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Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

Department of Public Service and Administration

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CIRCULAR NO: 08 OF 2020

TO ALL HEADS OF NATIONAL/ PROVINCIAL ADMINISTRATIONS AND PROVINCIAL DEPARTMENTS PROCESS ON RE-EMPLOYMENT OF FORMER EMPLOYEES WHO WERE DISMISSED FOR MISCONDUCT

1. Section 17 (a) of the Public Service Act 103 of 1994 provides for the reappointment of former employees who were dismissed on account of committing misconduct.

The Act read as follows:

- (4) (a) A person-
 - (i) Dismissed in terms of subsection (2) (d) for misconduct, including misconduct relating to the offering or receipt of any undue gratification or the facilitation of such offering or receipt; or
 - (ii) Deemed to be dismissed in terms of subsection (3)'

May only be re-employed by any department after the expiration of a prescribed period.
- (b) Different periods may be prescribed for different categories of misconduct.
- (c) Notwithstanding the conditions contained in paragraph (a) that an employee may only be re-employed in any department after the expiration of a prescribed period, the Minister may prescribe acts of misconduct in respect of which no period need to expire before a person is again employed in the department.
- (d) Subject to paragraph (a), a decision whether or not to re-employ a person dismissed in terms of subsection (2)(d) shall be taken with due regard to the nature of the misconduct concerned.



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2. Regulation 61 gives effect to Section 17 (4) of the Act, by providing for periods of prohibition for different acts of misconduct as indicated below:

No	ACT OF MISCONDUCT	PERIOD OF PROHIBITION
1	(a) The offering or receipt of any undue gratification or the facilitation of such offering or receipt; or (b) committing theft or fraud; or (c) Conducting business with any organ of state or being a director of a public or private company conducting business with an organ of state; or (d) Misconduct resulting from a criminal conviction where an employee has been sentenced for two or more years imprisonment, without the option of a fine.	Five years
2	(a) Sexual harassment; or (b) Unfair discrimination against others on the basis of race, gender, disability, sexuality or other grounds prohibited by section 9 (3) of the Constitution.	Four years
3	(a) Financial misconduct as contemplated in section 81 or 82 of the public Finance Management Act; or (b) Misconduct resulting from a criminal conviction where an employee has been sentenced for less than two years imprisonment, without the option of a fine.	Three years



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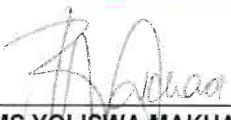
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4	Contravention of any provision of regulations 11 to 14 of Chapter 2 of the Regulations (Public Service Regulations) other than misconduct referred to item 1 to 3.	One year
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2. Departments are therefore directed to comply with the above-mentioned prescripts when dealing with the re-employment of former employees dismissed for misconduct.
3. Departments are further advised to register a System Change Control (SCC) with PERSAL when they want to appoint a person who appears on the system for having been dismissed for misconduct even after the prescribed expiry date, as contained in the regulations..
4. Kindly note that National Treasury has been advised of the relevant prescripts and requested to provide assistance to departments when dealing with these appointments, by allowing a System Change Control on PERSAL to accept such appointments.
5. For more information do not hesitate to contact Phumla Nonxuba at 012 336 1054 or Pumla@dpsa.gov.za



MS YOLISWA MAKHASI
DIRECTOR-GENERAL
DATE: 19/10/2020