



GUIDE ON MANAGING OTHER REMUNERATIVE WORK IN THE PUBLIC SERVICE

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LIST OF ABBREVIATIONS

| | |
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| DPSA | Department of Public Service and Administration |
| EA | Executive Authority |
| HoD | Head of Department |
| MPSA | Minister for the Public Service and Administration |
| PRECCA | Prevention and Combating of Corrupt Activities Act, 2004 |
| PSA | Public Service Act, No 103 of 1994 |
| PSR | Public Service Regulations, 2016 |

1. INTRODUCTION

The legal requirement to obtain permission to perform other remunerative work outside one's employment in the relevant department (hereafter called other remunerative work) is something that many employees in the public service do not understand. The reasons to seek permission can only be inferred from the conditions that are set in legislation.

There are two main reasons why employees have to obtain permission from their respective Executive Authority (EA) **before** they engage themselves in other remunerative work.

- The first reason is about allowing departments to manage the possibility of other remunerative work performed by their employees, which could create a potential, perceived or actual conflict of interest.
- The second reason is about preventing other remunerative work from impacting negatively on the conduct of public service employees and from interfering with or impeding the effective and efficient performance of the employee.

As public service employees, we are required to put the public good above private interests and to dedicate our time and energy to produce quality service for the benefit of the people of the country. If this does not happen, the public may experience poor service delivery and the reputation of the public service may be dented. It is therefore necessary to provide guidance to employees in the public service to understand their role when engaging in other remunerative work, but also to guide departments to understand their role in managing the occurrence of other remunerative work in the work environment. For this reason, the Department of Public Service and Administration (DPSA) developed the *Guide on Managing Other Remunerative Work in the Public Service* (the "Guide").

2. PURPOSE

The purpose of the Guide is to:

- Guide employees in the public service to demonstrate good judgement and avoid conflicts of interest when performing other remunerative work;
- Standardise the interpretation of the *Directive on Other Remunerative Work Outside the Employee's Employment in the Relevant Department, in terms of Section 30 of the Public Service Act, 1994*; and
- Provide guidance to departments to manage other remunerative work performed by their employees.

The Guide does not address the conducting of business with an organ of state or the State. However, the Ethics Officer and departments must ensure that the process for performing other remunerative work (as outlined in the *Directive on Other Remunerative Work Outside an Employee's Employment in the Relevant Department as Contemplated in Section 30 of the Public Service Act, 1994*) is not abused to request permission for work that involves the conducting of business with an organ of state or the State.

This Guide should be read in conjunction with the relevant legislation and other prescripts that govern the prohibition of employees in the public service from conducting business with an organ of state or the State.

3. LEGISLATIVE FRAMEWORK

The following legislative framework governs the management other remunerative work.

| Legislation | Provision |
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| Constitution of the Republic of South Africa, 1996 | <p>Section 195(1)(a) “A high standard of professional ethics must be promoted and maintained.”</p> |
| Public Service Act, No 103 of 1994 as Amended | <p>Section 30 “(1) No employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with written permission of the executive authority of the department. (2) For the purpose of subsection (1) the executive authority shall at least take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the employee’s functions in the department or constitute a contravention of the code of conduct contemplated in section 41(1)(b) (v). (3) (a) The executive authority shall decide whether or not to grant permission, contemplated in subsection (1), within 30 days after the receipt of the request from the employee in question. (b) If the executive authority fails to make a decision within the 30 day period, it would be deemed that such permission was given.”</p> <p>Section 31 “(1) (a) (i) If any remuneration, allowance or other reward (other than remuneration contemplated in section 38 (1) or (3), is received by an employee in connection with the performance of his or her work in the public service otherwise than in accordance with this Act or a determination by or directive of the Minister, or is received contrary to section 30, that employee shall, subject to subparagraph (iii), pay into revenue- (aa) an amount equal to the amount of any such remuneration, allowance or reward; or (bb) if it does not consist of money, the value thereof as determined by the head of the department in which he or she was employed, at the time of receipt thereof. (ii) If the employee fails to so pay into revenue the amount or value, the said head of department shall recover it from him or her by way of legal proceedings and pay it into revenue. (iii) The employee may appeal against the determination of the head of department to the relevant executive authority. (iv) The accounting officer of the relevant department may approve that the employee concerned retains the whole or a portion of the said remuneration, allowance or reward. (b) If- (i) in the opinion of the head of department mentioned in paragraph (a) an employee has received any remuneration, allowance or other reward contemplated in that paragraph; and</p> |

