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Environment & Nature Conservation
NORTHERN CAPE PROVINCE
REPUBLIC OF SOUTH AFRICA

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DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION

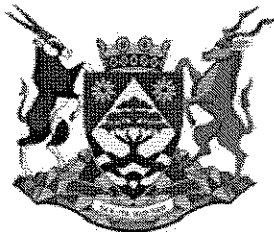
POLICY ON TERMINATION OF SERVICES

HUMAN RESOURCE

07 October 2011

FINAL VERSION

A PROSPEROUS AND EQUITABLE SOCIETY LIVING IN HARMONY WITH OUR NATURAL RESOURCES



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VERSION 2

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1. CONCEPTUAL BACKGROUND

DEPARTMENTAL POLICY GUIDELINE: TERMINATION OF SERVICE BY THE DEPARTMENT OF TOURISM, ENVIRONMENT AND CONSERVATION

In terms of the Public Service Co-ordinating Bargaining Council Resolution 3 of 1999 and the Public Service Regulations 2001, as amended, departments were given the mandate to develop policies and programmes which would enhance their managerial actions especially in respect of their human resource matters. The effect of the aforementioned is that departments are capacitated to develop their own policies and guidelines which will suit their needs, and with this added advantage those departments have greater autonomy in the day-to-day management of their human resource matters.

It can also be mentioned that in 1999, the then Director General for the province indicated that it was necessary to develop universal policies for the province, especially in those areas which are considered transversal. Although the then Director General had the intention to develop provincial policies for transversal issues, such intentions never materialized. For this reason, departments are still dependent on themselves to develop even those transversal policies until such time that provincial policies are developed.

1.1 PREAMBLE

The purpose of this policy is to set guide-lines and provisions regarding the termination of service in the Department and to establish conditions under which various termination options may be applicable.

1.2 DEFINITIONS

Termination of Service:

The termination of employment contract which exists between employer and employee.

Ill-health

A health condition that is of such a nature that an employee cannot render a service to the Department on a permanent basis.

1.3 LEGISLATIVE REQUIREMENTS

The following legislation applies to the termination of service:

- a) **Government Employees Pension Fund Act, No. 22 of 1996.**
- b) **Public Service Act, No. 103 of 1994 (as amended) read together with Public Service Regulations of 2001.**
- c) **Labour Relations Act, No. 66 of 1995.**



2. POLICY STATEMENT AND APPLICATION SCOPE

2.1 PRINCIPLES

- The termination process shall be open, fair and administratively just.
- The Policy shall be consistently applied to all employees.
- In applying provisions of this policy, the relevant legislation must be taken into account.
- Termination should be treated as a last option unless circumstances suggest otherwise.

2.2 POLICY PROVISIONS

I. RETIREMENT

An employee shall retire when he/she reaches the age of 65 years, if appointed before 1 July 1997, but the employee has a right to retire at age 60 (early retirement).

If appointed after 1 July 1997, the retirement age is 60 years but the employee has a right to retire at age 55 (early retirement).

II. RESIGNATION

- (a) An employee must submit his/her resignation in writing.
- (b) The Department must record the reasons given by the employee for his/her resignation.
- (c) An employee paid monthly must give one month's written notice; a casual employee who has been employed for less than 4 weeks must give one week's notice; a casual employee who has been employed for more than 4 weeks must give at least 2 week's notice.
- (d) A shorter notice period may be given with the recommendation of the supervisor and the approval of the Head of Department. If the supervisor does not approve the short notice and the employee leaves, this will be regarded as an abscondment.
- (e) If an employee is elected to a position as a full-time councillor, in a municipal council he/she will have to resign from the Department. In cases where employees wish to take up part-time position in a municipal council, the department should ensure that such an employee undertakes her/his duties as a councillor as far as possible outside official hours of work. Specific approval has to be granted that such an employee may retain his/her remuneration, as required



by section 30 of the Public Service Act, 1994 as amended. In order to assist the department with the managing of the position of employees who wish to stand as candidates and who are elected to municipal councils, the following guide-lines should be followed:

- * All staff should be informed of the provision and conditions that regulate their participation and election to municipal councils.
- * Employees wishing to stand as candidates must inform the Department of their intentions. The Department should in turn ensure that employees are properly informed of the conditions they will have to comply with.
- * Should an employee be elected to a municipal council, she/he is required to inform the designated persons of such election, the nature of their duties and responsibilities as a councillor, whether she/he will be required to perform such duties during official hours and details of her/his remuneration.

