



**AAN / TO: SAOU WERKPLEKVERTEENWOORDIGERS / SAOU SHOP STEWARDS**

**AANDAG: ATTENTION: ALLE SAOU LEDE / ALL SAOU MEMBERS**

**Nuusbrief 31 van 2018 / Newsletter 31 of 2018**

## **WAT IS MY REG? -GRIEWEPROSES-**

Talle gevalle noodsaak die skrywe hierby aangeheg.

Dit is van kardinale belang dat alle SAOU lede bewus sal wees wat hul regte is tydens die ontstaan van 'n griewe proses in die werksplek.

Hierby ingesluit 'n **MOET-LEES** inligtingstuk vir alle SAOU Lede:

***"What is my right?"  
-Volume 12 van 2018-***

## **WHAT IS MY RIGHT? -GRIEVANCE PROCEDURE-**

Numerous cases necessitated the attached written document.

It is of paramount importance that all SAOU members must take note of their rights when a grievance process is initiated at the workplace.

Herewith a **MUST-READ** information sheet for all SAOU members:

***"What is my right?"  
-Volume 12 of 2018-***

## **-SBL KONTRAKTE-**

Die meeste van die skole is tans besig met 'n begrotings proses en gevolglik ook die vasstelling van **SBL-aanstellings, asook salarisse**. Graag wys ons lede op die volgende:

- Kontrakte mag nie eensydig verander word om enigsins minder gunstig te wees as die kontrak waaronder u tans in diens is nie.
- Die SAOU sal lede bystaan in die interpretasie van kontrakte wat aangebied word en is by magte om namens u daarvoor te onderhandel met die SBL.
- Ons beveel ten sterkste aan dat u nie u kontrak sondermeer teken, alvorens u nie ten volle vertrouwd is met die inligting wat daarin vervat is nie.

**Vir enige navrae in hierdie verband is u welkom om ons kantoor te kontak.**

## **-SGB CONTRACTS-**

The majority of schools are currently busy with their annual budget process and as a result are also looking at **SGB appointments, as well as salaries**. We would like to draw members' attention to the following:

- Please note that no existing contract may be changed unilaterally to be less favourable.
- The SAOU can assist members with the interpretation of contracts and we may negotiate on your behalf should you find it necessary.
- The SAOU strongly recommends that you take cognisance of the content of the contract before you sign it.

**Please feel free to contact us for any enquiry with regards to your contract.**

## -SAOU VRYSTAAT WERWING-

'n **DRINGENDE** en **ERNSTIGE** beroep word op elke **SAOU Vrystaat WERKPLEKVERTEENWOORDIGER** gerig om te help om ten minste **TWEE** lede voor die einde van 2018 te werf! As ons dit kan vermag, kan ons gerieflik by die **6 000** lede verby skuif!

**ONTHOU:** Die SAOU verteenwoordig nie net Departementele onderwysers nie! Ons bedien ook Skoolbeheerliggaam aanstellings, sportorganiseerders, sekretaresses, finansiële beamptes, terreinwerkers, terapeute, sielkundiges, maatskaplike werkers, privaatskool personeel, departementele staatsdiens amptenare, asook **enige persoon** wat werksaam is in Suid-Afrika se onderwyssektor.

## -SAOU FREE STATE RECRUITMENT-

An **URGENT** and **SERIOUS** request is directed to every **SAOU Free State WORKPLACE REPRESENTATIVE** to recruit at least **TWO** members before the end of 2018! If we can achieve this, we will be able to exceed **6 000** members very soon!

**REMEMBER:** The SAOU does not only represent Departmental teachers! We also serve School Governing Body appointments, sports assistants, secretaries, financial officers, site workers, therapists, psychologists, social workers, private school staff, departmental public servants, as well as **any person** employed in the South African education sector.

# SAOU

***SAOU does not leave any  
member behind! Familie laat  
niemand agter nie!***



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## What is my right?

**IT IS SAID THAT I HAVE HUMAN RIGHTS,  
BUT WHAT DOES IT MEAN IN A CONFLICT  
SITUATION AT MY WORKPLACE?**

There's a lot of truth in the saying, "people don't leave jobs, they leave bosses." But this is the 21<sup>st</sup> century and almost every workplace is populated by a wide range of so-called 'generations', from 'Baby-Boomers' to 'Generation Y's.' Result? We often find ourselves working in an environment in which every employee is his or her own boss.



