

## **COMPARISON AND RECOMMENDATIONS – ALIGNMENT OF SEAFO CURRENT STAFF RULES TO THE NAMIBIAN LABOUR LAW**

SEAFO Secretariate

### **INTRODUCTION**

The Secretariate was tasked at the 2018 SEAFO SCAF meeting to determine which sections of the current SEAFO Staff Rules are not aligned to the Namibian Labour law. This is necessary since Namibian employees of SEAFO are covered by the Namibian Labour law regarding employment conditions.

The Secretariate appointed “Executive Management Services” who specializes in the Namibian labour law and labour issues to do an analysis and to make recommendations on this issue. See the report in [Annex I](#).

In this document, recommendations from the Executive Secretary, based on the recommendations from the consultant, are indicated in the existing Staff Rules. The sections highlighted in YELLOW are the sections that possibly need to be changed.

## STAFF REGULATIONS

---

### PART I: PREAMBLE

1. These Staff Regulations establish the fundamental principles of employment, regulate the working relationships and establish the rights and responsibilities of formally appointed employees who render their services in and receive remuneration from the Secretariat of the Commission for the Conservation and Management of Fishery Resources in the South East Atlantic (hereinafter called 'the Commission').

### PART II: DUTIES, OBLIGATIONS AND PRIVILEGES

2. Members of the staff of the Secretariat, and the Executive Secretary (hereinafter called 'staff members') are international civil servants. Upon accepting their appointments they pledge themselves to discharge their duties faithfully and to conduct themselves with the interests of the Commission in mind.
3. For the purposes of these regulations the term 'dependant' shall include only:
  - (a) any unsalaried child, who is born of, or adopted by, a staff member, his/her spouse, or their children, who is below the age of eighteen years and who is dependent on a staff member or his spouse for maintenance and continuing support;
  - (b) any child fulfilling the conditions laid down in paragraph (a) above, but who is between eighteen and twenty-five years of age and is receiving school or university education or vocational training;
  - (c) any handicapped child who is dependent on a staff member or his/her spouse for maintenance and continuing support;
  - (d) any other child who is given a home by and is dependent on a staff member or his/her spouse for main and continuing support;
  - (e) any person related by blood or marriage for whose main and continuing support a staff member or his/her spouse is legally responsible.
4. Staff members shall at all times conduct themselves in a manner in keeping with the international nature of the Commission. They shall always bear in mind the loyalty, discretion and tact imposed on them by their international responsibilities in the performance of their duties. They shall avoid all actions, statements or public activities that might be detrimental to the Commission and its aims.
5. Staff members are not required to renounce either their national feelings or their political or religious convictions.

6. In the performance of their duties, staff members may neither seek nor accept instructions from any government or authority other than the Commission.
7. Staff members shall observe maximum discretion regarding official matters and shall abstain from making private use of information they possess by reason of their position. Authorisation for the release of information for official purposes shall lie with the Commission or the Executive Secretary, as the case may require.
8. Staff members shall, in general, have no employment other than with the Commission. In special cases, staff members may accept other employment, provided that it does not interfere with their duties in the Commission, and that prior authorisation by the Executive Secretary has been obtained. The Commission's prior authorisation shall be obtained in respect of the Executive Secretary.
9. No staff member may be associated in the management of a business, industry or other enterprise, or have a financial interest therein if, as a result of the official position held in the Secretariat, she may benefit from such association or interest.
10. Ownership of non-controlling stock in a company shall not be considered to constitute a financial interest within the meaning of Regulation 9.
11. Staff members shall enjoy the privileges and immunities to which they are entitled under the Headquarters Agreement between the Government of the Republic of Namibia and the Commission, pursuant to Article 5 of the Convention.

### **PART III: HOURS OF WORK**

12. The normal working day shall be eight hours, Monday through Friday, for a total of forty hours per week.
13. The Executive Secretary shall establish the working hours, and may alter them for the benefit of the Commission, as circumstances may require.

### **PART IV: CLASSIFICATION OF STAFF**

14. Staff members shall be classified in either of the two following categories:
  - (a) Professional Category: Positions of high responsibility of a managerial, professional, or scientific nature. These posts will be filled by appropriately qualified professionals, preferably with University qualifications or the equivalent. Staff members in this category will be recruited internationally.
  - (b) General Services Category: Auxilliary administrative and technical positions. Clerical, secretarial and other office personnel. Such staff members shall be recruited in Namibia from among citizens of Members of the Commission.