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| | <p>(ii) it is still in his or her possession or under his or her control or in the possession or under the control of any other person on his or her behalf, or, if it is money, has been deposited in any bank as defined in section 1 (1) of the Banks Act, 1990 (Act 94 of 1990), or a mutual bank as defined in section 1 (1) of the Mutual Banks Act, 1993 (Act 124 of 1993), in his or her name or in the name of any other person on his or her behalf, that head of department may in writing require that employee or that other person or that financial institution not to dispose thereof, or, if it is money, not to dispose of a corresponding sum of money, as the case may be, pending the outcome of any legal steps for the recovery of that remuneration, allowance or reward or the value thereof.</p> <p>(c) A person of the financial institution contemplated in paragraph (b) who or which fails to comply with a requirement in terms of that paragraph, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.</p> <p>(d) The provisions of this section shall also apply to an officer who is a head of department, and in such a case a reference to a head of department shall be construed as a reference to the Treasury.</p> <p>(2) (a) Subject to paragraph (b), any salary, allowance, fee, bonus or honorarium which may be payable in respect of the services of an employee placed temporarily at the disposal of an organ of state, another government or body contemplated in section 15 (3) shall be paid into revenue.</p> <p>(b) In circumstances regarded by the relevant executive authority as exceptional, the said authority may approve of paying out of any revenue an amount equal to that salary, allowance, fee, bonus or honorarium, or a portion thereof, to the employee concerned."</p> |
| Public Administration Management Act, No 11 of 2014 | <p>Although this Act does not refer to other remunerative work, it should be noted that Chapter 3, section 8 stipulates the following:</p> <p>"(2) An employee may not –</p> <ul style="list-style-type: none"> (a) conduct business with the State; or (b) be a director of a public or private company conducting business with the State. <p>(3) A contravention of subsection (2)-</p> <ul style="list-style-type: none"> (a) is an offence, and any person found guilty of the offence is liable to a fine or imprisonment for a period not exceeding 5 years or both such fine and imprisonment; and (b) constitute(s) serious misconduct which may result in the termination of employment by the employer." <p>As such, the process to apply for permission to perform other remunerative work should exclude requests involving employees conducting business with the State.</p> |
| Public Service Regulations, 2016 | <p>Chapter 2 (Part 1, regulations 11 - 15) contains the Code of Conduct. EAs or delegated authorities should at least consider the possible breach of these regulations before providing permission to employees to perform other remunerative work.</p> |

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| | <p>Although all regulations under the Code of Conduct should be considered, the following are very specific to other remunerative work:</p> <p>Regulation 11 – “An employee shall-</p> <p>(b) put the public interest first in the execution of his or her official duties.”</p> <p>Regulation 13 – “An employee shall-</p> <p>(b) not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties.”</p> <p>(c) not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act.</p> <p>(d) recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this shall immediately be properly declared by the employee;</p> <p>(g) not use or disclose any official information for personal gain or the gain of others;</p> <p>(i) if he or she has permission in terms of section 30 of the Act to perform outside remunerative work, not –</p> <p>(i) perform such work during official work hours; and</p> <p>(ii) use official equipment or state resources for such work.”</p> <p>Regulation 14 – “An employee shall-</p> <p>(f) be honest and accountable in dealing with public funds and use the State’s property and other resources effectively, efficiently, and only for authorized official purposes;”</p> |
| | <p>Chapter 2 (Part 2)</p> <p>Details of interests to be disclosed at Regulation 19 – “The following details of interests shall be disclosed:</p> <p>(e) Remunerated work outside the employee’s employment in his or her department:</p> <p>(i) the type of work;</p> <p>(ii) the name, type and nature of business activity of the employer;</p> <p>(iii) the amount of the remuneration received for such work; and</p> <p>(iv) proof of compliance with section 30 of the Act must be attached.”</p> <p>Chapter 2 (Part 3)</p> <p>Regulation 23 (1) – “An executive authority shall designate such number of ethics officers as may be appropriate, for the department to-</p> <p>(e) manage the processes and systems relating to remunerative work performed by employees outside their employment in the relevant department.”</p> <p>Regulation 24 – “An application by an employee to perform remunerative work outside his or her department shall be in accordance</p> |

