



the dpsa

Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

Private Bag X916, Pretoria, 0001 Tel: (012) 336 1000, Fax: (012) 326 7802
Private Bag X9148, Cape Town, 8000 Tel: (021) 467 5120, Fax: (021) 465 5484

Enquiries : Mr D v/d Westhuizen/Fredah Tabane
Tel No. : 012-336 1295/1394
File : 17/6/R

TO HEADS OF NATIONAL AND PROVINCIAL DEPARTMENTS AND PROVINCIAL ADMINISTRATIONS

CIRCULAR NO 31 OF 2023

GUIDELINES ON POLICY IMPLEMENTATION CHALLENGES AS IT PERTAIN TO THE PAYMENT OF ANNUAL LEAVE TO EMPLOYEES WHO RESIGNED AND ARE REAPPOINTED IN THE SAME OR ANOTHER DEPARTMENT WITHOUT A BREAK IN SERVICE

1. To increase the effectiveness and efficiency of institutions, the Department of Public Service and Administration (DPSA) is charged with ensuring adherence to the minimum norms and standards set by the Minister for the Public Service and Administration in terms of section 3(1) of the Public Service Act, 1994, as amended. The volume of enquiries raised provides a good indication of how effectively the minimum norms and standards are implemented.
2. While it turns out that employees' demand access to certain conditions of service to which they are not entitled and exert undue pressure on HR components in departments to provide access to such, the policy clarity and guidance sought in a fair number of instances is prescribed. It is therefore deemed prudent to issue guidelines on how these matters must be handled taking into account the existing provisions that govern it in order to assist departments to deal with these matters decisively.

Problem statement

3. A phenomenon has emerged whereby employees who receive an employment offer from the same or another department within the public service choose to resign from their current position prior to starting work in the new position without taking a break from their previous employment. While there may be a variety of reasons for resignation, however, on resigning employees invoke the provisions of paragraph 9.1 of the Determination and Directive on Leave of Absence in the Public Service and demand payment for any unused annual leave credits that are still available at the time.

Policy provisions

4. Paragraph 5 of the Determination and Directive on Leave of Absence in the Public Service (hereafter referred to as the Determination), read with the applicable collective agreements of the Public Service Co-ordinating Bargaining Council (PSCBC) stipulate amongst others that -
 - 4.1 Employees are entitled to annual leave (as per *Annexure A* of the Determination) during each cycle of 12 months, commencing 1 January of each year.
 - 4.2 Annual leave should be planned and scheduled at least at the start of a leave cycle, i.e. January of each year.
 - 4.3 The utilisation of this leave must take the service delivery requirements of a department into account.
 - 4.4 The remaining days, if any, must be taken no later than 6 months after expiry of the relevant leave cycle where after unused annual leave credits shall be forfeited.
5. PSCBC Resolution 7 of 2000 stipulate in clause 7.2 (a) that the cash value of unused annual leave credits is payable at termination of service. Furthermore, clause 7.1 (d) of the Resolution stipulate that "*if due to the employers service delivery needs leave is not taken, such leave must be paid out at the end of the 18-month period*".
6. Section 14A of the Public Service Act, 1994, as amended, determines that an employee of a department who is appointed in terms of section 9 of the Act in another capacity in the same or another department or transferred in terms of section 12(3) or 14 of the Act shall be deemed to continue employment in the public service without any break in service.

7. With due consideration to the provisions of section 14A of the Public Service Act, the following provisions apply in respect of annual leave and sick leave respectively:

7.1 In respect of annual leave, paragraph 13 of the Determination directs that –

7.1.1 “An employee retains all his/her annual leave credits, when he/she is transferred within or between departments, due to him/her at that point in time. The employee retains likewise the leave category as reflected in *Annexure A*. The utilisation of these leave credits are subject to the provisions of this Determination and Directive.

7.1.2 If an employee transfers to an occupational class to which a different leave category applies, he/she adopts the new leave category for that occupational class. The employee will retain the leave credits due to him/her of the old occupational class. The utilisation of these leave credits is subject to the provisions of this Determination and Directive.