15. Persons employed under Part XI: Temporary Personnel Under Contract shall not be classified as staff members.

## **PART V: SALARIES AND OTHER REMUNERATION**

16. Staff members in the professional category shall be paid at a competitive salary as determined by the Commission and paid in Namibian Dollars.
17. Staff members in the general services category shall, in principle, be paid at rates equivalent to those paid in the Public Service of the Republic of Namibia for staff of equivalent qualifications and experience.
18. The salaries of staff members shall be reviewed annually by the Commission taking into account the evolution of cost of living in the host country and the performance of each staff member concerned.

19. The Commission shall levy from each staff members' salary an amount for income tax. Income tax rates shall be determined by the Commission.

*The Commission shall pay the income tax for each staff member who is eligible for paying income tax in Namibia. The Income tax rates shall be determined by the relevant Namibian tax legislation.*

20. The Executive Secretary shall make arrangements to ensure that any staff member who is subject to national income tax is reimbursed tax paid on his salary. Such arrangements shall be made only on the basis that the direct costs of reimbursement are paid by the staff member's home country.

21. Staff members in the professional category are not entitled to overtime pay or compensatory leave.

*Staff members in the professional category, due to the nature of the position held, are not entitled to overtime pay as compensation for overtime hours is included in their monthly remuneration.*

22. Staff members in the general services category required to work more than 40 hours during one week will be compensated:

(a) with compensatory leave equivalent to hours of overtime performed; or

(b) by remuneration per overtime hour, to be estimated at the rate of time and a half, or if the additional time is worked on a Sunday, or on holidays listed in Regulation 37, at the rate of double time.

*Staff members in the general services category required to work more than 40 hours during one week will be compensated by remuneration per overtime hour, to be calculated at the rate of time and a half, or if the additional time is worked on a Sunday, or on holidays listed in Regulation 37, at the rate of double time.*

23. The Commission shall pay duly justified representation expenses incurred by the Executive Secretary in the performance of his or her duties within the limits prescribed annually in the budget.

## **PART VI: RECRUITMENT AND APPOINTMENT**

24. In accordance with Article 11 of the Convention, the Commission shall appoint an Executive Secretary and shall establish the remuneration and such other entitlements as it deems appropriate. The Executive Secretary's term of office shall be for four years and the Executive Secretary may be eligible for reappointment.
25. In accordance with Article 11 of the Convention, the Executive Secretary shall appoint, direct, and supervise staff. The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity.
26. Offers of appointment to the Secretariat are subject to the persons selected undergoing a medical examination and presenting a certificate stating that they have no medical condition which might prevent them from performing their duties, or which might endanger the health of others.
27. Upon selection, each staff member shall receive an offer of appointment stating:
  - (a) that the appointment is subject to the staff regulations applicable to the category of appointment in question, and to changes which may be duly made in such regulations from time to time;
  - (b) the nature of the appointment;
  - (c) the date on which the staff member is required to commence duty;
  - (d) the period of appointment, the notice required to terminate it and the period of probation;
  - (e) the category and commencing rate of salary;
  - (f) any special terms and conditions that may be applicable.
28. Together with the offer of appointment, staff members shall be provided with a copy of these Regulations. Upon acceptance of the offer staff members shall state in writing that they are familiar with and accept the conditions set out in these Regulations.
29. Staff members in the professional category may be required to undergo further medical examination from time to time as determined by the Executive Secretary or the Commission as the case may require. The medical examinations shall be at the expense of the Commission.

**PART VII: LEAVE**

30. Staff members shall be entitled to annual leave at the rate of two and half workdays for each full month of service. Annual leave is cumulative, but at the end of each calendar year, not more than 30 workdays may be carried over to the following year. *Better than Namibian Labour Law*

*Staff members shall be entitled to annual leave at the rate of 1.67 workdays for each full month of service. Annual leave is accumulative. But at the end of ech calendar year, not more than 20 workdays may be carried over to the next year.*

**NOTE: The current annual leave accumulation is more favourable than what the Labour Act provides for, and would therefore be permissible.**

