educator in any way.

7.3. Stages in the grievance procedure:

- a) An educator shall first raise the grievance verbally with the principal who will attempt to resolve the grievance.
- b) If the matter is not resolved, the educator shall present the grievance in writing to the principal. The principal shall convene a meeting between the educator concerned, who must be accompanied by a representative of the union or fellow employee.
- c) Should the grievance not still be resolved, it will be referred to the governing body for its review.
- d) Should the grievance still not be resolved, the educator has the right to take up the matter as a dispute in accordance with provisions of the Labour Relation Act.

8. **PENSION FUND AND MEDICAL AID**

8.1. Membership of the pension fund is compulsory for permanent members of staff. Membership of the medical aid is not compulsory. Conditions are as determined by the Funds.

9. **RETIREMENT**

9.1. Teaching staff retire at the end of the month in which they turn 65 years of age.

10. **PROBATIONARY PERIOD**

Every new appointee will serve a probationary period of a year. During this period, this Contract will be applicable. The governing body may for any reason relating to the educator's performance on the job, terminate an educator's contract on one calendar month's notice.

I (full name) _____ accept the responsibilities, regulations, requirements and benefits as laid down in this Employment Contract.

SIGNATURE (Educator)

Date

SIGNATURE
(Representative of Governing Body,
Simunye C.P. School)

Date

Activities

A. State whether the following statements are true or false.

	True	False
1. The governing body is the employer of all members of staff at the school.		
2. The staff selection committee appoints members of staff to the school.		
3. The staff selection committee's chairperson must be a member of the governing body.		
4. Applications for vacant posts must be rejected if they are received after the closing date.		
5. A CV is a document that details the employer's work history.		
6. A short-list is a list of the applicants most suited for the job.		
7. A referee is someone who decides whether a dismissal is fair or unfair.		
8. At least one of the referees should be a previous employer.		
9. All the applicants must be interviewed on the same day.		
10. Interviews sometimes give unreliable impressions of an applicant.		
11. The contract of employment is an agreement that may be varied according to circumstances.		
12. A job description can be used in drawing up an advertisement for a vacant post.		
13. A job description states the minimum qualifications necessary for a post.		
14. Induction is the process of assessing an employee's work performance.		
15. A 'buddy' is a new employee's guide who assists him or her with becoming familiar with the work environment.		

16. The most important aspect of appraisal is to focus on the employee's weaknesses and shortcomings in the job.
17. A good appraisal is one which focuses on the employee's personal characteristics rather than work performance.
18. If an employee refuses to sign an appraisal, that appraisal is invalid.
19. Unions must be involved in the recruitment and selection process.
20. A letter of appointment must be issued to the new employee before he or she starts work.

True	False
-----	-----

B. Choose the correct answer

1. **An employer-employee relationship exists between the governing body and**
 - a. all members of staff at the school.
 - b. all members of staff that it pays remuneration to.
 - c. all members of staff who are members of the governing body.
2. **The principal is the**
 - a. employer of staff at the school.
 - b. is the representative employer of staff at the school.
 - c. is the employer of governing body appointed members of staff.
3. **Governing body appointed educators are subject to**
 - a. the Employment of Educators Act No. 76 of 1998.
 - b. the Education Laws Amendment Act No.48 of 1999.
 - c. the Labour Relations Act No. 66 of 1995.
4. **Every employee has a right to go on**
 - a. strike after all efforts to resolve a dispute have failed.
 - b. an unprotected strike.
 - c. strike whenever there is a labour dispute.
5. **The Education Laws Amendment Act No.48 of 1999 has changed the**
 - a. conditions of employment of educators.
 - b. powers of a governing body, allowing them to employ additional members of staff.
 - c. definition of who is an educator.

6. **The Labour Relations Act No. 66 of 1995 looks at**
 - a. the procedures for dismissing an employee.
 - b. implementing affirmative action policies when appointing members of staff.
 - c. implementing policies that will enable employees to develop.
7. **The Skills Development Levy is payable to the**
 - a. Department of Labour.
 - b. South African Revenue Services.
 - c. The Skills Development Levy Fund.
8. **The employer is obliged to deduct employee's tax and**
 - a. pay it to SARS.
 - b. pay it to the Department of Education & Culture.
 - c. retain it for employee benefits.
9. **An employee may be dismissed summarily for**
 - a. operational reasons.
 - b. incapacity.
 - c. misconduct.
10. **The employee has a right to:**
 - a. 2 months maternity leave.
 - b. 4 consecutive months maternity leave.
 - c. 6 months maternity leave.

C. Case Studies

Read the following case studies and answer the questions that follow.

