

**IN THE ESSENTIAL SERVICES COMMITTEE  
HELD AT JOHANNESBURG**

**Case No.: ES748**

In re: Investigation in terms of Section 71 of the Labour Relations Act, 66 of 1995:

Whether primary healthcare provided at tertiary institution should be designated as essential services

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Designation

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**Introduction**

1. The Essential Services Committee ("the ESC") in terms of Section 70B(1)(d) decided on its own initiative to investigate whether or not the above-mentioned services should be designated as essential services.
2. As provided for in section 71, read with section 70(2)(a) of the Labour Relations Act, 1995 (Act No 66 of 1995 as amended), the ESC gazetted a notice that it was conducting an investigation as to whether or not the above services are essential services. (see Government Gazette No 50880, Notice No. 2604 of 2024, dated 28 June 2024.

### **Details of Hearings**

3. The hearings were scheduled as per the notice published in the government gazette. In the hearings the ESC received a number of written submissions, and a number of interested parties also made oral representations to the ESC.
4. The parties that made submissions at the hearings were:
  - a) The Higher Education South Africa (HESA)
  - b) The South African Association of Campus Health Services (SAACHS)
  - c) North West university
  - d) University of Free State
  - e) Stellenbosch University:

Other universities and interested parties attended as observers.

### **Submissions**

5. The below submissions are a summary of the submissions (oral and written) made in this application.
6. SAACHS argued that its interest is rooted in the commitment to uphold the constitutional right to health care. It aims to protect the health and safety of the campus community. Any disruptions to health services can potentially endanger lives, making it crucial to understand the implications of labour relations on service delivery. The essential nature of health services extends across the entire value chain of support services that ensure a patient receives the necessary care during their time of need.

This includes administrative, logistical, and clinical support. The determination of what constitutes essential health care services should be the purview of professional bodies dedicated to protecting the public from unethical healthcare providers. It is essential to acknowledge that no decisions should compromise the health and safety of employees, staff, students, or visitors on campuses and in residences. Many institutions ensure the availability of after-hours emergency services. These services operate continuously, even during periods of disruption, to guarantee that no individual is unjustly denied access to necessary health care. Campus Health Employees have a professional obligation to maintain a standard of care that prioritizes preserving life, even during service disruptions. Molimi Geya a nurse registered with the South African Nursing Council and Director at the Centre for student health and wellness and SAACHS chairperson as well as Matsotso Mathebula, a medical practitioner and deputy chairperson of SAACHS submitted that the Constitution of South Africa guarantees the right to access health care services. Campus health services play a crucial role in ensuring that students and staff can exercise this right effectively. Campus health services provide essential preventive, curative, and emergency care that supports the overall well-being of the campus community. Empirical data demonstrates a direct link between accessible health services and mental health support and improved student health and academic outcomes. These services reduce absenteeism due to illness and support mental health, which is critical for academic success. Campus health services provide targeted interventions, such as mental health support and sexual and reproductive health services, health promotion activities and social support services that are tailored to the unique needs of the student population. Reports from Campus Health Workers indicate a strong commitment to providing care during labour unrest. These professionals have continued to deliver essential services, mitigating potential risks to student health. Based on the above evidence, it is SAACHS' professional opinion that campus health services should be designated as essential services under the Labour

Relations Act. This approach balances the constitutional right to health care with the labour rights of campus health employees, ensuring that the health and safety of the campus community are protected without infringing on workers' rights.

7. University of Free State (UFS) argued that it currently employs only seven nurses who work regular business hours without shift rotations. This limited number of staff makes it impractical for the University to comply with Section 72 of the Labour Relations Act. This section mandates that if a service is designed as essential, some employees must continue working during interruptions such as strike actions. Given their staffing levels, they cannot fulfil this requirement adequately. At UFS, industrial actions do not significantly disrupt primary healthcare services due to the availability of public sector emergency health services, which are already designated as essential and operate 24 hours a day. These include Community public hospitals and clinics operating 24 hours that are near the UFS; and Medical and paramedical services are available around the clock. In the event of service interruption due to industrial action, the UFS ensures that anyone on its premises still has access to healthcare services through these public sector facilities.

The Primary Health Care Services that the University of the Free State offers do not meet the requirement that the interruption thereof would endanger the life, personal safety or health of the population in that the University has replacement labour in place as a measure in instances of strike action to ensure that the provision of the Primary Health Care Service is not interrupted.