7.1.3 The provisions in paragraphs 13.1 and 13.2 apply *mutatis mutandis* in the case of employees who are appointed on contract and who secures a permanent appointment in the Public Service and vice versa.”

7.2 In respect of sick leave, paragraph 18.5 of the Determination directs that an employee retains his/her sick leave credits in respect of a particular sick leave cycle, when the employee is transferred within a department or between departments, or is appointed in terms of the Public Service Act, 1994 without a break in service.

8. However, if a break in service of less than 12 months occurred, section 84 of the Basic Conditions of Employment Act, 1997 as amended, read with paragraph 31.3 of the Determination comes into effect. In other words, for purposes of determining the length of an employee’s employment with an employer for purposes of the provisions of section 84 of the said Act, (i.e. leave benefits regarding annual, sick and family responsibility leave), previous employment with the same employer must be taken into account if the break between the periods of employment is less than 12 months. In such instances, at re-employment, the employee’s annual leave entitlement must be determined according to the provisions outlined in paragraph 31.3 of the Determination.

9. It must be noted that employees who resign, and did not secure an appointment or transfer to another department without a break in service, are entitled to have their unused annual leave paid out in accordance with paragraph 9.1 of the Determination.

Policy Application

10. With due consideration to the above-
 - 10.1 The employee who resigns from one department and is appointed in the same or another department without a break in service is, in terms of section 14A of the Public Service Act, deemed to continue employment in the public service.
 - 10.2 Therefore, since such an employee is deemed to continue employment in the public service -
 - 10.2.1 no pay-outs of annual leave benefits, must be effected.
 - 10.2.2 the employee retains his/her annual and sick leave credits, among others, as provided for in paragraph 13 and 18.5 of the Determination.
 - 10.2.3 the employee continues with his/her annual leave benefits, among others, in the same/new employing department.

Policy Management

11. According to paragraph 14(a) of the Public Service Regulations, 2016, employees are obligated to achieve their institution's objectives in a cost-effective and public interest-oriented manner, as outlined in the Code of Conduct. Additionally, paragraph 14(j) of the Public Service Regulations states that employees must promote sound, efficient, effective, transparent, and accountable administration.
12. In terms of the Code of Conduct as provided for in paragraph 14 (a) of the Public Service Regulations, 2016, an employee must strive to achieve the objectives of his or her institution cost-effectively and in the interest of the public. Furthermore paragraph 14 (j) of the Public Service Regulations stipulate that employees must promote sound, efficient, effective, transparent and accountable administration.
13. Adherence to the Code of Conduct requires employees to notify the employer when they receive an employment offer from the same or another department within the public service, resulting in a transfer or appointment without a break in service. Failure to inform the employer would constitute a breach of the Code of Conduct, potentially leading to sanctions as per the disciplinary

code and procedure. In adhering to the provisions of the Code of Conduct employees is under obligation to inform the employer if they received an employment offer from the same or another department within the public service which will result in them transferring or being appointed without a break in service. If an employee does not advise the employer it will amount to a breach of the Code of Conduct which may lead to a sanction in terms of the disciplinary code and procedure.

14. To ensure proper management and implementation of the Determination's provisions, the following measures will be applied:

- 14.1 It is the employee's responsibility to inform the employer about their appointment in the same or another department, or their transfer without a break in service.
- 14.2 Supervisors and managers are responsible for informing the Human Resource Division (HR) about the appointment or transfer of these employees.
- 14.3 HR will apply the policy provisions outlined in the Determination and will not provide a pay-out for the unused annual leave of these employees.
- 14.4 Employees who fail to inform the employer of their appointment or transfer must be subjected to the disciplinary process for non-compliance with the Code of Conduct.
- 14.5 In instances where employees neglected to inform the employer and have already received the annual leave gratuity the following applies:
 - 14.5.1 Employees must be subjected to the disciplinary process for non-compliance with the Code of Conduct.
 - 14.5.2 The yielding department must take the necessary steps to recover the overpaid amount from the employee.; and
 - 14.5.3 The receiving department must recalculate the employee's leave credits in accordance with Section 5(7) of the Public Service Act, 1994.

Ms Yoliswa Makhasi

Director-General

Date: