

SCHOOL GOVERNING BODY CONTRACTS

THE BEGINNING OF
THE END?

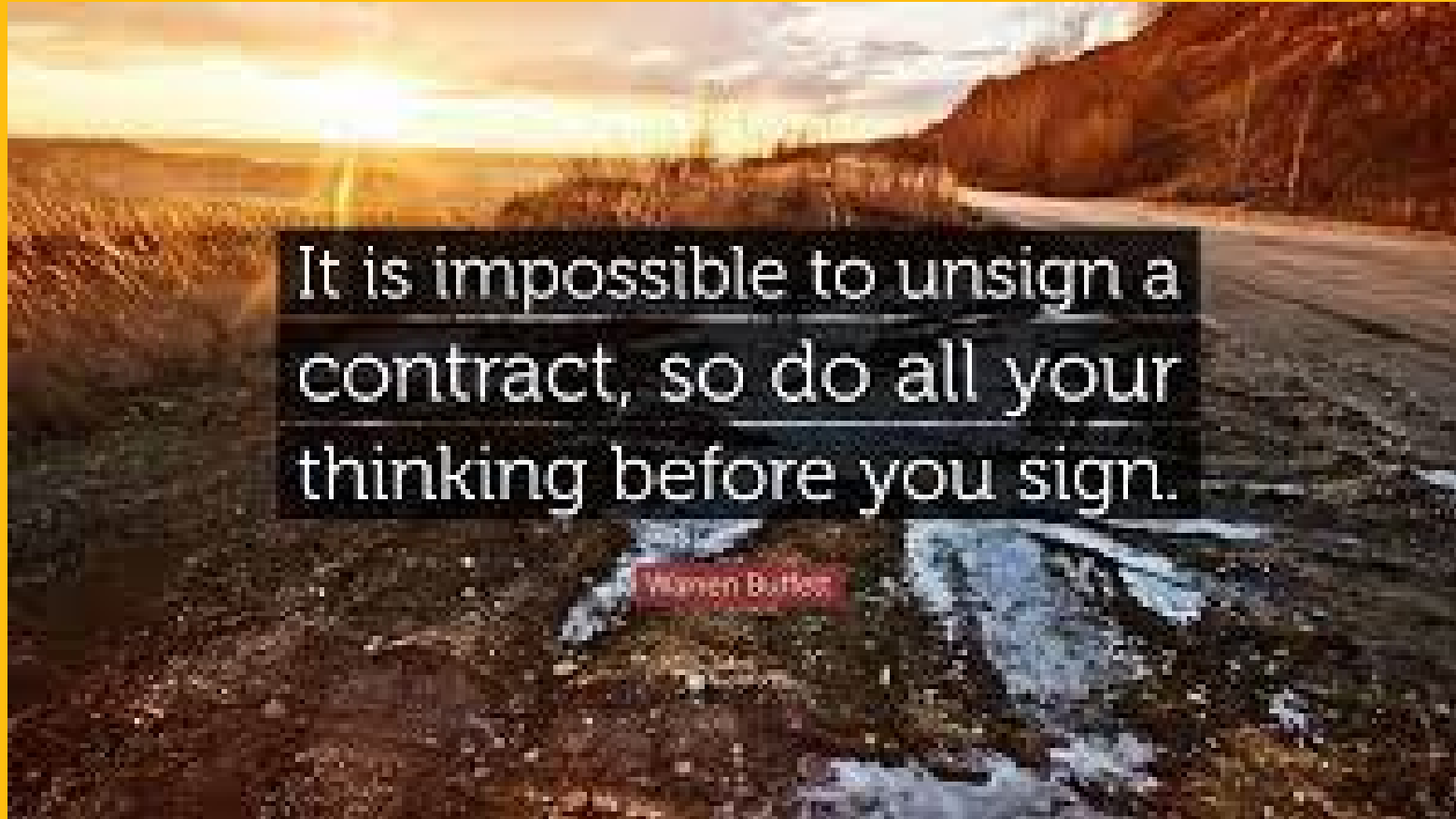
PRESENTED BY: ANKIA BESTER

Date: 19 October 2022

Signature



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION



It is impossible to unsign a contract, so do all your thinking before you sign.

