


SECTION 38A
SOUTH AFRICAN SCHOOLS ACT
84 OF 1996

26 AUGUST 2017
ANKIA BESTER


Section 38A payments: SA Schools Act

MSM


Refer to
Chapter 6.4: Cost and Expenditure



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"AN QUINCE OF PREVENTION IS WORTH A POUND OF CURE"

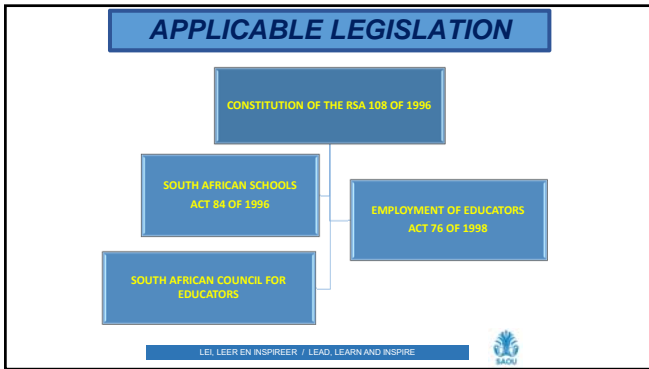


Prevention **Cure**


"THE GREATEST MEDICINE OF ALL IS TO TEACH PEOPLE HOW NOT TO NEED IT"

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APPLICABLE INSTITUTIONS



**PROVINCIAL
DEPARTMENT OF EDUCATION
YOUR EMPLOYER**

**SCHOOL GOVERNING BODY
GOVERNANCE STRUCTURE**

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

THE MEANING OF SECTION 38A OF SASA:

- IT PLACES A **PROHIBITION** ON THE PAYMENT OF UNAUTHORISED REMUNERATION, OR GIVING OF A FINANCIAL BENEFIT OR BENEFIT IN KIND TO STATE EMPLOYEES
- IT MAKES PROVISION FOR AN **APPLICATION** TO THE EMPLOYER FOR THE APPROVAL OF REMUNERATION, OR GIVING OF A FINANCIAL BENEFIT OR BENEFIT IN KIND TO STATE EMPLOYEES
- IT MAKES PROVISION FOR A **RIGHT TO APPEAL** TO THE MEC OF EDUCATION IF AN APPLICATION HAD BEEN UNSUCCESSFUL OR IF THE EMPLOYER FAILED TO RESPOND TO THE APPLICATION WITHIN 3 MONTHS AFTER SUBMISSION
- IT MAKES PROVISION FOR THE **PAYMENT OF TRAVEL AND SUBSISTENCE EXPENSES TO STATE EMPLOYEES** WITH REFERENCE TO CERTAIN TARIFFS AND DURING CERTAIN CIRCUMSTANCES
- IT REQUIRES THAT THE PAYMENT OF AUTHORISED REMUNERATION OF BENEFITS BE REFLECTED IN THE **SCHOOL'S BUDGET** AS PRESENTED AT THE GENERAL PARENTS' MEETING
- IT PROVIDES FOR **CORRECTIVE ACTION** THAT CAN BE TAKEN AGAINST SCHOOL GOVERNING BODIES IF REMUNERATION OR BENEFITS HAS BEEN PAID TO AN EMPLOYEE WITHOUT PRIOR APPROVAL OF THE EMPLOYER.

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

PROHIBITION:

IT PLACE A **PROHIBITION** ON THE PAYMENT OF **UNAUTHORISED REMUNERATION, OR GIVING OF A FINANCIAL BENEFIT OR A BENEFIT IN KIND TO STATE EMPLOYEES**

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

IS THIS REMUNERATION, FINANCIAL BENEFIT OR BENEFIT IN KIND
A RIGHT OR A PRIVILEGE?

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"MAY"

SECTION 38A(2):
"A SGB **MAY** APPLY TO THE EMPLOYER FOR APPROVAL TO PAY A STATE EMPLOYEE REMUNERATION, FINANCIAL BENEFIT OR BENEFIT IN KIND"

SECTION 38A(5):
"SGB **MAY** PAY TRAVEL AND SUBSISTENCE EXPENSES RELATING TO OFFICIAL SCHOOL ACTIVITIES."