31. The taking of leave shall not cause undue disruption to normal Secretariat operations. In accordance with this principle, leave dates shall be subject to the needs of the Commission. Leave dates shall be approved by the Executive Secretary who shall, as far as possible, bear in mind the personal circumstances, needs and preferences of staff members.
32. Annual leave may be taken in one or more periods.
33. Any absence not approved within the terms of these Regulations shall be deducted from annual leave.
34. Staff members who, upon termination of their appointment, have accumulated annual leave that has not been taken shall receive the cash equivalent estimated on the basis of the last salary received.
35. After 18 months of service the Commission shall, in accordance with Regulations 49 to 51, pay travel expenses to the staff member's home country on annual leave for internationally recruited staff members and their dependants. Following this, home leave shall be granted at two year intervals provided that:
- (a) dependants who benefit from this Commission grant have resided at Walvis Bay for at least 6 months prior to travel;
  - (b) it is expected that staff members will return to the Secretariat to continue rendering their services for a minimum additional period of 6 months.
36. The possibility of combining travel to home country on leave with official travel in Commission service may also be considered, provided the interests of the Commission are duly borne in mind.
37. Staff shall be entitled to the holidays celebrated traditionally in Namibia, i.e.:
- 1 January New Year's Day
  - 21 March Independence Day
  - Good Friday
  - Easter Monday

- 1<sup>st</sup> May Worker's Day
- 4 May Cassinga Day
- 20 May Ascension Day
- 25 May Africa Day
- 26 August Heroes' Day
- 10 December Human Rights Day
- 25 December Christmas Day
- 26 December Family Day

38. If under special circumstances members of the staff are required to work on one of the aforementioned days, or if any one of the above holidays falls on a Saturday or Sunday, the holiday shall be observed on another day to be set by the Executive Secretary, who shall take into account the needs of the Commission.

**To add compassionate leave**

39. Staff members qualify during each period of 12 months of continuous employment for compassionate leave of five (5) days per annum which lapses and cannot be carried forward to next year. Compassionate leave shall be applicable in the event of death and serious illness in the family, family being as per the definition of section 25. (5) of the Namibian Labour Act. Staff members shall be required to submit proof of serious illness or death.

## **PART VIII: SOCIAL SECURITY**

40. It is a condition of employment that each staff member will contribute to a recognized retirement fund and have adequate medical, hospital, life and disability insurance cover. Such insurance cover shall include adequate provision for dependants.

41. Staff members shall not be granted sick leave for a period of more than three consecutive days and more than a total of seven working days in any calendar year without producing a medical certificate. *Better than Namibian Labour law*

In order to qualify for paid sick leave, an employee who is absent due to illness for more than two days, shall be required to submit a medical certificate.

42. Staff members shall be granted certified sick leave not exceeding twelve months in any four consecutive years. The first six months shall be on full salary and the second six months on half salary, except that no more than four months on full salary shall normally be granted in any period of twelve consecutive months. *Better than Namibian Labour Law*

Staff members shall be entitled to 30 working days' sick leave during every sick leave cycle of 36 months. During the first year of employment staff will only be entitled to one day sick leave for every 26 days worked.

43. After six months of employment in the Secretariat staff members shall be entitled to maternity leave. On the basis of medical advice that the confinement will probably take place within six weeks, staff members shall be entitled to be absent from duty until eight weeks after confinement. During this period staff members shall receive full pay and corresponding allowances.

After six months of employment in the Secretariat female staff members shall be entitled to maternity leave. Maternity leave will commence four weeks prior to the expected confinement date, as prescribed by a medical practitioner, and shall lapse eight weeks after such confinement. During this period staff members will claim their basic salary from the Social Security Commission, and the balance of the remuneration package, including the portion not paid by Social Security, will be paid by the Secretariat.

44. In the event of death of a staff member following illness or surgery not resulting from an accident covered by the appropriate insurance, the right to salary and any applicable benefits shall cease on the day on which death occurs, unless the deceased leaves dependants, in which case these shall be entitled to mortality allowances and return travel and removal expenses to country of origin or former residence at the expense of the Commission.

In the event of death of a staff member the right to salary and any applicable benefits shall cease on the day on which death occurs.

Add:

45. The Commission will pay severance, mortality allowance, return travel and removal expenses to country of origin or former residence at the expense of the Commission.

46. Eligibility of the dependants of a deceased staff member for the payment of return travel and removal expenses shall lapse if the travel is not undertaken within six months of the date of the staff member's death.