1. Mr L.Ndlovu, an educator employed by your school, has been coming to school late. Several parents have complained that their children are missing out on work as a result of his late coming. As an employer how would you address this problem?
2. Miss F.Zondi, a governing body employed educator, approaches you, the principal of the school and says that she wishes you to stop deducting employee's tax. Instead she states that she will pay her tax directly to SARS when she submits her Income Tax Return. How will you handle this request?
3. A cleaner employed by your school, Mr T.Dlamini says that his volume of work increased after you asked him to also clean the new block that was recently built. He is now refusing to carry out this task. How will you respond?

4. On the odd occasion Mr.T.Dlamini, the cleaner employed by your school has been found sleeping under a tree during work hours after consuming alcohol. As an employer, what will you do to discipline him?
5. An educator employed by your school returned to school over the week-end and made private photocopies without your knowledge. Is this grounds for dismissal? Give reasons for your answer.
6. A matric educator informs you one month before the trial examination that she is pregnant and is applying for maternity leave. The syllabus is incomplete. Can you dismiss her and employ another educator?
7. One of the cleaners employed by your school has been ill for some time and his illness has impacted negatively on his work performance. What can you do to address this problem?
8. Your enrolment has decreased and you can no longer afford to employ an additional Languages, Literacy and Communication educator in the intermediate phase. How will you address this problem?
9. The educator that you have employed to coach sports and to instruct learners in physical education informs you, the principal, that he is HIV positive. How will you respond?

D. Role plays

Read the following role plays and have a few members of your governing body take on the different roles.

1. The staff selection committee at Simunye C.P.School have short-listed several candidates to appear for an interview for the post of a junior primary educator. The interview panel consists of Mr A.Kabanyane, the chairperson of the staff selection committee, Ms L.Nxumalo, the principal, Mrs F.Msomi, the junior primary head of department, Ms K.Ndlovu a parent member of the governing body and Mr J.Gwala a co-opted member of the governing body who is a retired principal.

Ms C.Bhengu an applicant has arrived for the interview.

Take on the different roles and show how the interview should be carried out.

2. You, the principal of Simunye C.P.School have charged Mr T.Dlamini, a cleaner, for assaulting an educator at the school. After investigating the matter and informing Mr Dlamini of your findings you have summoned him to appear before a disciplinary tribunal. You have appointed a tribunal of fair and open-minded people to hear the charge.

The members of the tribunal are Mr J. Ngubane the chairperson of the governing body, Ms L. Nxumlo the principal of Simunye C.P.School and Miss J.Nkosi a parent member of the governing body. Mr T. Mkhize, the educator who was assaulted is present to give evidence. Mrs L. Mthembu, an educator, is present as a witness to the assault.

Mr T. Dlamini has requested Mr A. Ndlovu from his union to represent him.

Take on the different roles and show how the misconduct hearing should be carried out.

E. Complete the following:

1. How would you calculate employee's tax?

2. How would you calculate the Skills Development Levy for your employees?

3. How would you calculate Unemployment Insurance Fund Contributions?

4. What are some of the important details that you will include in an employment contract?

5. Draw up a job description for an employee at your school.

Suggested answers

A. True or False

1. False
2. False
3. True
4. True
5. False
6. True
7. False
8. True
9. False
10. True
11. False
12. True
13. True
14. False
15. True
16. False
17. False
18. False (the appraisal is still valid as long as someone witnessed it being handed to the employee)
19. False
20. True

B. Choose the correct answer

1. b
2. b
3. c
4. a
5. c
6. a
7. b
8. a
9. c
10. b

C. Case studies

1. Apply the system of progressive discipline which is to first counsel the employee, establish reasons for his late coming and wherever possible assist him to solve his problem. If you find that he does not have a valid reason for coming to school late, you may warn him that this behaviour is unacceptable. If this behaviour persists the following steps should be applied:

- 2nd offence - 1st written warning
- 3rd offence - 2nd written warning
- 4th offence - Final warning in writing

After the final warning has been given and if the behaviour still persists misconduct charges may be laid against the employee.

