



the dr&pw

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Department:  
Roads and Public Works  
NORTHERN CAPE PROVINCE  
REPUBLIC OF SOUTH AFRICA

# TERMINATION OF EMPLOYMENT POLICY

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## 1. DEFINITIONS

HOD	Head of Department
Department (DR&PW)	Department of Roads and Public Works
Head of the Directorate	Means the Senior Manager responsible for a Program
Termination of Employment	Refers to any ending of the employment relationship.
Notice of Termination	In this context refers to the notice provided by an employer stating the date on which an employee's or employees' contract of employment will end.
Severance Package	A bundle of pay and benefits offered to an employee upon being laid off from the public service. The amount of money received is usually based on the length of service prior to termination, and may include payment for unused vacation and sick days, and unreimbursed business expenses.
Severance Pay	Compensation that the department will offer to someone who is about to lose his or her job.

## 2. INTRODUCTION

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. An employer may terminate an employee's employment if there is a; (a) **valid reason** to terminate; meaning the reason to terminate is related to the worker's conduct or capacity or operational requirement of the business and (b) **proper procedure** was followed, meaning that the employer has used fair criteria in selecting who is to be terminated.



### 3. BACKGROUND

Section 37 of the Basic Conditions of Employment Act provides that termination of employment at the instance of a party to the contract may be terminated only on a notice of not less than:

- One week, if the employee has been employed for six months or less;
- two weeks, if the employee has been employed for more than six months but not more than one year;
- four weeks, if the employee has been employed for one year or more or, in the case of a farmworker or domestic worker, employed for more than six months.

That these notice periods are the minimum and may not be shortened by any agreement. However, section 37 (2) (b) does provides that a collective agreements may permit the notice period of four weeks to be reduced to not less than two weeks. The employer may not impose on the employee a notice period that does not also equally apply to the employer. In other words, if the employment contract stipulates that the employee must give 2 months' notice for termination of the contract, then the employer must also give the employee 2 months' notice if the employer wishes to terminate the contract or dismisses the employee.

The Act stipulates further that notice of termination of a contract of employment must be given in writing except when it is given to or by any illiterate employee. Notice of termination of employment, when given by the employer, must not be given during any period of leave to which the employee is entitled in terms of chapter 3 of the Act, and may not to run concurrently with any period of leave to which the employee is entitled, except sick leave.

Put differently, if an employer dismisses an employee, and the employee has annual leave due to him, the employer may not require that the dismissed employee take the outstanding annual leave during the period of notice. The employer is required to pay out the employee for this leave. However should the employee require sick leave during a period of notice, and he/she has sick leave days available, then the employee is entitled to take paid sick leave during a period of notice.

## **4. REGULATORY FRAMEWORK**

- A. The Constitution of the Republic of South Africa (Act No. 108 of 1996), section 215 and 217,
- B. The Public Finance Management Act no.1 of 1999 (as amended by Act no 29 of 1999):
  - o Section 38 dealing with general responsibilities of accounting officers and specifically subsection 38 (1)(a)(i), 38(1)(b),38(1)(d),38(1)(h) and
  - o Section 45 dealing with the responsibilities of other officials.
- C. Basic Conditions of Employment Act, Act 107 of 1997
- D. Government Employees Pension Fund Act, 1996.
- E. Public Service Act, 1994 (as amended) read together with Public Service Regulations of 2001.
- F. Labour Relations Act, Act 66 of 1995
- G. Treasury Regulations issued in terms of the Public Finance Management Act,1999, Section 8.2.2 (Approval of Expenditure), 10.1.1 and 10.1.2 (Asset Management)

## **5. OBJECTIVE**

This policy is formulated to provide guidance on matters pertaining to:-

- 5.1** Terminations of employment, voluntarily or on involuntary basis. Voluntary terminations provide the employer with an opportunity to review its management practices, while involuntary terminations present a challenge to limit the employer's liability for claims of wrongful discharge and discrimination.
- 5.2** Ensuring consistent treatment among employees whose working relationship with the Department is ending
- 5.3** Minimising of legal fees arising from a legal dispute between the employer and the employee as a result of unfair labour practices and dismissals.
- 5.4** Ensuring that employee terminations are handled in a professional manner with minimal disruptions to on-going work functions.



