



Province of the
EASTERN CAPE
PROVINCIAL TREASURY

EMPLOYMENT RELATIONS POLICY

2024

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ACRONYMS

BCEA	Basic Conditions of Employment Act
DOL	Department of Labour
DPSA	Department of Public Service and Administration
GPSSBC	General Public Service Sectoral Bargaining Chamber.
H/O	Head Office
HOD	Head of Department
LRA	Labour Relations Act
MEC	Member of Executive Council for Finance
MMS	Middle Management Service
MPSA	Minister for Public Service and Administration
OTP	Office of the Premier, Eastern Cape.
PSC	Public Service Commission
PSCBC	Public Service Coordinating Bargaining Chamber
PSR	Public Service Regulations, 2016
SMS	Senior Management Service

DEFINITIONS

“Basic Conditions of Employment Act” means Act 75 of 1997 as amended.

“Council” means the Bargaining Council

“The department” means the Eastern Cape Provincial Treasury.

“Designated official” means any senior official of the department appointed by the Head of Department to perform duties in relation to this policy.

“Executive Authority” means the MEC for Finance

“Forum” means the Departmental Employment Relations Forum.

“Head of Department” means the administrative Head of the Eastern Cape Provincial Treasury.

“Head Office” means the Head Office of the department located in Bhisho

“Labour Relations Act” means Act 66 of 1995 as amended

“Line manager” means a person with direct managerial responsibility for a particular employee.

“Shop Steward” means a person elected by employees of the department, in terms of the Constitution of a trade union, to represent them in dealings with management

1. INTRODUCTION

Sound employer – employee relations is critical to the effective functioning of the Department. As the representative of the State as employer, the Member of the Executive Council or his delegate is committed to promoting harmonious working relationships, and to achieving social justice, labour peace and the democratization of the workplace. The employees of the Department will similarly commit to exercise their rights responsibility and take into account the interest of the employer.

2. PURPOSE

The purpose of this policy is as follows:

- (a) To clarify the position of the department in respect of the various areas of employment relations.
- (b) To give guidance on the application of various pieces of prescripts that governs employment relations in the department.
- (c) To promote sound employment relations in the department.

3. OBJECTIVES OF THE POLICY

- (a) Support sound labour relations in the department of Treasury.
- (b) Promote mutual respect between management and employees of the department.
- (c) ensure that Managers/Supervisors and employees share a common understanding of employment relations processes.
- (d) Promote acceptable conduct, fair and equal treatment to all employees.
- (e) Provide employees and management with quick and easy reference for application of discipline.
- (f) Avert and correct unacceptable conduct and
- (g) Prevent arbitrary or discriminatory actions by Managers/ Supervisors towards employees.

4. PRINCIPLES

Underpinning the policy are *inter alia* the following principles:

- (a) The department must play a key role in contributing towards service delivery, and human potential in the department must be maximized through sound human resource management and career development.
- (b) Therefore, employment relations practices in the department must be regulated to support the principles of service delivery.

5. LEGISLATIVE FRAMEWORK

- (a) Employment relations in the public service are governed by a myriad of acts of which the following are the most important:
 - (i) Constitution of the Republic of South Africa, 1996
 - (ii) Public Service Act, 1994
 - (iii) Labour Relations Act 66 of 1995
 - (iv) Basic Conditions of Employment Act 75 of 1997
 - (v) Employment Equity Act 55 of 1998
 - (vi) Public Finance Management Act 29 of 1999
 - (vii) Promotion of Administrative Justice Act 3 of 2000
 - (viii) Promotion of Access to Information Act 2 of 2000
- (b) The legislative framework is further enhanced through a number of Codes of Good Practice issued in terms of relevant legislation and collective agreements reached in the Public Service Co-coordinating Bargaining Council (PSCBC) and the various sectoral bargaining council.

6. SCOPE OF APPLICATION

The policy is applicable to all persons employed in the Eastern Cape Provincial Treasury, unless indicated otherwise.

7. RESPONSIBILITIES OF DESIGNATED OFFICIALS

The following, though not exhaustive, constitute the responsibilities of designated officials:

- (a) Hear employee grievances.
- (b) Determine the investigative action necessary for resolving the matter referred to for consideration or intervention.
- (c) Respond promptly or within a reasonable time whenever an employee complaint contains allegations of unfair employment practices and misconduct.
- (d) Actively participate in engagements to pro-actively implement the necessary measures to combat incidences of Misconduct.
- (e) Conduct and facilitate disciplinary hearings.
- (f) Facilitate resolution of grievances referred to Labour Relations.
- (g) Present outcomes of misconduct and grievance cases to the Head of Department for approval.

8. COLLECTIVE BARGAINING ARRANGEMENTS

8.1 Unionization

- (a) The principle of freedom of association and the right of all employees to form and join trade unions of their choice is acknowledged.
- (b) Employees are free to elect not to join a trade union. Those who do, as well as those who join trade unions not represented in the PSCBC are liable to pay an agency shop fee agreed to in the PSCBC.
- (c) Members of the SMS are exempted from the payment of the agency shop fee as per agreement. However, these employees are free to join, or not to join, any trade union. They are excluded from the bargaining unit as they act as representatives of the employer.
- (d) The spirit of the Labour Relations Act on the non-proliferation of trade unions is supported. Engagement with fewer, bigger unions that are well organized is therefore supported.

