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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**ELECTORAL COMMISSION****NOTICE 561 OF 2017****REGULATIONS ON THE CONDITIONS OF SERVICE, REMUNERATION, ALLOWANCES AND OTHER BENEFITS OF THE CHIEF ELECTORAL OFFICER AND OTHER ADMINISTRATION STAFF**

Acting in terms of section 23 of the *Electoral Commission Act, 1996* (Act No 51 of 1996) the Electoral Commission has made the regulations set out in the Schedule.

**SCHEDULE****Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act, shall have that meaning and, unless the context otherwise indicates-
  - i. **“Act”** means the *Electoral Commission Act, 1996* (Act No 51 of 1996);
  - ii. **“Chief Electoral Officer”** means the Chief Electoral Officer appointed in terms of section 12 of the Act as head of the administration of the Electoral Commission;
  - iii. **“Commission”** means the Commission established in terms of section 6(1) of the Act;
  - iv. **“Day”** means any day upon which the employee is normally required to work;
  - v. **“employee”** means the Chief Electoral Officer and any person who is appointed in terms of section 12(4) of the Act as an officer or employee;
  - vi. **“employer”** means the Commission;
  - vii. **“Electoral Commission”** means the Electoral Commission established in terms of section 3(1) of the Act;
  - viii. **“overtime”** means work in excess of the hours of work per day/week or month that an employee has contracted to perform;
  - ix. **“private commercial activity”** means the activity by a person, for his or her own account, of providing goods or services involving financial, commercial or industrial aspects;
  - x. **“week”** in relation to the employee means the period of seven (7) days within which the working week of that employee ordinarily falls.”

**Interpretation**

2. These regulations must be read in conjunction with any laws of the Republic of South Africa governing employer and employee relations.

**Commencement of employment**

3. An employee’s employment commences on the day agreed upon between the employer and the employee.

**Probation period**

4. (1) The appointment of a person from outside of the Electoral Commission shall be made on probation for a period of not less than 12 (twelve) calendar months. Probation will not be required when an employee, already confirmed as a permanent employee after successful completion of his or her probation period, is transferred or promoted.
- (2) The period of probation of an employee shall be extended by the number of days' unpaid leave, maternity leave or special paid sick leave as contemplated in Regulation 15A taken by him or her during the period of probation or any extension thereof.
- (3) If during the period of probation or extended probation, the employee concerned has been diligent, and his or her conduct has been uniformly satisfactory, and he or she is in all respects suitable for the post which he or she holds, and if the employee has complied with all the conditions to which his or her appointment was subject, the appointment may be confirmed. If the probationary appointment is not so confirmed, it may be extended for a period of not more than 12 (twelve) calendar months or be dealt with in accordance with sub-paragraph (4) below.
- (4) An employee who is serving on probation may be discharged from the service of the Electoral Commission whether during, or at, or after the expiry of the period of probation-
- (a) by the giving to such employee of a notice of termination of employment in terms of regulation 8; or
- (b) forthwith, but subject to the provisions of the *Labour Relations Act, 1995* (Act No 66 of 1995), if his or her conduct or performance is unsatisfactory.

**Re-location and re-deployment**

5. (1) The employer may, with the agreement of, or at the request of, the employee, relocate an employee to an office of the Electoral Commission other than the one in which he or she is then employed.
- (2) If the employee moves his or her household or place of abode to the new location, the employee is entitled to be reimbursed in respect of expenses involved on a basis of reimbursement decided upon by the Commission from time to time, except when the relocation takes place at the request of the employee.
- 5A (1) If the employee relocates at the request of the employer, he/she will be granted 2 (two) paid working days' relocation leave for travelling and moving household contents to the new location.

**Hours and place of work**

6. Except as otherwise agreed to in writing between the employer and employee, normal working hours are from 8:00 to 12:00 and 13:00 to 17:00 on every weekday (Monday to Friday) that is not a public holiday, and the place of work is at the offices and places determined by the Electoral Commission from time to time.

