



**DIRECTIVE ON DISCIPLINE MANAGEMENT
IN THE
PUBLIC SERVICE**

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

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DEFINITIONS

In this Directive, unless the context indicates otherwise, any word shall have the meaning assigned to it in the Public Service Act, 1994 (Proclamation 103 of 1994) and the Public Service Regulations, 2016.

‘Constitution’ means the Constitution of the Republic of South Africa, 1996.

‘Department’ means a national department, a national government component, the office of a Premier, a provincial department or a provincial government component.

‘a Day’ means particular number of days prescribed for the doing of any act, or for any other purpose, shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday, as defined in the Interpretation Act (Act 33 of 1957).

‘Directive’ means this Directive on Discipline Management in the Public Service.

‘DPSA’ means the Department of Public Service and Administration.

‘Employee’ means a person contemplated in section 8 of the PSA, but excludes a person appointed in terms of section 12A.

‘Framework’ means a National Framework towards the Professionalisation of the Public Sector (October 2022).

‘HoD’ means the Head of Department as contemplated in the PSA.

‘LRA’ means the Labour Relations Act, 1995 (Act No. 66 of 1995).

‘MPSA’ means the Minister for the Public Service and Administration.

‘PAMA’ the Public Administration Management Act, 2014 (Act No. 11 of 2014).

‘PSA’ means the Public Service Act, 1994 (Proclamation 103 of 1994).

‘PSCBC’ means the Public Service Co-Ordinating Bargaining Council.

‘PSR’ means the Public Service Regulations, 2016.

“a working day” means any days other than Saturdays, Sundays and public holidays as defined in the Public Holidays Act (Proclamation 36 of 1994).

1. BACKGROUND

- 1.1 The Minister for the Public Service and Administration (MPSA) is, in terms of the Public Service Act, seized with the task of, amongst others, establishing norms and standards relating to labour relations, discipline management and anti-corruption in the public service.
- 1.2. The poor management of discipline resulting from the decentralised model¹ introduced challenges such as lack of uniformity in sanctions imposed, lack of investigative and disciplinary capacity, lengthy periods of precautionary suspensions, inconsistencies in the way discipline is applied, and in some instances an unwillingness by managers to take responsibility for managing the discipline of their subordinates.
- 1.3. Government adopted the National Framework towards the Professionalisation of the Public Sector (“Framework”) in October 2022 to address, amongst others, the above challenges. The Framework places emphasis “on the need to hold public servants accountable for irregularities, to do away with a culture of impunity in the mismanagement and misappropriation of state resources”.² The Framework necessitates the strengthening of existing policy frameworks and the developing of new ones to decisively address consequence management in the public sector.
- 1.4. The Department of Public Service and Administration (DPSA) adopted a Discipline Management Strategy (2023), with three strategic pillars identified to strengthen the discipline management policy framework, namely: legislation, implementation and culture. Strategic focus areas were incorporated in projects/programs under the Implementation Plan, which includes the update of public service labour legislation and practice, to build the capacity of labour relations employees and to change the culture of discipline management in the public service. The *Directive on Discipline Management in the Public Service* (“Directive”) addresses the need for reforming labour legislation in the public service to align it with current practise, where norms and standards on discipline management are set to guide the uniform application of discipline management.

¹ Section 7(3)(b) of the PSA.

² Statement of Support by the President of South Africa, Mr Ramaphosa, in A National Framework Towards the Professionalisation of the Public Sector (October 2022).

2. PURPOSE

- 2.1. The purpose of this Directive is to:
 - 2.1.1. Direct effective norms and standards in the application of discipline in the public service;
 - 2.1.2. Direct uniform standards to manage abscondments; and
 - 2.1.3. Direct a process to strengthen oversight and monitoring of compliance with time frames stipulated for disciplinary process.