8.2 Organizational Rights of Trade Unions

- (a) The department recognizes that the granting of organizational rights to trade unions occurs at the level of the PSCBC and the GPSSBC.
- (b) The department shall determine the number of employees to be represented by a specific union for it to qualify for organizational rights, i.e. the threshold of representativeness. Provisions regarding organizational rights shall be guided by organizational rights agreements reached at the PSCBC or the GPSSBC.
- (c) A trade union could qualify for *inter alia* the following organizational rights –
 - (i) Trade union access to the workplace
 - (ii) Deduction of trade union subscriptions
 - (iii) Election of shop stewards
 - (iv) Leave for trade union activities
 - (v) Disclosure of information
- (d) Admission of a trade union to the PSCBC or a sectoral bargaining council does not mean that all the above-mentioned rights are automatically conferred on such a union. In terms of section 19 of the Labour Relations Act, such a union only obtains the rights of access to the workplace and the deduction of subscriptions of its members. To obtain other organizational rights, a union should act in terms of section 21 and 22 of the LRA, *Promotion of Access to Information Act*, Constitution and other applicable *and relevant* legislation.
- (e) A trade union qualifies for the right to elect representatives and for the right to disclosure of information, only if it is admitted to the PSCBC or the GPSSBC and is a representative trade union in the department.
- (f) The granting of organizational rights to trade unions should be based on audited membership as obtainable from the departmental payroll. If a trade union is a party to a collective agreement at PSCBC or sectoral level it qualifies to exercise any right established by such an agreement in a department as adopted by the department, unless otherwise determined. Leave for elected shop stewards, other than full-time shop stewards, must be granted according to a collective

agreement on the matter and the Determination on Leave issued by the Minister of Public Service and Administration from time to time.

- (g) Any action by a trade union (excluding action protected in terms of the Labour Relations Act) that disrupts the service delivery of a department may result in the suspension of organizational rights, provided the union is granted the opportunity to rectify the situation.

8.3 Negotiations and Consultations

8.3.1 Mandating and management of negotiations

- (a) In principle, as a provincial department, the Provincial Treasury will participate in the provincial collective bargaining structures, namely, the Eastern Cape provincial chambers of the PSCBC and the GPSSBC.
- (b) In the above respect, the Head of Department, through the departmental representative in the above collective bargaining structures, shall communicate the mandate of the department to the provincial government negotiations leader, who will in turn communicate such a mandate to the relevant provincial chamber, provided that such a mandate is not in conflict with general standpoint of the provincial government.

8.3.2 Management of internal consultations

- (a) The Head of Department shall establish an Employment Relations Forum which shall assist him in regulating the way in which the relationship between the department and trade union are represented in the department.
- (b) Representation in the department will be dealt with, subject to admission of such trade union to the PSCBC and the GPSSBC and annual submission of Shop Stewards names and the confirmation of acceptance of such names by the Head of Department.
- (c) The Department's team that represents the employer in the Employment Relations Forum may co-opt any other member of the Department to assist in negotiations where their specialist knowledge regarding a specific agenda item is required. The same principle applies to the Union negotiating team.

- (d) The Head of Department acts as mandating authority for the Department's negotiating team. When a dispute arises in the *Forum*, the dispute resolution procedure as set out in the relevant collective agreement will be applicable.

8.3.3 Procedure on internal consultations

- (a) Line Managers in the Department will be informed by Corporate Services about meetings in the Council, should they have matters to raise for discussion in the *Forum*.
- (b) Matters identified for possible tabling in the *Forum* will be submitted to the head of the Employment Relations sub-Directorate who will prepare the issues for tabling in the *Forum*.
- (c) Matters proposed for discussion or negotiations in the *Forum* *may be* dealt with in a pre-agenda meeting with trade unions that are parties to the GPSSBC or the PSCBC. The purpose of this meeting is to determine the relevance and importance or applicability of the matters. After the screening and acceptance of the proposed matters, an agenda will then be drawn up.
- (d) Persons identified to represent the department in its negotiating team *shall be* given adequate training in matters such as negotiations and dispute resolution.
- (e) The negotiating team will as soon as possible report in writing to the Head of Department and where necessary to the MEC on the outcome of a meetings.
- (f) The representative of the departments Corporate Services shall ensure that a copy of any *agreement* concluded in the Forum is submitted to the Head of Department.
- (g) Representatives of the department in *Forum* meetings will only be able to conclude binding agreements if –
 - (i) They have proper mandates whenever they enter the *workplace* collective bargaining.

- (ii) the matters which they entertain fall within the mandate of the department as employer.
- (iii) the matter that is subject of the agreement is not within the competence of the PSCBC or the GPSSBC or is not subject of another agreement concluded in the PSCBC or the GPSSBC.
- (iv) such agreements can only be signed into a *departmental protocol* by the Head of Department after proper *consultations* have taken place.

(h) Collective bargaining as a mechanism to address matters of mutual interest between the employer and employees (as represented by representative trade unions) is acknowledged and supported.

- (i) Collective bargaining at departmental level shall only deal with matters with regard to which the executive authority has the requisite power.
- (j) Members of the Senior Management Service are not normally covered by decisions reached in the bargaining units of all bargaining councils, except in as far as the employer concurs to their specific inclusion in a collective agreement concluded in the GPSSBC or the PSCBC.
- (k) The department shall remain responsible for the implementation of national and sectoral collective agreements.

8.4 Designation of *Trade Union Constituencies* -

The designation of constituencies in the department to enhance collective bargaining is supported, provided –

- (a) The units making up the constituency have a natural link to one another.
- (b) The majority of employees in the constituency are members of a trade union.

8.5 The Departmental Employment Relations Forum

8.5.1 Composition

The Head of Department or his/her delegate, in consultation with recognized trade unions that operate in the department shall convene the departmental Employment Relations Forum.

8.5.2 Trade Union Participation in the Departmental Employment Relations Forum and other Formal Structures

- (a) In order for a union to participate in the Employment Relations Forum of the department, it must have been admitted to the GPSSBC or the PSCBC or acts in concert with a trade union that has been admitted to the GPSSBC or the PSCBC.
- (b) The number of trade union representatives in the Departmental Labour Relations Forum will be determined in terms of the number of its members in the department on 31 December of the preceding calendar year and in terms of section 14 of the Labour Relations Act.
- (c) In order for a trade union to be admitted by the Head of Department to participate in Departmental Labour Relations Forum, it must have been admitted to the GPSSBC or the PSCBC in its own right.
- (d) In respect of trade unions that have not been admitted in their own right, exception with regard to participation in the Departmental Labour Relations Forum may be given to trade unions that are party to GPSSBC or the PSCBC, are representative in the department.
- (e) Before the 15th of January in each calendar year, Corporate Services will provide each admitted trade union with the number of its members in the department as on 31 December in the preceding calendar year and request confirmation of representation in the Departmental Labour Relations Forum in terms of the applicable threshold as determined in the Labour Relations Act.
- (f) Before 31 January in each calendar year, trade unions admitted in the Departmental Labour Relations Forum will confirm the names of their elected local representatives and office bearers and the names of those that will participate in the Forum to the Head of Department or his delegate.
- (g) The chairperson of the majority union, before 31 January in each calendar year, shall forward to the Head of Department or his/her delegate the name of the

person to whom all correspondence to the trade union representation would be directed.