III. SECTION 17 OF THE PUBLIC SERVICE ACT

Includes the following grounds for discharge:

- 17(2)(a) : Ill-health.
- 17(2)(b) : Abolition of posts or reduction or re-organisation.
- 17(2)(c) : Reasons other than his/her own unfitness or incapacity/promote efficiency or economy within the Department.
- 17(2)(d) : Unfitness for his/her duties or incapacity to carry them out efficiently.
- 17(2)(e) : Misconduct.
- 17(2)(f) : In case of employee appointed on probation (appointment not confirmed).
- 17(2)(g) : On account of misrepresentation of his/her position in relation to a condition of permanent appointment.
- 17(2)(h) : Continued employment constitutes a security risk for the State.
- 17(2)(i) : The President/Premier appoints him/her in the public's interest under any law to an office to which the provisions of this Act do not apply.

IV. CONDITIONS FOR DISCHARGE OF EMPLOYEES DUE TO CONTINUED ILL-HEALTH

- (a) An application for discharge on the grounds of ill-health can be initiated by either the employer or the employee.



- (b) The employee should in all instances have the right to provide a written response on the above action.
- (c) A decision regarding termination of service on account of ill-health should be made with due regard to the findings of the personal physicians or the district surgeon of the employee concerned.
- (d) In instances where medical reports do not provide clarity regarding the merits of an application, a report from a specialist physician may be requested. The Department may bear the cost of such report at its discretion.
- (e) The recommendation and inputs from the Department of Health, who constitute a medical board shall be obtained.
- (f) The form Z29 (previously prescribed form) should be submitted together with all relevant documentation.
- (g) Circumstances must as a matter of clear probability indicate that the concerned employees' work performance has decreased to such an extent (as a result of continuous ill-health) that discharge is unavoidable and in the interest of the Department and State as a whole.
- (h) Where circumstances indicate the inability or unsuitability of the employee to carry out his/her duties but do not establish clear grounds for discharge because the employee is unfit for further government Service as a result of continuous ill-health, Section 17(2)(d) of the Public Service Act, 1994 should rather be applied.
- (i) Attention should also be given to instances where the employee's ill-health is due to deliberate and/or irresponsible behaviour of the employee and if so, it must be clearly indicated and the pension authorities should be duly informed.
- (j) In cases where applications were submitted on the employees' own initiative, the costs pertaining to the completion of a medical report, as well as the medical examinations, should be borne by the relevant employee.
- (k) The costs indicated in paragraph (j) will only be covered by the Department where the retirement due to continuous ill-health is an initiative of the Department.
- (l) Discharge in terms of the relevant section must not only be based on the employees ill-health as such, but also his/her evident inability to render satisfactory service in his/her current or another post of suitable grading. The Head of Directorate should clearly indicate this in the recommendation.
- (m) Requirement for applications for discharge on the grounds of ill-health:



- * Applications must include at least two medical reports from medical physicians (one of the reports may be provided by a traditional healer registered with an official body, but the other must be from a registered medical physician).
- * The Human Resource Management Unit may refer an employee to a specialist physician in doubtful cases.
- * Directorates must provide a comprehensive recommendation, including an indication that official/employee cannot be utilised alternatively.
 - * A comprehensive work report must be provided by an employees supervisor regarding all issues addressed in paragraph (a) to (n) of this chapter.
 - * A job description in respect of the employee must be provided.
 - * If an application does not contain the documents as indicated in this paragraph, guidance should be provided on submission of the right documents.

(n) Delegation:

The authority to approve an application for ill-health retirement is vested with the MEC.

V. INCAPACITY TO CARRY OUT DUTIES

- (a) The aim of Section 17(2)(d) of the Act is to afford those employees who are unfit or incapable of performing their duties as expected, to be discharged from the service of the Department.
- (b) In cases where an application in terms of Section 17(2)(a) of the Act appears not to be adequate or sufficient, termination of service in terms of unfitness/incapability may be considered.
- (c) This procedure should be done within the framework of the performance management policy.
- d) When incapacity is due to IOD, the employee should be accommodated within another unit suitable to the employee's circumstances. (Measures should be put in place in consultation with the employee, to accommodate the employee elsewhere within the department)

VI. MISCONDUCT

Refer to **Resolution No. 2 of 1999** and the **Policy on Labour Relations: Disciplinary Procedures**.

VII. OFFICER APPOINTED ON PROBATION

Where the services of an employee on probation are terminated in terms of Section 13 of the Act, due regard must be taken regarding Item 8 of Schedule 8 of the Labour Relations Act.

VIII. MISREPRESENTATION OF POSITION IN RELATION TO A CONDITION OF PERMANENT APPOINTMENT

Should an employee not comply with the stipulations of Section 10 of the Act, his/her services may be terminated in terms of Section 17(2)(g) of the Act.

IX. CONTINUED EMPLOYMENT WHICH CONSTITUTES SECURITY RISK FOR THE DEPARTMENT

Should it come to light that an employee's continuous employment within the Department contains a security risk to the Department of the State as a whole, such employee services may be terminated.

