



NATIONAL NEWS FLASH



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RE-EMPLOYMENT AFTER DISCHARGE FOR MISCONDUCT

The Minister of Basic Education on 9 April 2021 issued regulations pertaining to the re-employment of former educators after a discharge for misconduct.

The regulations determine a period (for each of the acts of misconduct contained in sections 17 and 18 of the Employment of Educators Act (EEA)) that an educator, discharged for misconduct, will be prevented from being re-employed.

While these are new regulation applicable to educators appointed under the EEA, it is not a new concept in the public service. Since 2016, when the new Public Service Regulations were adopted, similar regulations were introduced for the rest of the public service.

Members are familiar with s.17 of the EEA and that any educator found guilty of any of the acts of misconduct listed therein must, due to the seriousness of the transgressions, be dismissed. In terms of the published regulations, educators dismissed for s.17 offences, with the exception of theft, bribery, fraud or an act of corruption with regard to examinations or promotions or promotional reports, will **indefinitely** be prevented from being re-employed. **The same will apply** to educators found guilty of sexual harassment involving learners and those found guilty and convicted by a court of law for murder, attempted murder, rape, indecent assault or assault with the intent to cause grievous bodily harm.

It is clear that this is done to prevent learners from ever again being exposed to an educator that had been found guilty of such harmful conduct towards a learner(s).

Educators found guilty and discharged for theft, bribery, fraud, etc., mentioned above, will have to serve a mandatory prevention period of 5 years before they will be considered for re-employment. The s.18 transgressions will carry prevention periods ranging from 5 years to 1 year, depending on the type of misconduct that the employee had been discharged for. If your employer failed in their duty to share the information with you, it is obtainable from your NAPTOSA provincial office.

It is important for members to realise that the regulations also apply to educators who have been deemed to have been discharged on account of misconduct or deemed to have resigned. In terms of s.14 (1)(d) of the EEA an educator who resigns while disciplinary steps taken against him/her have not yet been disposed of, or without permission of the employer assumes employment in another position, shall, unless the employer directs otherwise, be deemed to have been discharged from service on account of misconduct. The misconduct referred to is the misconduct that the educator had been charged with.

Resigning while facing misconduct charges/proceedings will therefore not prevent an educator from being subjected to the prevention periods for re-employment referred to in the regulations.

NAPTOSA will continue defending members in disciplinary cases, because we believe in the principle of “not guilty, until proven guilty”. Members are, however, cautioned to refrain from actions that could lead to charges of misconduct and the possible penalty of dismissal, because the regulations now introduce additional “penalties” (in the form re-employment prevention periods) over and above the penalty of discharge.

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