



agriculture, environmental affairs,  
rural development and land reform

Department:  
agriculture, environmental affairs,  
rural development and land reform .  
NORTHERN CAPE PROVINCE  
REPUBLIC OF SOUTH AFRICA

# **POLICY ON LEAVE OF ABSENCE 2022**



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## 1. CONCEPTUAL BACKGROUND

In terms of the Public Service Co-ordinating Bargaining Council Resolution 3 of 1999 and the Public Service Regulations of 2016, as amended, departments were given the mandate to develop policies and programmes which would enhance their managerial actions especially in respect of their human resource matters. The effect of the aforementioned is that the department is capacitated to develop its own policies and guidelines. The department will have greater autonomy in the day-to-day management of their human resource matters.

### A. LEGAL FRAMEWORK

- ✓ Basic Conditions of Employment Act [No. 75 of 1997], as amended;
- ✓ Labour Relations Act [No. 66 of 1995] as amended;
- ✓ Public Service Act [No 103 of 1994] as amended;
- ✓ Public Service Regulations of 2016 as amended;
- ✓ Public Service Coordinating Bargaining Council (PSCBC) Resolutions
- ✓ Directive on leave of absence in the Public Service issued by the Minister for Public Service and Administration, August 2021.
- ✓ Compensation for Occupational Injuries and Diseases Act of 1993

### B. DEFINITIONS

<b>Auditing leave:</b>	The checking of leave application forms on employees' leave files against leave records and data on the PERSAL system, to establish whether all leave days have been correctly captured
<b>Calendar days:</b>	all the days of the month, including weekends and holidays
<b>Month:</b>	A calendar month as defined in section 1 of the Public Service Act, 1994.
<b>Calendar Months:</b>	All the months in a year (January to December)
<b>Capped leave:</b>	Leave accrued from the date of appointment and accumulated until 30 June 2000
<b>Department:</b>	Agriculture, Environment Affairs, Rural Development and Land Reform
<b>Emergency:</b>	<b>Refers to a crisis or urgent situation</b>
<b>Full-time employees:</b>	All permanent employees employed on a full-time basis
<b>Temporary employees:</b>	A contract worker who is employed for a fixed term including Interns and Learners
<b>Medical Practitioner:</b>	Health Practitioners defined by the Health Professional Council of South Africa who are legally certified to diagnose and treat patients.



<b>Spouse:</b>	A person/s registered with the employer as the lawful husband/s or wife/wives or life partner (including same sex life partner)
<b>Working days:</b>	Monday to Friday, excluding public holidays.
<b>Child:</b>	A person who is under 18 years of age as defined in the Children's Act 38 of 2005
<b>Commissioning parent:</b>	means a person who enters into a surrogate motherhood agreement with a surrogate mother.
<b>Health Risk Manager:</b>	A company of multi-disciplinary medical experts, specializing in occupational medicine, which will be appointed by the DPSA and National Treasury. The Health Risk Manager will assess and advice the HOD in respect of an employee's application for <i>inter alia</i> incapacity leave.
<b>PILIR:</b>	Policy and Procedure on Incapacity Leave and Ill-Health Retirement

## C. ACRONYMS

**HOD:** Head of Department or his/her delegated authority or his/her designated office responsible for leave related matters and/or investigations.

**PILIR:** Policy on Incapacity Leave and Ill Health Retirement

**DPSA:** Department of Public Service and Administration

## 2. PURPOSE

The purpose of this policy is to regulate an employee's absence from duty by ensuring that leave is taken in an equitable, justifiable and fair manner with minimal service delivery disruptions.

## 3. SCOPE OF APPLICATION

This policy applies to all full time and temporary employees within the Department of Agriculture, Environment Affairs, Rural Development and Land Reform who are appointed in accordance with the Public Service Act 1994, as amended.

## 4. POLICY PROVISION FOR PERMANENT EMPLOYEES

### A. Granting and Proceeding on Leave

The following measures in relation to the granting of and proceeding on leave shall apply:

- (i) Applications should be made on the prescribed leave form Z1(a) (**attached as Annexure A**).



