



AVOIDING LEGAL PITFALLS

Legal stuff

No one likes it. The fine print. The Terms and Conditions. The nitty gritty. Allegedly², if we actually read all the software Privacy Statements we are presented with in a year, it would take us 76 working days. Who's got time for that?

But we all know the devil's in the detail. And not a year has passed on the NQT Project where there hasn't been a case of a teacher needing to know the policies and laws that govern her work in order to resolve a conflict. But: Apple's privacy statement is one thing. Losing your job is quite another.

What are my rights?

If you're a teacher, you're probably lower than average on the thinking-about-yourself scale. The idea of insisting on your rights, getting specific about legalities and saying 'no' may feel anathema to you: you didn't become a teacher just to dig your heels in at the first sight of a little extra work. You did this to make a difference, right?

²<http://techland.time.com/2012/03/06/you-d-need-76-work-days-to-read-all-your-privacy-policies-each-year/>

Unfortunately this means a lot of schools and employers will take advantage of your can-do attitude and your willingness to do what it takes to benefit your students. And teaching work has intensified tremendously over the last 20-30 years. It is important to know where to draw lines about what you will accept and to stand up for yourself. Otherwise you will get burnt out.

This is also an important self-respecting behaviour to model for your students. Our children learn far more from what we do than what we say. It is not healthy to provide them with role models for whom 'hard work' is equivalent to 'doormat'. Knowing your rights, insisting on being treated with dignity and respect and fighting for what is fair are all important issues our students need to see in the adults around them.

Of course there are grey areas. That's why lawyers are professionals. You don't need to know every policy inside out, its legal precedent and how it has been interpreted in the past. But there are some basics you really need to know. This tool is a crash course in Educator Employment policy. Let's go.

Newly Qualified Teachers Project

Key policy extracts

BEING INFORMED



JOIN A UNION!

We can't emphasize this enough. REALLY we can't. If you run into any form of labour dispute or disciplinary issue at work (and you think you won't, but there's no knowing what a hostile parent or child might accuse you of) you are defenceless without a lawyer or legal representative.

The chances of you being able to **afford a private attorney on a teacher salary is slim. Join a union.** They get the lawyer for you. They also offer pre-emptive advice on benefits, working conditions and conflict mediation, as well as professional development opportunities, all for a very reasonable monthly stipend.

There are two important factors that affect which laws apply to you and what you need to do in a conflict situation.

- 1) Are you **contract** or **permanent**?
- 2) Are you **government** employed or **school** employed?

Read on to find out more.



The Newly Qualified Teachers Project
School of Education | University of Cape Town



Government jobs

When your employer is the Provincial Education Department (PED)

If you applied for a provincial (gazetted) post through the Provincial Education Department, then **your post is a government post. This means that your contract is with the PED, not the school.** It also means that your employment terms and conditions are regulated by the major Acts and Regulations that are promulgated by the National and Provincial Education Departments, most notably the Employment of Educators Act (EEA), and its attached regulations, the Personnel Administration Measures (PAM).

There are also areas of the South African Schools Act (SASA) and the Children's Act that you should be aware of.

Because these laws are in the public domain, you often don't get an actual contract of employment from the PED. It is assumed you know that your T&Cs are public legal frameworks that are available for you to read any time.

Bargaining, collective agreements and educators' workplace conditions are negotiated in a statutory body referred to as the **Education Labour Relations Council (ELRC)**. Unions are normally represented on this council, as are employers (province and national).

The work of the ELRC is protected by the Constitution. Our right as teachers to a workplace that upholds our dignity is enshrined in the Constitution, as is our right to collectively negotiate for our working conditions.

USEFUL WEBSITES

All the laws listed here are available on the DBE website at www.education.gov.za

Click Resources >> Legislation

OTHER USEFUL SITES

www.elrc.org.za

www.naptosa.org.za > Labour Matters

www.sadtu.org.za

More generic sources

www.labourguide.co.za

Post level 1 educator

As an NQT you will be appointed as a **Post Level 1 Educator**. This is just legalese for being a 'normal classroom teacher'. Different levels of responsibility are allocated different post numbers. A Head of Department (HoD) is level 2. A Deputy Principal is level 3. A Principal is level 4. Post levels have salary implications.

Permanent vs. contract

If you are a **permanent** government employee, you receive a total negotiated **employment package**. This means:

- A take home salary
- A pension contribution
- A housing allowance
- Enrolment on the government medical aid scheme GEMS
- Access to benefits like ICAS.

This arrangement has been negotiated at the ELRC and is standard across the board.