3. STATUTORY FRAMEWORK

The following legislation informs this Directive, the:

- 3.1. Constitution;
- 3.2. PSA;
- 3.3. PAMA;
- 3.4. PSR;
- 3.5. Labour Relations Act 66 of 1995; and
- 3.6. Disciplinary Code of Conduct and Procedures as contained in PSCBC, Resolution 1 of 2003.

4. AUTHORISATION

- 4.1. This Directive is issued by the MPSA in terms of sections 3(2), 41(3) and 5(6)(b) of the PSA.

5. SCOPE OF APPLICATION

This Directive shall apply to or in respect of employees whether they are employed within or outside the Republic, and in respect of persons who were employed in the public service or who are to be employed in the public service; and members of the services, educators, and members of the intelligence Services only in so far as the provisions of the Directive are not contrary to the laws governing their employment.

6. MANAGEMENT OF DISCIPLINARY CASES

Principles and Standards:

- 6.1. Disciplinary action is a management function and must be initiated by a supervisor or an employee in the capacity of a line manager.
- 6.2. All cases must be supported by evidence or must be subject to outcomes of an investigation.

- 6.3. The supervisor or manager must assess the seriousness of each case to determine whether it warrants a formal or informal process.
- 6.4. In cases of less serious misconduct, a formal hearing is not required, however the *audi alteram partem*³ rule must be adhered to.
- 6.5. The HoD must effect the appointment of the chairperson and employer representative within 5-days of receipt of investigation report or approval of the disciplinary process.
- 6.6. Departments must adhere to the 90-day time frame to finalise cases and in instances of non-compliance, justifiable reasons must be recorded.

7. MANAGEMENT OF LEGAL REPRESENTATION

HoDs are directed as follows:

- 7.1. Neither the department nor employee charged with misconduct have an absolute right to legal representation⁴. The parties must first obtain the chairperson's ruling prior to appointing a legal representative(s).
- 7.2. Should either party require legal representation, a formal application must be brought before the chairperson to consider the exceptions to the rule and to decide.
- 7.3. In this instance the chairperson must decide based on circumstances of the case, including considering the following factors:⁵
 - 7.3.1. The nature of the charges brought;
 - 7.3.2. The degree of factual and legal complexity⁶ involved in the matter;
 - 7.3.3. The potential seriousness of the consequences of an adverse finding; and
 - 7.3.4. The nature of the prejudice to either party in granting or refusing legal representation.
- 7.4. In circumstances where legal representation is granted by the chairperson, the parties remain accountable to comply with the stipulated time frames.

³ Common law principle of the right to be heard.

⁴ *Hamata and Another v Chairperson, Peninsula Technikon Internal Disciplinary Committee and Others 2002 (5) SA 449 (SCA)*.

⁵ *MEC: Department of Finance, Economic Affairs & Tourism, Northern Cape Province v Mahumani (2005) 2 All SA 479 (SCA)*.

⁶ Cases relating to fraud, corruption or which require a special skill.

8. MANAGEMENT OF PRECAUTIONARY SUSPENSIONS

- 8.1. HoDs must determine the seriousness of a misconduct prior to deciding on suspending or transferring an employee. In case of serious misconduct, suspension may be invoked when a transfer is not a practical or appropriate measure.
- 8.2. The reassignment of duties on precautionary transfer must be applied with reference to section 32 of the PSA and not section 14 of the PSA.
- 8.3. The seriousness of the misconduct must be clearly outlined, recorded and supported by facts.
- 8.4. The decision of the HoD to suspend an employee must be informed by *prima facie* evidence linked to the allegations⁷.
- 8.5. The HoDs' reasonable belief that the presence of an employee at the workplace may jeopardise any investigation must be linked to the allegations.
- 8.6. The HoD must report misconduct allegations that are criminal cases to the South African Police Services and/or relevant law enforcement authority. Criminal proceedings are separate processes from misconduct processes and must be managed separately.
- 8.7. Should an HoD consider precautionary suspension to safeguard state property, there must be established evidence to support suspension in this regard.
- 8.8. The HoD must consider suspension only as a precautionary measure pending a process to determine the conduct of an employee.
- 8.9. With suspension, the employee retains his or her salary and all benefits payable in terms of their employment contract (including 13th cheque and leave credits) and their performance must be assessed.
- 8.10. The disciplinary inquiry must be commenced strictly within a month or 60-days of the suspension, which days are counted from the date after the employee received the suspension letter.
- 8.11. The days of the precautionary suspension or transfer period must be counted as days.