SECTION 38A(10):
"A SGB **MAY** APPEAL TO THE MEC AGAINST A REFUSAL BY THE EMPLOYER OF AN APPLICATION CONTEMPLATED IN SUBSECTION (2) FOR THE FAILURE OF THE EMPLOYER TO PROVIDE A DECISION WITHIN 3 MONTHS AFTER LODGING THE APPLICATION"


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RIGHT

SECTION 38A(2):
REMUNERATION; FINANCIAL BENEFIT OR BENEFIT IN KIND FOR **ADDITIONAL WORK PERFORMED**
FOR EXAMPLE: WORK NOT ACCORDING TO AN EDUCATORS JOB DESCRIPTION IN TERMS OF THE PAM

SECTION 38A(5):
"TRAVEL AND EXPENSES RELATING **TO OFFICIAL SCHOOL ACTIVITIES.**"
FOR EXAMPLE: ANNUAL SCHOOL ACTIVITIES RELATING TO MANAGEMENT, ACADEMIC, SPORT OR CULTURE

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

APPLICATION:


IT MAKES PROVISION FOR AN **APPLICATION** TO THE EMPLOYER FOR THE APPROVAL OF REMUNERATION, OR GIVING OF A FINANCIAL BENEFIT OR BENEFIT IN KIND TO STATE EMPLOYEES

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

APPLICATION
IN TERMS OF SECTION 38A(2) OF SASA:

- IN TERMS OF SECTION 38A(3) OF SASA SUCH AN APPLICATION MUST BE SUBMITTED IN WRITING TO THE OFFICE OF EMPLOYER AND MUST INCLUDE:
 - (a) FULL DETAILS OF THE NATURE AND EXTENT OF THE PAYMENT;
 - (b) THE PROCESS AND RESOURCES THAT WILL BE USED TO COMPENSATE OR REMUNERATE THE STATE EMPLOYEE; AND
 - (c) THE EXTENT OF COMPLIANCE WITH **SECTION 20(5) TO (9)**
- IN TERMS OF SECTION 38A(4) OF SASA THE SGB MUST SUBMIT THE APPLICATION CONTEMPLATED IN SUBSECTION (2) AT LEAST FOUR MONTHS PRIOR TO THE FINALISATION OF THE SCHOOL'S BUDGET

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

WHEN WILL CONTRACTS BE APPLICABLE?

SECTION 38A(3)(C):

– ONLY APPLICABLE TO THE CREATION OF ADDITIONAL POSTS OTHER THAN THE STATE'S EDUCATOR OR NON-EDUCATOR POSTS WHERE THE SCHOOL GOVERNING BODY IS THE EMPLOYER.

• SECTION 20(5) OF SASA: SUBJECT TO THIS ACT, **THE LABOUR RELATIONS ACT 66 OF 1995**, AND ANY OTHER APPLICABLE LAW A PUBLIC SCHOOL MAY ESTABLISH POSTS FOR NON-EDUCATORS AND EMPLOY NON-EDUCATOR STAFF ADDITIONAL TO THE ESTABLISHMENT DETERMINED IN TERMS OF THE PUBLIC SERVICE ACT OF 1994

• WHY SECTION 20(4) ARE EXCLUDED IN THIS APPLICATION REQUIREMENTS IS UNCLEAR.

• **REMEMBER IN TERMS OF THE LABOUR RELATIONS ACT 66 OF 1995 A CONTRACT CANNOT BE AMENDED UNILATERALLY**

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

WHEN THE DEPARTMENT OF EDUCATION IS THE EMPLOYER AND AN EMPLOYEE OF THE DEPARTMENT OF EDUCATION RECEIVES REMUNERATION OR A FINANCIAL BENEFIT OR A BENEFIT IN KIND FROM THE SGB

THE FOLLOWING WILL BE RECOMMENDED:

SECTION 38A(2) AGREEMENT / CONTRACT:

– FOR WORK DONE BY AN EMPLOYEE THAT IS NOT ACCORDING TO THE EMPLOYEE'S JOB DESCRIPTION IN TERMS OF THE PAM:

• THIS IS NOT A CONTRACT OF EMPLOYMENT

• THERE ARE NO OTHER EMPLOYER CREATED

• DUE TO THE FACT THAT A SGB MUST APPLY FOR SECTION 38A REMUNERATION OR FINANCIAL BENEFIT OR A BENEFIT IN KIND ANNUALLY, SUCH AN AGREEMENT ARE ONLY VALID FOR ONE YEAR

• **UNILATERAL AMENDMENTS ARE THEREFORE NOT APPLICABLE, BUT RATHER BREACH OF CONTRACT**

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

RIGHT TO APPEAL:

IT MAKES PROVISION FOR A RIGHT TO APPEAL TO THE MEC OF EDUCATION IF AN APPLICATION HAD BEEN UNSUCCESSFULL OR IF THE EMPLOYER FAILED TO RESPOND TO THE APPLICATION WITHIN 3 MONTHS AFTER SUBMISSION