**Outside work**

7. (1) Employees shall serve the employer in a full-time capacity and at the places and times determined by the Electoral Commission.
- (2) Employees shall not perform any other remunerated work nor received any other income in respect of work performed, or materials produced during the course of their employment by the Electoral Commission without the written permission of the employer.
- (3) An employee may not use the facilities of the Electoral Commission for private commercial purposes without the prior written approval of the Commission.

**Termination of employment by the employer**

8. (1) The employer may terminate the employment of an employee by giving to the employee at least 30 (thirty) days' notice of termination and the reason for the termination must be stated in the notice.
- (2) If the reason for the termination of employment is the abolishment of the post in which the employee has been serving, or the reduction of staff, the minimum period of notice to be given in terms of sub-regulation (1) is increased by 15 (fifteen) days for every period of 12 (twelve) months that the employee has been in the service of the employer.
- (3) The employer may decide to pay to the employee in lieu of the required minimum period of notice referred to in sub-regulation (2), the remuneration the employee would have been entitled to for that period or part thereof.

**Retirement**

- 8A (1) It will be permissible for employees to retire from the age of 60 (sixty) to a maximum age of 65 (sixty five).
- (2) In cases of retirement at 65 (sixty five) the employer will give to the employee at least 30 (thirty) days' notice of termination and the reason for the termination must be stated in the notice.
- (3) The employer will pay the employee an amount equal to 15 (fifteen) days salary for every completed period of 12 (twelve) months that the employee has been in the service of the employer.
- (4) The employee who is permitted to retire in terms of sub-regulation (1) will be entitled to a retirement gift to a value to be determined by the Commission from time to time.
- (5) Employees who are discharged as a result of injury on duty, appointment by the President or Premier, incapacity due to own accord, and incapacity not due to own accord, will be treated as retirement cases, unless otherwise determined by the rules of the employer's pension fund.
- (6) Employees who are discharged as a result of ill health will be accorded benefits as applicable to normal retirement cases as determined by sub-regulations (2), (3) and (4).

**Termination of employment by employee**

9. (1) The employee may terminate his or her employment by giving to the employer at least 30 (thirty) days' notice of resignation in writing.

**Limited term of employment**

10. (1) The employer and employee may enter into a written agreement that the employment will terminate at the latest on a specified future date.
- (2) In such cases, and unless the employment is terminated before that date in terms of regulations 8 or 9, the employment terminates on that date.

**Remuneration**

11. (1) The salary, allowances and other benefits of the Chief Electoral Officer shall be described in a fixed term contract entered into between the Commission and the Chief Electoral Officer. The remuneration of other administrative staff shall be less than that of the Chief Electoral Officer; the maximum remuneration of each grade may not be higher than the minimum remuneration of the subsequent.
- [(2) The salary, allowances and other benefits of the Chief Electoral Officer and other administrative staff aim, within fiscal constraints, to support-
- (a) efficient and effective service delivery and provide appropriate incentives for employees; and

- (b) equal pay for work of equal value and other relevant labour standards.
- (3) Where a post requires skills not readily available within the remuneration structures referred to in sub-regulation (1), the Commission may approve a higher remuneration package in respect of that specific post.
- (4) In determining an employee's salary, allowances and other benefits, the Commission shall take into account-
- (a) relevant collective agreements;
  - (b) available funding;
  - (c) the results of job evaluation, if available; and
  - (d) the need to recruit and retain personnel with appropriate competencies.
- (5) The Commission shall determine a salary scale or scales, allowances and other benefits-
- (a) for employees who fall within the ambit of the *Labour Relations Act*, in the course of the relevant collective bargaining process or agreement;
  - (b) for employees not falling within the ambit of the *Labour Relations Act*, in the course of relevant collective bargaining agreement(s).
- (6) The Electoral Commission shall make an annual heightened activity payment to its employees.
- (7) In determining the percentage of the annual heightened activity payment, the Commission shall take into account-
- (a) relevant collective agreements; and
  - (b) available funding.