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| | with the process determined by the Minister and in the form issued by the Minister.” |
| Directive on Other Remunerative Work Outside an Employee’s Employment in the Relevant Department as Contemplated in Section 30 of the Public Service Act, 1994 | Refer to the Directive |
| South African Police Service Discipline Regulations, 1996 | <p>Section 20. Misconduct</p> <p>“An employee will be guilty of misconduct if she/he, among other things –</p> <p>(m) Without written approval of the employer performs work for compensation in a private capacity for another person or organisation either during or outside working hours.”</p> |
| Correctional Services Act, No 111 of 1998 | <p>Section 118</p> <p>“(1) No correctional or custody official and no other person acting for or employed by him or her may directly or indirectly –</p> <p>(a) Sell, supply or derive any benefit or advantage from the sale or supply of any article to or for the use of any prisoner or prison; or</p> <p>(b) Have an interest in any contractor agreement for the sale or supply of any such article.”</p> <p>“(5) Any person who contravenes any provision of this section is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding two years, or to such imprisonment without the option of a fine, or both.”</p> |
| Employment of Educators Act, No 76 of 1998 | <p>Section 33: Performance of other work by educators</p> <p>“Unless an educator’s conditions of service provide otherwise –</p> <p>(b) No educator shall without permission of the employer perform or undertake to perform remunerative work outside the educator’s official duty or work.”</p> |
| National Prosecuting Authority Act, Act 32 of 1998 | <p>Section 39</p> <p>“(2) The National Director, a Deputy National Director and a Director shall not, without the consent of the President, perform any paid work outside his or her duties of office.”</p> |

4. USE OF THE GUIDE

The Guide is intended for use by national and provincial departments (including Ethics Officers) and its employees employed in the public service, as well as members of the services, educators or members of the Intelligence Services only in so far as the provisions of this guide are not contrary to the laws governing their employment.

5. CLARIFICATION OF CONCEPTS

In order to understand the concept “other remunerative work”, one has to understand what is meant with the concepts “work” and “remuneration.” It is also important to distinguish between “other remunerative work” and “conducting business with an organ of state or the State.”

In general, the concept “work” means:

“An activity involving mental or physical effort done in order to achieve a result.”
- Oxford Dictionary

To achieve a result, this effort is usually executed within a specific timeframe. This is important to note, as public service employees are expected to deliver a specific service over a specific period of time, for which they receive remuneration in the form of a salary.

In the context of the public service, “remuneration” may refer to salaries or allowances paid to employees.

Public Service Act, 1994, sec 37(1)

“Employees shall be paid the salaries and allowances in accordance with the salary scale and salary level determined by the Minister in terms of section 3 (5).”

Treasury Regulation 20.2.1 stipulates that an “Official Member” (public service employee) should not receive additional remuneration, except for subsistence and other allowances, from organs of the state.

In terms of section 30(6)(a) of the Companies Act, Act 71 of 2008, as amended, “...remuneration includes – fees paid to directors for services rendered by them to or on behalf of the company, including any amount paid to a person in respect of the person’s acceptance of the office of director...”.

Remuneration, in terms of Regulation 16 of the Public Service Regulations, 2016 (PSR, 2016, which is linked to the performance of other remunerative work) means:

“Any payment or benefit in cash or in kind.”

Thus, remuneration for other remunerative work may involve the payment of allowances, or a payment or benefit in cash or in kind.

Based on the two concepts explained before (work and remuneration), other remunerative work can be defined as:

“Any work performed by an employee outside his or her employment in the relevant department for which a fee, allowance, payment or benefit for services rendered is made.”

Activity

Remuneration

Therefore, based on the explanation provided, other remunerative work does not include a) receiving passive income, such as rent received from a property rented out or dividends paid to shareholders, or b) work performed for which no remuneration is received.

Important note

To have an interest in a business is not work *per se*. There has to be evidence of a physical or mental effort contributing to the operations of the business over a period of time.

All employees in the public service who received permission to perform other remunerative work, and who are designated as a category to disclose their financial interests, are required in terms of PSR, 2016 (Chapter 2, Part 2, regulation 19) to disclose on the eDisclosure system all income-generating assets, benefits or remuneration received from trusts, directorships and partnerships, remunerated work outside the employee's employment in her or his department, benefits derived from consultations and retainerships, value of sponsorships, ownership of other interests in immovable property and details of vehicles. This is required to enable a department to manage possible conflict(s) of interest.

