



## **KWAZULU-NATAL PROVINCIAL ADMINISTRATION**

### **PROVINCIAL POLICY FRAMEWORK ON THE TERMINATION OF SERVICES**

This reviewed Provincial Policy Framework was approved by the KwaZulu-Natal Committee of Heads of Department (COHoD) on 02/11/2018

Signed:

  
**Director-General**

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- 1. Exit Interview Questionnaire.***
- 2. Debt Clearance Form.***

# **PROVINCIAL POLICY FRAMEWORK ON THE TERMINATION OF SERVICES**

## **1. INTRODUCTION**

The Office of the Premier: KwaZulu-Natal and the KwaZulu-Natal Provincial Departments must ensure fair labour practices when dealing with the termination of services of employees. The Province acknowledges that it is incumbent upon departments to ensure that the termination of services takes into account the scarce skills requirements of the Human Resource Plan. This policy is aimed at augmenting the necessary prescripts regarding human resource practices on termination of services including the reconciliation and the recovery of contractual and other liabilities.

Departments may adopt this policy framework in its current form. However, if there are unique circumstances within a department, that necessitate the modification of the policy framework, departments may customize the policy to suit those prevailing circumstances but must ensure that they remain within the minimum and maximum provisions of this provincial policy and submit the customized policy to the KwaZulu-Natal Public Service Co-ordinating Bargaining Council (KZNPSCBC), for ratification through the Office of the Premier.

## **2. PURPOSE**

This policy framework is a collective approach to provide perimeters on the process of termination of services for employees in the Office of the Premier: KwaZulu-Natal and the KwaZulu-Natal Provincial Departments and to ensure that the termination of an employee's services is substantively and procedurally fair.

## **3. DEFINITION OF TERMS**

**For the purpose of this policy framework, unless the context indicates otherwise, the following definitions are set out for the terms indicated:**

**“calendar month”**- means a period extending from a day in one month to a day preceding the day corresponding numerically to that day in the following month, both days inclusive.

**“employee”** – means an employee as contemplated in Section 8 of the Public Service Act, 1994, as amended but excludes a person appointed in terms of Section 12 A of this act.

**“Executive Authority”** – means:

- (a) the Premier of the province in the case of the Office of a Premier or a provincial government component within a Premier's portfolio; and
- (b) the member of the Executive Council responsible for a portfolio in the case of a provincial department or a provincial government component within an Executive Council portfolio.

**“GEPF”** – means the Government Employees Pension Fund.

**“GPAA”** – means the Government Pensions Administration Agency.

**“Head of Department”** or **“HoD”** means the incumbent of a post as mentioned in Column 2 of Schedule 1, 2 or 3 of PSA and includes any employee acting in such a position.

**“operational requirements”** – means requirements based on the economic, technological, structural or similar needs of an employer.

#### **4. OBJECTIVES**

- (a) To ensure efficient and fair labour practices when dealing with the employee's termination of services.

- (b) To augment the necessary prescripts regarding work practices and the recovery of any contractual and other obligations during the termination of services process.
- (c) To enforce the practice of exit interviews for alignment with the human resource plan and the development and retention strategies of provincial departments.

## **5. APPLICABILITY**

The provisions of this policy apply to all employees of the Office of the Premier: KwaZulu-Natal and the KwaZulu-Natal Provincial Departments, employed in terms of the Public Service Act, 1994 (Proclamation No 103 of 1994), as amended. The Department of Education must develop a similar policy to address the termination of service for educators, in terms of the Employment of Educators Act 76 of 1998.

## **6. AUTHORISATION**

The development of this policy framework is in accordance with the following legislation and strategic frameworks:

- (a) Public Service Act (PSA), 1994 (Proclamation No. 103 of 1994) as amended.
- (b) Public Service Regulations (PSR), 2016.
- (c) Basic Conditions of Employment Act (BCEA) No.75 of 1997, as amended.
- (d) Labour Relations Act (LRA) No. 66 of 1995, as amended.
- (e) Public Service Coordinating Bargaining Council (PSCBC) Resolution 1 of 2003.
- (f) Public Service Coordinating Bargaining Council (PSCBC) Resolution 10 of 1999.
- (g) Public Service Coordinating Bargaining Council (PSCBC) Resolution 3 of 1999.