## **6. PRINCIPLES, VALUES AND PHILOSOPHY**

The Department of Roads and Public Works within the Northern Cape Provincial Government is committed to the implementation and full compliance the Basic Conditions of Employment as enshrined in the Act, and regulations in a manner that is fair, equitable, transparent and competitive.

- 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.

## **7. SCOPE AND APPLICABILITY**

- 7.1** This Policy applies to all employees of the Department of Transport, Roads and Public Works
- 7.2** This policy is also applicable to learners who has concluded a learnership agreement; and who was not employed by the employer party to the learnership agreement when the agreement was concluded

## **8. PROCEDURES**

The following procedures must be followed in order to correctly manage and administer termination of employees and should be handled consistently with the guidelines which follow.

- Retirement
- Resignation
- Section 17 of the Public Services Act
- Ill-health
- Incapacity to carry out duties
- Misconduct
- Officer appointed on Probation
- Misrepresentation of Position in relation to a Condition of Permanent appointment
- Continued Employment which constitutes a Security Risk



- Employment in Public Interest
- Voluntary/Premature Discharge initiated by an employee

## 1. 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).

## 2. 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 weeks' 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 councilor, 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 councilor 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 councilor whether she/he will be required to perform such duties during official hours and details of her/his remuneration.

### 3. 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.                                   |

### 4. 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.



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- (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 behavior 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 employee's 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 employee's 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.

**5. 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

**6. MISCONDUCT**

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

**7. 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.

**8. MISREPRESENTATION OF POSITION IN RELATION TO A CONDITION OF PERMANENT EMPLOYMENT**

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.

**9. CONTINUED EMPLOYMENT WHICH CONSTITUTE A SECURITY RISK**

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.

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## 10. 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.

## 11. VOLUNTARY / PREMATURE DISCHARGE INITIATED BY AN EMPLOYEE

(a) In terms of Section 16(6)(a) of the Public Service Act, 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.

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- (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.

## **12. LEARNERSHIP**

### **12.1. Conditions for Terminations**

An employer may terminate a learner's employment contract only if–

- 12.1.1. the specified learnership period has ended;
- 12.1.2. a learner successfully completes his learnership;
- 12.1.3. the employer and learner have agreed to do so in writing or if the SETA has approved it; or
- 12.1.4. a learner is fairly dismissed for his misconduct or incapacity as a worker.

### **12.2. Pay on Termination**

On termination of employment employers must pay learners for any–

- 12.2.1. paid time off that the learner is entitled to;
- 12.2.2. leave that the learner has not taken

### **12.3. Certificate of Service**

On termination of employment, learners are entitled to a certificate of service. The certificate must state –

- 12.3.1. the learner's full name;
- 12.3.2. name and address of the employer;
- 12.3.3. a description of the sectoral employment standard that covers the employer's business;
- 12.3.4. the starting and ending dates of the learner's employment;
- 12.3.5. short description of the learner's training and experience he gained;
- 12.3.6. the learner's pay at the end of his employment; and
- 12.3.7. if the learner requests it, the reason for his termination.

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## **9. ROLES AND RESPONSIBILITIES**

### ***EXECUTING AUTHORITY***

The duties of the executing authority are outlines under section G of the Public Service Regulation 2001, as amended; and are quoted verbatim as follows:-

G.2.1 an executing authority shall prescribe the manner in which an employee shall submit her or his resignation.

G.2.2 an executing authority shall record the reasons given by the employee for her or his resignation.

G.2.3 an employee may resign from the public service, and for that purpose, unless otherwise agreed with the executing authority, shall -

- a) in the case of any employee paid monthly, give at least one month's written notice of resignation;
- b) in the case of any casual employee who has been employed for less than four weeks; give at least one week's notice of resignation or
- c) In the case of any casual employee who has been employed for more than four weeks, give at least two weeks' notice.