⁷ MEC for Education, North West Provincial Government v Gradwell (2012) 33 ILJ 2033(LAC).

- 8.12. The chairperson may extend a period of suspension beyond the 60-day time frame⁸. In this instance, the chairperson must consider the complexity of the matter and grounds to continue the precautionary suspension and any further postponement of the hearing.
- 8.13. In cases where, at 60-days, a hearing is not scheduled to consider the continuation of such suspension, the precautionary suspension falls away and the employee must be permitted to return to the workplace.
- 8.14. An employee who is on extended precautionary suspension beyond the disciplinary sanction and lodged an appeal, is subject to the 30-day appeal time frame. Should the appeal not be finalised within 30-days, the employee must report for duty⁹.

9. MANAGEMENT OF ABSCONDMENT CASES

HoDs must manage abscondment cases as follows:

- 9.1. All incidents of absence from duty must be recorded by the supervisor or an employee in capacity of the line manager.
- 9.2. The HoD must on the 5th day of reported absence from duty, initiate contact with the employee at the last known residential address of the employee.
- 9.3. Should the employee not report for duty by the 10th day of absence, the HoD must deliver a written instruction to the employee to report for duty. The instruction must be served to the employee at the last known residential address of the employee, next of kin or a person of 16 years of age or older, at the residential premises of the employee.
- 9.4. Should, by the 20th day of reported absence from duty, the employee fails to report or respond to the served instruction to report for work, the HoD must make all other reasonable attempts to contact the employee and record these efforts.
- 9.5. Should by 10h00am on the day after the 30th day of reported absence from duty, the employee fails to report or respond to the served instruction, the HoD must effect termination of services. The termination must be properly recorded.
- 9.6. Should the employee report for duty within the 30-day period, the HoD must initiate a formal disciplinary hearing for absence without authority, however where there is

⁸ Vukela v Department of Public Works and Infrastructure (J488/2022).

⁹ Paragraph 8.8 of the Code.

justifiable reason for absence, the HoD must record the days of absence as unpaid leave and service continues uninterrupted.

- 9.7. In instances where the employee reports to office after the 30-day period, the employee may make representations to the executive authority for consideration for re-employment.
- 9.8. The representation must be attended to within 30-days of receipt by the HoD and an outcome must be communicated to the affected employee.

10. MANAGEMENT OF RESIGNATIONS

- 10.1. The department must keep records on the PERSAL System of employees who resign or transfer with pending misconduct cases or investigations.
- 10.2. Such record must be provided to any other department that in future intends to employ or employs the affected employee.

11. RECORDS MANAGEMENT

The HoDs must:

- 11.1. Keep proper records of all disciplinary cases in the department;
- 11.2. Report all disciplinary cases to the DPSA as directed by the MPSA; and
- 11.3. Monitor compliance with all stipulated time frames¹⁰.

12. DUTY TO REPORT CONTRAVENTIONS IN TERMS OF THIS DIRECTIVE

HoDs are responsible for ensuring compliance with this Directive and for reporting non-compliance in terms of section 16A of the PSA.

13. DATE OF IMPLEMENTATION

This Directive shall take effect on **1 APRIL 2024**.

¹⁰ Refer to the Disciplinary Code.

**DIRECTIVE ISSUED BY THE MINISTER FOR THE PUBLIC SERVICE AND
ADMINISTRATION**



MS NOXOLO KIVIET, MP

MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION

DATE: 31/03/24