

EMAKHAZENI LOCAL MUNICIPALITY



TERMINATION OF EMPLOYMENT POLICY

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1 Introduction

Recognizing that termination is a sensitive issue, it is desired that any case of employment termination by the Emakhazeni Local Municipality be legally correct both procedurally and substantively. In addition all such procedures should show consistency and fairness. In order to guide supervisors and managers through this process the following policy and attached guidelines have been devised.

2. Definitions

For the purpose of this policy the following definition(s) apply:

“Contract of Employment”: means appointment contract/letter

“Day “: means working days, i.e. Mondays to Fridays excluding Public Holidays unless indicated otherwise by the context.

“Employee”: shall include a permanent employee or a contract employee as defined but excludes an independent contractor or its employees.

“Employer”: refers to employer/municipality within the registered scope of the South African Local Government Association (SALGA)

“Permanent employee”: means a person who is in the full-time employ of the employer and who has been confirmed on the permanent staff and whose contract of employment is of an unspecified duration.

“Part-time workers”: means employees who work for an employer for more than 24 hours in a particular month, are entitled to all rights in terms of the BCEA, where appropriate on a proportional basis but may also work part-time for another employer.

“Managers”: means a senior permanent employee who reports to an executive in charge of a department, division or company and who is accountable for agreed objectives, plans and campaigns to implement strategies and policies already agreed objectives, plans and campaigns to implement strategies and policies already agreed at executive level and to achieve pre-determined results.

“Code of Good Practice”: means a code of good practice issued by the Minister in terms of section 87 of the Basic Conditions of Employment Act or Schedule 8 of the Labour Relations Act.

“Remuneration”: means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person.

“Week”: means the period of seven days within which the working week of that employee ordinarily falls.

“Dismissal”: the employer has terminated a contract of employment with or without notice.

“Date of Dismissal”: the date on which the contract of employment is terminated by the employer.

“Procedural Fairness”: means the application of a fair and just procedure during the process of discipline, leading up to and including the dismissal of an employee.

“Substantive Fairness”: means the substance and/or seriousness of a matter to be adjudicated.

“Elected representative”: means a member of a trade union- or non-union body of employees- who is elected by his/her fellow workers to represent them in the workplace.

“Audi Alteram Partem” means that both parties must be heard to reaching a verdict of guilt or innocence.

“Head of Department”: Any official appointed in terms of section 56 of the Municipal Systems Act, as amended (Act NO. 32 of 2000) as a Manager directly accountable to the Municipal Manager or his/her designate.

“Municipality”: means the Emakhazeni Local Municipality

“Policy “: means the basic principles by which a municipality is guided.

“SALGBC”: means the South African Local Government Bargaining Council.

3. Purpose

The purpose of this policy is to:-

- Regulate the process of termination of employment, whether on the basis of misconduct, incapacity, redundancy, retrenchment, resignation, death or retirement and set guidelines/procedures for implementation.
- Ensure consistency and fairness in dealing with matters preceding and following the termination of employment of a person in the employ of the municipality.
- Standardize the principles underlying the termination of employment of any person in the employ of the municipality.

- Specify separate conditions for each of the following causes for termination, i.e. misconduct, incapacity, redundancy, retrenchment, resignation or retirement.

4. Scope of Application

This policy is applicable to all employees of the Emakhazeni Local Municipality.

5. Legal Framework

There are a number of key pieces of legislation, which will influence the Emakhazeni Local Municipality's treatment of employee on termination of employment. These include the following:

4.1. The South African Labour Relations Act (66 of 1995)

This Act provides for, or describes:

- Section 187: Automatically unfair Dismissals
- Section 188: Other Unfair Dismissals
- Section 189: Dismissals based on Operational Requirements
- Section 191: Disputes about Unfair Dismissals
- Section 192: Onus in Dismissal Disputes
- Section 193: Remedies for Unfair Dismissal
- Section 194: Limits on Compensation
- Section 196: Severance Pay
- Section 197: Transfer of Contracts of Employment
- Schedule 8: Code of Good Practice: Dismissal

4.2. The Basic Conditions of Employment Act (No. 75 of 1997)

This act stipulates the following requirements attached to termination of employment:

- Section 37(1) to (5) Notice required
- Section 38 (1) and (2) Payment in lieu of Notice
- Section 39 (1) and (2) Accommodation provided by the employer
- Section 40 (a) to (c) Payments on termination
- Section 41 (1) to (10) Severance pay
- Section 42 (a) to (g) Certificate of service

4.3. These Acts create an integrated approach to all forms of dismissal. They outline clearly the separate conditions in each category of dismissal and should therefore be studied and adhered to by all involved in such processes.