### **G.3 Ill-health**

G.3.1 an executing authority may on the basis of medical evidence, consider the discharge of an employee in terms of section 17(2) (a) of the Act on account of ill-health.

To this end, an executing authority may require an employee to undergo a medical examination by a registered physician.

G.3.2 A discharge on account of ill health shall occur with due regard to item 10 of Schedule 8 to the Labour Relations Act.

### **G.4 Operational requirements**

G.4.1 An executing authority may discharge employees for operational reasons if the discharge complies with-

- (a) sections 17(2)(b) and (c) of the Act and sections 189 and 190 of the Labour Relations Act; and

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- (b) Any applicable collective agreement that determines benefits for employees to be so discharged.

G.4.2 if an executing authority transfers personnel to an entity outside the public services he or he shall comply with section 197 of the Labour Relations Act.

G.4.3 If personnel is transferred from an entity outside the public service to a department, the executing authority shall comply with section 197 of the Labour Relations Act. [Regulation G.4.3 inserted by Government Notice No.R. 785 of 28 June 2004 with effect from 1 July 2004]

### **G.5 Termination of probation**

When the services of an employee on probation are terminated in terms of section 13 of the Act, due regard must be had to item 8 of Schedule 8 to the Labour Relations Act.

### **HEAD OF DEPARTMENT / ACCOUNTING OFFICER**

Most of the above stated functions of the executing authority have been delegated to the Accounting Officer. The Accounting Officer, therefore, advises the Executing Authority on matters pertaining to employee terminations in general.

### **HUMAN CAPITAL MANAGEMENT**

The Human Resource Management unit plays a significant role through the whole process of termination of contracts; one of which is to help employees leave the organisation with their dignity intact. HR intervention:-

- Can help shape the process, guide the conversation and minimize potential damage to both company and employee.
- provides checks and balances;
- ensures company policy and procedures are followed; and
- in conjunction with legal services ensures that all actions conform to legal guidelines.

### **EMPLOYEE'S IMMEDIATE SUPERVISOR**

The main responsibility of the supervisor is to deliver the message during termination of employee contracts.

The accounting officer of a user must surrender a surplus immovable asset under its control to the relevant custodian.



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**EMPLOYEE**

The employee whose contract is being terminated has a right to fair hearing; if the termination was not initiated by the employee, to attend exit interview when asked to do so and to accept the responsibility of his/her own actions....

**10. FINANCIAL RESOURCE IMPLICATION**

The Programme / Responsibility Managers of the Department shall submit budgetary requests to be approved by the Accounting Officer, on the recommendation of the Chief Financial Officer, to ensure that all expenses relating human capital management, including costs relating to terminations; are budgeted for through the medium expenditure framework.

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## 11. MONITORING AND EVALUATION

### Head of Department

The Head of Department as Accounting Officer of the Department has an oversight role in policy planning, development and implement. However, most of these functions of monitoring and evaluation have been delegated to units such as Policy, Internal Control and HR who should ensure amongst others the following:-

- (i) Efficient and effective implementation of the policy
- (ii) The accessibility of the policy to the intended parties
- (iii) The possible abuse of the policy
- (iv) Furnish the required monitoring reports, periodically.
- (v) Develop necessary tools and processes to assess the outcome of the policy implications by all the stakeholders

### Penalties for Non-Compliance

- Any failure to comply with the Policy will be viewed as a serious disciplinary transgression and could lead to disciplinary action taken against the offending employee in terms of the Public Service Regulations and Code of Conduct.

## 12. POLICY REVIEW

- 12.1. This policy is effective from the date it is approved and signed by the Head of Department.
- 12.2. This policy shall be assessed in one year from its effective date to determine its effectiveness and appropriateness. This policy may be assessed before that time as necessary to reflect substantial organisational etc. changes at the Department or any change required by law.
- 12.3. Deviations from this policy must be approved by the Accounting Officer.

