

# Labour RELATIONS

Article: 2nd Quarter 2014/15

## LEAVE MANAGEMENT

### 1. Managing leave of absence

• Sekhukhune District Municipality is committed to supporting employee's personal and professional lives, which may include an employee taking a leave of absence to address and heal from health challenges or changes. As a manager or supervisor your role is crucial in helping employees navigate their transitions away from and return to work. An employee's plan for taking a leave call on a manager's planning skills. Advance consideration of how you will cover the employee's job responsibilities during his leave, along with sensitivity to the personal challenges or changes he may be facing, will pay dividends in your whole team productivity, morale and retention. Both supervisors and employees have joint accountability for effective leave management. Supervisors have both leave sign off and expense authority and are required to:

- Determine if the employee is eligible for pay while on the requested leave,
- Review employee leave requests and approve or deny them,
- Consider operational requirements before approving a leave request,
- Confirm leave credits before approving leave and/or authorising leave encashment.
- Employees must ensure that:
- Leave is requested in advance when absence from work is necessary,
- Leave is authorised;

### 2. The importance of sensitivity and compassion

While the process of considering, approving and managing employees leave involves documentation and adherence to rules, it is important to always bear in mind your employee's personal challenges and feelings, and communicate them with sensitivity and compassion. Be aware that work demands and the need for documentation may be the furthest things from your employee's mind, and be prepared to be flexible in dealing with him. Your willingness to help staff balance work and personal issues and your kindness throughout these encounters can lead to greater employee loyalty, morale, and retention that may extend to the affected employee's co-workers as well.

CHAPTER 2 OF SEKHUKHUNE DISTRICT MUNICIPALITY'S LEAVE OF ABSENCE POLICY (Extract)

#### 2.1 Classification of leave of absence

##### 2.1.1 Annual Leave

Annual leave shall accrue in respect of each completed month of service at the rate of two days of the following number of days due to the employee per cycle:

- a) 24 days for five (5) day workers; b) 27 days for six (6) day workers

An employee is required to take leave within each leave cycle as follows:

- c) 5 day worker – 16 days; d) 6 day worker – 19 days

##### 2.1.1 The remaining leave of an employee may be accumulated subject to the provisions herein

##### 2.1.2 Sick Leave

- a) All employees qualify for 80 working days sick leave per 3 year cycle on full pay; and
- b) An employee shall be required to submit a medical certificate from registered medical practitioner if more than two (2) days are taken as sick leave. If an employee absents himself/herself as usual occurrence on the pretext of illness, a medical certificate shall be demanded.
- c) Sick leave shall accrue to an employee on the first day of the cycle: Provided that sick leave on full pay shall not be granted to an employee in respect of absence during the first 20 working days' of service, unless the Municipality determines otherwise after consideration of the case
- d) The employer is not required to pay an employee if an employee is absent on more than two occasions during an eight week period, and on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.
- e) An employee to whom the maximum period of sick leave has been granted may be granted sick leave without pay for not more than 80 working days in any 3 year cycle if the council is satisfied that such an employee is not permanently incapacitated to resume his duties.
- f) An employee who is absent from duty owing to an injury arising out of his duties and occurring during the course thereof or owing to an illness contracted in the course of such employment and during which sick leave full pay was made for the period during which he is unfit to perform his usual duties then, if the case falls within the ambit of the compensation for occupational injuries and Diseases Act, 1993 (Act No.130 of 1993), the amount payable to such an employee in terms of that Act by means of periodic payments of his monthly earnings shall be paid over to the council.
- g) If an employee to whom special sick leave has been granted is unable, as a result thereof to take vacation leave, he shall be credited with the vacation leave which would otherwise have been deducted from his leave credit, over and above the maximum and be allowed to take it within 12 months after resumption of duty.
- h) Special sick leave shall not be granted if the council is of the opinion that the injury or illness is due to gross and wilful misconduct on the part of the employee.

##### 2.1.3 Maternity Leave

An employee, including an employee adopting a child under 3 months, shall be entitled to receive 3 months paid maternity leave, with no limit to the number of confinements or adoptions. This leave provision shall also apply to an employee whose child is still born.

- a) To qualify for paid maternity leave an employee must have one (1) year service with the employer

##### 2.1.4 Special Leave

Special leave may be granted to an employee on application in the event of the following:

- a) The leave is unclassified but recognized in terms of the Constitution of the RSA for religious or traditional celebrations or reasons
- b) The classified leave prescribed herein has been exhausted.
- c) An employee has been arrested or is to appear in court on a criminal charge and is later acquitted or the charge is withdrawn;
- d) Special leave on full pay not exceeding three working days per event may be granted to an employee, such employee to take part in a bona fide sports meeting for provincial and higher level.

e) Special leave shall include any time actually necessarily taken up by travelling for the purposes for the leave is granted.

##### 2.1.4.1 Exam Leave

An employee who is writing an examination with a learning institution approved in terms of the Bursary policy or professional body may apply for leave to enable them to sit and write such exams on a prescribed day (s)

##### 2.1.4.2 Study Leave

An employee, who is writing examinations with a learning Institution approved in terms of the Bursary Policy or with a professional body may, on application, be granted a day's leave prior to the sitting of such an examination to study. Such a study leave day shall be given per examination paper.