- (h) Department of Public Service and Administration Circular on Participation of Public Service Employees as Candidates in Elections, Ref 10/8, dated 23/03/2009.
- (i) Department of Public Service and Administration Ministerial Directive to Institutionalise the Practice of Exit Interviews in the Public Service, number 14/1/7/P, dated 15/01/2008.
- (j) Policy and Procedure on Incapacity Leave and Ill-Health Retirement (PILIR) dated April 2009.
- (k) Government Employees Pension Law, 1996, Proclamation 21, as amended.
- (l) Code of Conduct for the Public Service.
- (m) Code of Good Practice on:
  - (i) The Integration of Employment Equity into Human Resource Policies and Practices, published under GN1358 in GG 27866 of 4 August 2005.
  - (ii) Dismissal Based on Operational Requirements, published under GN 1517 in GG 20254 of July 1999.
  - (iii) Key Aspects of HIV and Aids and Employment, published under GN R1298 in GG 21815 of 1 December 2000.
- (n) DPSA Circular dated 06/03/2017 on the Implementation of Recommendations made by the Public Service Commission (PSC) in the March 2016 Report on the Management of Service Terminations and Pension Pay-Outs in the Public Service.
- (o) Government Pensions Administration Agency Practice Note 1 of 2014.

## **7. PRINCIPLES**

- (a) Terminations must be fairly and lawfully effected and must be practised without discrimination against any employee.
- (b) Terminations must be conducted according to fair labour practices and in line with the applicable procedures, including the discipline, grievance and dispute resolution procedures. For this reason,

departments must ensure that all line managers are provided with relevant training so as to avoid any kind of discrimination.

- (c) Reference to Schedule 8 of the Labour Relations Act, 1995, the Code of Good Practice on Key Aspects of HIV and AIDS and Employment of People with Disabilities must be made for terminations due to incapacity based on disability or chronic illnesses.

## **8. POLICY PROVISIONS**

The White Paper on Human Resource Management in the Public Service states that employees who have served the public service with loyalty must be treated with consideration when they leave. Similarly, employees for whom there is no further operational requirement, or who can no longer perform competently and effectively, must be properly managed out of the Public Service. In cases where an employee's conduct is unacceptable, disciplinary action must be initiated.

### **8.1 Termination of Service in terms of Section 16 of the Public Service Act (Retirement)**

#### **(a) Compulsory Retirement**

- (i) An employee shall have a right to retire, and shall be so retired at the age of 65 years. Conditions as laid down in Section 16 (1) (a) and (b) should be considered when processing this type of termination of service.
- (ii) An employee who has been in service with effect from a date prior to 01 October 1993 and employed in terms of a law repealed by the PSA, as amended, shall have a right to retire at or at any time after the retirement age that is applicable to him or her as at 01 October 1993, and that retirement shall not be amended without his or her consent.

- (iii) An employee who has the right to an earlier retirement age in terms of paragraph 8 (1) (a) (ii), and who wishes to be so retired, shall give written notification to his/her Head of Department of his/her wish to be so retired. Subsection 16 (2) (b) and (c) of the PSA, must be taken into account when considering such a request.
- (iv) If it is in the public interest to retain an employee who has gone beyond the age of 65, in his/her position, he/she may, with his/her consent and the approval of the relevant Executive Authority, be retained periodically but not exceeding the aggregate of two years, except with the approval of Parliament granted by resolution.