Values instead of rules are implemented in workplaces to encourage employees to be their own leader instead of their own boss. To be a leader means to help build fellow employees instead of breaking them down, to assist fellow employees in their struggles instead of only seeing their mistakes. A boss works completely differently: he or she is the 'boss' after all. Unfortunately we find more bosses in the workplace than leaders and the consequence is that employees leave their jobs because they feel undervalued and unappreciated; their performance is ignored; their struggles are seen as failures and they are made to understand clearly that they are replaceable.

In a workplace employees must constantly work on workplace relationships seeing that workplace relationships has a direct effect on a worker's ability and drive to succeed. Like all relationships a workplace relationship requires a lot of work and a lot of communication; it takes a great deal of care, sympathy and sensitivity to understand what the other person is thinking and feeling. Most of us do not even know who we are working with and therefore we tend not to know how to approach each other as leaders.

People have been classified by medical counsellors into four temperament types: choleric, sanguine, phlegmatic and melancholic.

Are you working with a *choleric* who seems to be angry most of the time but who is also a go-getter with no people skills, and is focussed on facts with little or no regard for emotions? Or is the person sitting next to you in the staffroom a *sanguine* who thinks life is a party, is loved by everybody and has great people relationships? Or what about the *phlegmatic* – the one who is as stable as the mountains, totally reliable, does not like taking risks, is a very hard worker and does not easily show any emotion? And then there is the *melancholic*; the perfectionist who is always serious, very private and tends to see only the problems?

Did you know the choleric has to be approached with facts because he or she is afraid of losing control; the sanguine has to be approached with applause because he or she is afraid of rejection; the phlegmatic has to be approached with no stress because he or she is afraid of conflict and the melancholic has to be approached very sensitively because he or she is afraid of criticism?

If we do not know who we are working with things like favouritism, jealousy, rumours, backstabbing, hidden attacks, bullying, lying and misunderstandings lead to conflict in the workplace and the consequences are productivity drain, wasted resources, negative toll on public image, lack of communication and the deadliest of all – the destruction of a healthy and sound work relationship!



The important role-players in a workplace are the employer, the employee and the employee's Union or legal representative. In a conflict situation at the workplace one must know who to turn to for assistance. For example, when you and your spouse are struggling with your relationship, you start by seeking advice from your family or friends, a therapist or a marriage counsellor. The next step would be to assess your marriage contract, apply mediation and if all else fails contact your lawyer for legal advice and assistance.

In a conflict situation at the workplace, employees normally start by seeking advice from family or friends, a therapist or a medical practitioner. If they are still struggling with the conflict they peruse their contract of employment, seek advice from their employer, apply mediation and if all else fails they contact their Union or lawyer for legal advice and assistance.

The moment when a lawyer or the Union is contacted for assistance feelings are set aside and the law becomes relevant; your human rights become applicable!

Even though you may feel in a conflict situation that you are not important and that you have no rights the Constitution of the Republic of South Africa which is the highest and most important piece of legislation in South Africa proves how important you are! Section 33 of the Constitution states that you have the right to just and administrative action which means administrative action that is lawful, reasonable and procedurally fair.

Schedule 8 of the Labour Relations Act explains this human right a little bit more by saying that every employee has a right to disciplinary action that is both substantively and procedurally fair. The Employment of Educators Act applies this right to educators by saying that a grievance process, an informal disciplinary process and a formal disciplinary process must be substantively and procedurally fair in accordance with the Labour Relations Act and the Constitution of the Republic of South Africa, **YOUR HUMAN RIGHT!**



But what is meant by substantive and procedural fairness? If an employee is confronted in any grievance or disciplinary procedure the substance which is also known as 'the merits of the problem' must be addressed in accordance with the correct and fair procedure. The merits or substance in an allegation of theft would be for example: "Was there a rule stating that no employee is allowed to steal in the workplace, was the employee aware of the rule (or could reasonably be expected to be aware of the rule); did the employee contravene the rule, was the employer consistent in applying the rule, was the sanction given, an appropriate sanction?"

The fair procedure in addressing an allegation of theft would be the application of the Audi alteram partem rule which means 'hearing the other side' and providing the employee with a written notice. The employee has a right to a fair meeting or hearing which means a right to a speedy hearing, a right to have enough time to prepare, a right to allegations that are not vague and/or confusing, a right to representation, a right to a hearing that is chaired by an objective presiding officer, a right to lead evidence and cross examine, a right to submit mitigating arguments, a right to appeal and/or object to the findings and/or outcome.