X. EMPLOYMENT IN PUBLIC INTEREST

In cases where the Minister has employed certain employees to an office which serves in public interest such employment may be terminated in accordance to Section 17(2)(i) of the Act where the said employees contract expires or no further need for extended appointment is required.

XI. VOLUNTARY/PREATURE DISCHARGE INITIATED BY AN EMPLOYEE

(a) In terms of Section 16(6)(a) of the Public Service Act, No. 103 of 1994 as amended an employee may request to be discharged prematurely from the Public Service before reaching the age of 55.

(b) The employer has a prerogative to make the decision to release the employee or refuse to relieve him/her.

(c) Conditions:

* Requests in terms of this section must be in writing and with sufficient provision of reasons and acceptance thereof occurs at the employer's prerogative.

* The application of the section must be in the interest of the state.

(d) Guidelines



The application of the section should occur within the broad context of the following:

* Age/Length of Service

* Short periods of service should counteract the application of the section. The age of an officer must be considered thoroughly and cases of relative youthfulness should counteract the application of this section.

* Health Problems

Health problems which are not so serious that they dictate discharge due to continuous ill-health but which are of such a nature that they have a negative influence on work performance.

- (e) The application of the section must be in the interest of the state.
- (f) Officials who retire in terms of this section are excluded from any reappointment (full-time or part-time) in the Public Service in future. Such officials must be informed of this restriction prior to finalising their premature retirement under this section.

2.2 APPLICATION SCOPE

This policy will apply to all officials of the Department of Environment and Nature Conservation.



3. POLICY FRAMEWORK

3.1 IDENTIFICATION AND CONSULTATION OF STAKEHOLDERS

This policy document was distributed to staff members within the department and their feedback and inputs are included where changes were suggested and motivated. Information sessions were also held as part of the consultation process. The recognized Labour Unions are not excluded in the process as they do have shop stewards within the department, and them being part of the departmental staff, thus had the opportunity to participate in the process. Furthermore, it needs to be mentioned that the department cannot negotiate with the Unions (Organized Labour) as a separate entity on this policy. Especially, because there are matters of mutual interests that must be dealt with in the formal structures created for this purpose, such as the Provincial Bargaining Council.

3.2 TIMEFRAMES

In August 2007 a draft of this policy was reviewed by the departmental legal services and policy unit who submitted their comments on the policy. After incorporating those comments a second draft was sent to the policy and planning unit on the 14-18 February 2008 to align and re-check the policy. 02- 14 April 2008, the policy unit used the soft copies of this policy to align it with the provincial template. This policy was analysed on the 07 March 2011 by the Policy Development unit.

3.3 IMPLEMENTATION STRATEGY

It is the responsibility of each Head of department to ensure that this policy is carefully followed within the department. All managers should make members of their employees aware of the obligation to familiarize themselves with and follow this policy.

An implementation plan will be drafted which will outline how and when this policy will be implemented. The plan will be drafted two months after the implementation date of this policy. In order to ensure adequate implementation of this policy the human resource unit will compile an infrastructure investment (in terms of human capital) and policy management plan. The plan will be updated on an annual basis and will contain details on future guidelines for this policy. The financial implications if any will be indicated on the plan in order to ensure that funds are available or availed.

The implementation date for this policy is 1 NOVEMBER 2011

3.4 FINANCIAL IMPLICATIONS

This policy will be funded by the Human Resource Unit

3.5 COMMUNICATION

This policy should be communicated through the respective directorates. However, the most important unit to contact would be Human Resources and DPSA.



3.6 COMPLIANCE, MONITORING AND EVALUATION (M&E)

Section 17(2)(a)-(i) of The Public Service Act deals with Compliance Monitoring and the evaluation of Termination of services. It stipulates the procedures and guidelines which should be followed for each scenario.

DELEGATIONS

The authority to deal with terminations is vested with the MEC.

3.7 POLICY REVIEW

This policy will be reviewed when the need arises or in case of the occurrence of extenuating circumstances (political mitigation, or pronouncement by legislation and/or regulations). The contact person for this policy will be required to submit all relevant information pertaining to this policy in conjunction with a signed memo with all amendments (addition or omission) during the third quarter annually.

The exception, the Policy development unit will be conducting all extenuating reviews throughout the year, therefore it is paramount that any new information received be submitted to this unit, in order to coordinate the review process of this policy.

3.8 INTERIM MEASURES


This is an interim policy document for this Department until such time that a provincial policy has been developed.

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4. ADOPTION OF POLICY

Approved / ~~Not Approved~~
Comments:

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.....
.....


D VAN HEERDEN
HEAD OF DEPARTMENT

201110017
DATE