**(b) Early Retirement**

- (i) Notwithstanding the above stated provisions, an employee has a right to retire from the public service on the date on which s/he attains the age of 55 years or any date after that date. The provisions of subsection 16 (2) (b) and (c) shall apply when considering such a request. When exercising this option, the provisions of subsection (2) (b) of the PSA, shall apply with necessary changes for an employee who wishes to retire in terms of paragraph (2) (a) of the same Act.
- (ii) An employee who occupies the office of Head of Department has a right to retire from the public service and shall be retired at the expiry of the term as provided for, in Section 12 (2) of the PSA, or any extended term. If an employee retires in terms of this provision, s/he shall be deemed to have been dismissed from the public service on operational requirements.



- (iii) An Executive Authority may, at the request of an employee, allow him/her to retire from the public service before reaching the age of 60 years, if sufficient reasons for the retirement have been provided. An Executive Authority may approve this type of retirement with full entitlement to pension benefits as in normal retirement. It is imperative to ensure that the provision of Rule 14.3 of the Government Employees Pension Law, 1996 are taken into consideration when approving all types of early retirement.
- (v) Departments are advised to exercise restraint when approving early retirement without penalisation between the ages, 55 to 60 years, as they remain fully responsible for the resultant liability to the GEPP. Therefore, early retirement without scaling down of benefits may, amongst others, be considered on the following grounds:
  - (aa) if the retirement will be in the interest of the State due to the significantly deteriorating performance of an employee which is not due to his/her own fault or an inability to satisfactorily perform on a higher level after promotion. Probably this employee would no longer be gainfully employed and the State will be better off without him/her. Employees who are “burnt out”, who lack motivation, who are unable to focus and/or concentrate on their work, may fall under this category.
  - (bb) if an employee’s medical condition is not serious enough to justify ill-health retirement, yet has a negative impact on his/her work performance, for example, regular absence from work on medical grounds.

- (cc) if an employee has grievances, negative and disloyal attitudes that negatively influence his/her work or that of his/her colleagues and the State's performance as a whole.

**(c) Normal Retirement**

- (i) An employee who has reached the age of 60 years may be retired from the Public Service, subject to the approval of the relevant Executive Authority or his/her designee.
- (ii) An Executive Authority may, at the request of an employee occupying the office of Head of Department and if sufficient reason for retirement exists, allow him/her to retire from the public service before the expiry of the term as contemplated in Section 12 (2) of the PSA, or any extended term contained therein, and notwithstanding the absence of any reason for dismissal contained in Section 17 (2) of the PSA or the contract concluded with the employee.

**8.2 Termination of Service in terms of Section 17 of the Public Service Act**

**(a) Incapacity Due to Ill Health or Injury**

The Executive Authority may, in terms of the applicable employment legislation, consider, on the basis of medical evidence, the discharge of an employee on account of ill-health and/or injury. Dismissal based on these factors shall occur with due regard to item 10 and 11 of Schedule 8 of the Labour Relations Act. Also, adherence to the Policy and Procedure on Incapacity Leave and Ill-Health Retirement dated April 2009 must be ensured when processing this dismissal.

**(b) Operational Requirements**

An employee may be discharged from the public service due to operational requirements, owing to the abolition of his/her post or any reduction in or reorganisation or readjustment of his/her department or office. Compliance with section 17(2) (b) and (c) of the PSA, sections 189 and 190 of the Labour Relations Act, 1995 and any applicable collective agreement determining benefits for employees to be so discharged must be ensured. The Executive Authority or his/her designee must approve such dismissal and the Head of Department must ensure that such discharge is procedurally and substantively fair.

**(c) Incapacity Due to Poor Work Performance**

An employee may be discharged on account of incapacity due to poor work performance if evidence is provided that:

- (i) The employee has consistently failed to perform to the required standards, notwithstanding the application of all remedial measures, including opportunities for improvement provided by the performance management and development system.
- (ii) The employee is incapable of improving or unwilling to improve his/her performance.
- (iii) There is no other job within the organisation, which the employee is capable of performing.

In addition, the procedure outlined in the PSCBC Resolution 10 of 1999 must be followed through when dealing with such dismissal.