The performance of other remunerative work should not be confused with the concept "conducting business with an organ of state or the State".¹ "Conducting business with an organ of state or the State" is particularly interested in a procurement relationship, whether goods or services, with employees or companies (where employees are directors) and the State. In terms of both the PSR, 2016 (regulation 13(c)) and the Public Administration Management Act, Act 11 of 2014 (Chapter 3, section 8, subsection (2)), national -, provincial - and local government employees, including Special Advisors, are **prohibited** from conducting business with the State. Conducting business with the State is not only prohibited, but in terms of the Public Administration Management Act, it is also a criminal offence that carries a maximum sentence of 5 years imprisonment and/or a fine. It also constitutes a serious misconduct which may result in the termination of employment by the employer.

5.1. To summarise:

An employee should request written permission to perform other remunerative work outside his or her employment in the relevant department before commencing with intended work that involves the following:

- Receiving remuneration;
- Performing work (even if self-employed), and
- Spending an employee's time.

This said, the intended work should not:

- Impact negatively on the employee's effective and efficient performance (see Section 30 (2) of the Public Service Act, 1994);
- Contravene the Code of Conduct for the Public Service (thus contravene regulations 11 – 15 of the PSR, 2016 as found in Chapter 2, see Section 30(2) of the Public Service Act, 1994); or
- Prevent the employee from placing his/her time at the disposal of the State (regulation 13 (i) is clear that other remunerative work conducted during official work hours should not be approved).

¹ See *Directive on Conducting business with an organ of state* and the *Guide on Conducting Business with an organ of state/the State*.

The above should serve as criteria for EAs or their delegated authorities when considering applications from public service employees requesting to perform other remunerative work.

Important note

No employee should undertake other remunerative work **without prior authorisation** from their EA/delegated authority. Therefore, authorisation should be obtained well before other remunerative work is conducted. There is no process that allows for post facto authorisation for other remunerative work conducted by an employee outside his or her employment in the relevant department.

6. MANAGING EMPLOYEES IN THE PUBLIC SERVICE PERFORMING OTHER REMUNERATIVE WORK

In terms of regulation 24 of the PSR, 2016 the Minister for the Public Service and Administration (MPSA) is responsible for establishing an application process for public service employees to perform other remunerative work. This process was outlined in the *Directive on Other Remunerative Work Outside the Employee's Employment in the Relevant Department, as Contemplated in Section 30 of the Public Service Act, 1994* (the "Directive"). This Guide is not replacing the referred Directive, but intends to standardise the interpretation of this Directive through further elucidation.

6.1. Who should apply?

All public service employees who wishes to perform other remunerative work should apply for permission to do so. This includes all persons (including interns) employed in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), as amended; and members of the South African Police Service, Correctional Service, South African National Defence Force and Intelligence Services and educators employed in terms of their respective employment laws only in so far as these are not contrary to the laws governing their employment. As special advisors are not employed in terms of the Public Service Act, 1994, they are not required to apply for performing other remunerative work.

6.2. When should an employee apply for permission to perform other remunerative work?

All public service employees should request and receive permission to perform other remunerative work before engaging in that work, as the process does not allow for *post facto* approvals. If an employee foresees a situation where he/she would like to perform other remunerative work but is still not sure, he/she should go ahead and apply for permission to perform other remunerative work. If such work does not materialise, he/she stands nothing to lose. If the employee proceeds to perform the work without the necessary permission, it would constitute misconduct and non-compliance to section 30 of the PSA, 1994.

6.3. How to apply?

A public service employee interested in performing other remunerative work should apply for permission to do so, by completing the prescribed application form in full (see Directive) and thereafter submit it to the Ethics Office. This form is determined by the MPSA, in terms of regulation 24 of the PSR, 2016, and should not be altered. However, if more information is required by a department to guide decision-making, an addendum may be attached.

6.4. Restrictions?

Departments may, based on their risk assessment, elect to have a list of categories of other remunerative work that their employees are barred from engaging in. This could be because they are in direct conflict with the mandate, reputation or organisational values of the department.