Eligibility of the dependents of a deceased staff member for the payment of return travel and removal expenses shall lapse if the travel is not undertaken within six months of the date of the staff member's death.

47. The above mortality allowance for death shall be calculated in accordance with the following scale:

| Years of service                        | Months of net base pay salary following death |
|---|---|
| Less than 3 years                       | 3 months                                      |
| 3 years and more, but less than 7 years | 4 months                                      |
| 7 years and more, but less than 9 years | 5 months                                      |
| 9 years and more                        | 6 months                                      |

*Note:*

*Mortality allowance may be payable in addition to the severance allowance at a lesser amount, but in terms of legislation the employer will be obliged to pay severance upon the death of an employee.*

48. The Commission shall pay for transport of the staff member's body from the place of death to the place designated by the next of kin.

## **PART IX: TRAVEL**

49. All official travel shall be authorised by the Executive Secretary in advance within the limits of the budget, and the itinerary and travelling conditions shall be those best suited for maximum effectiveness in the fulfilment of duties assigned
50. With regard to official travel, a travel allowance, generally consistent with United Nations practice, shall be paid in advance for fares, accommodation, and daily living expenses.
51. Economy class shall be utilised, wherever feasible, for air travel.
52. First class may be utilised for land travel, but not for travel by sea or air.
53. Following completion of a duty journey, staff members shall repay any travel allowances to which, in the event, they were not entitled. Where staff members have incurred expenses above and beyond those for which travel allowances have been paid, they shall be reimbursed, against receipts and vouchers, as long as such expenses were necessarily incurred in pursuit of their official duties.
54. On taking up an appointment in the Professional Category staff members shall be eligible for:
- (a) payment of economy class air fares (or equivalent) and travel allowance for themselves, their spouses and dependants to Walvis Bay;
  - (b) an Installation Grant equivalent to one month net salary;

- (c) payment of removal costs, including the transport of personal effects and household goods from place of residence to Walvis Bay, subject to a maximum volume of 30 cubic metres or one international standard shipping container;
  - (d) payment or reimbursement of sundry other expenses related to relocation, including insurance of goods in transit and excess baggage charges. Such payment shall be subject to prior approval by the Executive Secretary.
55. Staff members who, in the course of their duty, are required to use private motor vehicles for official travel purposes shall, with the prior authorisation of the Executive Secretary, be entitled to receive a reimbursement of the costs involved in line with that available to members of the Government Service in Namibia. The costs associated with normal daily travel to and from place of work shall not be reimbursed.

## **PART X: SEPARATION FROM SERVICE**

56. Staff members may resign at any time upon giving three months notice or such lesser period as may be approved by the Executive Secretary or the Commission, as the case may require.

*Staff members may resign at any time upon giving three months' written notice.*

57. In the event of a staff member resigning without giving the required notice, the Commission reserves the right to decide whether repatriation expenses or any other allowance shall be paid.

*In the event of a staff member resigning without giving the required notice, the short notice will be set off against the annual leave credit payment and the Commission reserves the right to decide whether repatriation expenses or any other allowance shall be paid.*

58. Appointment of staff members may be terminated upon prior written notice at least three months in advance, by the Executive Secretary when he or she deems this to be for the benefit of the Commission due to restructuring of the Secretariat or if she or he considers that the staff member does not give satisfactory service, fails to comply with the duties and obligations set out in these Regulations, or is incapacitated for service.

*Appointment of staff members may be terminated upon prior written notice at least three months in advance, by the Executive Secretary when he or she deems this to be for the benefit of the Commission due to restructuring of the Secretariat or if he or she considers the staff member does not give satisfactory service, fails to comply with the duties and obligations set out in these Regulations, or is incapacitated for*

service. Such terminations will be preceded by the relevant disciplinary and / or legislative procedures as prescribed in the Labour Act.

59. In the event of separation from service with the Secretariat, staff members shall be compensated at a rate of one-month base pay for each year of service, beginning the second year, unless the cause of termination has been gross dereliction of duties.