**(d) Misconduct**

Employees within the public service are required to uphold the highest standard of professional and personal behaviour, as laid down in, amongst others, the Code of Conduct. An employee who is found guilty

of misconduct, which is so serious as to render him/her unsuitable for employment, is in breach of his/her contract and may therefore be dismissed. Schedule 8 of the Labour Relations Act, Chapter VI of the PSA and the PSCBC Resolution 1 of 2003 must be adhered to when initiating this dismissal.

**(e) Abscondment**

- (i) If an employee is absent from duty without the permission of the employer for a period longer than three days, the employer must take reasonable steps to contact that employee. What is reasonable will be determined by the circumstances of each case.
- (ii) Notwithstanding paragraph 2 (e) (i) above, an employee who absents him/herself from his/her official duties without permission of his/her Head of Department, office or institution for a period exceeding one calendar month, shall be deemed to have been dismissed from the public service on account of misconduct with effect from the date immediately succeeding his/her last day of attendance at his/her place of duty; or
- (iii) If such an employee assumes other employment, he/she shall be deemed to have been dismissed as aforesaid irrespective of whether the said period has expired or not. If an employee who is deemed to be so dismissed, reports for duty, at any time after the expiry of the period referred to in paragraph (ii), the relevant Executive Authority may on good cause shown by that employee and notwithstanding anything to the contrary contained in any law, approve the reinstatement of such employee.

**(f) Participation of Employees as Candidates in Elections**

An employee may remain in employment after he/she have been issued with a certificate as candidates in elections. In terms of Section 36 of the PSA,

effective on 20 March 2009 (Proclamation No. R. 18 of 20 March 2009), the following applies;

- (i) An employee permitted to be a candidate for elections subject to the Public Service Code of Conduct and the limits prescribed by regulation by the Minister for Public Service and Administration.
- (ii) In the case where an employee is elected and assumes office, he/she shall be deemed to have resigned from the public service from the date immediately before the date he/she assumes office as a member of the National Assembly or a provincial legislature or as a full-time municipal councillor.
- (iii) An employee elected as a part-time councillor may continue as an employee, however he/she must seek approval in terms of section 30 of the PSA from his/her Executive Authority to receive remuneration for work outside the public service.
- (ii) An employee who is appointed as a permanent delegate of the National Council of Provinces, shall be deemed to have resigned from the public service immediately before the date he/she assumes office as a delegate.

### **8.3 Other Forms of Termination of Service in terms of other legislation and prescripts**

#### **(a) Resignations**

- (i) Section 69 of the Public Service Regulations states that an employee may resign from the Public Service on his/her own volition at any time by giving notice, as stated in his/her contract of employment. Unless otherwise agreed to with the Executive Authority, the contract should be terminated by giving notice of not less than:

- (aa) one week, in the case of an employee who has been employed for six months or less;
  - (bb) two weeks, in the case of an employee who has been employed for more than six months but less than a year;
  - (cc) four weeks, in the case of an employee who has been employed for one year or more.
- (ii) The Executive Authority and the employee may however agree to period of notice shorter or longer than the applicable period stated above, as per section 16B (6) of the Public Service Act.
- (iii) The Executive Authority must stipulate the manner in which an employee shall submit his/her resignation.
- (iv) Notice of termination of a contract of employment must be given in writing, unless it is given by an illiterate employee. The notice of resignation must be submitted via the employee's supervisor/manager to the relevant Human Resource Component of the department.
- (v) An employee's notice of resignation submitted to the Executive Authority may only be withdrawn with written approval of the Executive Authority, which must be made no later than the last working day.
- (vi) The Executive Authority may require an employee who has submitted a notice of resignation to return all official equipment and documents, vacate his/her office and leave the department's premises before the expiry of the notice period on a day stipulated by the Executive Authority and not to perform any duties for the remaining notice period.
- (vii) In the case where the Executive Authority acts in terms of paragraph (vi) above, the benefits of the employee shall remain unaffected.