Women Butcher

IF THE PURPOSE OF A CONTRACT IS UNDERSTOOD, IT CAN BE CREATED IN SUCH A MANNER THAT IT WILL PRODUCE THE EXPECTED RESULTS.

UNDO AS

WHAT IS THE PURPOSE
OF AN EMPLOYMENT
CONTRACT?



To regulate a healthy
employer-employee
relationship

SAODS

WHY THE SAOU?

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PROVIDE OUR MEMBER WITH A WRITTEN CONTRACT OF EMPLOYMENT

1.

Every employer is required *by law* (Basic Conditions of Employment Act – section 29) to provide the employee with

A WRITTEN CONTRACT OF EMPLOYMENT

*not later than the first day of
commencement of employment.*

WHAT IMPORTANT TERMS
AND CONDITIONS MUST BE
INCLUDED IN A CONTRACT
OF EMPLOYMENT?



It must establish the terms
and conditions of
employment between the
employer and the
employee

UNOS

2.

LET US PERUSE THE CONTRACT BEFORE SIGNING

A contract is usually entered between two or more parties, in order to protect the parties to the contract against any breach or unlawful action in terms of the contract itself.

FOR EXAMPLE



DIENSKONTRAK

(Vaste Termyn – Onderwyser)

AANGEGAAN DEUR EN TUSSEN:

- **PERMANENT**
 - ✓ VERLOF
 - ✓ TERMINASIE
 - ✓ KWALIFIKASIE
- **VASTE TERMYN**
 - ✓ VERLOF
 - ✓ WANNEER EINDIG DIE KONTRAK?
 - ✓ VOORWAARDES TOT PERMANENTMAKING
 - ✓ SALARIS
 - ✓ REDES WAAROM NIE PERMANENT AANGESTEL NIE
 - ✓ REDELIKE VERWAGTING

Posomskrywing

- ✓ Genoegsaam gekwalifiseerd vir die aanstelling
- ✓ Pligtestaat (Aanhangsel)
- ✓ “en enige ander redelike pligte soos versoek deur die werkgever”
- ✓ Wie namens die werkgever instruksies kan gee

Werksure

- ✓ Is dit ooreenkomstig die Wet op Basiese Diensvoorwaardes?
- ✓ Is sekere vergunnings duidelik gestipuleer?
- ✓ Is daar 'n aanhangsel wat handel oor buite-kurrikulêre aktiwiteite?
- ✓ Is daar iets duidelik oor oortydbetaling?

Diensbeëindiging

- ✓ *Termination regulated by Law*
- ✓ Aanhangsels
- ✓ Kennisgewingstydperk
- ✓ Uitbetalings en aftrekkings
- ✓ Aftreedatum
- ✓ Verteenwoordiging

IF THE EMPLOYEE DOES
NOT GET THE EXPECTED
RESULTS?

3.

RIGHTS MUST BE ENFORCED

SAOU

FOR EXAMPLE





3. NATURE OF THE DISPUTE

What is the dispute about (tick only one box)?

- | | |
|---|---|
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Mutual Interest |
| <input type="checkbox"/> Severance Pay | <input type="checkbox"/> <u>Organisational Rights</u> |
| <input type="checkbox"/> Unfair Labour Practice | <input type="checkbox"/> Disclosure of Information |
| <input type="checkbox"/> Freedom of Association | <input type="checkbox"/> S180 BCEA |
| <input type="checkbox"/> Unfair Discrimination - S10 EEA | <input type="checkbox"/> S19 SDA |
| <input type="checkbox"/> Interpretation/Application of Collective Agreement | <input type="checkbox"/> S198 LRA |
| <input type="checkbox"/> Disputes relating to breach of collective agreement, picketing agreement or picketing rules (s69(8)) | <input type="checkbox"/> S198B (Fixed Term Contract) |
| | <input type="checkbox"/> S84 BCEA |
| | <input type="checkbox"/> Breach of picketing rules |
| <input type="checkbox"/> Unilateral Changes to Terms and Conditions of Employment (s64 LRA) | |
| <input type="checkbox"/> Refusal to Bargain | |
| <input type="checkbox"/> S198A LRA (Temporary Employment) | |
| <input type="checkbox"/> S198C LRA (Part-time Employment) | |
| <input type="checkbox"/> Application for Determination of Picketing Rules – s69(6B)) | |
| <input type="checkbox"/> S198A(4) LRA (Dismissal) | |
| <input type="checkbox"/> S198A(5) LRA (<u>Unfavourable treatment</u>) | |
| <input type="checkbox"/> Unilateral Changes to Terms and Conditions of Employment - s4(8) NMWA | |
| <input type="checkbox"/> S73A BCEA (Claims for Monies Owing in terms of the NMWA) | |
| <input type="checkbox"/> S73 BCEA (Other claims for Failure to Pay Amounts Owing) | |
| <input type="checkbox"/> S69(5) BCEA (Disputes relating to Compliance Orders) | |
| <input type="checkbox"/> Other: | |