- (h) The department will only engage in consultations and communication only with those trade unions and local representatives that have been admitted to the Departmental Labour Relations Forum.
- (i) The Departmental Labour Relations Forum may serve as a coordinating body for trade union participation in other formal departmental structures wherein trade union participation is desirable.

8.5.3 Functions of the departmental Employment Relations Forum

In promotion of sound employment relations in the department, the Forum will perform the following functions:

- (a) Serve as a consultation forum between the department and organized labour.
- (b) The trade union representatives may bring matters of their members interest to the Forum for discussion. Decisions reached in the forum will be binding on both the department and the trade unions represented in the Forum. In this way, the Forum will act as workplace bargaining Forum.
- (c) Refer matters of transversal nature to the GPSSBC or PSCBC for further discussion or bargaining.
- (d) Monitor the implementation collective agreements reached in the GBSSBC and the PSCBC.
- (e) Participate in the creation of the departmental strike management committee in the event of industrial action against the department or the State as employer.
- (e) Any other task that is within its competence and is not in conflict with the provisions of any law of the land or existing collecting agreements which are binding to the department and the participating trade unions.

8.6 Dispute Resolution

8.6.1 Disputes of interest

- (a) If in the process of collective bargaining, a matter cannot be resolved by concluding a mutual agreement, the right of parties to invoke the dispute resolution mechanisms of the Labour Relations Act, i.e. conciliation and arbitration and/or industrial action, i.e. strikes and lockouts, is acknowledged.
- (b) Whether a strike is protected or not, or whether it is for a full day or part of a day, the principle of “no work, no pay” should be applied regardless. Under no circumstances may leave be granted for strike purposes.
- (c) Employees who participate in unprotected strike action must be disciplined in terms of the relevant Disciplinary Code and Procedure.
- (d) Employees who participate in protected strike action may not be dismissed unless they misconduct themselves during the strike or for operational reasons and after following the prescribed procedure.
- (e) To minimize conflict during strike action, trade union leaders of the action should, where possible, be engaged in talks to try to resolve the dispute.
- (f) In order to deal with industrial action, the Head of Department shall designate a person or group of persons who will be responsible for management of the strike. In line with guidance from the DPSA or Office of the Premier where appropriate, mechanisms shall be put in place to ensure that information on strike action is obtained at departmental level and submitted to DPSA to enable the Minister for the Public Service and Administration to inform Cabinet on the extent of any strike action.
- (g) Deductions from the salaries of employees, who participated in strike action or are locked-out, shall be effected in the month that the strike action or lock-out takes place or in the subsequent months should it not be possible to effect it in the month of the strike/lock-out.

- (h) Information on any strike action or lock-out must be captured on the PERSAL system within 30 days of such action; where this is not possible it should be captured within 60 days on Persal.

8.6.2 Disputes of right

- (a) Disputes of right should be minimized by the timeous and correct implementation of council resolutions and adherence to legislation, regulations, directives, etc. that grants rights to employees.
- (b) Every attempt should be made to resolve a dispute of an employee. The conciliation stage of the dispute procedure should therefore be actively utilized to achieve this.
- (c) If any of the parties to the matter is not prepared to conciliate a matter, it may exercise its prerogative and inform the relevant bargaining council as such, five (5) working days before the conciliation date.
- (d) The Head of Department may designate an official, preferably in the employment relations or human resource section of a department to which all dispute referral forms should be submitted. The Head of Department shall be sensitized that dispute referral forms that might be forwarded to them should be submitted to the designated officer.
- (e) The designated official shall ensure that mechanisms are put in place to prevent "no shows" of a department in arbitration and Labour Court proceedings.
- (f) A dispute concerning any matter that could negatively impact on a national policy or a national collective agreement may be referred to the DPSA for advice and assistance.

8.7 Protest Action

- (a) The right of employees to participate in protest action to support their socio-economic interests is acknowledged.

- (b) The principle of “no work, no pay” must be applied in all instances where an employee participates in protest action, be it for a full day or part of a day.
- (c) No leave may be granted for purposes of participating in protest action.
- (d) Employees who participate in unprotected protest action will be disciplined in terms of the relevant disciplinary code and procedure.
- (e) Employees who participate in protected protest action may not be dismissed, unless they misconduct themselves during the protest action.
- (f) The policy in respect of the submission of information and the deduction from salaries indicated under “Disputes of Interest” also applies to protest action.

8.8 Picketing

- (a) The right of a registered trade union to authorize a picket by its members or supporters for the purpose of peacefully demonstrating in support of a protected strike or in opposition to a lock-out is acknowledged.
- (b) Picketing should be conducted in terms of picketing rules.
- (c) Picketing rules, on matters affecting only the department, will be regulated by national rules developed by DPSA and where appropriate departmental policies or rules, taking into account the following:
 - (i) the Code of Good Practice on Picketing issued in terms of the Labour Relations Act
 - (ii) any framework negotiated at national or sectoral council level.
- (d) The principle of “no work, no pay” shall apply where employees participate in picketing during official working hours.

8.9 Strike Management

8.9.1 Right to strike.

The department acknowledges the right of employees to engage in protected strike action. The department further affirms its right to engage in protected lockout in response to strike action.