8. The following institutions supported the designation: UNISA, University of Cape Town; University of Witwatersrand; University of Pretoria; Stellenbosch University; University of Johannesburg; University of Kwa Zulu Natal; University of the Western Cape; North

West University; Rhodes University; University of Zululand; University of Fort Hare; Durban University of Technology; Central University of Technology; University of Limpopo; Nelson Mandela University; Tshwane University of Technology; Vaal University of Technology; University of Mpumalanga; University of Venda; Mangosuthu University of Technology; Walter Sisulu University; Sol Plaatje University; Sefako Makgatho University; Cape Peninsula University of Technology

### **Legal Framework**

9. In this matter the issue that the committee has to determine is whether Primary health services provided at Tertiary Institutions should be designated as essential services. In determining the matter, it is important that one should set out the legal framework.
10. Section 23(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution") states that... "Every worker has the right ... (c) to strike."
11. Section 36 (1) of the Constitution states inter alia that... "The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom".
12. Section 65 (1) (d) (i) of the LRA states that ... "No person may take part in a strike ... if that person is engaged ... in an essential service".
13. An 'essential service' is defined in section 213 of the Act as:
  - (a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;
  - (b) the Parliamentary service;

(c) the South African Police Service”.

14. The *Constitutional Court in South African Police Service v Police and Prisons Civil Rights Union and Another [2011] 9 BLLR 831 (CC)* said the following: -

“In order to ascertain the meaning of essential service, regard must be had to the purpose of the legislation and the context in which the phrase appears. An important purpose of the LRA is to give effect to the right to strike entrenched in section 23(2)(c) of the Constitution. The interpretative process must give effect to this purpose within the other purposes of the LRA as set out in Section 1(a). The provisions in question must thus not be construed in isolation, but in the context of the other provisions in the LRA. For this reason, a restrictive interpretation of essential service must, if possible, be adopted so as to avoid impermissibly limiting the right to strike (footnotes excluded)”

15. It is trite that strike action is an important element of collective bargaining and it is recognised as a primary mechanism through which workers exercise collective power (See *Ex-Part Chairperson of the Constitutional Assembly in re: Certification of the Constitution of the Republic of South Africa, 1996 (4) SA744 (CC)* at par [66]).

### Analysis of Evidence

16. It must be noted that public primary health care services were designated as essential services in 1997. The designation of public primary health care services has nothing to do with the fact that they are only available between 08h00 and 16h30, but have

everything to do with the fact that they are the first step of health care and they are most accessible to the communities.

17. From the submissions made it is clear that primary health services rendered at Tertiary Institutions protects the health and safety of the campus community. The following submissions of SAACHS were uncontested:

- a. Campus health services play a crucial role in ensuring that students and staff can exercise this right effectively.
- b. Campus health services provide essential preventive, curative, and emergency care that supports the overall well-being of the campus community.
- c. Empirical data demonstrates a direct link between accessible health services and mental health support and improved student health and academic outcomes.
- d. These services reduce absenteeism due to illness and support mental health, which is critical for academic success.
- e. Campus health services provide targeted interventions, such as mental health support and sexual and reproductive health services, health promotion activities and social support services that are tailored to the unique needs of the student population.

18. The argument raised by the University of Free State is that according to their staffing levels, they would not be able to have minimum services. Also that at UFS, industrial actions do not significantly disrupt primary healthcare services due to the availability of public sector emergency health services, which are already designated as essential and operate 24 hours a day. These include Community public hospitals and clinics operating 24 hours that are near the UFS; and Medical and paramedical services are

available around the clock. While this is acknowledged, this is not necessarily the case with all tertiary institutions campuses.

19. The ESC is satisfied that at the majority of the campuses, primary health care is the first available care for students and university staff and that by being the first available care it plays a significant role in not endangering the lives and health of the students and staff members. It is a known fact that time is a significant factor in dealing with life and health and to have such health services being available to serve the students and university staff during office hours is in the view of the panel important to ensure that there is no endangerment to the lives and the health of the students and university staff.

### **Designation**

20. On the submissions made, the panel hereby designates primary healthcare provided in tertiary institutions as an essential service.
21. Tertiary institutions providing this service are required to negotiate and conclude minimum service agreements with the labour unions representing staff, by 28 February 2025.



**Adv. L Bono**

**ESC Panel Chairperson**

**30 September 2024**