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

- IN TERMS OF SECTION 38A(7) OF SASA THE EMPLOYER MUST TAKE INTO ACCOUNT:
 - (a) THE IMPLICATIONS FOR THE EMPLOYER IN TERMS OF THE EMPLOYMENT CONTRACT AND LABOUR LAW
 - (b) WHETHER THE SERVICE CONCERNED IN THE APPLICATION WILL INTERFERE WITH THE NORMAL SERVICE DELIVERY OF THE EMPLOYEE
 - (c) WHETHER THE SERVICE CONCERNED IN THE APPLICATION HAS ALREADY BEEN PAID FOR BY THE EMPLOYER; AND
 - (d) WHETHER THE ADDITIONAL REMUNERATION, OTHER BENEFITS OR BENEFITS IN KIND SUPPORT THE CORE ACTIVITIES AND FUNCTIONS OF THE SCHOOL

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

ANNUAL APPROVAL FROM THE EMPLOYER / FAILURE BY THE EMPLOYER TO PROVIDE A DECISION ON AN APPLICATION IN TERMS OF SECTION 38A(2) OF SASA:

- YOU ARE **NOT ALLOWED** TO PAY ANY REMUNERATION, FINANCIAL BENEFIT OR BENEFIT IN KIND IN TERMS OF SECTION 38A(1) OF SASA WITHOUT THE PRIOR APPROVAL OF THE EMPLOYER.
- A SGB **MAY APPEAL TO THE MEC** AGAINST:
 - THE UNREASONABLE REFUSAL (SECTION 38A(6) OF SASA) BY THE EMPLOYER OF AN APPLICATION CONTEMPLATED IN SUBSECTION (2)
 - THE FAILURE OF THE EMPLOYER TO PROVIDE A DECISION ON AN APPLICATION CONTEMPLATED IN SUBSECTION 2 WITHIN THREE MONTHS AFTER THE LODGING OF THE APPLICATION IN THE OFFICE OF THE EMPLOYER

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

SCHOOL'S BUDGET

IT REQUIRES THE PAYMENT OF AUTHORISED REMUNERATION OF BENEFITS BE REFLECTED IN THE **SCHOOL'S BUDGET** AS PRESENTED AT THE GENERAL PARENTS' MEETING

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

IN TERMS OF SECTION 38A(8) OF SASA THE PAYMENT CONTEMPLATED IN SUBSECTION (1) MUST BE REFLECTED IN THE SCHOOL'S BUDGET (SALARIES), AS PRESENTED AT THE GENERAL PARENTS' MEETING AS CONTEMPLATED IN SECTION 38(2) OF SASA.

IN TERMS OF SECTION 38(2) OF SASA BEFORE A BUDGET IS APPROVED BY THE SGB, IT MUST BE PRESENTED AT A GENERAL MEETING OF PARENTS CONVENED ON AT LEAST 30 DAYS NOTICE FOR CONSIDERATION AND APPROVAL BY A MAJORITY OF PARENTS PRESENT AND VOTING.

REASONABLE REMUNERATION DEPEND ON THE SCHOOL'S FINANCIAL POSITION.
SCHOOLS MUST ACT CAUCIOUS.

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PRIVILEGE:

"A SPECIAL RIGHT, ADVANTAGE, OR IMMUNITY GRANTED OR AVAILABLE ONLY TO A PARTICULAR PERSON OR GROUP"

FOR EXAMPLE:

REMUNERATION OR A FINANCIAL BENEFIT OR A BENEFIT IN KIND **JUST BECAUSE YOU ARE APPOINTED IN A SPECIFIC POST**

REMUNERATION OR A FINANCIAL BENEFIT OR A BENEFIT IN KIND **JUST TO GET YOU INTERESTED IN A PARTICULAR POST**

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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

POTHOLES



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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

DURING MOST DISCIPLINARY HEARINGS THE FOLLOWING BECOME APPARENT:

PRINCIPALS INADVERTENTLY CREATE PITT-FALLS FOR THEMSELVES

CREATING A SCENARIO WHICH COULD ERUPT AT ANY POINT!



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SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

CORRECTIVE ACTION:

PROVIDES FOR **CORRECTIVE ACTION** THAT CAN BE TAKEN AGAINST SCHOOL GOVERNING BODIES IF REMUNERATION OR BENEFITS HAD BEEN PAID TO AN EMPLOYEE WITHOUT THE PRIOR APPROVAL OF THE EMPLOYER.