In other words your human right to substantive and procedural fairness is applicable when addressing a conflict situation by way of a grievance, an informal disciplinary meeting and a formal disciplinary hearing. There is thus a *stipulated process* that has to be followed and honoured to enable you to successfully address the merits of the problem and it all starts with a written mandate or instruction. The same principal applies when you - for example - go to the police station to report a crime. You cannot leave the police station without providing a written statement to enable the police to investigate and prosecute. In a conflict situation at your workplace you cannot go to your employer or Union or lawyer and report the conflict without providing them with a written mandate to address the matter.

# SAOU KONNEKT

## It is important to understand the different processes:

1. A grievance (which is more feeling focused) is *“any act between two employees that has a negative effect on labour peace in the workplace”*
  - This act will not necessarily or in the first instance be misconduct
  - The employer is responsible to manage this process
  - The grievance process must be followed as stipulated in the Employment of Educators Act to ensure that the merits of the problem will successfully be addressed **starting with a written grievance** that will both serve as a mandate to act and the start of the Audi alteram partem rule
  - The purpose is only to restore labour peace in the workplace which in the worst scenario may lead to a transfer as a solution
  - A repeating act may lead to an Informal disciplinary meeting



2. An informal disciplinary meeting is a process which addresses less serious types of misconduct as stipulated in section 18 of the Employment of Educators Act

- The employer is responsible to manage the process with the employee and his / her Union representative
  - The process must be followed as stipulated in the Employment of Educators Act to ensure that the merits of the problem will successfully be addressed **starting with a written complaint** that will both serve as a mandate to act and the start of the Audi alteram partem rule
  - The purpose will be to correct the misconduct by providing an appropriate sanction of counselling, verbal warning, written warning or a final written warning
  - Another transgression may lead to a formal disciplinary hearing
3. A formal disciplinary hearing is a process which addresses serious types of misconduct as stipulated in section 17 and 18 of the Employment of Educators Act
- The employer is responsible to start the disciplinary process
  - The process must be followed as stipulated in the Employment of Educators Act to ensure that the merits of the problem will successfully be addressed **starting with a written complaint** that will both serve as a mandate to act and the start of the Audi alteram partem rule
  - The purpose will be to correct the misconduct by providing an appropriate sanction which may be counselling, verbal warning, written warning, final written warning, fine, suspension without pay, demotion or dismissal

What will happen if a process is not followed correctly? Firstly it will be an infringement of the employee's Human right. Secondly it depends on the merits of each case, for example:

1. Mr X screamed at his fellow employee Ms Y and Ms Y lodged a written grievance (with or without representation) against Mr X, to her employer. A grievance process was followed with no success. Mr X repeated his unbecoming behaviour towards Ms Y and Ms Y lodged a written complaint (with or without representation) against Mr X, to her employer. Her employer summoned Mr X to a meeting with no regard to procedural fairness and dismisses him in that meeting.

When Mr X refers the unfair dismissal to the Education Labour Relations Council (ELRC) the Commissioner will most probably make a **ruling in favour of Mr X** seeing that the procedure of a fair dismissal was not followed.

2. Mr X stole money, made himself guilty of fraud or seriously assaulted Ms Y and Ms Y lodged a written complaint (with or without representation)



against him to her employer. Her employer summoned Mr X to a meeting with no regard to procedural fairness and dismisses him in that meeting.

When Mr X refers the unfair dismissal to the Education Labour Relations Council (ELRC) the Commissioner will most probably make a ruling **in favour of the employer** seeing that the transgression is so serious that it outweighs the fact that the procedure was not followed correctly.

*Therefore, if due process is not followed correctly from the beginning in addressing the merits of a problem in the workplace, it may have a negative impact on the next step in solving the problem.*

## IN CONCLUSION

**SAOU members must know that even though as a Union we are promoters of leaders rather than bosses; mediation rather than disciplinary action and relationships rather than the mere application of rules, we are also promoters of justice that is fair and in accordance with your human rights!**

**Therefore, in a conflict situation at your workplace, give US the mandate to fight for your rights.**

# SAOU

DIE VERANDERING IN ONDERWYS  
THE CHANGE IN EDUCATION



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