8.9.2 Strike Management Committee

- (a) The Head of Department shall appoint a strike management committee which shall assist him /her in dealing with matters pertinent to a strike action.
- (b) The purpose of the Strike Management Committee shall include the following:
 - (i) To co-ordinate implementation of department contingency plan for service delivery.
 - (ii) To ensure protection of personnel who maintain critical services.
 - (iii) To co-ordinate plans to maintain security and protection assets.
 - (iv) To establish and monitor communication in addressing media, strikers and clients of the department.
- (c) The functions of Strike Management Committee shall include the following:
 - (i) Convene and determine frequency of meetings strike management meetings.
 - (ii) Keep the record of events.
 - (iii) Attend meetings with strikers when need arises.
 - (iv) Review strike management plan to respond to circumstances.
 - (v) Co-ordinate external communication.

- (vi) Monitor adherence to relevant laws and regulations.
- (vii) Report to and brief the Accounting Officer on strike-related developments and incidents.
- (viii) Maintain regular contact with representatives of recognized trade unions that operate in the department.

8.9.3 District Coordinating Teams

The Head of Department shall appoint a District Coordinating Team in each of the district offices which shall assist the Strike Management Committee.

8.9.4 Composition of District Coordinating Teams

A District Coordinating Team will be composed of the following persons:

- (a) Head of District Office
- (b) Members of District Office management team (maximum of 3)

8.9.5 Functions of District Coordinating Teams

The functions of a District Coordinating Team shall include the following:

- (a) Determine key services to be prioritized.
- (b) Co-ordinate service processes during strike action.
- (c) Invite participants to strike management team.
- (d) Manage and co-ordinate the security functions to ensure protection of property and individuals.

- (e) Prepare a daily diary on all major events pertaining to services affected and staff behavior (e.g. picketing, demonstration).
- (f) Contact emergency services (e.g. police, ambulance, fire fighters) when necessary.
- (g) Maintain regular contact with H/O and non-striking workers.
- (h) Establish status of attendance and co-ordinate reporting to Head Office.

9. MANAGEMENT OF DISCIPLINE

9.1 Purpose

The purpose of this policy is not to replace the disciplinary code and procedure as contained in the PSCBC Resolution 2 of 1999, as amended, by PSCBC Resolution 1 of 2003 and Chapter 7 of the SMS Handbook or any determination issued by the Minister of Public Service and Administration. This policy is intended to supplement the said Resolutions and the Ministerial Directive or SMS Handbook, in the following aspects:

- (a) To support constructive labour relations in the department.
- (b) To promote mutual respect between employees and management.
- (c) To ensure that managers and employees share a common understanding of misconduct and discipline.
- (d) To promote acceptable conduct.
- (e) To provide employees and the department with a quick and easy reference for the application of discipline.
- (f) To avert arbitrary or discriminatory action by managers towards employees.

9.2 Policy Statement

- (a) The Disciplinary Code allows for relatively informal procedures before the imposition of less serious penalties such as warnings and final warnings. The Code specifically provides that formal procedures do not have to be invoked every time a rule is broken, or a standard is not met.
- (b) The Code provides that informal advice and corrective measures are the best and most effective ways for an employer to deal with minor violations of workplace discipline. It should be borne in mind that formal warnings are nevertheless sanctions and can have serious consequences for employees.

9.3 Procedure

The employer shall embrace the following guiding procedures with regard to the management of discipline in the workplace:

- (a) That discipline is consistent and fair.
- (b) That disciplinary action is corrective; and
- (c) That accountability for discipline is vested in line management and management in general.
- (d) All disciplinary action, whether formal or informal (progressive) discipline, shall be captured on the appropriate PERSAL database.
- (e) Discipline shall be meted out as soon as possible after the transgression occurred.
- (f) The department takes serious exception to offences such as willful damage to the property of the employer, willfully endangering the safety of others, physical assault on the employer, a fellow employee or a client, gross insubordination and gross dishonesty, etc. which may warrant dismissal for a first offender, as they may render employment relationship intolerable.

9.4 Principles Underlying Institution of Disciplinary Action

- (a) The circumstances of an offence must be properly investigated before a warning is issued, and the employee must be given an adequate opportunity to make representations either on the facts or in mitigation.
- (b) The Department has a right or duty to maintain discipline in the workplace. This duty is recognized in Chapter VIII and Schedule 8 of the LRA, Code of Good Practice: Dismissal. The employee's duty lies at the heart of the employment relationship. The Department has the authority to impose sanctions on those who do not abide by the Code of Conduct and other Departmental Policies.
- (c) The Department prescribes standards of conduct for the workplace and initiates disciplinary steps. Disciplinary systems are legitimate, reasonable and applied fairly and consistently in the workplace.
- (d) The function of discipline in the department is to ensure that individual employees contribute effectively and efficiently to the goals of the Department. Hence it is the Department's right and duty to ensure that its employees adhere to reasonable standards of efficiency and conduct.
- (e) The disciplinary rule and this policy are a guideline and may be departed from in appropriate circumstances. The Department is not required to spell out every workplace rule in detail; the test is whether the employees are reasonably aware of the rules and the consequences of non-compliance.

9.5 Disciplinary Sanctions

9.5.1 Counselling.

- (a) Disciplinary sanctions must be applied progressively. i.e. generally, a lighter sanction for lighter cases for a first-time offender, and more serious sanctions reserved for repetitions.
- (b) In cases where the seriousness of the misconduct warrants Counseling the manager of the employee must

- (i) Bring the misconduct to the employee's attention.
- (ii) Determine the reasons for the misconduct and give the employee no opportunity to respond to the allegations.
- (iii) Seek to get agreement on how to remedy the conduct; and
- (iv) Take steps to implement the agreed course of action.

9.5.2 Verbal Warning

- (a) In cases where the seriousness of the misconduct warrants a verbal warning, the manager of the employee may give a verbal warning. The manager must inform the employee that further misconduct may result in a more serious disciplinary action and record the warning.
- (b) If during the sixth month period, the employee is subject to disciplinary action, the verbal warning may be taken into account in deciding on an appropriate sanction. This warning cannot be held against the employee after the sixth months period has lapsed.

