
CONTENTS • INHOUD

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
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GENERAL NOTICE

Education, Department of

General Notice

1164 South African Schools Act (84/1996): Call for comments on regulations relating to the prohibition of the payment of unauthorised remuneration of the giving of financial benefit or benefit in kind to certain state employees.....	3	32514
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GENERAL NOTICE

NOTICE 1164 OF 2009

DEPARTMENT OF EDUCATION

SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

CALL FOR COMMENTS ON REGULATIONS RELATING TO THE PROHIBITION OF THE PAYMENT OF UNAUTHORISED REMUNERATION OR THE GIVING OF FINANCIAL BENEFIT OR BENEFIT IN KIND TO CERTAIN STATE EMPLOYEES


I, Angelina Matsie Motshekga, Minister of Basic Education, after consultation with the Council of Education Ministers and in terms of sections 5A (2)(b) and 61(i), read with section 38A, of the South African Schools Act, 1996 (Act No. 84 of 1996), intend making regulations relating to the prohibition of the payment of unauthorised remuneration or the giving of financial benefit or benefit in kind to certain state employees, as set out in the Schedule.

All interested persons and organisations are invited to comment on the regulations, in writing, and to direct their comments to –

The Director-General, Private Bag X895, Pretoria, 0001, for attention: Mr C Ledwaba, tel. 012 312 6314, email ledwaba.c@doe.gov.za, fax 012 312 6058.

Kindly provide the name, address, telephone number, fax number and email address of the person or organisation submitting the comments.

The comments should reach the Department within 30 days of the date of this publication.


ANGELINA MATSIE MOTSHEKGA, MP
MINISTER OF BASIC EDUCATION

DATE: 18 August 2009

Schedule

1. Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act has that meaning and, unless the context indicates otherwise –

“additional work” means any activity which qualifies for additional remuneration as contemplated in section 38A and which is not remunerated in terms of the employment agreement prescribed by the Employment of Educators Act of 1998 (Act No. 76 of 1998) and the Public Service Act of 1994 (Proclamation 103 of 1994);

“authorised remuneration” means payment for additional work done as calculated in regulation 6;

“benefit in kind” means any benefit offered or afforded the employee which is not a monetary benefit, including, but not limited to –

- (a) exclusive private usage or ownership of a vehicle;
- (b) free accommodation;
- (c) free phone, including cellphone;
- (d) free holiday;
- (e) groceries to the benefit of the employee; and
- (f) garden services;

“employee” means a person who is already in the employ of the State in terms of the Employment of Educators Act, 1998, or the Public Service Act, 1994, and whose services are to be used by the governing body;

“other financial benefit” means any benefit of monetary nature, including, but not limited to –

- (a) exemption from the payment of school fees to the school in respect of the child of an employee, but excluding exemption in terms of the provisions of sections 39 to 41 of the Act;
- (b) credit card linked to an employee for his or her personal use;
- (c) petrol card linked to an employee for his or her personal use not related the school activity; and

“**the Act**” means the South African Schools Act, 1996 (Act No. 84 of 1996).

2. Scope of application

These Regulations apply to all public schools.

3. Application by governing body

- (1) A governing body must apply to the Head of Department or his or her delegate for authorisation for paying an employee for additional work done on instruction of the governing body for the benefit of the school.
- (2) The application must contain the following details:
 - (a) the nature and extent of the additional work to be done;
 - (b) an identified post in which the employee will be utilised for such additional work;
 - (c) a post description and job content;
 - (d) the number of hours to be worked and the duration of the proposed additional work;
 - (e) an indication of the extent of compliance with subsection 20(4) to (9);
 - (f) a clear indication of how the proposed payment for additional work is provided for in the school budget; and
 - (g) reasons why the employee in question, and not another person, must be appointed to the post contemplated in (b).

- (3) A governing body must attach to its application a written notice by the employee confirming his or her willingness to serve in the post contemplated in subregulation (2)(b).
- (4) The application must indicate the extent to which –
 - (a) school fees;
 - (b) fundraising money; or
 - (c) donationswill be used to remunerate the employee.
- (5) A list of dates by which the application must be submitted and processed is attached as Appendix 1.
- (6) If the Head of Department approves the application for authorisation for remunerating an employee for additional work, such approval will be regarded as approval for the employee to receive the remuneration from a person other than the State.
- (7) If the Head of Department does not approve the application, the governing body has the right to appeal to the Member of the Executive Council responsible for education in the province against this decision.
- (8) The appeal must be in writing and must contain all the details prescribed in subregulation (2) and any other information relevant to the matter.
- (9) The Member of the Executive Council must consider the appeal within 21 days of receipt of the appeal and must communicate his or her decision to the governing body and Head of Department.
- (10) If the appeal is unsuccessful, the Member of the Executive Council must provide reasons therefore.