#### **Pay progression**

- 11A (1) Staff members will qualify for pay progression annually on the 1<sup>st</sup> of April, subject to satisfactory work performance.
- (2) Newly appointed staff members will annually qualify on the 1<sup>st</sup> of April for notch increment consideration after successful completion of the required probationary period (the qualifying period).
- (3) Upon completion of the qualifying period, such newly appointed employee will qualify for pay progression annually on the subsequent 1<sup>st</sup> of April, subject to satisfactory work performance.

#### **Overtime**

12. The Electoral Commission may require an employee to do work outside the normal working hours.
- 12A Only staff members earning less or equal to the actual maximum earnings ceiling as approved by the Minister of Labour in concurrence with the Minister of Finance from time to time, will qualify for payment for overtime worked.

#### **Travel, Accommodation and Subsistence**

13. (1) If an employee is required to perform duties away from his or her office, such employee is entitled to be reimbursed in respect of reasonable travel, accommodation and subsistence expenses incurred at such rates as the Commission may determine from time to time, bearing in mind the basis on which such rates are determined by the South African Revenue Services.

#### **Vacation Leave**

14. (1) An employee is entitled to 25 (twenty five) working days' vacation leave and after ten (10) years of continuous service to 33 (thirty three) working days' vacation leave with full pay

during every 12 (twelve) months leave cycle commencing on the 1<sup>st</sup> day of April of every calendar year and ending on the 31<sup>st</sup> day of March of the next calendar year.

(2) If an employee commences employment on any day other than the 1<sup>st</sup> day of April or ends employment on any day other than the last day of March during any leave cycle his or her leave entitlement is proportionally reduced for that leave cycle and so is the number of consecutive and total working days leave that he or she is obliged to take during the leave cycle. For the purposes of these proportional reductions, the first month of employment will be regarded as a full month of employment regardless of the actual date during that month on which duty was assumed and the last month of employment will be regarded as a full month of employment regardless of the actual date during that month on which the employment ended.

(3) Leave must be taken on days agreed to between the employee and the employer in advance. If they cannot agree, the employer's decision is final.

(4) At least 15 (fifteen) working days leave in total must be taken during each leave cycle. Any remaining days leave to which the employee is entitled are not taken during the leave cycle, that leave is forfeited, provided that -

(a) 7 (seven) of those days per leave cycle may be carried forward and accumulated to be paid out to the employee when his or her employment ends and provided further that not more than 35 (thirty five) such accumulated days will be paid out, the rest being forfeited;

(b) If it was not possible to allow employees to take those days during the leave cycle, the employee is entitled to take those leave days during the first 6 (six) months of the next leave cycle, or by a date to be determined for all staff by the Chief Electoral Officer, after consultation with the Commission.

(5) Employees are obliged to take vacation leave from their leave entitlement for a leave cycle on working days falling between the 25<sup>th</sup> of December of any calendar year and the 1<sup>st</sup> of January of the following year.

#### **Nomination of beneficiaries and leave pay-outs**

14A (1) Employees may, if they so desire, designate one or more beneficiaries to whom their leave pay-out may be paid in the event of their death.

(2) If an employee dies and has not nominated a beneficiary, the leave pay-out may be paid:

- a) in full to the spouse/life partner of that employee; or
- b) if there is no spouse/life partner, in equal shares for the benefit of minor and other children (including legally adopted children) of the deceased who, at the time of his or her death, were dependant on the employee; or
- c) if there are no children, to the employee's estate.

#### **Sick Leave**

15. (1) An employee is entitled to 36 working days paid sick leave for each three year employment cycle, but during the first six months of employment the employee is only entitled to one working day sick leave for every month that he or she has worked.