9.5.4 Written Warning

In cases where the seriousness of the misconduct warrants a written warning, the manager may give the employee a written warning. The following provisions apply to written warnings:

- (a) The manager must bring the misconduct to the employee's attention.
- (b) The manager must determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations.
- (c) The manager must seek to get agreement on how to remedy the conduct.
- (d) A copy of the written warning must be given to the employee who must acknowledge receipt thereof.
- (e) The warning must be filed on the employee's personal file.

- (f) It remains valid for six (6) months; and
- (g) If during the sixth month period, the employee is subject to disciplinary action, the written warning may be taken into account in deciding on the appropriate sanction. This warning cannot be held against the employee after the sixth month period has lapsed.

9.5.4 Final Written Warning

In cases where the misconduct is of a very serious nature, the manager may give the employee a final written warning. The following provisions apply to a final written warning:

- (a) The manager must bring the misconduct to the employee's attention.
- (b) The manager must determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations.
- (c) The manager must seek to get agreement on how to remedy the conduct.
- (d) A copy of the final written warning must be given to the employee who must acknowledge receipt thereof.
- (e) The final written warning must be filed on the employee's personal file.
- (f) It is valid for six (6) months; and
- (g) If during the six (6) month period, the employee is subject to disciplinary action, the final written warning may be taken into account in deciding on an appropriate sanction. This warning cannot be held against the employee after the sixth month period has lapsed.

9.5.5 Suspension without pay

- (a) Suspension without pay can only be applied after a formal disciplinary hearing has been convened.

- (b) The length of the period of unpaid suspension cannot exceed three (3) calendar months or an equivalent period. This sanction may therefore be applied in cases of serious misconduct.

9.5.5 Demotion

9.5.6.1 Background and Purpose

- (a) As stated above various methods exist on how to address an employee's unacceptable/ inappropriate conduct such as correcting it by means of progressive steps e.g., counseling, a verbal warning, a written warning or a final written warning, depending on the severity of the misconduct.
- (b) However, should the progressive steps taken not have the desired effect of correcting the wrong behavior, a more formal process can be followed and **demotion** as a disciplinary sanction may be imposed.
- (c) This policy framework also aims to promote consistency in dealing with demotion as a disciplinary sanction in the workplace and thereby ensuring compliance with accepted norms.

9.5.6.2 Definition of Demotion

- (a) Demotion is defined by Rycroft and Jordaan, South African Labour Law, 2nd Edition, as "*...a variation or amendment of an employee's terms of employment to the extent that he or she is required to fill a different position or to fulfill different functions to that which he or she normally hold and fulfills, coupled with a reduction in status*".
- (b) The courts, however, apply a wide definition of demotion. In general, demotion is accepted as the opposite of promotion.
- (c) Section 186(2) (a) of the Labour Relations Act (LRA) recognizes demotion as a valid ground for an unfair labour practice. For the purposes of section 186(2)(a), demotion can be deemed as such when any one or more of the following occurs.

- (i) Reduction in remuneration levels
- (ii) Reduction in fringe benefits
- (iii) Reduction in status
- (iv) Reduction in levels of responsibility
- (v) Reduction in levels of authority and power
- (vi) Reduction in levels of job security

(d) In disputes regarding demotion as an unfair labour practice, the onus rests on the employee to prove that the conduct of the employer was unfair and not *vice versa*.

9.5.6.3 Principles of Demotion

- (a) A sanction of demotion can only be applied after a formal disciplinary hearing has been convened. This sanction may therefore be applied of serious misconduct.
- (b) When considering applying the sanction of demotion, the following principles must be adhered to:
 - (i) Demotion as a sanction should not be punitive but rather corrective in nature, preventative and a deterrent. However, sanctions, including demotion, may also contain an element of retribution (punishment).
 - (ii) The demotion as a sanction must be for a valid reason and in accordance with fair procedure.
 - (iii) The demotion may not unreasonably prejudice the employee's future career and development prospects.

(iv) The demoted employee may only apply after twelve (12) calendar months, without prejudice, for promotion to a higher advertised post. The application should follow the normal procedures and be considered as if the employee was not demoted to the current position.

9.5.6.4 Substantive Provisions for Demotion

- (a) The objective of discipline in the workplace is to correct the unacceptable behavior of the employee in a progressive manner. Therefore, discipline should not only be punitive. It should however be noted that discipline is aimed at rehabilitating the transgressor, preventing similar incidences of misconduct and should be a deterrent.
- (b) Discipline may also contain an element of retribution (punishment). Retribution is but one element of discipline.
- (c) For disciplinary purposes demotion as a sanction might be imposed as a result of the fact that the employee committed an act of serious misconduct (not poor work performance), thereby illustrating an inability to execute the duties and responsibilities on a higher or supervisory level to the required standard.
- (d) Misconduct refers to the behavior or attitude that an employee might adopt towards performing his duties in terms of what is expected of him whereas poor work performance relates to the ability or skills of an employee to perform duties to an acceptable standard. Unacceptable behavior or attitude towards your duties might constitute misconduct that warrants demotion. Demotion as a sanction should therefore not exclusively be linked to poor work performance.
- (e) Demotion as a disciplinary sanction should be reserved for cases of serious misconduct and should be applied for a fair reason and in accordance with fair procedure. Demotion as a disciplinary sanction should be reserved for an instance where the misconduct relates to the unacceptable or inappropriate conduct of the employee towards his duties and where the severity of the offence is of a serious nature, but the employment relationship has not been irreparably damaged.

(f) A demotion as a disciplinary sanction should bring about a combination of a difference in position or functions and a reduction in status (Rycroft et al). A demotion, therefore, as per definition, implies a lower salary level as well as a reduction in levels of authority or responsibility.