2. In terms of the Income Tax Act, all employees whose remuneration exceeds the tax threshold (R21 111 p.a and R36 538 for persons 65 and over - 2000/2001 tax year) must pay employees tax. This is the employer's duty. Failure to do so is a criminal offence and the employer may be prosecuted.
3. If his job description did not include the new block, the cleaner is within his rights to refuse to take on additional duties if they are unreasonable. As an employer you may renegotiate his job description to include the new block. The employee may request that he be remunerated for this additional task or be relieved of some of his other duties.
4. Follow the system of progressive discipline as outlined in 1 above
5. The matter must first be investigated. If there are reasons to believe that the educator was deliberately dishonest, a misconduct charge may be laid against him or her. A tribunal may be constituted and it should come to a decision after weighing up the evidence and hearing the educator's account of the events. Usually dismissal is used as a last resort and must match the severity of the offence. In this case, if you as the employer feel that you cannot trust the educator and that your employer-employee relationship has broken down, you may be within your rights to dismiss the educator.
6. No, she may not be dismissed, as the Labour Relations Act makes dismissal on the grounds of pregnancy automatically unfair. Employees are entitled to four months maternity leave. A locum tenen may be employed as a relief teacher in her absence.
7. Discuss the situation with the employee and look at the possibility of employing him in another position. If this is not possible the employee may be dismissed on the grounds of incapacity for health reasons. See Section 10.7 of this manual and the Code of Good Conduct: Dismissal, of the LRA.

8. Consult with educator and examine the possibility of using his or her services elsewhere. If this is not possible and the post that he or she is occupying is being abolished for operational reasons then he or she may be dismissed. . See Section 10.6 of this manual and Section 189 of the LRA.
9. The employee may not be discriminated against and may not be dismissed because he has HIV/AIDS. As a precautionary measure he may be advised not to engage in contact sport with learners where there may be a possibility of coming into contact with open wounds, blood etc.

Understanding School Governance

Index: Manuals 1, 2, 3, 6 & 7

Manual Page

A

Acknowledging applications	7	13
Action planning	1	46
Admissions policy	1	38
Advertisements for vacancies	7	12
Agenda	3	37-41
	3	51-52
Alternative placement	6	33
Amendments (at meetings)	3	29
Appeals about election results	2	25
against suspensions/expulsions	6	33
Appraisal, defined	7	32
how to appraise	7	32-34

B

Ballot papers	2	22
Basic conditions of Employment Act No. 75 of 1997	7	38
Bill of Rights	7	35

C

Casting vote	3	35
Chairperson s agenda	3	42
Code of conduct	1	37
acceptance	6	10
binding notice	6	11
consultation	6	10
contents	6	7-12
defined	6	6
departmental approval	6	17
guidelines	6	7
publicising	6	12
responsibility of SGB	6	6
roles and responsibilities	6	13
Committees	1	18
Communication with the KZNDEC	1	21
Compensation Fund	7	39
	7	48-49
Compulsory attendance	1	39
Constitution of a SGB	1	32
example	1	50-60
Contentious issues at meetings	3	31
Contract of employment		
defined	7	24
example	7	70
fixed term contract	7	27
indefinite contract	7	27
items in contract	7	25
Co-opted members	1	14

	Manual	Page
C		
Counter-proposal	3	29
Covering letter	7	14
Curriculum vitae (CV)		
assessing	7	15
example	7	16
D		
Debate	3	27
Deliberative vote	3	35
Disciplinary processes	6	28
Discipline and the law	6	26
Discipline (employee)	7	59
disciplinary code	7	60
disciplining employees	7	61-62
Discipline (learner) - see Code of Conduct and Misconduct		
Dismissals		
automatically unfair dismissals	7	63
defined	7	63
dismissal for incapacity	7	65-66
operational reasons	7	65
E		
Elections		
candidates, eligibility	2	10
defined	2	5
educators	2	35
frequency	2	6,36,40
learners	2	43-47
meeting	2	17
non-educators	2	39
parents	2	27
Electoral officer		
documents and forms needed	2	15
duties	2	13
in educator elections	2	35-37
in non-educator elections	2	39-41
in parent elections	2	27-33
in RCL elections	2	44-46
information needed	2	14
Employee		
basic rights	7	51-57
defined	7	6
duties	7	59
employee s tax		
calculation	7	45
defined	7	42
IRP 5 certificate	7	46-47
PAYE	7	42
payment to SARS	7	45
records	7	46

E

SITE	7	43
tax reconciliation	7	47
taxable benefits	7	44
Employee rights		
annual leave	7	53
fair labour practices	7	56
family responsibility leave	7	54
freedom of association	7	55
maternity leave	7	53-54
notice on termination of employment	7	55
remuneration	7	51
right not to be unfairly dismissed	7	56
right to certificate of service	7	56
right to payments on termination	7	55
right to prescribed days off	7	54
right to strike	7	57
sick leave	7	53
work only prescribed hours	7	52
Employer		
defined	7	6
duties	7	41-50
Employer-employee relationship	7	6
Employing new staff	7	7
Employment Equity Act No. 55 of 1998	7	38
Expulsion	6	25,32

F

Financial management	1	24
Forms connected with tribunals	6	39-44
Functions of a SGB		
additional	1	25
compulsory	1	23
optional	1	24
Functions, failure to carry out	1	26