The policy is founded on the following fundamental principles:-

- Every person has the right to fair and unbiased treatment.
- Every person has the right of access to formal procedures to deal with grievances and discipline.
- Every employee has the right to be protected from arbitrary action and not to be unfairly dismissed.
- Every employee has the right to fair labour practices.
- Disciplined behavior is essential both for the successful achievement of the employer's objectives and for the safety and fair treatment of the employees.
- It is the responsibility of management to maintain disciplined behavior and satisfactory work performance from employees.
- For discipline to be maintained fairly the employees should know what constitutes misconduct, misdemeanor, incapacity, ill health or injury and operational requirements and the procedures which will be followed when discipline or termination is applied.
- Employers and Employees should treat each other with mutual respect.
- A remium is placed on both employment justice and the efficient operation of business.

- The onus of proof, in the event of a dismissal, rests with the employer- to prove that the dismissal is fair or the only solution in the circumstances.
- An employee who is absent for three (3) days without providing an acceptable reason is taken to have absconded.
- An employee who has been taken into custody is suspended without pay until the case is heard and judgment is passed.

6. Termination of Employment Policy Guidelines

6.1. Policy Provisions

The employer and the employees will strive to:-

- 6.1.1. Ensure that no employee is unfairly dismissed.
- 6.1.2. Apply the principles of procedural and substantive fairness during the scheduling and conduct of discipline relating to misconduct, incapacity, ill health, redundancy or retrenchment for operational reasons;
- 6.1.3. Ensure uniformity and set clear disciplinary guidelines (in a Disciplinary Code) as to incidents, sanctions and the level of seniority to deal with discipline and adherence to such rules, codes and procedures;
- 6.1.4. Comply with the rules of natural justice during the application of discipline and apply the audi alteram partem principles (set above definition);
- 6.1.5. Allow for representation on all levels within the organization by an elected representative prior to and during the process of discipline, grievance or dispute handling;
- 6.1.6. Consult with workplace forum(s), representative trade unions and/o representatives from the workplace in drafting an appropriate set of disciplinary procedures and code of conduct in line with the policy contained in this document;
- 6.1.7. Apply discipline and sanctions consistently and with due regard to the individual circumstances, mitigating circumstances, severity of the action and all other relevant factors relating to the case under consideration;
- 6.1.8. Apply uniform criteria in dealing with matters of termination of employment due to no fault of the employee, e.g. retirement and redundancy/ retrenchment for operational reasons;
- 6.1.9. Handle redundancy and retrenchment sensitively by applying the procedures provided in the Retrenchment Policy;
- 6.1.10. Ensure employment justice and protection of employees against arbitrary action, whilst also protecting the employers' right to satisfactory conduct and work performance by employees and the efficient operation of the business;
- 6.1.11. Recognise early the influence of political and economic trends on the business and take timeous action to limit negative influences, being fair and just in its dealings with employees who are affected by such action;
- 6.1.12. Ensure that disciplinary hearing and termination is taken strictly in accordance with the Disciplinary, Grievance and Dispute Resolution Policy in order that the municipality's name as a responsible employer remains intact;
- 6.1.13. Negotiate a severance package with representatives of a majority trade union and in consultation with elected non-union employees, which will be applied in the event of redundancy and/or retrenchment (i.e. part of the Retrenchment Policy);
- 6.1.14. Handle misconduct, incapacity and ill-health strictly in accordance with the Disciplinary, Grievance and Dispute Resolution Policy;

6.1.15. Handle resignation and retirement strictly in terms of the contract of employment and the rules of the pension/ provident funds respectively; and

6.1.16. Conduct an exit interview with every employee who leaves the company's employ, except in the event of a dismissal.

6.2 Should an employee be terminated, the number of vacation leave days credit will be used to recoup any amount owed to the municipality including consumer accounts with due processes having been followed

6.3 Reasons for termination

6.3.1 Probationary Policy

If the municipality, on or before the date of completion of the probationary period of such an employee, is of the opinion that he/she is not fit for the post occupied following the setting of objectives, targets and various interventions, it may give such an employee at least one working month's written notice that his/her services will be terminated on a specific date provided fair procedure has been followed.

