GBF

Leading schools, serving schools

Undercurrents

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THIS ISSUE

is aimed at SGB Secretaries, Bursars, HR/Personnel Officers and Fees Administrators

It covers the following topics: New employment tax incentive scheme; Appointments in acting positions; Employment contracts and retirement; SACE registrations and membership, Workmen's compensation; Fee rebates and exemptions; and Where SGB members have had to resign as their children move on and up.

GUIDELINES ON THE NEW EMPLOYMENT TAX INCENTIVE

In terms of the newly-promulgated SARS employment tax initiative, and in the light of legal opinion we sought in this regard, it appears that schools ***may*** qualify for the incentive in respect of certain of their employees in SGB posts, but not in respect of those in state posts. The opinion suggests that it is ***just possible that you could away*** with a claim in respect of your section 38A payments (i.e. those for state staff), but that there is certainly a chance that SARS will repudiate such a move. ***We recommend you don't try it.***

Our understanding of the rules is as follows, and we pass it on for your enlightenment:

Eligible employers
An ***employer*** is eligible to receive the employment tax incentive, provided such an employer is registered for the purpose of the withholding and payment of employee tax in respect of those employees in terms of whom the incentive is being claimed – i.e. the school qualifies as an eligible employer and can claim in respect of ***governing body employees from whom it deducts PAYE*** , but ***not*** in respect of departmental employees.

Eligible employees
An ***employee*** (i.e. member of your staff) qualifies as an eligible employee provided that he or she:

- entered the relevant employment position on or after 1 October 2013;
- is employed at a fixed place of business;
- earns between R2000 and R6000 per month for a full-time position, or the equivalent in respect of a part-time position (this obviously immediately excludes most teachers and admin staff);
- is between 18 and 29 years old (both inclusive) at the end of the month in respect of which the incentive is claimed;
- has a South African identity card or an asylum seeker's permit;
- is not related to the employer; and
- is not a domestic worker.

The amount of the employment tax incentive
The amount that may be claimed in respect of employees is as follows:

- for those earning between R2 000 and R4 000 per month (both figures inclusive) the amount of the incentive is R1 000-00:
- for those earning from R4001-00 to R6 000-00 (both figures inclusive) the amount of the incentive is calculated as follows:

  The incentive = R1000 - (0.5 x (monthly salary - 4000))

  The following example illustrates the use of the formula:

  Where an employee earns R5 000-00 per month the calculation would be as follows:

  The incentive = R1000 - (0.5 x (5000-4000))
  = R1000 - (0.5 x (1000))
  = R1000 - R500
  = R500

  NB ***The amount is halved in the second year of employment.***
  SARS's EMP 201 has been amended to help you to claim as a matter of course.

APPOINTMENTS IN ACTING POSITIONS

In provinces where promotion posts are not regularly advertised, the need obviously arises for acting appointments. This almost inevitably leads to a snowball effect as others are appointed by the SGB to cover for those who are temporarily promoted. A difficulty arises (and it is happening increasingly often) when the Department deploys a 'displaced' teacher into the post, and there are suddenly two incumbents in one post. To cover for this eventuality we recommend that where an acting promotion appointment or a 'snowball' appointment is made, it not be per a fixed term contract, but one "for such period as the post remains vacant, pending its filling through accepted channels."

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EMPLOYMENT CONTRACTS AND RETIREMENT

We have stated several times recently that it is surely high time that every school scrutinizes and updates all its employment contracts. While doing so we believe that in particular you need to check that the following are in place:

- All the current advice is that you make your employment contracts open-ended (i.e. permanent) unless there is a very good reason to make them fixed-term or temporary appointments. A "good reason" needs to more objective and telling than that you are simply concerned that you may not be in a position to afford the salary next year. Valid reasons would include the fact that you are replacing temporarily someone who is on leave, but who will be returning at a future date, or where someone is hired to run a fixed-term project.
- Your contracts, though open-ended, should all make provision for some form and date of retirement. The contracts don't necessarily have to include a pension (though we recommend that they should) but it is really important to indicate when the person is going to have to stop working without putting you to the trouble of 'retrenching' him or her. We recommend either 60 years, 65 years or the inclusion of a clause such as the following.