9.5.6.5 Senior Management Service Cadre and Demotion

Chapter 7, clause 2.7(4)(b) of the SMS handbook governs discipline of SMS members and stipulates that demotion as a sanction can only be considered, as an alternative to dismissal, if the relevant SMS member has agreed in writing to the proposed sanction of demotion. If a member is demoted, after a year he or she may apply for promotion without prejudice.

9.5.6.6 Monitoring and Evaluation

The monitoring of the institution of demotion as a sanction is the responsibility of the Chief Director responsible for Human Resource Management. In this respect, the Chief Director responsible for Human Resource Management must ensure that the application thereof is applied fairly and consistently.

9.5.6 Combination of Sanctions

A disciplinary hearing chairperson may apply a combination of not more than two (2) of the above sanctions. These may be a demotion together with any other sanction or a suspension without pay together with any other sanction.

9.5.8 Dismissal

In cases where the employment relationship between the employer and the employee has been rendered intolerable, a disciplinary hearing chairperson may apply the sanction of dismissal. Due formal processes must therefore be followed before a sanction of dismissal can be applied.

9.6 Appeals against Sanctions

- (a) An employee may appeal against the finding or sanction by completing the appeal form provided in Resolution 2 of 1999 as amended by 1 of 2003.
- (b) The employee shall, within five (5) working days after receiving the outcome of the hearing, refer his or her appeal to the MEC through the office of the head of the departmental Labour Relations Unit. This is in order to enable the Labour Relations Unit to track progress on the resolution of the matter and to facilitate adherence to prescribed timeframes.
- (c) The MEC is the appeal authority in very formal disciplinary hearing processes whereas in non-formal hearings the Superintendent-General is the Appeal Authority or designated Deputy Director-General or General Managers appointed by the appeal authority.
- (d) The appeal authority has discretion on how to handle the appeal. Where the appeal authority requires a hearing, he/she shall notify the employee of the date and place.
- (e) The Department shall immediately implement the decision of the appeal authority.

9.7 Precautionary Suspensions

9.7.1 Purpose

- (a) The purpose of suspension is to enable the Department to make the necessary investigations into a charge of misconduct while the employee is temporarily removed from his/ her workplace so that he/she cannot interfere with the investigation. This usually applies where serious offences occur such as gross dishonesty (theft, bribery, corruption, fraud, etc.) or offences against the administration of the State and where it can reasonably be believed that the continued retention of the employee in his/her post particularly post will be prejudicial to the State administrations and moreover that the appropriate penalty if the suspended employee is found guilty will be dismissal.

- (b) The purpose of this policy is to supplement the relevant public service provisions on suspension including Resolution 2 of 1999 as amended by 1 of 2003.

9.7.2 Principles with Regard to Precautionary Suspensions

- (a) The department will suspend an employee from his or her duties pending disciplinary proceedings, only if the offence is of a very serious nature and the presence of the employee at the workplace might jeopardize an investigation or endanger the wellbeing or safety of any person or property; or due to other necessity as determined by the Head of Department.
- (b) The length of the suspension, prior to an employee appearing before a disciplinary hearing, must preferably be limited to the maximum period of sixty (60) days, as stated in the disciplinary code and procedure.
- (c) The institution of a **Precautionary Suspension** must be preceded by the application of the principle of natural justice; that is, hear both parties (*audi alteram partem* rule).
- (d) All suspensions will be with emoluments.

9.7.3 Procedure for Suspension

- (a) Depending on the circumstances, the suspension of employees from the workplace pending a disciplinary inquiry and hearing is not *per se* unfair.
- (b) Suspensions affects the employee's vested right to be economically active. Before a suspension is effected consideration may be given to the following:
 - (i) Transferring the employee temporarily to other duties, another post or another location, and where necessary, employing that employee out of

adjustment or additional to the fixed establishment after applying the 'audi alteram partem' rule and/or

- (ii) Instructing the employee in writing not to interfere with specified matters or enter specified areas.
- (c) The decision to suspend an employee is not to be taken lightly. It must be carefully judged against the facts and circumstances pertaining to each case and the extent to which it appear that:-
 - (i) The employee concerned can prejudicially interfere with the investigation.
 - (ii) The employee concerned is in a position to tamper with evidence.
 - (iii) State witnesses are being interfered with and influenced or blackmailed.
 - (iv) The chances are strong that the employee concerned will again render himself/herself guilty of the same or other specific mal practices.
- (d) If it is decided to suspend an employee, a written notice of suspension, furnishing full conditions, will be given to the employee under the signature of the Superintendent-General or an official authorized by the Superintendent-General.
- (e) The provisions of section 30 and 31 of the Public Service Act, 1994 as amended (remunerative work outside of work in the Public Service) are applicable to an employee who is suspended from duty.
- (f) Provision will be made for payment of the salary of the employee who is suspended from duty pending a disciplinary enquiry.

9.8 Abscondment

- (a) Strong action should be taken by the employer against any employee who absents him/herself from his/her official duties without permission. In this regard the department shall -

- (i) adhere to section 17(3)(a)(i) and 17(3)(b) of the Public Service Act as amended or other relevant legislation when the employee's absence exceeds a period of one calendar month *or an equivalent period*: or
- (ii) on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that employee in the public service in his or her former or any other post or position, and in such case the period of his or her absence from official duty shall be deemed to be absence on vacation leave without pay or leave on such other conditions as the said authority may determine.

(b) When an employee absents him/herself from official duties (without submitting a valid reason), the employer should –

- (i) attempt to determine the whereabouts of the employee.
- (ii) if the whereabouts of the employee are known, call the employee to a meeting or allow him/her to respond in writing before the expiry of the one calendar month period to give reasons why his/her services should not be terminated in terms of the relevant legislation when the above-mentioned period lapses.

(c) Where the employee does not report to work after one month without reason, the *Head of Department* may approve that the employee be dismissed on account of abscondment. This decision may be reversible upon the authority of the *Head of Department*, subject to the employee providing good reason and proof to the satisfaction of the department that the employee has a legitimate reason to be absent. Such absence may be converted to leave without pay in appropriate circumstances.