I

Induction	7	28-30
Interviews		
defined	7	19
do s and don ts	7	21
interview questions	7	20
venue for interviews	7	20

J

Job description	7	30
example	7	31

L

	Manual	Page
Labour Relations Act, No. 66 of 1995	7	36
Language policy	1	39
Legal status of an SGB	1	20
Legislation		
interpreting	1	7
Letter of appointment	7	23
example	7	69

M

Majority	3	8
Management compared to governance	1	9
Management role of a SGB	1	23
Management		
different roles	1	8
Meetings		
annual general meetings	3	12,51,53
attendance of meetings	3	17,47
chairperson of meeting	3	20,26
extraordinary meetings	3	12,16,52
general meetings	3	11
meetings, frequency	1	19
meetings, overview	1	23
notice of meetings	3	16
preparation	3	15-18
rights and responsibilities	3	10
set procedure	3	9
short notice meetings	3	13,16
types	3	11
urgent meetings	3	13,16
vice-chairperson of meeting	3	22
venues	1	19
	2	18
Membership of a SGB	1	11
Minority rights	3	8
Misconduct (employee)	7	67
fair procedure	7	68
Misconduct (learners)		
measures to deal with	6	21-23,25
misconduct, levels	6	19
weighting disciplinary measures	6	23
Mission statement	1	36
Motion	3	29

N

Nominations of the SGB	2	20-21,30, 37,41
------------------------	---	--------------------

	Manual	Page
Notices of meetings	3	46,50,51
Numbers on a SGB	1	13
	2	7,35,39,47

O

Office-bearers (SGB)		
absence at meetings	3	26
election of	1	17
	2	49
resignation	3	26
terms of office	1	18
	2	9
types of	3	19

P

Payment for serving on an SGB	1	20
Personal interest of members in issues	1	27
Planning	1	43
Point of order	3	32
Policies	1	23
compulsory	1	30,32
developing	1	30-31
defining	1	29
making effective	1	31
problem-orientated	1	42
technical	1	42
Prioritising	1	46
Procedural fairness	7	64
Procedural motion	3	30
Proposal (motion)	3	29
Protection of speaker	3	33

Q

Quorum	3	32
--------	---	----

R

Rating applicants	7	22
Recognising a participant	3	33
Reconsideration of motions	3	36
Records of meetings	3	45-50
Recruitment	7	11
Referees, checking with	7	17
Regional services levy	7	50
Registers of meetings	3	47
Religious policy	1	41
Remuneration, defined	7	44
Representative Council of Learners	2	43-47
Representivity	1	16
	2	8

R

Resolution	3	29,49
Resolutions book	3	49
Rights and duties of minors	1	21
Rules, school	6	12,35

S

SASA as amended, Education Laws Amendment Act No. 100 of 1997 and No. 48 of 1999	7	37
Seating at meetings	3	18
Secretary of SGB meeting	3	24-26
Selection of applicants		
method of selecting	7	12
criteria for selection	7	13
Shortlisting	7	18
Skills Development Act No. 97 of 1998	7	39
Skills Development Levies Act No. 9 of 1999	7	39
Skills levy	7	39,49
Staff selection committee, defined	7	8
Standing order	3	9
Substantive fairness	7	64
Substantive motion	3	29
SWOT analysis	1	44

T

Treasurer	3	22,26
Tribunals		
arrangements at	6	30
composition	6	30
findings	6	31
function of	6	29
prior to	6	29
questioning	6	31
rights of accused learner	6	30
witnesses	6	31
penalties	6	31

U

Unemployment Insurance Fund	7	40,48
Unruly member	3	28

V

Vacancies on the SGB	1	18
Vision	1	35
Voters roll	2	28
Voters, eligibility to vote	2	9,36,40



Votes, counting
Voting methods

Voting procedure at SGB meeting
 abstaining
 acclamation
 ballot
 proxy
 casting vote
 general consent
 show of hands

Manual	Page
2	24,33,47
2	22,47
2	31-32
3	35
3	34
3	35
3	35
3	35
3	34
3	35

NOTES

NOTES

NOTES

In compiling this manual we acknowledge the use of the following:

Butler D (ed.), *Managing A Self-Reliant School: Employment, Orientation & Induction*, Sacred Heart College

Carrell M R (et al), *Human Resource Management in South Africa*, Prentice Hall (Pty)Ltd, South Africa, 1998

Grogan J, *Workplace Law*, Juta & Co Ltd, Cape Town, 2000

The assistance of Advocate E Boshoff, Department of Education (Pretoria) and Mr A Moodley, Deputy Director of the Department of Justice is also acknowledged.

