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TO HEADS OF NATIONAL AND PROVINCIAL DEPARTMENTS AND PROVINCIAL ADMINISTRATIONS

ISSUES EMANATING FROM THE IMPLEMENTATION OF PSCBC RESOLUTION 1 OF 2007

1. The DPSA's evenly numbered circular, dated 21 August 2007, refers.
2. Following the implementation and application of the provisions of the amended Determination on Leave and the Determination on Working Time as a result of the implementation of PSCBC Resolution 1 of 2007, a number of implementation teething issues came to the fore that warrants further attention by means of amendments to clarify or rectify certain provisions to reflect the intention of the collective agreement.
3. The amendments or points of clarity to the Determination on Leave in the Public Service and Determination on Working Time are explained in the paragraphs below.

4. Determination on Leave

4.1 Leave Entitlement for Learners and Interns

- 4.1.1 Prior to the conclusion of PSCBC Resolution 1 of 2007 an Intern or Learner was entitled to the same leave provisions as that of a casual worker. In terms of clause 11 of the PSCBC Resolution 1 of 2007, a casual worker is defined as a person employed on a day to day basis and who is paid a daily wage and who does not work more than 24 hours a month. The casual worker is in terms of this clause, entitled to a salary and any benefits prescribed for casual workers in the BCEA. It therefore follows that a casual worker is not eligible for any leave. Paragraph 26 of the Determination on Leave of Absence refers. In order to rectify the gap that occurred as a result of the implementation of PSCBC Resolution 1 of 2007, the Minister for Public Service and Administration, in terms of section 3(5)(a) of the Public Service Act, 1994 as amended-

- (a) determined that the provisions as contained in paragraph 27 of the Determination on Leave of Absence in the Public Service be extended to Interns and Learners; and
- (b) approved that paragraph 5.1 of the Determination on Learners and Interns be amended as depicted in the attached revised Determination.

4.2 Unpaid Leave

- 4.2.1 In terms of the pre-revised Determination on Leave of Absence, read with PSCBC Resolution 7 of 2000 and 5 of 2001, unpaid leave is regarded as calendar days. The formula provided for purposes of the calculation of unpaid leave provided for a divisor of 365.
- 4.2.2 With the implementation of PSCBC Resolution 1 of 2007, the divisor was changed to 260.714. The rationale for the change was informed by the principle of uniformity and consistency since the divisor of 260.714 is used to calculate leave payouts and over granted annual leave, as well as the fact that employees remuneration is based upon work days and not calendar days. Though the change was introduced with good intent it created controversy and the application of the new divisor has a negative effect since leave without pay is calculated as calendar days.
- 4.2.3 Emanating from an in-depth analysis of the relevant collective agreements the Minister for Public Service and Administration determined, in terms of section 3(5)(a) of the Public Service Act, 1994 as amended, that-
 - (a) unpaid leave be regarded as working days as oppose to calendar days; and
 - (b) the penalty clause applied to annual leave and sick leave when unpaid leave is utilized be amended to the effect that an employee's annual leave and sick leave is in respect of each 10 working days leave without pay reduced by 1/24th and 1/72th per annual / sick leave cycle, respectively.
- 4.2.4 The Minister for Public Service and Administration consequently approved that paragraphs 5.2, 14.2 and 25 as well as example 7 and 8 on Annexure B of the Determination on Leave of Absence, be amended accordingly.

4.3 Formula for Annual Leave Payouts

- 4.3.1 Noting that the formula for the calculation of unused leave contained in paragraph 10.4 of the Determination on Leave of Absence was amended to depict the definition of remuneration as provided in clause 9.8 of PSCBC Resolution 1 of 2007 for purposes of calculating pay for annual leave, capped leave, unpaid leave as well as severance pay, the practical execution of the formula transpired to be problematic and confusion created by the different remuneration indicators to be applied.

- 4.3.2 To address this predicament the Minister for Public Service and Administration, in terms of section 3(5)(A) of the Public Service Act, 1994 as amended, determined that the formula utilized for the calculation of unused leave be amended as follows:

$$\frac{\{ [(A-B) + (C-D) \times E] + (F \times G) \}}{260.714}$$

260.714

Where:

A = represents the full annual or pro-rata leave entitlement in the previous leave cycle

B = represents the leave taken in the previous leave cycle

C = represents the pro rata leave entitlement in the current leave cycle

D = represents the leave taken in the current leave cycle

E = represents the employee's remuneration (levels 1-10 annual basic salary plus 37% and MMS the all inclusive remuneration package) as at the last day of duty

F= represents the capped leave

G= represents the employee's annual basic salary only as at the last day of duty

- 4.3.1 The Minister for Public Service and Administration subsequently approved the amendment of paragraph 10.4 of the Determination on Leave of Absence in the Public Service.

5 Issues Related to the Interpretation and Application of the Determination on Leave of Absence

- 5.1 Emanating from various enquiries clarity is provided in respect of the interpretation and application of the following issues:

5.2 Determination on Leave of Absence

- 5.2.1 Paragraph 3.1.1. of the revised Determination on Leave of Absence stipulates that registered and enrolled nurses and nursing assistants, who were employed on or before 30 June 2007, may retain their entitlement as per contract. The concept "as per contract" should be interpreted to mean "**till the end of the current annual leave cycle, extended to 6 months after the expiry of the current leave cycle**".

- 5.2.2 Paragraph 3.1.2.3 (a) of the revised Determination on Leave of Absence stipulates that a contract worker who was on maternity leave or whose maternity leave commenced on the date of signature of PSCBC Resolution 1 of 2007 shall retain/complete the four months maternity leave and paragraph 3.1.2.4 (a) of the same Determination stipulates that a contract worker who was on adoption leave or whose adoption leave commenced on the date of signature of PSCBC Resolution 1 of 2007 shall retain /complete the 45 working days paid leave. Both these paragraphs should be amplified by the words **as per contract**, since the protection afforded in the transitional arrangement is not open ended.

5.3 Determination on Working Time

5.3.1 In terms of clause 9.2 of PSCBC Resolution 1 of 2007, read with the Determination on Working Time, the basis for the calculation of overtime worked shall be the actual salary notch of the employee, provided that it shall not be higher than the basic salary of R132 054 per annum. Regulations D.2.(d), Part V/Chapter I of the Public Service Regulations stipulates that except in exceptional circumstances, the monthly compensation for overtime should constitute less than 30 per cent of the employee's monthly salary. For purposes of the application of the said regulation the basic salary referred to above must be utilized in respect of employees earning higher than the basic salary of R132 054 per annum. The Public Service Regulations will be amended in due course to reflect this change.



P **DIRECTOR-GENERAL**

DATE: 8 July 2008