- (ii) Except in cases of emergency/unforeseen circumstances, leave must be applied at least 5 working days in advance for short leave (**one or two days**) and 10 days prior to the commencement of leave in the case of long or annual leave (**five days and more**).
- (iii) An employee must direct his/her leave form/s through his/her immediate supervisor to the Head of Division/Directorate. A copy of his/her leave credits may accompany the leave application form. The immediate supervisor will recommend / not recommend the leave application, where after he/she will forward the signed leave form to the Head of the Division/ Directorate. After the leave has been approved / not approved by the Head of the Division/Directorate, he/she must inform the applicant accordingly. The Head of the Division/Directorate must ensure that the approved leave application form is forwarded to the Human Resource Administration Directorate within 2 days for capturing on the PERSAL system.
- (iv) Under no circumstances may an official proceed on leave unless the leave form has been approved by the Head of the Division/ Directorate. Should an employee proceed on leave without the leave form being duly authorised by the Head of the Division/Directorate, the employee concerned will be deemed to be absent from work without permission and may face possible disciplinary actions.
- (v) If confronted with emergency/unforeseen circumstances which necessitate the utilization of annual leave, the employee **must personally** notify his/her supervisor/manager immediately requesting leave.
- (vi) A verbal message to the supervisor/manager by a relative, fellow employee or friend is only acceptable if the nature and/or extent of the unforeseen circumstances prevents the employee from informing the supervisor/manager personally.
- (vii) An employee must submit an application for annual leave personally or through a relative or fellow employee in cases of unforeseen circumstances within 5 working days after the first day of absence. If the employee fails to submit the application on time or compelling reasons why an application cannot be submitted, the supervisor/manager must immediately-
  - (a) *notify the employee that if such application is not received within 2 working days, the leave period will be regarded as unpaid leave; and*
  - (b) *inform the Human Resource Directorate, should the employee default on the notification referred to in par (vii)(a), above, and the relevant authority shall approve such absence as unpaid leave. The employee's supervisor/manager/ Head of Department and/or his/her delegate must within two (2) working days from receipt of the leave application form recommend/not recommend and/or approve/disapprove this leave application and submit to the relevant Human Resource Directorate.*



- (viii) Failure by the employee to submit his/her application form within the stated periods, or failure by the supervisor/manager to properly manage it, must be viewed in a serious light and corrective measures in terms of the Disciplinary Code of conduct should be taken to remedy the situation.

## **B. Annual Leave**

- (i) The annual leave cycle is from January to December each year.
- (ii) An employee is entitled to the following annual leave in an annual leave cycle with effect from 1 January of each year:
- (a) *Employee with less than 10 years' service: 22 working days.*
  - (b) *Employee with more than 10 years' service: 30 working days.*
  - (c) *The annual leave entitlement of an employee appointed after 1 January of each year shall be calculated proportionally in relation to each full month of service at a rate of 1, 83 working days if entitled to 22 working days and 2, 5 working days if entitled to 30 working days' annual leave in a leave cycle.*
  - (d) *Should an employee request his/her full 22 or 30 days leave entitlement for example in, he/she must be informed by the Supervisor that he/she is only entitled to pro-rata credits as on February (for 22 days, 3.66 days and for 30 days, 5 days) and that in the event of that he/she exit the Public Service before the end December he/she will have Leave Debt in days over granted. Such Leave applications can however not be unreasonably refused taking service delivery requirements into consideration.*
- (iii) For the purpose of granting annual leave, working days shall mean Monday to Friday.
- (iii) At least **10 working days** must be taken as leave days during the annual leave cycle (January – December). It is the manager's responsibility to ensure that every employee takes at least 10 days leave before December each year. Annual leave should, as far as possible, be taken as consecutive working days. The remaining leave days of the previous leave cycle must be taken before 30 June of the following year. The utilisation of this leave must take the service delivery requirements of the department into account. All remaining unused leave days of the previous leave cycle will be automatically forfeited (fall away) after the extra 6 months' period.
- (iv) Employees must be cautioned timeously if, at the end of the relevant leave cycle (December), they have not utilized their leave entitlements.
- (v) Employees should schedule their leave within an annual cycle and if, due to operational and/or personal reasons they are not able to utilize the leave as scheduled, they should reschedule it as soon as possible.
- (vi) To ensure that employees schedule their leave, supervisors must compile and maintain a leave-planning schedule, indicating when employees will utilise leave during the leave cycle.