**(b) Employee-Initiated Severance Package**

The Executive Authority or his/her delegate may approve voluntary application for discharge from the public service in terms of section 17(2) (c) of the PSA, for an employee who is affected by transformation and restructuring. The procedure, as laid down in any relevant Determination on Employee-Initiated Severance for the Public Service must be adhered to when processing such terminations.

**(c) Fixed-term contract**

- (i) The service of an employee who is on a fixed-term contract will automatically cease at the end of that contract period.
- (ii) Subject to the terms and conditions of a contract of employment, as contemplated in section 12(2) of the PSA, an Executive Authority may allow a Head of Department to retire from the Public Service before the expiry of the term provided for in section 12 (2) of the PSA, or any extended term therein if sufficient reasons for retirement have been provided.

**(d) Death**

Death is regarded as another form of termination of services, which is unpredictable and unplanned. In the case of the death of an employee, a death certificate/affidavit/certified letter must be submitted to the Human Resource Component.

**9. EXIT INTERVIEWS**

- (a) Departments must conduct exit interviews with all employees whose services are terminated on account of incapacity due to ill-health or injury, retirement, resignation or employee-initiated severance so as to obtain information about the employee's experience during employment. An employee exiting the department may provide

valuable information about barriers and other factors that contribute to staff turn-over.

- (b) For this purpose, the Executive Authority must:
  - (i) designate responsibility for managing the exit interview;
  - (ii) determine the manner in which the exit interview will be conducted;
  - (iii) utilise the prescribed exit interview template; and
  - (iv) treat the personal details of departing employee as confidential.

## **10. ROLES AND RESPONSIBILITIES**

### **10.1 Employee**

The employee must notify his/her supervisor in writing of the intention to terminate services given in accordance with the required period of notice. He/she must ensure that all documentation pertaining to termination is properly completed and submitted timeously to the relevant Human Resource component.

### **10.2 Supervisor or Manager**

- (a) In the case of resignation and early retirement, the supervisor must endorse the employee's written intention to terminate services, finalise and submit all necessary documentation to the relevant Human Resource Component of the department within 3 (three) working days.
- (b) In the case of death, the supervisor must formally notify the Human Resource Component of the department and submit the certified copy of death certificate within a day after receipt.
- (c) The supervisor must verify the audited leave of the employee whose services are to be terminated.



### **10.3 Human Resource Component**

The Human Resource component must:

- (a) Process all transactions to give effect to the termination of service of an employee.
- (b) Ensure that an employee is not in service beyond his/her compulsory retirement date.
- (c) Ensure that exit interviews are conducted, information is recorded on the attached Exit Interview Questionnaire and stored for analysis and reporting purposes.
- (d) Treat the personal details of a departing employee as confidential.
- (e) Process pensions pay-outs for employees exiting the public service and ensure that timeous payments of pension benefits.
- (f) Ensure the reconciliation and recovery of all contractual and other liabilities from an employee exiting the system.
- (g) Ensure that the content of this policy is communicated to all employees and also ensure implementation thereof.
- (h) Departmental Health and Wellness Practitioners must offer guidance and counselling to departing employees, as and when required.

## **11. FINANCIAL IMPLICATIONS**

The Heads of Department must ensure that funds are available to implement this policy.

## **12. GRIEVANCE AND DISPUTE RESOLUTION**

Grievances and disputes arising from the implementation of this policy shall be dealt with in terms of the existing dispute resolution procedures in the public service.

**13. MONITORING, EVALUATION AND REVIEW.**

- (a) The responsibility for monitoring and evaluating compliance with the provisions of this Provincial Policy Framework resides with the Chief Directorate: Strategic Human Resources Management in the Office of the Premier.
- (b) Provincial departments are required to monitor and evaluate the implementation of this policy framework within their departments on a regular basis.

**14. IMPLEMENTATION DATE**

This policy will come into effect on 02/11/2018.