4. Duration

The governing body may not employ an employee for more than –

- (1) two hours per ordinary school day; or
- (2) six hours per day on any other day.

5. Recording of work done by employee

- (1) The governing body must keep a record of the actual time additionally worked by the employee for which the employee will receive authorised remuneration from the governing body.
- (2) The record-keeping contemplated in subregulation (1) must be done in a register similar to the one attached as Appendix 2.

6. Remuneration of employee

- (1) The authorised remuneration that the governing body pays the employee for the actual time additionally worked must be calculated by using the following formula: The annual total package that the State pays the employee, divided by 1 800 (as the number of hours a State employee is expected to work in a full-time post), then multiplied by the number of actual additional hours worked.
- (2) An illustration of the formula is attached as Appendix 3.

7. Agreement between employee and governing body

- (1) The governing body of each school must, with each employee affected by these Regulations, enter into a written agreement, which must comply with the provisions of all the applicable Acts and Regulations.
- (2) The agreement must be kept in the file of the employee at his or her school.
- (3) The employee must be given a copy of the signed agreement.

- (4) Disputes relating to the agreement between the employee and the governing body should be referred to the Council for Conciliation, Mediation and Arbitration for resolution.

8. Prohibition of certain categories of remuneration

An application for authorisation for remunerating an employee for additional work may not deal with remuneration related to –

- (a) the payment of gratuities;
- (b) the payment of bonuses;
- (c) payment for hostel supervision;
- (d) the promotion of an employee to a level higher than that at which he or she is employed by the State;
- (e) any benefit in kind, unless a monetary value is attached thereto; or
- (f) any service that has already been paid for by the State.

9. Proof of additional work done by employee

- (1) The register contemplated in regulation 5 must be forwarded to the Head of Department or his or her delegate every quarter.
- (2) The Head of Department or his or her delegate must, on a quarterly basis, verify the additional work done as contemplated in these Regulations.

10. Short title and commencement

These Regulations are called the Regulations Relating to the Prohibition of the Payment of Unauthorised Remuneration or the Giving of Financial Benefit or Benefit in Kind to Certain State Employees and shall come into operation on the date of publication in the *Government Gazette*.

APPENDIX 1

DATES FOR PROCESSING APPLICATION

1. With regard to applying for permission to pay additional remuneration, financial benefit or benefit in kind:
 - 1.1 On or before 31 May in the year in which the school budget is finalised in terms of section 38 of the Act, governing bodies must submit their applications to the Head of the provincial education department for approval.
 - 1.2 On or before 31 August in the year referred to in item 1.1, the Head of the provincial education department must communicate to the governing bodies his or her decision regarding the application referred to in item 1.1.
 - 1.3 On or before 30 September in the year referred to in item 1.1, governing bodies may appeal to the Member of the Executive Council against the Head of the provincial education department's failure to provide a response to, or against his or her refusal to grant permission in respect of, the application made in terms of section 38(A) of the Act.

APPENDIX 2

**REGISTER FOR ADDITIONAL WORK PERFORMED
BY A STATE EMPLOYEE**

NAME OF SCHOOL: _____

DISTRICT: _____

EMIS NUMBER: _____

PROVINCE: _____

REGION: _____

<u>NAME OF EMPLOYEE</u>	<u>ID NO.</u>	<u>PERSAL NO.</u>	<u>ADDITIONAL WORK DONE</u>	<u>ACTUAL HOURS WORKED</u>	<u>DATE</u>	<u>NAME OF SUPERVISOR</u>	<u>SIGNATURE OF EMPLOYEE</u>	<u>SIGNATURE OF SUPERVISOR</u>

Month: _____

APPENDIX 3**Illustration of the formula**

(Apart from number 1 800, all amounts and figures are examples are merely examples.)

Annual total package of the State employee to be appointed in the post:	R197 437
Number of working hours per year expected of a State employee:	1 800
Number of actual additional hours worked per month:	40 hours

The formula:
$$\frac{\text{Total package} \times \text{actual additional hours worked per month}}{\text{Number of working hours per year expected of a State employee}}$$

Total package = total package of employee to be appointed in the post.

Application of the formula

$$\frac{R197\,437 \times 40}{1\,800}$$

$$= R4\,387,50$$