- (vii) The Department will not unreasonably refuse an employee's application for annual leave. Any refusal of annual leave must be confirmed in writing, stating the reasons and arrangements for rescheduling of the annual leave.
- (ix) If, due to the employer's service delivery requirements, an employee's application for leave is denied and not rescheduled, such leave must, upon request, be paid out to the employee at the end of the 18 months' period. Employee requests for payment of unused leave credits must be:
  - (a) *in writing; and*
  - (b) *accompanied by written proof of refusal of leave by the Head of Department.*
- (x) The department will pay the cash value of unused annual leave credits due to the employee at the termination of service, whether such termination is employee or employer initiated.
- (xi) An employer may not permit or require an employee to take annual leave during any period of notice of the termination of service.
- (xii) An employee retains all his/her annual leave credits, when he/she is transferred within or between departments, due to him/her at that point in time. The employee retains likewise the leave category as reflected in paragraph 4.B.(ii)(a) and (b) above. s
- (xiii) If an employee who is appointed on contract secures a permanent appointment in the Public Service, he/she will retain the leave credits due to him/her at the time his/her contract is terminated.
- (xiv) In the event where an employee qualifies after completion of ten years of service after the first day of the month for the higher leave category as indicated in paragraph 4.B.(ii)(a) and (b) above, the higher pro rata portion of the new leave category should be calculated from the first day of the next month.
- (xv) An employee may request to be released from duty (time off) at any time during a working day on condition that he/she takes one (1) day's annual leave for every 8 (eight) hours he/she is so released from duty. For this purpose, every supervisor will keep a time off register to enter the number of hours an employee requested to be released (**format of register attached as Annexure B**). Once the hours have accumulated to 8 hours, a leave form using the date of the last request must be completed and submitted to the Human Resource Directorate. For example, an employee has to attend to domestic problems for instance fixing of a leaking water pipe at home or to be at home when contractors need to install/deliver appliances; or to attend a function at his/her child's school.
- (xvi) The department shall request an employee to take one (1) day's annual leave for every 8 (eight) hours he/she was absent from duty without prior approval. The time off register referred to above would also apply. For example, when an employee arrives



late at work due to oversleeping, attending to family matters at home during official hours.

- (xvii) However, the granting of the relevant leave as mentioned in paragraph (xvi) above does not preclude the department from taking disciplinary action.
- (xviii) Employees, suspended as a precautionary measure while investigations into allegations of misconduct are being completed or employees who have been suspended as a sanction as a result of misconduct within the 6 months (paragraph B(iv) above refers) after the expiry of the relevant leave cycle and who could not utilise their unused annual leave credits, must upon request, be paid out such annual leave credits at the end of the 6 months' period referred to in B(iv) above. Employee requests for payment of unused leave credits must be:
  - (a) *in writing; and*
  - (b) *accompanied by written proof of suspension.*

#### **C. ANNUAL LEAVE WITH FULL PAY GRANTED IN EXCESS**

- (i) An employee may not be granted annual leave with full pay in excess of that which the employee is to in terms of paragraph 4.B.(ii)(a) and (b) above, plus capped leave in respect of persons who were in service prior to 1 July 2000.
- (ii) If due to a bona fide error, an employee had been granted annual leave with full pay in excess of that which stood to his/her credit at that time, such over-grant must be deducted from the subsequent leave cycle.
- (iii) If an employee who has been over-granted annual leave with full pay exits the Public Service, that portion of the over-grant, which exceeded his/her normal annual, leave credit on his/her last day of duty must be regarded as an overpayment that must be recovered from him or her.