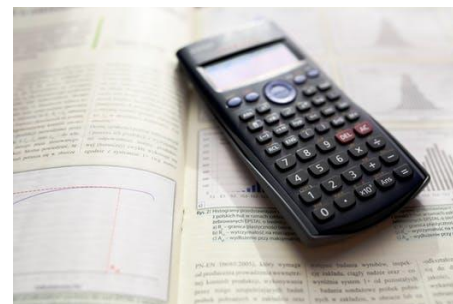
But if you are on **contract** you get a lump sum of the total cost-to-company of all these benefits as cash, and you need to make decisions about your own medical scheme, pension etc. You also get your housing allowance in cash. This can end up inflating a contract teacher's take-home money by up to 27%.

Sometimes, when a contract teacher is made permanent, they resent this. They miss having the freedom of liquid cash. It *feels* like they are being paid less.

Truth is, though, if you were doing with your money what you **should** (i.e. getting health insurance, contributing to a pension), you would have the same amount of money leftover at the end of the month either way. The structured package is a realistic take on people's difficulty prioritizing long-term vs. short-term. Remember, every retiree without a pension and every patient without health insurance will become a burden on the state. It is in the government's (and society's) interests that as many people as possible are financially prepared for sickness and old age.

One of the benefits of your employer making the contributions for you (i.e. being permanent) is that they add a little top up **and** they do all the tax calculations on your behalf (both medical costs and pension costs are tax deductible). If you do it yourself, you have to

manually claim these back every tax year in your tax return.



Salary notches

Without getting into the nitty-gritty about whether the promotion and progression system is fair, here's how the salary increase scale works for government jobs.

When you begin work as a teacher, your REQV (Relative Education Qualification Value) level is calculated based on your recognized experience and your qualifications.

The minimum qualification you require to be considered 'qualified' by SACE and SAQA is REQV level 13. If you have successfully completed a B.Ed degree (4 years) or a 3 year Bachelor degree + a 1 year PGCE this is 480 SAQA credits which puts you at REQV level 14. Doing an Honours will bump you up to REQV 15. A Masters will bump you to REQV 17. This is as high as you can go through qualifications alone.

The minimum REQV level for an unqualified educator is REQV 10. Unqualified educators can appeal for a higher REQV in recognition of other learning up to a maximum of REQV level 15.

So why does the REQV level matter?

Your REQV level dictates which salary notches you earn on. You can find the notch bands and how they apply to different posts and different roles if you web search for:

"REQV level salary notch educator"

These change each year with annual increases and negotiations so go to a union website that will have the most up to date information.



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BASIC DUTIES AND RESPONSIBILITIES



The next section gives a summary of the basic responsibilities of a Post Level 1 Educator.

The full text can be found on pages 7-21 of the PAM (the regulations attached to the Employment of Educators Act).

The following duties are considered full-time educators core responsibilities, **inside of and outside of the formal school day.**

- Scheduled teaching time
- Relief teaching
- Extra and co-curricular activities *
- Pastoral duties (ground, detention, scholar patrol etc.)
- Administration
- Supervisory and management functions
- Professional Duties (meetings, workshops, seminars, conferences) *
- Planning, Preparing and Evaluation *
- Professional Development *

Those marked with an asterisk (*) are not limited to the formal school day (7am to 3pm).

The principal, in consultation with staff, is obliged to optimize the timetable so that workload division is equitable across post levels and within post levels.

School leadership should also timetable to educators' strengths *as far as possible*, meaning you can query if you are allocated all classes outside your specialisms, but only if there seems a reasonable alternative timetable which has been overlooked.

A description of each of the duties listed above and what they entail can be found in **Annexure A2** of the Personnel Administration Measures.

LEAVE



While teachers have lengthier holidays than the normal 9 to 5 job, there are some important misconceptions regarding teacher leave that need to be cleared up.

As you will notice in our time management workshop, teachers often work significant overtime during the term. The holidays are in lieu of this.

But life does not happen according to the school calendar, and sometimes teachers need to be absent from school during the term time.

The PAM outlines the following types of leave available to public full-time educators:

- Annual leave during term time (for being sent on courses, to appear in court or for civil proceedings). However, all mandated holiday periods are considered leave otherwise.
- 36 days sick leave over a three year cycle (these are not cumulative)*
- Leave for occupational injury/illness
- Maternity, paternity and pre-natal leave
- Family responsibility leave
- Adoption and surrogacy leave
- Special leave for urgent private affairs
- Special leave for personal/professional development and religious observances
- Special leave for study purposes
- Special leave for examination purposes
- Unpaid leave
- Unpaid leave for continuity of service

These forms of leave apply to fixed term contract educators, with adjustments made where necessary.

* an educator must inform her direct line manager as soon as she knows she will be absent due to illness. A medical certificate (which does not need to state the nature of the illness) is required for three or more days absence. Absence on a Monday or a Friday may require a medical certificate, even if it is only for one day.

DISCIPLINARIES AND GRIEVANCES



In the event that you do experience conflict in your work place, there are important procedures that should be followed to make sure everyone is treated fairly and power is not abused.

Workplace disputes are sticky and difficult to navigate. Join a union to keep yourself protected with expert knowledge on these issues.