7. RECOMMENDED MEASURES TO MANAGE THE PERFORMANCE OF OTHER REMUNERATIVE WORK IN THE PUBLIC SERVICE

Heads of Department are responsible to have the *Directive on Other Remunerative Work Outside the Employee's Employment in the Relevant Department, as Contemplated in Section 30 of the Public Service Act, 1994* implemented. The responsibility for managing the processes and systems relating to other remunerative work was assigned, under the PSR, 2016, to the Ethics Officers.

The following process is outlined in the referred Directive:

Step 1: Application

- The employee completes (in full) the determined application form (see Directive for the form).
- The employee submits the completed application form to the Ethics Office for processing. This marks the start of the 30 day period to obtain permission from the EA, and in case it is not adhered to, the employee automatically receives permission to perform other remunerative work (called "deemed approval").
- On applying, the employee should receive an acknowledgement letter (see Annexure A) and a stamp on the copy of the submitted form indicating that he/she has submitted his/her application.

Step 2: Processing of application

- On receiving the complete application form, the Ethics Officer submits it within 3 days to the supervisor. The supervisor recommends or declines to recommend the application and returns the form, within 5 days, back to the Ethics Officer. The supervisor's comments are limited to the current performance of the applicant. The applicant's supervisor must provide comments taking into account the performance of the employee, before the application is returned to the Ethics Office. If the supervisor does not comment within this timeframe, the form has to be forwarded to the EA, indicating that the supervisor did not comment.
- If necessary, the Ethics Officer can request information on the performance of the applicant from Human Resources (HR). This is to determine if the outside work will negatively affect the employee's performance.
- When all relevant information is obtained, the Ethics Officer analyses it to identify cases of actual, perceived or potential conflict of interest that may arise as a result of the employee undertaking other remunerative work.
- The Ethics Officer prepares a report for every application received, with recommendations, to the EA/delegated authority for decision-making purposes. The report can therefore be the application with the recommendations of the Ethics Officer. The Ethics Officer has in total 7 days to submit the report to the EA or delegated authority, after receiving it from the supervisor.

Step 3: Decision-making

- The EA, or his/her delegated authority, studies the recommendations and makes a final decision, either to grant permission or to decline the request. The EA/delegated authority has 15 days to make a decision, guided by section 30 of the Public Service Act, 1994. The EA (or delegated official) approves by penning a signature on the form and certificate. When not approved, the

EA should indicate so in writing and give reasons for declining the application. All approvals are **valid for 12 months** (including deemed approval), and will never include applications for conducting business with an organ of state or the State. The approval is also **linked to the employee's post at that point in time**, meaning when an employee is promoted or transferred, his or her permission to perform other remunerative work terminates.

Point to note

It is advisable that the decision-making authority not be delegated to a too low level so as to avoid a situation where the delegated authority processes applications submitted by a senior. The best practise is to make the chair of the Ethics Committee the delegated authority.

Step 4: Feedback

- When permission is granted by the EA/delegated authority, the Ethics Officer indicates the outcome to the applicant (see Annexure B). The employee should be provided with a copy of the signed application form and an approval certificate (see Directive for the certificate). Deemed approvals should also be communicated to employees and the Ethics Office must provide the employee with an approval certificate, but only after assessing that the deemed approved work will not contravene Section 30(2) of the Public Service Act, 1994. If it does contravene the indicated Act, the Ethics Officer should request the EA to withdraw permission.
- When permission is declined, the Ethics Officer returns the signed application to the applicant and indicates (in writing) the reason(s) for declining (See Annexure B).
- The Ethics Officer should ensure that all copies are sent to HR to be filed in the personal file of the employee and that all relevant information is captured on the PERSAL system.
- When declaring their financial interests, SMS members and other designated categories must attach the approval certificate to the relevant field on the e-Disclosure system.

Point to note!

The employee must receive feedback on their application within a 30-day period from the time of submission to the Ethics Office. In terms of section 30(3)(b) of the PSA, if the EA or his/her delegate does not communicate the outcome of the application to the employee, it will be deemed that permission has been granted. Deemed approval will be valid for a period of 12 months. **However**, if approval is granted by default, permission must still be evaluated and can be withdrawn at any time when a conflict of interest is detected. Additionally, permission to undertake other remunerative work may also be rescinded based on operational requirements.