#### **D. CAPPED LEAVE**

- (i) Capped leave is leave accrued prior to 1 July 2000, which has been audited and converted to working days. Employees will retain capped leave and be allowed to utilise capped leave as discussed below. The Department will pay capped leave out to employees only in circumstances such as death, retirement or medical boarding.
- (ii) Employees with capped leave may utilise their capped leave over and above their annual entitlement. The utilisation of this leave must take the service delivery requirements of the department into account.
- (iii) Employees will be able to make use of their capped leave only when they have exhausted leave credits of previous and current leave cycles.





## **E. SICK LEAVE**

- (i) An employee qualifies for 36 working days' sick leave with full pay over a three-year cycle. Unused sick leave credits will lapse at the end of a three-year cycle. It is incumbent on the employee to utilise and manage his/her normal sick leave responsibly and with circumspect.
- (ii) An employee who is sick for 3 days or more must submit a medical certificate from a medical practitioner and must personally notify his/her supervisor/manager of his/her illness before 10h00 on the first day of illness. A verbal message to the supervisor/manager by a relative, fellow employee or friend is only acceptable if the nature and/or extent of the illness/injury prevents the employee to inform the supervisor/manager personally.
- (iii) In instances where a pattern in the use of sick leave has been established, a medical certificate may be required for absences of less than three working days.
- (iv) An employee who has been on sick leave on more than 2 occasions within an 8-week period must submit a medical certificate regardless of the duration of the absence. The medical certificate must state that the employee was unable to work due to a sickness or injury. Should the employee fail to submit the required medical certificate the leave will be covered by annual leave. If he/she does not have leave credits the leave will be covered by unpaid leave.
- (v) The 8-week period will be treated as a calendar month and will start on the 1<sup>st</sup> day of an employee's absence due to an illness or an injury.
- (vi) If an employee falls ill whilst on annual leave, such leave may be converted to sick leave, provided that a medical certificate is submitted. In these circumstances a medical certificate must be submitted irrespective of the number of days of sick leave taken.
- (vii) The date on which the employee consulted the medical practitioner must be within the first three days of illness. If the employee only consulted a medical practitioner thereafter he/she must submit reasons therefore at the time of his/her return to work. If reasons are not acceptable to the department, the employee will be granted annual or leave without pay the period not covered in the medical certificate or by the period where a medical certificate is not required.
- (viii) The certificate shall describe the nature of the illness (If the official has given informed consent for it to be disclosed) and the period needed for recuperation. Supervisors must check that the dates on the medical certificate correspond with the dates on the leave application (for example a certificate should not state "2 days" and the employee applied for "5 days" sick leave).
- (ix) An employee must submit an application for sick leave personally or through a relative, fellow employee within 5 working days after the first day of absence. The employee's



supervisor/manager/ Head of Department and/or his/her delegate/must within two working days from receipt of the leave application form recommend/not recommend and/or approve/disapprove the application and submit to the Human Resource Directorate.

- (x) If the employee fails to submit an application within the period indicated in paragraph (ix), above, the following arrangements apply:

(a) *The employee's manager/supervisor must immediately notify the employee that if such application is not received within 2 working days, the leave period will be regarded as unpaid leave or annual leave. If the employee fails to submit the application on time or compelling reasons why an application cannot be submitted, the supervisor/manager must immediately inform the Human Resource Directorate and the relevant authority shall approve such absence as unpaid leave or annual leave. The employee's supervisor/manager/Head of Departments and/or his/her delegate must within two working days from receipt of the leave application form recommend/not recommend and/or approve/disapprove this leave application and submit to the Human Resource Directorate.*

(b) *Failure by the employee to submit his/her application form within the stated periods, or failure by the supervisor/manager to properly manage it, must be viewed in a serious light and disciplinary steps in terms of the Disciplinary Code of Conduct should be taken against the employee and/or supervisor/ manager.*

- (xi) An employee may request to be released from duty (time off) at any time during a working day on condition that he/she takes one (1) day's sick leave for every 8 (eight) hours he/she is so released from duty. For this purpose, every supervisor will keep a time off register to enter the number of hours an employee requested to be released. For example, when an employee has to consult a doctor, dentist, or any other medical practitioner when the employee has a health problem during working hours.