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### 13. APPROVALS AND RECOMMENDATIONS

This policy is approved / not approved  
Comments:

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.....  
.....  
.....

  
\_\_\_\_\_  
ACCOUNTING OFFICER

2015-09-04  
\_\_\_\_\_  
DATE



# TERMINATION OF EMPLOYMENT PROCEDURE MANUAL

Annex A

FUNCTION	LEVEL OF DELEGATION	REGULATIONS AND POLICY	PROCEDURE	
			STEPS	KEYPOINTS
4(a). Death			<b>TASK OF THE PERSONNEL OFFICER (LEVEL 2-6)</b>  On receipt of notice that an official has passed away, the following steps must be followed:  1. Draw all the official's files from Registry.  2. Prepare a sympathy letter for the official's next of kin.  3. Terminate the official's services on Persal function 4.7.1  4. On receipt of the death certificate, calculate the Leave Gratuity of the official.  5. Take the Leave gratuity per hand to the supervisors for the signing thereof.  6. After signing take the advice the Directorate: Finance for their attention.  7. The next of kin/spouse must complete form Z143.	<b>IMPORTANT NOTE:</b> The next of kin must be informed of the late official's death benefits etc.  (a) Continued membership of medical aid or the outpayment thereof.  (b) Pension benefits.

FUNCTION	LEVEL OF DELEGATION	REGULATIONS AND POLICY	PROCEDURE	
			STEPS	KEYPOINTS
			<p>8. Complete form Z102 and attach the original forms Z143 and forward the forms to the Department of Finance Pension Administration after signature by the supervisor.</p> <p>9. Copies of the above-mentioned forms must be filed on the SP-file.</p> <p>10. Copies of the above-mentioned forms must be filed on the SP-file.</p> <p><b>TASK OF THE SUPERVISOR (Level 7)</b></p> <p>1. Approve the transaction on Persal function 6.8.10.</p> <p>2. Check that all steps are correctly followed and completed.</p> <p>3. Sign form Z102.</p> <p>4. Keep record for statistical purposes.</p>	

FUNCTION	LEVEL OF DELEGATION	REGULATIONS AND POLICY	PROCEDURE	
			STEPS	KEYPOINTS
4(b). Request for an unemployment insurance fund card		PSSC BXV/11.5.10.2  PSSC BXV/ 11.5.11.3	<b>TASK OF THE PERSONNEL OFFICER (Level 2-6)</b>  1. <u>UIF Cards:</u>  (a) Make a request where applicable (only for temporary appointment and official's who have contributed to the Unemployment Insurance Funds for a certain period)  (b) Complete a temporary UIF Card with the necessary information and fax/post it to issue an original contributors card.  2. On receipt of the UIF card, it must be completed by the PPO. 3. Send the completed UIF card to the official.	
			<b>TASK OF THE SUPERVISOR</b>  1. Check if the information on the UIF card is correctly completed.	

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Department:  
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NORTHERN CAPE PROVINCE  
REPUBLIC OF SOUTH AFRICA

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Enquiries: Mr. Kholekile Nogwili

Date: 03.09.2015

Anne Mpotsang  
Chief Director: Corp. Services  
Kimberley  
8300

Department of Roads and Public Works  
P.O. Box 3132  
Kimberley  
8300

**ACTING: YOURSELF**

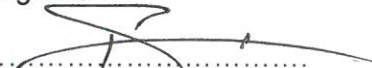
By virtue of the provision of Section 32 of the Public Service Act of 1994, you are hereby appointed to act in the capacity of the Head of Department and shall be responsible for performing the functions of the said post.

You are therefore required to execute these functions according to the delegations of the Head of Department.

Please note that this acting capacity is not coupled with any additional remuneration.

Your acting period: 04.09.2015

Regards

  
Kholekile Nogwili  
**HEAD OF DEPARTMENT**  
DATE: 03.09.2015

**Acceptance of delegation to act as Head of Department.**

I, Ann Linda Mpotsang hereby accept / ~~do not accept~~ the delegation to act as stipulated in the above letter.

  
DATE: 2015-09-04