(2) An employee must submit a medical certificate or affidavit in respect of an absence of 3 (three) or more consecutive working days as well as in respect of a shorter period of absence if asked for by the Electoral Commission.

(3) A medical certificate is required from a medical practitioner or any other person registered with a professional body that is certified to diagnose and treat patients, or, if treatment was received from a non-registered health practitioner such as traditional healers or homeopaths, an affidavit must be presented as proof of the employee having been for such treatment.

15A (1) If an employee has exhausted all his or her normal sick leave but must be absent from work due to a non-permanent or temporary disability, the Commission may grant such an employee additional special paid sick leave.

(2) The Commission may request the employee to submit appropriate medical information in considering a request for special paid sick leave.

#### **Maternity Leave**

16. (1) An employee who has been in the service of the employer for a period of uninterrupted service of 12 (twelve) months or longer is entitled to four consecutive months' paid maternity leave.

(2) An employee who has been in the service of the employer for an uninterrupted period of less than 12 (twelve) months, is entitled to one month paid maternity leave for every three months of that period.

(3) An employee may take maternity leave

(a) at any time from four weeks before the expected date of birth; or

(b) from a date which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child to take such leave.

(4) At least four weeks prior to the commencement of maternity leave, an employee must notify the employer in writing of the date from which the employee intends to take maternity leave.

#### **Paternity leave**

16A (1) During his first year of employment, a male employee is entitled to 1 (one) working day's paid paternity leave for every 2 (two) months of uninterrupted service with the Electoral Commission. An employee who has completed 12 (twelve) months of uninterrupted service is entitled to paid paternity leave of 7 (seven) consecutive working days.

(2) Paternity leave is subject to the approval of the Chief Electoral Officer, who has the discretion to grant an additional 7 (seven) working days.

(3) Paternity leave is to be taken within 3 (three) months of the birth of the employee's biological child and proof will be required before paternity leave is approved.

#### **Pre-natal leave**

16B (1) An employee is entitled to 8 (eight) working days pre-natal leave, per pregnancy, to attend medical examinations by a medical practitioner or midwife and tests related to the pregnancy.

(2) An employee can utilise a full day or part of a day for pre-natal leave.

(3) Absences related to medical complications during the pregnancy are covered by sick leave provisions.

#### **Family responsibility leave**

17. (1) An employee who has been in employment for longer than 4 (four) months may be granted family responsibility leave on full remuneration during every annual leave cycle-

a) for a period of 5 (five) working days if the employee's child is ill or if the employee's spouse or life partner is ill; and

b) for a period of 5 (five) working days in the event of the death of the employee's spouse or life partner, parent, adoptive parent, parent-in-law, grandparent, child, adopted child, grandchild or sibling.

**Adoption leave**

- 17A (1) An employee who adopts a child that is younger than 2 (two) years, shall qualify for adoption leave to a maximum of 45 (forty five) working days, thereafter annual leave or leave without pay shall apply.
- (2) If both spouses or life partners are employed by the Electoral Commission, both will qualify for adoption leave provided that the combined leave taken does not exceed the 45 (forty five) working days mentioned in 17A(1) above.
- (3) Adoption leave is subject to the approval of the Chief Electoral Officer and proof of adoption is required before such leave is approved.