7.1. Procedure for applying for other remunerative work outside the department of employment

The following procedure, based on a 30 day's timeframe, and as prescribed in the *Directive on Other Remunerative Work Outside the Employee's Employment in the Relevant Department, as Contemplated in Section 30 of the Public Service Act, 1994*, must be adhered to:

7.1.1. The Application Form must be fully completed

The employee needs to ensure that he/she completes the form in full to avoid unnecessary delays. If the form is not fully completed, it will be returned to the employee to complete all mandatory fields (Sections A-D of the application form are mandatory fields) and no acknowledgement letter will be issued. The submission will also not be recorded.

7.1.2. The Application Form must be submitted to the Ethics Office

The form cannot be submitted to just anyone in the Department. Only the Ethics Office (or delegated Ethics Officers) is responsible for receiving applications for other remunerative work (This may be submitted by hand or electronically.) Once the form has been submitted to the Ethics Office, the date of submission will be recorded in the relevant register (see Annexure C) and an acknowledgement letter (see Annexure A) will be issued to the applicant without delay. The date on the acknowledgement letter indicates the start of the 30 days period. The application has to be captured on PERSAL.

7.1.3. The Ethics Officer must gather all relevant information/facts

The Ethics Officer will liaise with necessary role-players like HR to obtain all relevant details about the application of the employee. Once the Ethics Officer has gathered all relevant facts, the application will be submitted to the EA/delegated authority for a decision.

7.1.4. The decision of the EA must be done in writing

The EA/delegated authority, guided by the recommendation of the Ethics Officer, makes a decision on the application. The Ethics Officer must formally indicate the outcome to the applicant (see Annexure B). If the application is unsuccessful, the reason(s) for not approving the application must be stated. With all approved applications (including deemed approvals), the Ethics Officer must issue an approval certificate to the employee. The certificate must indicate the nature of work approved and the period of approval (see Directive). **ONLY WHEN A CERTIFICATE IS ISSUED CAN THE EMPLOYEE ENGAGE HIMSELF/HERSELF IN THE APPLIED FOR OTHER REMUNERATIVE WORK.** The decision of the EA is final. There is no review process, meaning an aggrieved employee should approach court.

7.1.5. The Ethics Office must continuously monitor other remunerative work

The Ethics Office has to continuously monitor employee's performing other remunerative work to detect any conflict of interest or deviation from the certificate of approval. This is especially true for deemed approvals. This entails interviewing relevant role-players to establish if other remunerative work performed by an employee impacts on his/her performance, and/or on the availability of the employee to perform his/her official functions, and/or to assess if the conduct of the person is in breach of the Code of Conduct for the Public Service. The monitoring process must be recorded using the report format provided (Annexure D). When a conflict of interest is detected, a report must be immediately compiled and it must be submitted to the EA/delegated authority to revoke the employee's permission to perform other remunerative work.

The Ethics Office should inform the Ethics Committee at least quarterly of the number of applications received, the identified conflicts of interest, the outcome of the application process, and the number of monitoring reports completed.

8. ROLES AND RESPONSIBILITIES

The roles and responsibilities set out below may be assigned to people, so as to establish a proper process for managing other remunerative work.

8.1. The role of the employee/applicant

An employee needs to complete, in full, an application form requesting permission to perform other remunerative work, prior to engaging in the intended work.

Once completed and signed by the applicant, the applicant submits the form to the Ethics Office.

The employee can only start involving himself/herself in other remunerative work once permission has been granted (for which a certificate will be issued).

An employee who received permission to perform other remunerative work should notify the Ethics Office when he or she is promoted or transferred.

The employee has to honour the conditions for approval and not venture into performing other activities for which permission was not obtained. (E.g. an employee is granted permission to sell shoes but then starts to run a transport service business). NB. For each other remunerated activity an employee wishes to venture into, a separate application must be lodged and written permission must be obtained, prior to engaging in that activity.

It is the responsibility of employees to request renewal of permission before expiration of the current permission if they intend to continue performing other remunerative work. This is important, as the permission for performing other remunerative work expires after 12 months.

It is advisable that a request for renewal be lodged three months before expiry of permission.

Once permission expires, all work must cease.

Point to note!

To manage possible cases of conflict(s) of interest, employees are advised to report any significant change in their current responsibilities to the Ethics Office (promotions, secondments, etc.). This is to ensure that there is no conflict between the new functions and the other remunerative work for which permission has been granted.

8.2. The role of the supervisor

The supervisor provide comments on the application of the employee, focussing on the performance of the employee. After permission is granted, the supervisor should monitor the employee, especially for possible abuse of state resources, other contraventions of the Code of Conduct and negative impact on performance. This must be brought to the attention of the Ethics Officer.

