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GOVERNMENT NOTICE

ELECTORAL COMMISSION

No. R. 796

3 October 2012

AMENDMENTS TO THE 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 "The Regulations" means the regulations published in Government Notice No R514 of 19 May 2000, as amended by the regulations published in the Government Notice No R 902 of 17 September 2001 and amended by the regulations published in the Government Notice No R 1152 of 3 December 2007.

Amendment of regulation 1 of the Regulations

2. Regulation 1(iii) of the Regulations is hereby replaced by the following regulation:

"(iii) "**Commission**" means the Commission appointed in terms of section 6 of the Act"

Amendment of regulation 1 of the Regulations

3. Regulation 1 of the Regulations is hereby amended by the insertion of the following new sub-regulations:

(vi) "**Electoral Commission**" means the Commission established in terms of section 3 of the Act"

(vii) "**overtime**" means work in excess of the hours of work per day/week or month that an employee has contracted to perform;

(viii) "**week**" in relation to the employee means the period of seven (7) days within which the working week of that employee ordinarily falls."

Amendment of regulation 4 of the Regulations**4. Regulation 4 is hereby replaced by the following regulation:**

“4(1) The appointment of a person into the employ of the Electoral Commission shall be made on probation for a period 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 leave 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 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 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.

Insertion of regulation 5A in the Regulations**5. The following regulation is hereby inserted in the Regulations after regulation 5:**

“5A(1) If the employee relocates at the request of the employer, s/he will be granted two (2) paid working days’ relocation leave for travelling and moving household contents to the new location.”

Amendment of regulation 11 of the Regulations**6. Sub-regulation 11(1) of the Regulations is hereby amended by the substitution of sub-regulation (1) by the following sub-regulation:**

“(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 salary of the Chief Electoral Officer shall not exceed the salary of a Director-General in the Public Service. The remuneration of other administrative staff shall be less than that of the Chief Electoral Officer; the maximum remuneration of each grade being at least one level lower than that of the next more senior grade.”

Insertion of regulation 11A in the Regulations

7. The following regulation is hereby inserted in the Regulations after regulation 11:

“Pay progression

“11A(1) Staff members will qualify for pay progression annually on the 1st of April, subject to satisfactory work performance.

(2) The qualifying period for newly appointed employees to a next notch will be 12 (twelve) months, effective from 1 April immediately following the period of 12 (twelve) months.

(3) Upon completion of the period, such newly appointed employee will qualify for pay progression annually on the 1st of April, subject to the successful completion of the probationary period or the extended probationary period and satisfactory work performance.”

Insertion of regulation 12A in the Regulations

8. The following regulation is hereby inserted in the Regulations after regulation 12:

“12A 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.”

Amendment of regulation 14 of the Regulations

9. Regulation 14 of the Regulations is hereby amended by the substitution of sub-regulations (1) and (4)(a) and (b) by the following sub-regulations:

“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 1st day of April of every calendar year and ending on the 31st day of March of the next calendar year.”

“14(4) (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 an employee to take those days during the leave cycle through unforeseeable extra-ordinary circumstances, the employee is entitled to take those leave days during the first 6 (six) months of the next leave cycle.”

Insertion of regulation 14A in the Regulations

10. The following regulation is hereby inserted in the Regulations after regulation 14:

“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.”

Amendment of regulation 16A of the Regulations

11. Regulation 16A of the Regulations is hereby substituted by the following regulation:

“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 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.”

Insertion of regulation 16B in the Regulations

12. The following regulation is hereby inserted in the Regulations after regulation 16A:

“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.”

Amendment of regulation 17 of the Regulations

13. Regulation 17 of the Regulations is hereby replaced by the following regulation:

“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 spouse or life partner or child 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.”

Insertion of regulation 17A in the Regulations

14. The following regulation is inserted in the Regulations after regulation 17:

“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 day, where after annual leave or leave without pay shall apply.

(2) If both spouses or life partners are employed by the 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.

Insertion of regulation 17B in the Regulations

15. The following regulation is inserted in the Regulations after regulation 17A:

“Permanent incapacity leave

17B(1) An employee shall not directly access or apply for permanent incapacity leave. The Commission may grant an employee up to a maximum of 30 (thirty) working days’ permanent incapacity leave once it has, following an assessment by a medical practitioner and investigation, been 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 by a medical practitioner 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, such must be explained well in advance and 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 entail 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 Commission and 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)."

Insertion of regulation 17C in the Regulations

16. The following regulation is inserted in the Regulations after regulation 17B:

"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.

Insertion of regulation 17D in the Regulations

17. The following regulation is hereby inserted in the Regulations after regulation 17C:

“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.”

Insertion of regulation 17E in the Regulations

18. The following regulation is hereby inserted in the Regulations after regulation 17D:

“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.”

Insertion of regulation 17F in the Regulations

19. The following regulation is hereby inserted in the Regulations after regulation 17E:

“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.”

Transitional Arrangements

20. The amendments and insertions in respect of regulations 5A(1), 14(4)(b), 16B, 17(1), 17(2), 17A, 17B, 17C, 17D, 17E and 17F in the Regulations are deemed to have come into effect on 1 April 2012. The amendment of regulation 14(1) and 14(4)(a) of the Regulations will come into effect on 1 April 2013.

Short title

- 21.** These regulations are called the Third Amendment to the *Regulations on the Conditions of Service, Remuneration, Allowances and other Benefits of the Chief Electoral Officer and other Administration Staff, 2012*.
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