**Permanent incapacity leave**

- 17B (1) An employee shall not directly access or apply for permanent incapacity leave. The Chief Electoral Officer may grant an employee up to a maximum of 30 (thirty) working days' permanent incapacity leave once s/he has, following an assessment and investigation, determined that the employee's condition is of a permanent nature.
- (2) The Chief Electoral Officer must during the period referred to in paragraph 17B(1) and in accordance with the advice in terms of the group life insurance policy determinations ascertain the feasibility of alternative employment or adapting duties or work circumstances to accommodate the employee.
- (3) An employee, whose degree of incapacity has been certified as permanent but who can still render a service, may be redeployed to an appropriate position with retention of his or her salary and benefits.
- (4) If the redeployment necessitates reallocation to a job of a lower grading, the continued utilisation of such an employee should, in this regard, be with his or her consent.
- (5) If instances where the employee's redeployment entails retraining, the employer must take requisite resources (time and financial) and potential returns into consideration before approving redeployment. The redeployment of an employee's services should ensure the optimal utilisation of his or her competencies and must not compromise service delivery.
- (6) If both the Chief Electoral Officer and the employee are convinced that the employee will never be able to render an effective service at his or her level or rank, the employer may proceed with the process of termination of service on account of continued ill-health.
- (7) The Chief Electoral Officer may extend the period of permanent incapacity leave referred to in paragraph 17B(1) by a further 30 (thirty) working days in order to finalise the process referred to in sub-paragraph (6).

**Leave for occupational injury**

- 17C (1) An employee who, as a result of his or her work, suffers an occupation injury, shall be granted occupation injury leave for the duration of the period they cannot work.
- (2) If an employee suffers a work-related injury as a result of an accident involving a third party, the Chief Electoral Officer shall grant him or her occupational injury leave provided that the employee-
- (a) brings a claim for compensation against the third party; and
  - (b) undertakes to use compensation in terms of the *Compensation for Occupations Injuries and Diseases Act of 1993*, received to recompense as far as possible for the cost arising from the accident.
- (3) The Chief Electoral Officer shall take reasonable steps to assist an employee to claim compensation according to sub-paragraph (2) above.

**Leave for shop stewards of recognised employee organisations**

- 17D (1) An employee who is a shop steward in terms of the recognition agreement with a union is entitled to 15 working days shop steward leave with full remuneration in every leave cycle for activities related to the employee's union position.
- (2) The 15 working days shop steward leave shall be pooled per recognised trade union.
- (3) All applications for this type of leave must be submitted in writing together with supporting documentation.

**Study leave**

- 17E (1) An employee who has been in employment for longer than four months may be granted paid study leave to write examination in a part-time formal qualification study course which benefits the Electoral Commission and such study leave may not be more than 2 (two) days in respect of each examination paper, *i.e.* the day of the examination and the preceding working day.
- (2) Study leave must be applied for in advance and proof of registration and an examination timetable must accompany any such application for study leave.

**Special leave: General provisions**

- 17F (1) An employee may be granted special paid leave after consideration of the circumstances and conditions applicable in each case.

**Leave of absence without remuneration**

18. The employer may at its discretion, grant an employee unpaid leave of absence for any period of time not exceeding 12 (twelve) months, subject to regulation 7.

**Conflict of interest**

19. Where a possible conflict of interest arises or where an employee has an interest, whether financially or otherwise, or obtains an interest in a company or organisation with which the employer enters into business transactions, or where the interest is of such nature that it may influence the outcome of any decision or benefit any person or company or organisation, such interest must be disclosed in writing to the employer as soon as it arises and the employee must refrain from participation in any way in related business dealings.

**Gifts or benefits**

20. (1) An employee must in writing disclose to the employer any gifts or benefits of a value to be determined from time to time, offered to him or her or on behalf of a person or organisation with whom the employer has, or may enter into, a business relationship and any gifts or benefits that may be intended to, or may be perceived to, influence him or her in the performance of his or her functions.
- (2) An employee may not accept any such gift or benefit or any other gifts or benefits offered to him or her as an officer or employee of a value to be determined from time to time, without prior consultation with the employer and the employer reserves the right to order non-acceptance of such gifts or benefits.

**Repeal of regulations**

21. These regulations shall repeal Regulations No 514 of 19 May 2000, Regulations No 902 of 17 September 2001, Regulations No 1152 of 3 December 2007 and Regulations No 796 of 3 October 2012 and shall be called the *Regulations on the Conditions of Service, Remuneration, Allowances and other Benefits of the Chief Electoral Officer and Other Administration Staff* and shall come into effect on a date fixed by the Commission by proclamation in the *Gazette*.