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## **TO HEADS OF NATIONAL DEPARTMENTS AND PROVINCIAL ADMINISTRATIONS**

### **CIRCULAR NR 18 OF 2017**

#### **OVERTIME COMPENSATION: INTERPRETATION OF REGULATION 49(1)(C) OF THE PUBLIC SERVICE REGULATIONS, 2016**

1. In terms of the repealed Regulation D2/V/1 of the Public Service Regulations, 2001 determined in respect of overtime that an executing authority might compensate an employee for overtime work if-
  - 1.1. the employee does not belong to the SMS, except in those cases mentioned in regulation V D.3;
  - 1.2. the department has a written policy on overtime;
  - 1.3. the executing authority has provided written authorisation in advance for the work; and
  - 1.4. except in exceptional circumstances, the monthly compensation for overtime constitutes less than 30 per cent of the employee's monthly salary.
2. With the proclamation of the 2016 Public Service Regulations, Regulation 49(1) stipulates that an executive authority shall compensate an employee, other than a member of the SMS, for overtime work if-
  - 2.1. the department has an approved written policy on overtime;
  - 2.2. the executive authority has provided written authorisation in advance for the work; and
  - 2.3. the monthly compensation for overtime constitutes less than 30 percent of the employee's monthly salary or the limitation determined by the Minister, whichever is the lesser.

3. The important changes that were brought about with Regulation 49(1), referred to above, is that-
  - 3.1. an employee's monthly overtime pay is now limited to 30 percent of his/her monthly salary or the limitation determined by the Minister, whichever is the lesser; and
  - 3.2. an executive authority no longer has the authority to approve that the overtime compensation may exceed 30 percent of the employee's monthly salary due to exceptional circumstances.
4. Cognisance must be taken that with the conclusion of PSCBC Resolution 1 of 2007, clause 9.2 of the said Resolution introduced a limitation determining that the basic salary for the calculation of overtime worked shall be the actual salary notch of the employee, provided that it shall not be higher than a basic salary of R 281 418 per annum. The latter amount is adjusted annually with the general cost of living adjustment. This Resolution is a determination of the Minister for Public Service and Administration as contemplated in terms of section 3(5) of the Public Service Act, 1994, as amended. The provisions of clause 9 of PSCBC Resolution 1 of 2007, among others, are effected through the Determination and Directive on Working Time. Refer to specifically to paragraph 4.1 of Part II and paragraph 1.1 of Part IV of the Determination and Directive on Working Time.
5. Following the promulgation of the Public Service Regulations, 2016 various enquiries have been received pertaining to-
  - 5.1. the repealed authority of the executive authority to authorise that the 30% threshold in respect of overtime pay may be exceeded;
  - 5.2. what exactly the limitation contemplated in Regulation 49(1)(c) as determined by the Minister constitute; and
  - 5.3. whether the employees whom their salary notches are above notch 1 of salary level 8 which is the maximum notch overtime compensation is capped at, in terms of paragraph 4.1 of Part II and paragraph 1.1 of Part IV of the Determination and Directive on Working Time, read with clause 9.2 of PSCBC Resolution 1 of 2007, the 30 percent limit should be applied to their actual monthly salary or the notch employees are compensated for overtime work.
6. Regulation 49 of the Public Service Regulations, 2016 is clear in that executive authorities are no longer authorised to authorise overtime compensation in excess of the 30% threshold in exceptional circumstances. Hence this point is not further deliberated on.
7. Noting that PSCBC Resolution 1 of 2007 is in terms of section 3(5) of the Public Service Act, 1994 a determination made by the Minister, there is legal certainty that the limitation contemplated in Regulation 49(1) of the Public Service Regulations, 2016 is indeed the limitation set in clause 9.2 of the said Resolution, read with paragraph 4.1 of Part II and paragraph 1.1 of Part IV of the Determination and Directive on Working Time. However, for purposes of clarity it is deemed necessary to issue a directive to elucidate on the interpretation and application of the Regulation 49(1).

8. In light of the afore-going the Minister for the Public Service and Administration issued in terms of section. 41(3) of the Public Service Act, 1994, a directive to elucidate on the interpretation and application of Regulation 49(1)(c) through the addition of the new paragraph 2 in Part IV of the Determination and Directive on Working Time, i.e. for purposes of the interpretation and application of Regulation 49(1)(c), referred to above, the limitation determined by the Minister is the minimum basic annual salary of R281 418, as adjusted annually with the general cost of living adjustment.



**DIRECTOR-GENERAL**

DATE: 2018/02/07