10. INCAPACITY MANAGEMENT

10.1 Nature of incapacity

- (a) Incapacity can take two forms, namely –
 - (i) incapacity due to poor performance.

- (ii) incapacity due to ill-health or injury.
- (b) Both forms of incapacity shall be dealt with in terms of the relevant collective agreements of the PSCBC or sectoral council or Schedule 8 of the Labour Relations Act, 1996, Code of Good Practice on Dismissal as contained in relevant legislature (whichever is applicable) or a determination issued by the Minister of Public Service and Administration and as provided in the departmental Performance Management Policy.

10.2 Incapacity due to poor performance

- (a) Once identified, be identified steps must be taken to manage and correct incapacity due to poor performance as soon as possible.
- (b) Where possible, evidence of incapacity must be substantiated through the employee's performance assessment.
- (c) It must be dealt with through a process of counseling and monitoring that could ultimately lead to termination of service.
- (d) The correction process must fully involve the employee concerned (and his/her representative if applicable).

10.3 Incapacity due to ill-health

- (a) The management process requires that the employer, based on medical evidence, determines whether the ill-health, is of a permanent or temporary nature. In this respect, the application of the provisions of the Policy and Procedure on Incapacity Leave and Ill-Health Retirement (PILIR) takes precedence over the provision of this policy.
- (b) The process should only lead to medical boarding in cases where the ill-health or injury is of a permanent nature and where alternative employment, or adaption of the employee's work circumstances to his/her situation, is not possible; or any other relevant situation may be considered by the employer

depending on the state of health and ability of the employee to perform its function.

- (c) Since the process requires the involvement and co-operation of the employee and his/her representative, if applicable, their participation is imperative in order for the process to be successful.
- (d) Incapacity due to ill-health may, in cases of alcohol or drug abuse, lead to termination of services if the behavior remains repetitive after rehabilitation or if the employee fails to follow any formal or rehabilitation programme.

11. GRIEVANCE MANAGEMENT

11.1 Policy Statement

- (a) The right of an employee to lodge a grievance against an official act or omission on the part of the employer is acknowledged.
- (b) The Department deals with complaints and grievances ensuring that grievances are dealt with in a fair and just manner in terms of the Public Service Commission Grievance Rules.
- (c) Section 23 (1) of the Constitution determines that everyone has the right to fair labour principles. The grievance procedure contributes to this end.

11.2 Procedure

- (a) The Public Service Commission (PSC) has, under its Grievance Rules, provided guidelines for dealing with grievances in the Public Service. In principle, therefore, a grievance will be dealt with in terms of the grievance rules or guidelines issued by the Public Service Commission or in terms of relevant legislation or any other directives or determination issued by the Minister of Public Service and Administration.
- (b) An employee may lodge a formal grievance only when an incident has occurred, or the employer's position is such that he/she is left with a general feeling of dissatisfaction or injustice and other methods to rectify this may have failed. The

seriousness of the dissatisfaction should warrant that it be brought to the attention of the higher levels of management.

- (c) This does not mean that each and every incident of dissatisfaction should result in the formal grievance procedure being followed. The formal grievance procedure should be followed only when informal methods of trying to resolve the grievance have failed.
- (d) The ideal is to resolve a grievance as soon as reasonably possible, depending on the nature of the grievance. Time limits are established at every stage of the grievance. Management at the various levels will give careful consideration to the grievance of employees and will make every effort to resolve them.
- (e) Skilled investigating officer with sound knowledge of the labour legislation and relevant enabling prescripts will be appointed to do the investigation.
- (f) The employee has the right to declare a dispute in terms of the Labour Relations Act, 1995 as amended; if the time limit has lapsed or the grievance procedure has not produced any result.

11.3 Appeal Stage in a Grievance

- (a) When lodging an appeal to the MEC, an employee must do so through Labour Relations Office. If all internal procedures have been exhausted and the employee's grievance could not be disposed of, to his/her satisfaction, he/she may within 10 working days of receipt of the notification request that all the documents be submitted to the PSC. Such request must be in writing and must be submitted to the Chief Director responsible for Human Resource Management.
- (b) The appeal authority at this stage is the Public Service Commission. Within 10 working days of receiving the request, the Chief Director responsible for Human Resource Management will forward all the files and documents to the PSC and advise the official accordingly that this has been done.
- (c) If the official is still not satisfied with the outcome of the grievance, as recommended by the PSC, he/she may declare a dispute against the

Department. Such a dispute may be lodged with the relevant dispute resolution agency.

12. RETRENCHMENT AND REDUNDANCY

- (a) It is the policy of the employer to, as far as possible, provide continuous employment for all its employees. It must nevertheless be accepted that changes in the national economy, organizational and operational structures of departments and demands in terms of service delivery might result in certain employees being in excess of the establishment.
- (c) All possible steps should be taken to limit the number of employees to be affected by a retrenchment exercise. These include –
 - (i) the redeployment of employees within the department.
 - (ii) the redeployment of employees within the public service.
 - (iii) the redeployment of employees to other sectors of the economy, within the public sector.
 - (iv) the training or retraining of affected employees; and
 - (v) allowing employees to opt for early retirement or an employee-initiated severance package (if available).
- (c) The provisions of sections 189 and 189A of the Labour Relations Act, the “Code of Good Practice on Dismissals based on Operational Requirements” and/or any other relevant Code of Good Practice, national or sectoral collective agreement and ministerial directive or determination on the matter must be adhered to.
- (d) The selection criteria to be used to determine which employees are to be retrenched may be agreed upon and be fair and objective.
- (e) Retrenchments should not target a specific group or groups of personnel, but should be applied vertically throughout a department, unless a specific service is terminated where only certain occupations and/or grade levels become redundant.
- (f) Benefits payable to employees affected by retrenchments will be determined by means of a national collective agreement but should not be less than the

amount prescribed by statute (see section 41 of the Basic Conditions of Employment Act, Act 75 of 1997, as amended).