If your school management instigate a disciplinary procedure against you, you should:

- Try to keep all communication about the issue in writing. For verbal conversations, send a follow up email as soon as possible, politely stating "Further to our conversation, my understanding of the situation is x, y, z..." . This will create a time stamped record of all exchanges.
- Request details of the nature of the complaint as soon as possible. You have a right to know before anyone else does what the allegations are against you.
- Get assistance/representation.
- Not allow yourself to be bullied or constructively dismissed (statements like "it would be best if you left" or "if I were you I would resign" are coercive. And illegal. Don't fall for this).

Do not make the mistake of thinking that because you are junior you are wrong, or that all allegations are made honestly and in good faith. There is an unfortunate amount of bullying that happens in the work place, and schools are no different.

In the event that you have made a mistake, you also have a right to supportive correction which is intended to help you rectify your error, not to punish you.

You can also lodge a **grievance** if you feel you've been treated unfairly.

See Chapter G on page 177 of the PAM for the process and the form you must fill in. You have **90 days** from the incident in question to do this.



SGB/Independent school jobs

When your employer is the school

If you have a **School Governing Body** post (also known as an SGB post) in a public school, or you work for an independent school, then the *school* is your employer, not the government.

Like government posts, these jobs can also be full-time or part-time, permanent or contract.

In an SGB post, you are still an educator in a public school, **and the Employment of Educators Act still applies to you**. That is: SGB paid teachers have the same work description and duties as their government post counterparts (see previous section).

BUT

SGB posts are often paid *less* than government posts. The general rule is: less or equal, but not more. Also: SGB posts are very rarely permanent. This is because the school's ability to pay your salary is dependent on their financial standing. Schools may not borrow money, and hence they must always keep a positive balance in their bank accounts. If something drastic might happen to the school's financial situation, SGB teachers are unfortunately very exposed to retrenchment.



This is why schools tend to hire SGB staff on rolling contracts.

If you are hired on an SGB post, you are not completely at sea. But you should ask for the terms and conditions of your pay, the school's contribution to your pension and medical aid (if any) and clarify what your leave terms are. You may still join a union, and you should.

Independent schools

Independent schools are basically private companies that offer education services. All the usual precautions that you would take when working in the private sector apply.

1. You should have an explicit and detailed contract of employment that outlines all the details about your pay, leave, terms of severance, notice periods etc.
2. The Labour Relations Act and the Basic Conditions of Employment Act apply.
3. You should clarify your schools position on union membership if you can. While the right to organize for your labour rights is in the Constitution, and hence applies to everybody, it would be wise to establish your employer's disposition so that you are well informed.

TAMING THE MONEY MONSTER

Whatever job you end up in, whether teaching or not, public or private, you should always be proactive about the following:

PENSION

Who pays what? Where is it? Is it a pension or provident plan? How is it taxed? When can you access it?

MEDICAL AID

Who pays what? Where is it? What benefits do you have? Are you tied in to a specific scheme and for how long? How is it taxed? How do you claim back on expenses? What do you do if you need to go to hospital?

DISPUTES

Know your rights. And don't be afraid to stand up for yourself. Look up institutions such as the Commission for Conciliation, Mediation and Arbitration (CCMA) and understand what constructive dismissal means. South Africa has very progressive labour law and it will protect you, but only if you utilize it.

The Children's Act

There are also areas of Children's Act that you should be aware of as a practicing teacher. This law applies to all professionals who work with minors.

Most importantly, you must be aware that **you have a legal obligation to report any suspected abuse or neglect of a minor**. That is: if you do *not* report any suspected or observed neglect or abuse, you are considered an accessory to the crime, and may be charged by the State for being negligent in your duty of care.

As an NQT, your primary point of reporting is your principal. They then take up the responsibility of taking the issue further.

This sounds very clear, but in reality it is not. Firstly, our support systems lack the capacity to deal with all the abuse cases teachers encounter. Secondly, running a traumatized child through a failing system is often worse than not: the victim feels failed again. Thirdly, many learners will ask you to keep an explicit disclosure of abuse a 'secret' as a basis of trust for talking to you.

You must let them know that you cannot keep their secret and that it is illegal for you to do so. You also cannot make them promises about what will happen. The system is too complex and overloaded for you to be sure they will receive the ideal support. **And you cannot make up for all the other adults in their lives who have failed them.**

So what to do?

1. **Listen.** If a minor wants to share something difficult with you, make them feel heard, safe and not judged.
2. **Inform them** that you will need to have a chat with your principal about what they might share with you, but that you are there for them and they are cared for. This is a promise that does not rely on anyone else.
3. **Do not promise to fix their issue**, but do tell them they are brave for speaking out.
4. **Refer to a counsellor** if the school has one for advice, or call ICAS if you can to talk it through. Many of the things learners might tell you are deeply troubling. Do not underestimate the effect such issues might have on your own wellbeing.