The impact of the new earnings threshold on the BCEA, LRA and EEA

Section 6 of the Basic Conditions of Employment Act (BCEA) makes provision for the Minister of Employment and Labour to publish a determination on the Commission's advice that will exclude employees earning above a certain amount per year from sections of chapter 2 of the Act.

In a gazette published on 8 February 2022, the minister announced a new annual earnings threshold under the BCEA which will have implications for South African employees. The new threshold will be **R224,080.48 per year** (approximately R18,673 per month) from 1 March 2022.

This new threshold impacts the application of provisions of not only the BCEA but also the Labour Relations Act, 1995 (LRA) and the Employment Equity Act, 1998 (EEA).

Employees earning under this threshold enjoy the complete protection of the BCEA. However, any employees earning above the threshold are excluded from the provisions which regulate ordinary hours of work, overtime, compressed working weeks, averaging of hours of work, meal intervals, daily and weekly rest periods, Sunday pay, pay for night work, and pay for work on public holidays.

This does not mean that employees who earn higher than the threshold are not entitled to these provisions, but they are usually dealt with in their employment contracts and negotiated at the time of employment with their employers.

In terms of the LRA, employees earning higher than the threshold are not subject to the deeming provision in accordance with which employees engaged by a temporary employment service or labour broker who is not performing a temporary service are deemed to be employees of the client for purposes of the LRA. Employees earning higher than the threshold also fall outside the scope of the provisions relating to fixed-term employees who are deemed to be employed indefinitely after three months, only if there is no justifiable reason, of course.

An employee earning higher than the threshold, which has a dispute under Chapter II of the EEA relating to unfair discrimination, is not permitted to refer the dispute to the CCMA for arbitration and has to refer the dispute to the Labour Court for adjudication. Only if the dispute relates to alleged unfair discrimination on the grounds of sexual harassment, or the parties all agree to arbitration can the dispute be heard at the CCMA.

The sections covered in the BCEA, LRA and EEA are intended to protect vulnerable employees and regulate the abovementioned provisions.

Employers should be mindful of the fact that from 1 March 2022, some employees who earn more than R211,596.30 but less than R224,080.48 per year may be entitled to additional protections, such as overtime payment when working more than 45 hours per week, compulsory breaks and rest periods, night work allowances etc.

Section 73A Referral Procedure

Section 73A(1) of the BCEA provides that any employee (as defined in section 1) or worker (as defined in section 1 of the National Minimum Wage Act 9 of 2018 ("NMWA")) may refer a dispute to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of the BCEA, the NMWA, an employment contract, a sectoral determination, or a collective agreement. This provision, however, is intended to assist low-income earners as it does not apply to employees or workers who earn more than the prescribed threshold of R211 596.30 per annum. Employees or workers earning above the threshold may instead institute a claim concerning failure to pay any amount in section 73A(1) in either the Labour Court, High Court, Magistrates Court or Small Claims Court if they meet the necessary jurisdictional requirements for either court.

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GELUKKIGE
DIENSVERHOUDING
VIR ONS LEDE!**

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THE BEGINNING OF
A HAPPILY EVER
AFTER



Signature