



**DETERMINATION ON IMPLEMENTATION AND APPLICATION
SECTION 15(1) OF THE PUBLIC SERVICE ACT, 1994.**

DATE ISSUED 24 JANUARY 2019

**MADE BY THE MINISTER FOR THE PUBLIC SERVICE AND
ADMINISTRATION**



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PART I: GENERAL

1. INTRODUCTION

1.1. The Public Service Amendment Act, Act 30 of 2007, was promulgated with a view to improve the organisational human resource framework, which in turn will improve service delivery. Therefore, the key objectives of the Amendment Act are, among others, to-

1.1.1. improve staff mobility arrangements for the public service; and

1.1.2. enable greater alignment between the conditions of service of the general public service falling under the Public Service Act and other Organs of State.

1.2. Section 22 of the Public Service Amendment Act introduced a new section 15(1) in the Public Service Act. The new section 15(1) of the Act aims to clarify a similar provision for certain transfers of employees from organs of state to the public service where they successfully apply for posts in the public service. The new section 15(1) of the Act stipulates that:

“Any person who was employed by an organ of state immediately before he or she is appointed in terms of section 9 shall be deemed to be transferred to the public service in respect of such conditions of service and to such extent as the Minister may determine in terms of section 3 (5)”

2. AUTHORISATION

2.1. This Determination is made in terms of section 3(5), read with section 15(1) of the Public Service Act, 1994 (hereafter referred to as the Act) by the Minister for the Public Service and Administration.

3. SCOPE OF APPLICATION

3.1. This Determination applies to an employee who was employed by an organ of state immediately before his/her appointment in terms of section 9 of the Act and who is deemed to be transferred to the Public Service in terms of the provisions of section 15(1) of the Act.

4. COMMENCEMENT DATE

This Determination takes effect on 24 January 2019

5. DEFINITIONS

In this Determination, any word or expression bears the meaning which was assigned in the Act, unless the context indicates otherwise -

4.1. **“transferred employee(s)”** means an employee(s) who was (were) employed by an organ of state immediately before his/her (their) appointment in terms of section 9 of the Act and who is (are) deemed to be transferred to the Public Service in terms of the provisions of section 15(1) of the Act.



PART II: CONDITIONS OF SERVICE

1. PENSION BENEFITS

- 1.1. The employee who is deemed to be transferred in terms of section 15(1) of the Act on a permanent basis shall, in terms of the Rules of the Government Employees Pension Fund (GEPF), be compelled to become a member of the Fund.
- 1.2. The membership to the Fund of an employee appointed on a fixed term contract basis is regulated by mutual agreement. In the event where an employee on a fixed term contract does not become a member of the GEPF, does not receive a service bonus and a housing allowance nor join a medical scheme, s/he will be eligible to 37% of his/her basic salary in lieu of those benefits; the 37% in lieu of benefits applies to employees on salary levels 1 to 10 and those on Occupational Specific Dispensation's (OSD's) that are not on total cost-to-employer (TCE) packages. Should an employee opt to receive his/her salary plus benefits, he / she cannot receive both the benefits and the 37% in lieu of benefits.
- 1.3. An employee's membership, contributions and pension benefits shall be governed in terms of the Government Employees Pension Law, 1996, and the Rules of the GEPF.
 - 1.3.1. If the organ of state from which an employee transfers is a participating employer of the GEPF, the transferred employee shall continue his/her membership without interruption.
 - 1.3.2. A transferred employee, who was a member of another pension fund/provident fund at the organ of state from which s/he transferred, may in terms of the provisions of the Government Employees Pension Law, 1996, and the Rules of the GEPF apply to the GEPF to purchase service.

2. MEDICAL ASSISTANCE

- 2.1. An employee who is deemed to be transferred in terms of the provisions of section 15(1) of the Act on-
 - 2.1.1. Salary level 1 to 10 shall become a member of the Government Employee Medical Scheme (GEMS) on assumption of duty in order to receive medical subsidy. Employees on salary level 1 to 5 who join the Sapphire benefit option of GEMS receive 100% subsidy. Those on salary levels 6 to 10 receive 75% subsidy capped at amounts provided in the Determination and Directive on Medical Assistance in the Public Service. Should an employee opt not to join GEMS and remain with their medical scheme, the subsidy will be capped at R1014.00 as per the Determination and Directive on Medical Assistance for Employees in the Public Service.
- 2.2. An employee appointed on a total cost-to-employer (TCE) package in the Senior Management Service, Middle Management Service or applicable Occupational Specific Dispensation, shall not qualify for a medical subsidy as s/he structures his/her salary.



3. LONG SERVICE RECOGNITION

- 3.1. An employee's service rendered at the organ of state from which s/he are deemed to be transferred shall be recognised for purposes of long service recognition as provided for in the Determination and Directive on Long Service Recognition.
- 3.2. An employee who is deemed to be transferred in terms of section 15(1) of the Act shall adopt the long service provisions provided for in the Determination and Directive on Long Service Recognition.

4. RESETTLEMENT

- 4.1. Transfers as contemplated in terms of section 15(1) of the Act, shall be deemed to be transfers as contemplated in clause 3, read with clause 1, of Part XV of PSCBC Resolution 3 of 1999.
- 4.2. Assistance with a transferred employee's reasonable actual cost associated with resettlement shall take place within the parameters of clause 3 of Part XV of PSCBC Resolution 3 of 1999, read with the applicable departmental policy on resettlement.

5. SERVICE BONUS

- 5.1. For purposes of calculating a transferred employee's service bonus, the employer shall take into account continuous employment at the organ of state from which an employee was deemed to be transferred.
- 5.2. The payment of the service bonus shall take place in terms of the provisions of PSCBC Resolution 3 of 1999, as amended by PSCBC Res 7 of 2000, PSCBC Resolution 2 of 2015 and any other determination issued by the Minister for the Public Service and Administration in this regard.

6. LEAVE OF ABSENCE

- 6.1. An employee who is deemed to be transferred in terms of section 15(1) of the Act shall adopt the leave provisions provided for in the Determination and Directive on Leave of Absence in the Public Service. Employees who are transferred after the commencement of an annual leave cycle shall be entitled to leave on a pro rata basis determined as a fraction of the entitlement as provided for in the Determination and Directive on Leave of Absence in the Public Service.
- 6.2. For purposes of the annual leave categories provided for in the Determination and Directive on Leave of Absence in the Public Service, a transferred employee's continuous service rendered with the relevant organ of state shall be recognised.
- 6.3. Unused annual leave credits which the transferred employee accumulated at the organ of state prior to the date of the deemed date of transfer shall not be transferred.

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