**Note:**

*Regulation 59 is permitted in terms of the provisions of section 9. (2) (b) of the Labour Act, as it is more favourable than the prescriptions of the Act. It should*

60. On separation from service, a staff member shall, subject to Regulation 61 below, be entitled to the following:
- (a) payment of economy class air fares (or equivalent) to the staff member's country of origin or former residence, for the staff member and dependent members of his family;
  - (b) payment of removal costs, including the transport of personal effects and household goods from place of residence in Walvis Bay to the country of origin or former residence, subject to a maximum volume of 30 cubic metres or one international shipping container;
  - (c) a repatriation allowance equivalent to one month net salary.
61. At the discretion of the Executive Secretary, the right to the repatriation expenses may be cancelled or reduced appropriately if:
- (a) less than one year has elapsed between the date of taking up the appointment and the date of separation from service;
  - (b) the reason for separation from service was termination of employment due to gross dereliction of duty;
  - (c) more than six months has elapsed between the staff member's separation from service and his return to his country of origin or former residence;
  - (d) less than six months has elapsed since the staff member last visited his country of origin or former residence on home leave at the expense of the Commission;
  - or
  - (e) the staff member has applied for or received status as a permanent resident of Namibia.
- however be noted that if enforced, the gross dereliction of duties should be proven in a disciplinary procedure prior to staff forfeiting such payment.

## **PART XI: TEMPORARY PERSONNEL UNDER CONTRACT**

62. The Executive Secretary may contract temporary personnel necessary to discharge special duties in the service of the Commission. Such personnel shall be classified as additional help and may be paid on an hourly basis.
63. Persons in this category may include translators, interpreters, typists, and other persons contracted for meetings, as well as those whom the Executive Secretary contracts for a specific task. Whenever possible, persons resident in Namibia shall be utilised in such cases.

## **PART XII: APPLICATION AND AMENDMENT REGULATIONS**

64. Any doubts arising from application of these Regulations shall be resolved by the Executive Secretary following consultation with the Chairperson of the Commission.
65. All matters not foreseen in these Staff Regulations shall be brought to the attention of the Commission by the Executive Secretary.
66. Subject to the provisions of the Convention, these Regulations may be amended by the Commission in accordance with its Rules of Procedure.

**ANNEX I – Report from Labour  
Consultants**



**EXECUTIVE MANAGEMENT**  
SERVICES

Telephone: +264 61 225 100

Fax: +264 61 225 287

Email: admin@ems.org.na

P. O. Box 30672, Pionierspark, Windhoek

3 October 2019

The Executive Secretary  
South East Atlantic Fisheries Organisation  
P. O. Box 4862  
Vineta  
Swakopmund

Ms. Lizette Voges

**STAFF REGULATIONS**

Your request to compare the SEAFO Staff Regulations with current Namibian labour legislation refers. Herewith my recommendations based on the prescriptions of the Labour Act, 2007 (Act No. 11 of 2007):

**PART V: SALARIES AND OTHER REMUNERATION**

**REGULATION 19**

Current:

19. The Commission shall levy from each staff member's salary an amount for income tax. Income tax rates shall be determined by the Commission.

Recommendation:

19. The Commission shall levy from each staff member's salary an amount for income tax. Income tax rates shall be determined by the relevant Namibian tax legislation.

**REGULATIONS 21 AND 22**

Current:

21. Staff members in the professional category are not entitled to overtime pay or compensatory leave.

MEMBERS: Louis Conradie . Hannali van Zyl

22. Staff members in the general services category required to work more than 40 hours during one week will be compensated:
- (a) with compensatory leave equivalent to hours of overtime performed; or
  - (b) by remuneration per overtime hour, to be estimated at the rate of time and a half, or if the additional time is worked on a Sunday, or on holidays listed in Regulation 37, at the rate of double time.

Legislation:

1. (1) "staff member" means an individual defined as such in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995)<sup>1</sup>
- "employee" means an individual, other than an independent contractor, who –
- (a) works for another person and who receives, or is entitled to receive, remuneration for that work; or
  - (b) in any manner assists in carrying on or conducting the business of an employer
8. (1) (b) "basic wage" means, for the purpose of calculating any basic condition of employment, that part of an employee's remuneration in money including the cash equivalent of payment in kind, if any, as calculated in terms of section 10, paid in respect of work done during the hours ordinarily worked but does not include –
- (a) allowances, including travel and subsistence, housing, motor vehicle, transport and professional allowances, whether or not based on the employee's basic wage;
  - (v) payments in respect of pension, annuity or medical benefits or insurance
8. (1) (f) "overtime" means time worked in excess of the hours an employee ordinarily works in any ordinary working day but does not include any work done on –
- (i) a Sunday, if it is not an ordinary working day for that employee; or
  - (ii) a public holiday
9. (2) A basic condition of employment constitutes a term of any contract of employment except to the extent that –
- (b) a term of the contract of employment or a provision of a collective agreement is more favourable to the employee
17. (1) ... an employer must not require or permit an employee to work overtime except in accordance with an agreement, but, such agreement must not require an employee to work more than 10 hours overtime in a week, and in any case, not more than three hours' overtime a day.