8.3. The role of the Ethics Office

The general role of the Ethics Officer is stated in regulation 22 of the PSR, 2016. In particular, the Ethics Officer is assigned in terms of the PSR, 2016, to manage the system relating to remunerative work performed by employees outside their employment in the relevant department (see regulation 23(1)(e)).

The Ethics Officer needs to submit the completed assessment, supported by all relevant information, to the EA for a decision.

The Ethics Office makes recommendations to the EA, keeping in mind the criteria outlined in paragraph 5.1, to assess for a perceived, potential or any actual conflict of interest.

Perceived conflict of interest: The wife of one of the senior managers of the DPSA is the owner of a stationery company that is contracted to the department. Potential conflict of interest: The same senior manager is appointed as a member of the bid specification committee and later a member of the bid evaluation committee to make recommendations for the appointment of a service provider to supply stationery for the department for the next three years. The senior manager's wife has also tendered for the contract.

Actual conflict of interest: The senior manager does not disclose the fact that his wife is the owner of one of the companies bidding and he does not recuse himself from the tendering process. An actual conflict of interest will occur if the senior manager, in reaching his decision, is influenced by his private interests by unduly favouring his wife's bid and scoring her higher.

(Adapted from the ICAC Toolkit on Managing Conflicts of Interest in the Public Sector).

If a case of conflict of interest is detected, this information must be included in the recommendation to the EA.

All steps in the approval process should be captured on PERSAL. This information is used by the DPSA to monitor the implementation of the said Directive and also to update decision-makers on the issue of public service employees performing other remunerative work.

In terms of managing other remunerative work, Ethics Officers need to keep a register, monitor/review applications for any conflict of interest and report to the Ethics Committee any conflict of interest detected. (For more information please refer to the *Guide on Managing Ethics in the Public Service* and *Directive on Other Remunerative Work Performed by Employees Outside the Public Service*).

It is also important to note that the Ethics Office must re-evaluate permission granted to employees who are promoted or transferred after obtaining permission. The assessment should be guided by section 30(2) of the Public Service Act, 1994. This is because approval is linked to a specific situation. If operational circumstances change or a person is promoted and transferred, that initial assessment falls short.

The Ethics Office may also keep a database with the expiry dates of all permissions (depending on the practicality thereof) and notify employees to reapply before the expiry date.

The Ethics Office should keep the Ethics Committee informed on the other remunerative work process: the number of applications received, the identified conflicts of interest, the outcome of the application process, and the number and nature of monitoring reports completed.

8.4. The role of HR

HR should assist the Ethics Office with performance information needed to guide the EA in making a decision to grant or refuse an application. The following information may be provided in report format by HR to the Ethics Office: performance agreement, work plan, and any other relevant information in the personnel file.

During the recruitment phase, prospective employees in the Public Service should be alerted to the fact that they would be required to request permission to perform other remunerative work, if they successfully join the public service. The HR person assisting the panel should explain the conditions for performing other remunerative work.

8.5. The role of the Ethics Committee

In essence, this committee acts as an advisory body to the EA/delegated authority. For a detailed explanation of the role of the Ethics Committee, refer to the *Ethics Committee Guide* (issued by the DPSA in 2019).

8.6. The role of the EA/delegated authority

Granting or refusing permission for the performance of other remunerative work is the sole responsibility of the EA or his/her delegated authority. The EA has 30 days, from the date of submission, to make a decision in writing (approval and refusal). If the allocated time frame lapses, it will be deemed that permission has been granted.

The EA/delegated authority should provide permission by signing the certificates and should also consider revoking permission based on reports of the Ethics Office outlining conflict of interest or a violation of the conditions to perform other remunerative work.

The EA should base their decision to grant permission (or not) on the criteria outlined in the Public Service Act, 1994, section 30, namely: to consider performance and the Code of Conduct (see summary in paragraph 5.1). The comments of the supervisor and Ethics Officer should also guide the EA in making a decision. This can be further illustrated as follows:

Performance:

- The EA has to be guided by all available information to assess if responsibilities linked to the other remunerative work applied for will not add pressure to the employee, resulting in negligent behaviour, poor performance and absenteeism.
- The EA should also be mindful of the number of application provided permission for. If it is too many, it may impact on the performance of an individual.

