



higher education & training

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Higher Education and Training
REPUBLIC OF SOUTH AFRICA

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To: SETA Chief Executive Officers

Skills Development Circular No. 01/2020

**JUDGMENT OF THE LABOUR APPEAL COURT OF 16/10/2019 WHICH SET ASIDE
REGULATION 4(4) ON THE ALLOCATION OF THE MANDATORY GRANT OF THE
LEVY PAID BY AN EMPLOYER**

1. On 7 August 2015, the Labour Court set aside Regulations 3(12) and 4(4) of the Sector Education and Training Authority (SETA) Grant Regulations of 3 December 2012.
2. The Labour Court judgment had set aside Regulation 4(4) and provided the Minister of Higher Education and Training until the 31 March 2016 to consult with the National Skills Authority (NSA).
3. Following the ruling of the Court, the NSA was duly consulted and it provided its advice to the Minister of Higher Education and Training on 30 October 2015.
4. The NSA advice supported the re-promulgation of the Mandatory Grant at 20%. Based on the advice received from the NSA, the Minister re-promulgated Regulation 4(4) in Government Gazette number 39592 of 13 January 2016.
5. Gazette 39592 of 13 January 2016 was communicated to all SETAs on 13 January 2016.
6. The re-promulgation provided that the Mandatory Grant be set at 20% as per Regulation 4(4).

7. The Department of Higher Education and Training issued six (6) Circulars to SETAs communicating its position on the matter and how the SETAs must treat Regulations 3(12) and 4(4).
8. The six Skills Development Circulars are:
 - 8.1. Circular 16/2015 issued on 2 September 2015;
 - 8.2. Circular 04/2016 issued on 5 April 2016;
 - 8.3. Circular 05/2016 issued on 21 April 2016;
 - 8.4. Circular 06/2016 issued on 31 May 2016;
 - 8.5. Circular 15/2017 issued on 30 November 2017; and
 - 8.6. Circular 16/2018 issued 11 September 2018
9. Aggrieved by the re-promulgation of Regulation 4(4) by the Minister on 13 January 2016, Business Unity South Africa (BUSA) approached the Labour Court on 1 July 2016 requesting the Labour Court to set aside Regulation 4(4).
10. The Minister opposed the application and the matter was heard in the Labour Court on 21 August 2018.
11. On 31 August 2018, the Labour Court issued a judgment and issued an order effectively dismissing the BUSA application.
12. The Labour Court indicated that the Minister acted within his legislative power when he reduced the Mandatory Grant from 50% to 20%.
13. BUSA appealed the judgment of the Labour Court with the Labour Appeal Court and the matter was heard on 20 August 2019.
14. On 16 October 2019, the Labour Appeal Court ruled in favour of BUSA and set aside Regulation 4(4) as promulgated in Government Notice 23 of 2016, published in Government Gazette 39592 in terms of section 36 of the Skills Development Act 97 of 1998.
15. In light of the Labour Appeal Court Judgment of 16 October 2019, Regulation 4(4) has been set aside and SETAs may no longer pay a Mandatory Grant at 20% of the total levy paid by an employer.
16. In practice the judgment as it stands means that the said Regulation 4(4) simply falls to the wayside and that the 2012 Regulations must forthwith be interpreted and applied as if there is no such Regulation 4(4) in place.

17. The interpretation of the Department of Higher Education and Training is that, although it is still obligatory to pay Mandatory Grants, there is no specific percentage that SETAs should pay as a Mandatory Grant to employers.
18. The Department is of the view that, in line with Regulation 4(1), it would be within the power of a SETA to decide what percentage of the levies would be paid back to the employer as a Mandatory Grant.
19. This Circular is effective with immediate effect.



Mr GF Qonde

Director-General

Date:

17/01/2020