- (g) Any retrenchment exercise should be linked to a social plan (to assist affected employees) determined by a national or sectoral collective agreement, in the absence of which the guidelines, as developed by the Department of Labour, should be followed.
- (h) Employees retrenched should be given preference when a department rehires employees in those categories in future. If there is no national or sectoral collective agreement governing this matter, a department should (as part of the retrenchment process) consult with the relevant trade unions on the period during which preferential rehiring would be applicable, which period should be reasonable (maximum 18 months).

13. MANAGEMENT OF CONFLICT OF INTERESTS

- (a) Employees, from time to time, may approach Human Resource Management or State Law Advisory Services or Legal Services for advice in matters where such employees are or may become involved in a dispute with the Department. Most often, they are of the opinion that their labour rights have been violated or are threatened by the Department, and they want advice on what their rights are, what courses of action are open to them.
- (b) Human Resources and Labour Relations Officers, together with Legal Service personnel, are employed and duty bound to provide the Department with, amongst other things, advice on disputes or potential disputes with employees. It is their duty to always assist and represent the Department in these matters. It should therefore be noted that when an employee approaches such an officer for such advice or assistance there is an immediate actual or potential conflict of interests. The officer must in such a case put the interests of the Department first. It would be inappropriate or wrongful for the officer to provide the employee with any advice or information that is prejudicial to the department. It is not in the State interest to allow personnel employed to advise them to also assist employees against the lawful interests of the Department.

- (c) An employee who feels aggrieved with any official action, or who has an enquiry about his or her rights with regards to any matter relating to his or her employment relationship with the Department, must approach his or her supervisor for assistance. If his or her supervisor cannot resolve the grievance, the relevant directorate which caused the grievance may be approached with his or her complaint or enquiry, which directorate will then seek legal/labour relations advice, if it is deemed necessary. If such directorate decides not to seek advice, or the employee concerned is in any way not happy with the response, he or she is always entitled to institute formal grievance proceedings or to seek legal advice from private legal practitioners or trade union.
- (d) No employee may request any staff in Human Resources, Labour Relations or Legal Services to assist him or her in any way in disciplinary proceedings against such employee by the Department. Also, no employee in Human Resources, Labour Relations or Legal Services may assist any employee in any way, with regard to the merits of such proceedings. The employee may be assisted by an employee representative from a recognized trade union. The employee representative must be from outside of Human Resources, Labour Relations or Legal Services.

14. EMPLOYMENT RELATIONS TRAINING

- (a) It is the responsibility of departments to ensure that employees are trained in the area of labour relations.
- (b) Training should be structured to capacitate different groups of employees, e.g. employees in general, employment relations officers, senior and line managers, negotiators, representatives and chairpersons in disciplinary hearings.
- (c) The Department will align with the DPSA responsibility for providing advocacy training to departments on collective agreements concluded at the PSCBC level.
- (d) Similarly, lead departments in the various sectors are responsible for providing advocacy training to the departments falling within their jurisdiction, in respect of collective agreements reached at the sectoral level.

- (e) The Department shall afford trade union representatives the opportunity to attend training programs conducted by the union within the fifteen (15) days leave provisions for union representatives determined in terms of a collective agreement.

15. POLICY MONITORING AND EVALUATION

- 15.1 Implementation of this policy will be enabled by inclusion of its salient deliverables and their performance indicators in the operational plan of the department. This, in turn, will enable measurement of achievement of the deliverables.
- 15.2 Reporting on the deliverables will be done on a quarterly and annual basis to management and to external stakeholders such as the Office of the Premier, the DPSA and the Public Service Commission.
- 15.3 Annual surveys and analysis reports on the employment relations climate in the department will also form part of the tools used to determine effectiveness in the application of this policy.

16. POLICY COMMUNICATION

- (a) The employer has the right to communicate directly with its employees. Formal channels of downward communication between management and employees may be established for this purpose, e.g. briefing groups, information sessions, circulars, etc.
- (b) Lines of communication with trade unions involved in a department, or at the sectoral or national levels, must be maintained at all times (e.g. during strike action).
- (c) A trade union should, after complying with the terms of organizational rights agreements, be allowed to communicate with their membership in a department (e.g. feedback meetings).
- (d) The employer and employee / trade unions should refrain from communicating with each other through the media.

(e) Organizational rights agreements between the employer and trade unions should address the issue of individual and joint press releases on employment relations matters where appropriate.

17. POPIA COMPLIANCE

- a) In accordance with the Protection of Personal Information Act (POPIA), all personal information collected and processed during disciplinary and grievance processes, including but not limited to employee names, hearing outcomes, and contact details, will be handled with the utmost confidentiality and security. Access to such information will be restricted to authorized personnel involved in leave administration.
- b) Any personal information provided by employees will be used solely for the purpose of grievance and misconduct processes will not be disclosed to any third parties unless required by law. Employees have the right to access and update their personal information held for leave management purposes, and any concerns regarding the handling of personal data should be directed to the designated privacy officer.
- c) The department undertakes that when processing personal information of the bereaved, it shall at all times:
 - Comply with the provisions of all laws, which regulate the protection of personal information, including but not limited to the POPIA.
 - Comply with all laws and procedures relating to the protection, storage, handling, privacy, processing, and retention of data as well as the destruction of information, including personal information.
 - Ensure that it does not disclose personal information other than in terms of this policy.
 - Ensure that it processes information for only the express purpose for which it was obtained.

18. DATE OF IMPLEMENTATION

This policy shall be implemented from the date of signature by the Head of Department.

19. POLICY REVIEW

19.1 policy will be reviewed within 3 years from its effective date.

19.2. Notwithstanding 19.1 above, changes in the relevant or underlying legislation, regulations and codes of good practice will also trigger the need to review or update this policy. In this respect, changes in the policy may be made prior or immediately after the application of the change.

19.3 This policy shall be reviewed or amended as and when the Head of Department deems it is appropriate to do so.

PREPARATION AND APPROVAL

Approved by:

Mr. D Majeke
Head of Department

30/03/2024

Date