  "The employment contract will automatically terminate at the end of the month [or term] in which the employee reaches the age of 60 [or 65, or normal retirement age as applicable to equivalent employees in the employ of the relevant provincial education department], subsequent to which employment may only occur or continue with the written agreement of both parties and on mutually acceptable terms."
- ***If you don't already have a 'pension-date' in the existing contracts, you can't just impose one: you will have to negotiate it.***

SACE REGISTRATION AND MEMBERSHIP

It is probably — hopefully — news to no one who is reading this that nobody may be employed as an educator by any employee unless the person is registered with SACE [the South African Council for Educators] — just like anyone wishing to practise as a doctor must be registered with the Health Professionals Council of South Africa (HPCSA). The registration requirement for teachers applies not only to state staff and state schools, but to all teaching staff in all schools — including, of course, SGB staff. The second bit of legislation, which may well be news to some, is that the employer—in the cases at issue here that is the Governing Body— must adhere to a procedure whereby it is established that the teacher is registered with SACE. It seems to me that the simplest way to do this is for the school to take on responsibility for paying the continuing SACE membership fees of its SGB teachers. They amount to R120-00 per annum or R10-00 per month at present, and it is easy to have your payroll programme do this automatically, either annually or monthly. It then becomes a straight deduction from the educator's salary—the school has no obligation to carry any of the cost, as it does with, for example, UIF or workmen's compensation.

Some of you may be doing this already, but queries show that a great many aren't doing so, and have no idea whether the teachers are paying their own—which, if I may say so, is ***highly*** unlikely.

WORKMEN'S COMPENSATION

The following is a copy of an e-mail from one of our members. *"Over the December break we had the frightening experience of our Grounds Man, a GB staff member, being injured on duty. On returning to school we had another shock when we found that our workman's compensation contribution had not been paid up and we were thus faced with the possibility of the claim being rejected. Thankfully the situation was rectified by paying the outstanding contributions and a fine. For a section 21 school the contribution is 0.2 cents to the rand of your yearly salaries, so not a huge number. Please share this experience with other members of the GBF …".*

We are very happy to share the experience with you, and in doing so remind you that:

- If you have not registered with the relevant section of the Department of Labour, or have missed out on paying you assessed amount over annually, <u>you should do so immediately</u>.
- At the same time ensure that <u>you are registered with the Unemployment Insurance Fund</u> (UIF) as well. ***This is not automatic just because you add UIF to your PAYE submission every month - you actually need to register with the Fund as a separate exercise.***
- The relevant addresses are:
  - The Compensation Commissioner, P.O. Box 955, Pretoria, 0001 or e-mail cfinfo@labour.gov.za and
  - Unemployment Insurance Fund, 94 Church Street, Pretoria, 0052. You can also use www.ufiling.co.za

FEE REBATES AND EXEMPTIONS

Also at the request of one of our member schools we have updated and consolidated our advice and details concerning the regulations attached to the granting of total or partial exemption from the payment of school fees. The document is too long to reproduce here, but is attached as a separate file. The important aspects that appear to have been incorrectly interpreted or ignored in the past by some schools are that:

- Fees ***<u>may not</u>*** be charged in no-fee schools. (Of course, ***voluntary donations may be requested***, but not made compulsory.)
- ***<u>All</u>*** children and ***<u>all</u>*** parents in the school are treated in the same way when it comes to fee exemptions - there is no provision for treating immigrants, refugees, aliens, foreigners or those who live closer to another school any differently.
- You have to work according to the ***<u>state's</u>*** formula and regulations concerning exemptions - you ***<u>may not</u>*** set your own.

We suggest strongly that you read the attached document in its entirety.

WHERE SGB MEMBERS HAVE RESIGNED AS THEIR CHILDREN HAVE MOVED ON …

Two questions emerge as this happens - most commonly at this time of the year, of course:

- May we co-opt parent members to see us through until next year's general SGB elections?
  - Unfortunately not: you can co-opt parents (or for that matter, staff) ***with*** voting rights to replace those who are no longer eligible. However, ***<u>except in Gauteng</u>*** they may serve for a ***maximum period of 90 days***, starting from the time that the previous incumbent ceased to qualify to be a member. During this time the school ***must*** hold a by-election. Please note also that the requirements and processes for a valid by-election are ***exactly the same as for a full election***. This means that you must hold a by-election to replace last year's grade 7 or grade 12 leavers, or leaving staff, before the end of this term. [in ***<u>Gauteng only</u>*** you may co-opt up to ***<u>a maximum of two parent members</u>*** to replace departing parent members, and they serve, ***<u>with full voting rights, for the remainder of the original member's term of office</u>***.]
- Do parent members have to be in the majority at every SGB meeting?
  - No. Parent members have to ***be in the majority on the constituted body*** (that is why you may temporarily co-opt members with voting rights) but they ***don't*** have to be in the majority ***at every meeting***. If that were so, a small group of parents could execute an effective veto on anything and everything they didn't like, simply by staying away.