##### a) If she/ he does not have leave to his / her credit, unpaid study leave will be granted.

##### 2.1.7 Family responsibility Leave

a) Family responsibility leave applies to an employee who has been with an employer for longer than four (4) months

b) An employer shall grant an employee, during each annual leave cycle and at the request of such employee, a total of five (5) days paid leave which the employee is entitled to take either:

- i. the employee's child is born
- ii. the employee's child is sick
- iii. the employee's spouse or life partner is sick
- iv. in the event of death of:

a) the employee's spouse or life partner

b) the employee's parent, adoptive parent, grand parent, child, adopted child, grand Child or sibling.

##### 2.1.8 Unpaid Leave

a) In the event that an employee absents themselves otherwise than in terms of the leave granted in terms of the provisions of this policy then such absenteeism shall be regarded as unpaid leave and the equivalent number of days absent in monetary terms will be deducted from the next basic salary due to such an employee.

b) Such unpaid leave may also be dealt with as misconduct in the form of abscondment in terms of the disciplinary code of conduct for employees.

### CHAPTER.3

#### 3.1 Granting and Cancellation of Leave of Absence and Leave Application

3.1.1 Leave of absence shall be granted subject to the Council or its delegates' approval.

3.1.2 Application for leave of absence shall be made by an employee on the form determined by the Council

3.1.3 Notwithstanding the provisions of any law, the Council may at any time cancel, postpone or interrupt leave of absence, other than sick leave and exam leave which has been granted to an employee, should it be deemed necessary in the council's interest to do so, and such an employee shall be compensated by the council for irrecoverable expenses or commitments incurred by him before he had been notified of the cancellation, postponement or interruption.

3.1.4 An employee shall not go off duty or absent himself from duty without prior permission unless he is prevented by sudden illness or owing to other unavoidable circumstances acceptable to the Council from remaining on duty or reporting for duty

3.1.5 Except in the case of sick leave, the period from the date on which an application for leave is received until the date on which the leave begins shall not be shorter than the period of leave applied for. A shorter period may be allowed under exceptional circumstances.

### CHAPTER 4

#### 4.1 Unauthorised Absence from the Duty

Unauthorized absence from duty shall, without prejudice to the rights of the employer and with due regard to any disciplinary measure/s against an employee, be deemed to be unpaid leave without payment unless the council decides otherwise.

### Chapter 5

#### 5.1 Leave of Absence in Excess

When more paid leave of absence than is due to an employee has been granted inadvertently but in good faith, and has been taken by such employee, the leave granted in excess may be deducted from leave which shall accrue to such an employee in the next cycle later, or the value thereof may be claimed from him if such an employee's services do not continue to enable them to

### CHAPTER 6

#### 6.1 Vacation Leave Without Pay

The council may grant an employee who has no paid annual leave due to his credit vacation leave for not more than 120 working days in any period of 36 months.

**Case Law update** Two recent court cases have confused the issue in respect of leave pay, specifically regarding accrued leave. The cases are *Jooste v Kohler Packaging Limited 2003 12 (LLC) 6.7.2* and *Jardine v Tongaat Hewlett 2003 12 (LLC) 6.7.1*.

Both cases deal with the accumulation of leave, a problem that all employers and employees face over a period of time. In the case of *Jooste v Kohler Packaging Limited*, the court held that the purpose of the Basic Conditions of Employment Act No. 75 of 1997 (BCEA) is to ensure employees take annual leave. In terms of the act, the employer may not refuse that entitlement within an 18-month period. The BCEA leave is the basic entitlement of 21 consecutive days in a 12-month cycle. The court concluded that Section 40 of the act, which regulates accumulated leave, is applicable only to the immediate preceding leave cycle together with leave accumulated in the present leave cycle, i.e. the cycle during which the employment is terminated.

The latest Labour Court case above has taken the view that it is the employer's responsibility to insist on annual leave and if the employer refuses to grant such, the matter be dealt with in terms of the BCEA. Very importantly, the case then differentiates between BCEA leave and claims in terms of the contract of employment and any other policy or agreement between the employer and the employee. Most organizations have leave in excess of the basic minimum provisions of the act. In respect of that, leave may be accumulated and regulations can control the paying out of such leave. The company policy could dictate that leave must be taken and may not be accumulated beyond a certain number of days.

More importantly, the organization's policy should also dictate on what basis such leave will be paid out.

Leave in terms of the minimum requirements of the BCEA is paid out at the full definition of total remuneration. Excess leave, over and above the minimum requirements, could be paid out in terms of company policy on basic remuneration. It is now clear that organizations need to sort out their policies regarding leave (specifically for leave in excess of the BCEA's requirements) and create clarity in dealing with accumulated leave. It is also important that an organization understands that within a six-month cycle, after the expiry of a 12-month leave cycle, employees are entitled to take the leave in terms of the act and the organization may not refuse them such leave.



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