<sup>1</sup> The Public Service Act defines a "staff member" as any person employed in a post on or additional to the establishment, it comprises of all persons employed permanently or temporarily, on a full-time or part-time basis, or under a special contract.

17. (2) An employer must pay an employee for each hour of overtime worked at a rate at least one and one-half times the employee's hourly basic wage...
21. (5) Subject to subsection (6), an employer must pay an employee who works on Sunday double that employee's basic hourly wage for each hour worked.
21. (6) Despite subsection (5), an employer may pay an employee who works on Sunday, one and one half of that employee's hourly basic wage for each hour worked, if –
  - (a) the employer grants that employee an equal period of time away from work during the next working week; and
  - (b) that employee agrees.
22. (7) If an employee works on a public holiday that falls on a day other than the employee's ordinary work day, the employer must pay double that employee's hourly basic wage for each hour worked.

Recommendation:

21. Staff members in the professional category, due to the nature of the position held, are not entitled to overtime pay as compensation for overtime hours is included in their monthly remuneration, and thus regarded as more favourable as envisaged in Section 9. (2) (b) of the Labour Act, based on the notion that the employee will be paid such remuneration regardless of whether such hours were worked or not.
22. Staff members in the general services category required to work more than 40 hours during one week will be compensated by remuneration per overtime hour, to be calculated at the rate of time and a half, or if the additional time is worked on a Sunday, or on holidays listed in Regulation 37, at the rate of double time.

**PART VII: LEAVE**

**REGULATION 30**

Current:

30. Staff members shall be entitled to annual leave at the rate of two and half workdays for each full month of service. Annual leave is cumulative, but at the end of each calendar year, not more than 30 workdays may be carried over to the following year.

Legislation:

9. (2) A basic condition of employment constitutes a term of any contract of employment except to the extent that –
- (b) a term of the contract of employment or a provision of a collective agreement is more favourable to the employee
23. (2) Every employee is entitled to at least four consecutive weeks' annual leave with full remuneration in respect of each annual leave cycle...
25. (1) An employee is, during each period of 12 months of continuous employment, entitled to five working days' compassionate leave with fully paid remuneration.
25. (2) An employee is entitled to compassionate leave if there is a death or serious illness in the family.
25. (4) Compassionate leave –
- (a) does not form part of annual, sick or maternity leave;
- (b) does not entitle the employee to any additional remuneration on termination of employment; and
- (c) if not used during the period referred to in subsection (1), lapses at the end of that period.
25. (5) For the purpose of this section "family" means a –
- (a) child, including any child adopted in terms of any law, custom or tradition;
- (b) spouse;
- (c) parent, grandparent, brother or sister, of the employee; or
- (d) father-in-law or mother-in-law of the employee

Recommendation:

30. Staff members shall be entitled to annual leave at the rate of 1.67 workdays for each full month of service. Annual leave is cumulative, but at the end of each calendar year, not more than 20 workdays may be carried over to the following year.
31. Staff members qualify during each period of 12 months of continuous employment for compassionate leave of five (5) days per annum which lapses and cannot be carried forward to next year. Compassionate leave shall be applicable in the event of death and serious illness in the family, *family* being as per the definition of section 25. (5) of the Labour Act. Staff members shall be required to submit proof of serious illness or death.

*Note:*

*In terms of Section 9. (2) (b) the current annual leave accumulation is more favourable than what the Labour Act provides for, and would therefore be permissible.*

**PART VIII: SOCIAL SECURITY**

**REGULATIONS 40 TO 42**

**Current:**

40. Staff members shall not be granted sick leave for a period of more than three consecutive days and more than a total of seven working days in any calendar year without producing a medical certificate.
41. Staff members shall be granted certified sick leave not exceeding twelve months in any four consecutive years. The first six months shall be on full salary and the second six months on half salary, except that no more than four months on full salary shall normally be granted in any period of twelve consecutive months.
42. After six months of employment in the Secretariat staff members shall be entitled to maternity leave. On the basis of medical advice that the confinement will probably take place within six weeks, staff members shall be entitled to be absent from duty until eight weeks after confinement. During this period staff members shall receive full pay and corresponding allowances.