#### **F. TEMPORARY INCAPACITY LEAVE**

- (i) Incapacity leave is not an unlimited number of additional sick leave days at an employee's disposal. Incapacity leave is additional sick leave granted conditionally at the employer's discretion, read with the *Policy and Procedure on Incapacity Leave and Ill-Health Retirement* determined by the Minister for Public Service and Administration in terms of the Public Service Act, 1994, (hereafter referred to as PILIR).
- (ii) An employee who has exhausted his/her normal sick leave, referred to in paragraph E(i) above, during the prescribed sick leave cycle and who according to the treating



medical practitioner requires to be absent from work due to a temporary incapacity, may apply for temporary incapacity leave with full pay on the applicable application form prescribed in terms of PILIR in respect of each occasion.

- (iii) For an employee's application for temporary incapacity leave to be considered, the-
  - (a) *employee must submit sufficient proof that she/he is too ill or injured to perform his/her work satisfactorily;*
  - (b) *application form must, regardless the period of absence, be accompanied by a medical certificate issued and signed by a medical practitioner that certifies his/her condition as temporary incapacity and if the employee has consented, the nature and extent of the illness or injury;*
  - (c) *employee is in accordance with item 10(1) of Schedule 8 to the Labour Relations Act, 1995, afforded the opportunity to submit together with his/her application form-*
    - (i) *any medical evidence related to the medical condition of the employee, such as a medical report(s) from a specialist, blood tests result, x-ray results or scan results, obtained at the employee's expense; and*
    - (ii) *any additional written motivation supporting his/her application; and*
  - (d) *employee is requested to give his/her consent that medical information/records be disclosed to the employer and/or its Health Risk Manager and to undergo further medical examinations in terms of the assessment process described in PILIR.*
- (iv) An employee must submit his/her application for temporary incapacity leave in respect of clinical procedures in advance, unless the treating medical practitioner certifies that such procedures have to be conducted as an emergency.
- (v) The Head of Department must within 5 working days from the receipt of the employee's application for temporary incapacity leave-
  - (a) *conditionally grant a maximum of 30 consecutive working days' temporary incapacity leave with full pay subject to the outcome of his/her investigation into the nature and extent of the employee's illness/injury; and*
  - (b) *refer the application with all the supporting evidence immediately to its Health Risk Manager in accordance with the PILIR for an assessment and advice-*
    - (i) *on whether the employee's illness or injury justifies the granting of incapacity leave; and*
    - (ii) *which steps, if any, in accordance with the procedures contained in item 10(1) of Schedule 8 to the Labour Relations Act, 1995, read with clause 7.5.1 of PSCBC Resolution 7 of 2000, as amended by PSCBC Resolutions 5 of 2001 and 15 of 2002, are necessary;*