Code of Conduct:

- The work to be undertaken should not contravene the Code of Conduct. That includes regulation 13 (c) which prohibits public service employees from conducting business with an organ of state.
- No public servant should be allowed to perform other remunerative work during official hours or use state resources for that purpose (see regulation 13 (i)).
- Other remunerative work applied for must not interfere with the normal functioning of the department or be in conflict with the department's core business, its values and reputation.

- Other remunerative work must not put the employee in a situation where he/she can solicit funds from subordinates or persons having business with the department or those employed within the department (such as selling of products/goods during office hours to colleagues).
- Other remunerative work should not pose any reputation risk to the department.
- Offices, equipment, telephones, computer services, etc. may not be used in other remunerative work. The titles, offices, addresses and telephone numbers of a department may not be used in advertising non-departmental activities. This especially refers to the selling of goods and products.

9. MANAGEMENT TOOLS

In order to manage other remunerative work effectively, each department should have a register to record all their applications (see Annexure C). PERSAL should also be used to record all applications and the outcome thereof.

Departments should have a continuous monitoring process, so as to ensure continuous monitoring of the impact of other remunerative work activities on employees' conduct and performance.

10. SCENARIOS

In order to provide further guidance, consider the following scenarios:

Scenario 1

Sipho has an Honours Degree in Applied Philosophy and works as a senior manager in the Office of the Premier. Sipho was approached by one of the universities to mark examination papers for the Philosophy department. With this opportunity, Sipho will mark exam papers of undergraduate students four times a year and earn himself an extra income.

Most employees would not see anything wrong with Sipho securing a contract with a university to mark exam papers. In fact, there is nothing wrong with an employee like Sipho marking examination papers. However, because Sipho is an employee in the Public Service, he is required in terms of section 30 of the PSA to obtain permission from his EA prior to engaging in other remunerative work. So Sipho needs to follow the steps outlined elsewhere and seek permission from his EA/delegated authority.

Scenario 2

The IT technician in the department has been granted permission to run a "tuck shop" after official working hours. The employee uses the office fax machine to send out orders to the supplier and uses the work telephone to follow up on these.

Scenario 2 represents a situation where the employee uses state resources to perform other remunerative work after permission was granted. As soon as this is detected, the EA should be informed and permission be revoked. Disciplinary steps should also be considered against the employee as this is contravening the Code of Conduct (PSR, 2016, regulation 13 (i)(ii)).

Scenario 3

Sam is a school teacher in a rural village in the North West Province. His family runs the only local grocery store in the village. Recently his school qualified for a feeding scheme. With no other suppliers to run this feeding scheme, Sam decides to take up this opportunity. His family store will be able to provide all the necessary goods that he will require for the feeding scheme. He presents the idea to the school and everyone agrees that Sam is capable of running the feeding scheme for the school. He gets a contract with the school and starts providing this service to the school.

Scenario 3 presents a situation in which a public servant is conducting business with the State. In this case, Sam is guilty of contravening section 8 of the Public Administration Management Act, 2014. This is a criminal offence and Sam may face a sentence of maximum 5 years in prison and/or a fine. It is also a dismissible offence.

Scenario 4

Joyce is an events coordinator, appointed at level 9 in a department in the Public Service. She is responsible for implementing marketing plans and promoting the departmental brand, products and services. She is also responsible for organising planning sessions for the department (procuring the venue, accommodation and any professional printing as required). She requests permission to work for an events company over weekends.

Scenario 4 illustrates a situation where the request to perform other remunerative work presents a direct conflict of interest. Given the relatedness of the work the employee intends to undertake and her function in the Public Service, the likelihood of interference with her official duty is high. Joyce might direct business while performing official duties to the events company she works for over weekends, and/or use departmental resources to further the work of the events company. In this case, permission to perform other remunerated work should be refused.

Where to go for help?

If you have questions after reading the Guide, there are several other sources you may contact for help.

Management

Feel free to approach your supervisor or manager with whatever concern or question you might have. Your management might refer you to another resource, but under most circumstances they should be your first point of contact.

Ethics Officers

Ethics Officers have access to management, have knowledge of the process and are well versed in the policy guiding gifts.

Hotlines

Report employees who are receiving bribes to the National Anti-Corruption Hotline: 0800 701 701.

Department

Contact the DPSA (Ethics Enforcement Unit) on 012 336 1000.