**Legislation:**

8. (1) (i) "sick leave cycle" –
- (i) means the period of 36 consecutive months' employment with the same employer immediately following –
    - (aa) an employee's commencement of employment; or
    - (bb) the completion of the last sick leave cycle
24. (1) During any sick leave cycle, an employee is entitled to sick leave as follows:
- (a) not less than 30 working days, if the employee ordinarily works five days during a week
- but an employee is entitled to one day's sick leave for every 26 days worked during the employee's first year of employment.

24. (4) ... an employer is not required to pay an employee for sick leave in any of the following circumstances:
- (a) if the employee –
    - (i) has been absent from work for more than two consecutive days; and
    - (ii) fails to produce a medical certificate by a medical practitioner or any other evidence of proof of illness as may be prescribed
26. (1) Subject to subsection (3), a female employee who has completed six months' continuous service in the employment of an employer is, with a view to her confinement, entitled to not less than 12 weeks' maternity leave, calculated as follows:
- (a) before her actual date of confinement –
    - (i) she is entitled to commence maternity leave four weeks before her expected date of confinement, as certified by her medical practitioner; and
  - (b) after her date of confinement, she is entitled to –
    - (i) eight weeks maternity leave in every case; and
    - (ii) in the case of an employee whose date of confinement occurred less than four weeks after the commencement of her maternity leave, the amount of additional time required to bring her total maternity leave to 12 weeks.
26. (3) During any period of maternity leave, the provisions of the contract of employment remain in force, and the employer must, during the period of maternity leave, pay to the employee the remuneration payable to the employee except the basic wage.
26. (4) The Social Security Commission established by the Social Security Act, 1994 (Act No. 34 of 1994) must, during the period that an employee is on maternity leave, pay to that employee such portion of that employee's basic wage as may be prescribed in terms of that Act.

Recommendation:

40. Staff members shall be entitled to 30 working days' sick leave during every sick leave cycle of 36 months. During the first year of employment staff will only be entitled to one day sick leave for every 26 days worked.
41. In order to qualify for paid sick leave, an employee who is absent due to illness for more than two days, shall be required to submit a medical certificate.
42. After six months of employment in the Secretariat female staff members shall be entitled to maternity leave. Maternity leave will commence four weeks prior to the expected confinement date, as prescribed by a medical practitioner, and shall lapse eight weeks after such confinement. During this period staff members will receive full remuneration, except the basic salary, which will be claimed from the Social Security Commission.

OR

42. After six months of employment in the Secretariat female staff members shall be entitled to maternity leave. Maternity leave will commence four weeks prior to the expected confinement date, as prescribed by a medical practitioner, and shall lapse eight weeks after such confinement. During this period staff members will claim their basic salary from the Social Security Commission, and the balance of the remuneration package, including the portion not paid by Social Security, will be paid by the Secretariat.

#### REGULATIONS 43 AND 45

##### Current:

43. In the event of death of a staff member following illness or surgery not resulting from an accident covered by the appropriate insurance, the right to salary and any applicable benefits shall cease on the day on which death occurs, unless the deceased leaves dependents, in which case these shall be entitled to mortality allowances and return travel and removal expenses to country of origin or former residence at the expense of the Commission.
44. Eligibility of the dependents of a deceased staff member for the payment of return travel and removal expenses shall lapse if the travel is not undertaken within six months of the date of the staff member's death.
45. The above mortality allowance for death shall be calculated in accordance with the following scale:

| Years of service                        | Months of net base pay salary following death |
|---|---|
| Less than 3 years                       | 3 months                                      |
| 3 years and more, but less than 7 years | 4 months                                      |
| 7 years and more, but less than 9 years | 5 months                                      |
| 9 years and more                        | 6 months                                      |

##### Legislation:

35. (1) Subject to subsection (2), an employer must pay severance pay to an employee who has completed 12 months of continuous service, if the employee –
- (b) dies while employed
35. (3) Severance pay in terms of subsection (1) must be in an amount equal to at least one week's remuneration for each year of continuous service with the employer.