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PRINCIPAL



SGB



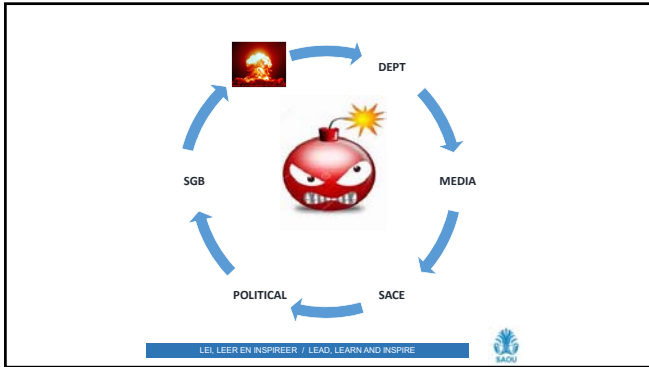
PROF
MANAGEMENT



GOVERNANCE

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YOU AS EMPLOYEE OF THE DEPARTMENT OF EDUCATION:

SECTION 18(1) OF THE EMPLOYMENT OF EDUCATORS ACT 76 OF 1998:

- (a) FAILS TO COMPLY WITH OR CONTRAVENES THIS ACT OR ANY OTHER STATUTE, REGULATION OR LEGAL OBLIGATION RELATING TO EDUCATION AND THE EMPLOYMENT RELATIONSHIP WHEN YOU:
- IN TERMS OF SECTION 16(A)(2)(VI) OF SASA FAILED TO IMPLEMENT POLICY AND LEGISLATION;
 - IN TERMS OF SECTION 16(A)(2)(F) OF SASA FAILED TO INFORM THE SGB ABOUT POLICY AND LEGISLATION;
 - IN TERMS OF SECTION 16(A)(2)(H)(I)(K) OF SASA FAILED TO ASSIST THE SGB WITH THE MANAGEMENT OF THE SCHOOL'S FUNDS; PREVENT FINANCIAL MISMANAGEMENT AND REPORT FINANCIAL MISMANAGEMENT BY THE SGB

- (h) ACCEPTS ANY COMPENSATION IN CASH OR OTHERWISE FROM A MEMBER OF THE PUBLIC OR ANOTHER EMPLOYEE FOR PERFORMING HIS OR HER DUTIES WITHOUT WRITTEN APPROVAL FROM THE EMPLOYER
- (m) WITHOUT THE WRITTEN APPROVAL (SECTION 33 OF SASA) OF THE EMPLOYER, PERFORMS WORK FOR COMPENSATION FOR ANOTHER PERSON OR ORGANISATION WHETHER DURING OR OUTSIDE WORKING HOURS
- (n) WITHOUT THE WRITTEN APPROVAL OF THE EMPLOYER ACCEPTS OR DEMANDS IN RESPECT OF THE CARRYING OUT OF OR THE FAILURE TO CARRY OUT THE EDUCATOR'S DUTIES, ANY COMMISSION, FEE, PECUNIARY OR OTHER REWARD TO WHICH THE EDUCATOR IS NOT ENTITLED BY VIRTUE OF THE EDUCATOR'S OFFICE, OR FAILS TO REPORT TO THE EMPLOYER THE OFFER OF ANY SUCH COMMISSION, FEE OR REWARD

YOU AS A REGISTERED EDUCATOR WITH THE SOUTH AFRICAN COUNCIL FOR EDUCATORS :

CODE OF PROFESSIONAL ETHICS AND DISCIPLINARY PROCEDURE:

- (a) CONTRAVENTIONS RELATING TO DISHONESTY:
 - STRUCK OFF THE ROLE OR
 - BE SUSPENDED COMBINED WITH A FINE

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YOU AS PART OF THE SCHOOL GOVERNING BODY:

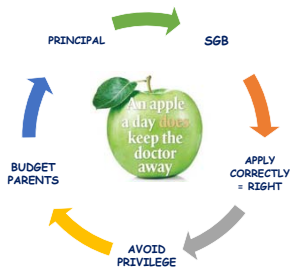
SECTION 38A(9) OF SASA:

"IF A SGB PAYS REMUNERATION OR GIVES ANY FINANCIAL BENEFIT OR BENEFIT IN KIND CONTEMPLATED IN SUBSECTION (1) TO AN EMPLOYEE WITHOUT PRIOR APPROVAL OF THE EMPLOYER, THE AMOUNT OF MONEY PAID OR BENEFIT GIVEN MUST BE RECOVERED BY THE EMPLOYER ON BEHALF OF THE SCHOOL FROM MEMBERS OF THE SGB WHO TOOK THAT DECISION, EXCLUDING A MEMBER OF THE SGB WHO IS A MINOR"

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CONCLUSION



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ANY QUESTIONS?

an apple a day keeps you away from the doctor

SAOU

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