6.3.2 Normal Retirement

The attainment of pensionable age as per the prevailing rules of a municipal pension fund is a ground for termination of services. If the employee is not a contributing member of such a fund, the attainment of pensionable age will be as determined in the regulations of the fund of which he/she would normally have been a member had she/he qualified for membership. Termination in this instance will be on the last day of the month in which he/she retires.

6.3.3 Ill-health

Continued ill-health or physical disability which, in a medical opinion, renders such an employee unfit for the effective execution of the duties attached to the post occupied by him/her.

6.3.4. Forfeiture of any certificate of competence, license or authorization without which the employee is unable to perform the duties attached to the post occupied by him/her.

6.3.5 A conviction of misconduct in terms of the Municipal Disciplinary Code. (Depending on the severity of the misconduct).

6.3.6. The expiry of the employee's service contract with the municipality. If the employee and the municipality agree thereto.

6.3.7 Imprisonment

When an employee serves a term of imprisonment in terms of a sentence imposed by a competent court, the matter will be dealt with as abscondment.

6.3.8 Contract Employees

For temporary or contract staff termination shall be in terms of the provisions of such employee's services contract with the municipality including Interns.

6.3.9 Abscondment

An employee who absents himself/ herself for a period exceeding 10 (ten) working days without the municipality's permission or for an acceptable reason and without reason and without the Council being informed during such period of the reason for the absence, shall be deemed to have absconded from the first day he/she was absent and his/her employment shall be terminated accordingly provided that every possible avenue has been made to locate the employee.

6.3.10. Resignation

Written notice of termination shall be given to the municipality by the employee. The notice period shall be determined by the nature of the employee's contract with the municipality. Should the municipality and the employee agree to a period shorter than the one in the employee's employment contract, the municipality shall pay the employee his/her full notice pay. A period of notice shall not coincide with any period of approved leave of absence on full or half pay unless agreed to with the municipality.

6.4 Termination Procedure

6.4.1 Upon termination of employment, Corporate Services Department will issue a termination form which must be completed by the relevant employee and handed back to Corporate Services, the form will then be circulated to relevant departments to confirm that the employee does not owe the municipality and that the employee is not in possession of any municipal assets.

6.4.2 Corporate Services Department will inform the salaries section and the ICT department to facilitate the process of terminating the employee from the payroll and ICT systems.

6.4.3 Should an employee be terminated, the number of vacation leave days credit will be used to recoup any amount owed to the municipality including consumer accounts with due processes having been followed"

6.5 Payment of Leave Days credit due to terminated employees will be paid within a period of six months subject to the nature of termination, e.g terminated employees who are under investigation on financial misconduct

7. Roles and Responsibilities

7.1. The Role of the Human Resource Function

- a) To uphold the policy requirements and provide guidelines to line management to do so as well;
- b) Provide training to managers, supervisors and employee representatives in the sensitive but effective handling of discipline, grievances and disputes;
- c) Provide guidance on correct disciplinary hearing procedures and performance management;
- d) Handle resignations and retirements according to the contractual and legal requirements;
- e) Conduct exit interviews.
- f) In consultation with relevant parties draft an appropriate set of disciplinary procedures and code of conduct in line with the policy contained in this document.

7.2. The Role of the Line Manager

- a) Be aware of the municipal's disciplinary policy, code and procedures and apply them fairly and consistently.

7.3. The Employee

- a) Accept responsibility for appropriate conduct and work performance.
- b) Make use of the rights afforded in the legislation and other policies mentioned in this policy document.

8. Monitoring, Evaluation and Reporting

The Human Resources will monitor and evaluate the implementation of the Termination of Employment Policy and will report deficiencies in the practice thereof to the Council.

9. Annexure

- Disciplinary, Grievance and Dispute Policy

- Schedule 8 of the Labour Relations Act (1995) – Code of Good Practice: Dismissal
- Disciplinary Code (including guidelines & procedures)
- Code of Conduct
- Retrenchment Policy
- Termination Form

10. Date of Approval

Approved as a draft	25 February 2016
Reviewed	26 May 2016
Final Approval	