**Recommendation:**

43. In the event of death of a staff member the right to salary and any applicable benefits shall cease on the day on which death occurs.
44. The Commission will pay severance as prescribed in the Labour Act, and return travel and removal expenses to country of origin or former residence at the expense of the Commission.
45. Eligibility of the dependents of a deceased staff member for the payment of return travel and removal expenses shall lapse if the travel is not undertaken within six months of the date of the staff member's death.

**Note:**

*Mortality allowance may be payable in addition to the severance allowance at a lesser amount, but in terms of legislation the employer will be obliged to pay severance upon the death of an employee.*

**PART X: SEPRARATION FROM SERVICE****REGULATIONS 54 TO 57****Current:**

54. Staff members may resign at any time upon giving three months notice or such lesser period as may be approved by the Executive Secretary or the Commission, as the case may be.
55. In the event of a staff member resigning without giving the required notice, the Commission reserves the right to decide whether repatriation expenses or any other allowance shall be paid.
56. Appointment of staff members may be terminated upon prior written notice at least three months in advance, by the Executive Secretary when he or she deems this to be for the benefit of the Commission due to restructuring of the Secretariat or if he or she considers the staff member does not give satisfactory service, fails to comply with the duties and obligations set out in these Regulations, or is incapacitated for service.
57. In the event of separation from service with the Secretariat, staff members shall be compensated at a rate of one month base-pay for each year of service, beginning the second year, unless the cause of termination has been gross dereliction of duties.

Legislation:

30. (1) Subject to any provisions of this Part to the contrary, if a contract of employment may be terminated on notice, the period of notice must be not less than –
- (a) one day, if the employee has been employed for four weeks or less;
  - (b) one week, if the employee has been employed for more than four weeks but not more than one year;
  - (c) one month, if the employee has been employed for more than one year.
30. (2) An employer and an employee may agree to a longer notice period than required in terms of subsection (1), provided that it is of equal duration for both parties.
31. (3) Instead of giving an employer notice in terms of section 30, an employee may pay the employer the remuneration the employer would have paid, if the employee had worked during the period of notice.
33. (1) An employer must not, whether notice is given or not, dismiss an employee –
- (a) without a valid and fair reason; and
  - (b) without following –
    - (ii) subject to any code of good practice issued under section 137, a fair procedure, or in any other case.
35. (1) Subject to subsection (2), an employer must pay severance pay to an employee who has completed 12 months of continuous service, if the employee –
- (a) is dismissed;
  - (b) dies while employed;
  - (c) resigns or retires on reaching the age of 65 years.
35. (2) Subsection (1) does not apply –
- (a) to a fair dismissal on grounds of misconduct or poor work performance;
35. (3) Severance pay in terms of subsection (1) must be in an amount equal to at least one week's remuneration for each year of continuous service with the employer.
37. (3) An employee is not entitled to the accrued annual leave pay contemplated in subsection (2) if that employee, without good cause, fails –
- (a) to give notice of termination in terms of section 30, and to work the full period of the notice; or
  - (b) to pay the employer the remuneration contemplated in subsection 31 (3) instead of working the period of notice.

Recommendation:

54. Staff members may resign at any time upon giving three months' written notice.
55. In the event of a staff member resigning without giving the required notice, the short notice will be set off against the annual leave credit payment and the Commission reserves the right to decide whether repatriation expenses or any other allowance shall be paid.
56. Appointment of staff members may be terminated upon prior written notice at least three months in advance, by the Executive Secretary when he or she deems this to be for the benefit of the Commission due to restructuring of the Secretariat or if he or she considers the staff member does not give satisfactory service, fails to comply with the duties and obligations set out in these Regulations, or is incapacitated for service. Such terminations will be preceded by the relevant disciplinary and / or legislative procedures as prescribed in the Labour Act.
57. ~~In the event of separation from service with the Secretariat, staff members shall be compensated at a rate of one month base pay for each year of service, beginning the second year, unless the cause of termination has been gross dereliction of duties.~~

*Note:*

*Regulation 57 is permitted in terms of the provisions of section 9. (2) (b) of the Labour Act, as it is more favourable than the prescriptions of the Act. It should however be noted that if enforced, the gross dereliction of duties should be proven in a disciplinary procedure prior to staff forfeiting such payment.*

Please contact me should you require any further information.



**HANNALI VAN ZYL**  
**EXECUTIVE MANAGEMENT SERVICES**