- (vi) The Head of Department may request the employee, if s/he has consented thereto in his/her application form, as part of the process contemplated in paragraph v.(b), above, to subject him/herself for one or more medical examinations by medical practitioners of the employer's choice and for the employer's account. If the employee fails to honour the appointments for such medical examinations, the employee shall be held responsible for any fruitless expenses incurred.
- (vii) The Head of Department must within 30 working days after receipt of both the application form and medical certificate referred to in paragraph (iii)(b), approve or refuse the temporary incapacity leave granted conditionally. In making a decision, the Head of Department must apply his/her mind to the medical certificate (with or without describing the nature and extent of the illness or injury) contemplated in paragraph (iii)(b), medical information/records contemplated in paragraph (iii)(d) (if the employee consented to disclosure), the Health Risk Manager's advice, the information supplied by the employee in terms of paragraph (iii)(c) (if any) and all other relevant information available to the Head of Department and based thereon approve or refuse the temporary incapacity leave granted conditionally, on conditions that the Head of Department may determine, e.g. to return to work, etc.;
- (viii) The Head of Department may on the basis of medical evidence gathered during its investigation approve the granting of additional incapacity leave days on conditions that he or she shall determine. The Head of Department may for this purpose grant conditionally further temporary incapacity leave.
- (ix) The Head of Department, if applicable and as soon as possible, must after the receipt of the Health Risk Manager's advice, decide on the possibility of securing alternative employment for the employee, or adapting his/her duties or work circumstances to accommodate his/her incapacity or alternative employment and, as soon as possible, approve and implement an action plan for this purpose.
- (x) If the Head of Department-
- (a) *approves the temporary incapacity leave granted conditionally, such leave must be converted into temporary incapacity leave; or*
  - (b) *refuses the temporary incapacity leave granted conditionally, s/he must notify the employee in writing-*
    - (i) of the refusal;
    - (ii) of the reasons for the refusal;
    - (iii) that s/he must notify the Head of Department in writing within 5 working days of the date of the notice to him/her, whether or not the period of conditional incapacity leave must be covered by annual leave (to the extent of the available annual leave credits) or unpaid leave and that, if



s/he fails to notify the Head of Department of his/her choice, the period will be covered by unpaid leave; and

- (iv) he employee may, if he/she is not satisfied with the Head of Department's decision, lodge a grievance in terms of section 35 of the Public Service Act.
- (xi) The Head of Department must cover the period of absence, referred to in paragraph (x)(b)(iii) in accordance with the employee's written notification or, if the employee fails to notify that the Head of Department in terms of that paragraph or the annual leave credits are insufficient, the relevant period of absence must be covered by unpaid leave.
- (xii) If an employee passes away after submitting an application for temporary incapacity leave a decision on such application must be made where the information provided is sufficient. However, where a decision cannot be made due to a lack of information the Head of Department or his/her delegate must approve such application for temporary incapacity leave and close the application. Any decision must take into account the recommendation from the Health Risk Manager.

#### **G. PERMANENT INCAPACITY LEAVE**

- (i) An employee shall not directly access or apply for permanent incapacity leave. The Head of Department may grant an employee up to a maximum of 30 working days' permanent incapacity leave once she/he has, following the assessment and investigations contemplated in paragraph (v)(b), determined that the employee's condition is of a permanent nature.
- (ii) The Head of Department must during the period referred to in paragraph G.(i) and in accordance with the advice from its Health Risk Manager ascertain the feasibility of and implement its plan of action contemplated in paragraph (ix), above, in respect of
  - (a) *alternative employment; or*
  - (b) *adapting duties or work circumstances to accommodate the employee.*
- (iii) An employee, whose degree of incapacity has been certified as permanent but who can still render a service, may be transferred to an alternate appropriate vacant post without a reduction in benefits.
- (iv) In instances where the employee's transfer entails retraining or retooling, the employer must take requisite resources (time and financial) and potential returns into consideration before approving the transfer.
- (v) The transfer of an employee should ensure the optimal utilisation of his/her competencies and must not compromise service delivery.
- (vi) If both the Head of Department and employee are convinced that the employee will never be able to render an effective service, the employee/employer may proceed with



the process of termination of service on account of continued ill-health in terms of section 17(2)(a) of the Public Service Act, as amended.

- (vii) The Head of Department may extend the period of permanent incapacity leave referred to in paragraph G.(i) by a further 30 working days in order to finalize processes already commenced. If the processes set out in this Determination and Directive is not completed within the 60 working days, the Head of Department must report the case to the Director-General: Public Service and Administration together with a report explaining the reasons for the delay.

## **H. ACCEPTANCE OF MEDICAL CERTIFICATES**

The Head of Department must accept medical certificates that do not describe the nature and extent of an employee's illness for sick leave taken during the normal sick leave cycle, i.e. 36 working days in a 3- year cycle.

- (i) The employer may request from the employee a medical certificate describing the nature and extent of the illness before granting sick leave, if the employee abuses the system during the normal sick leave period of 36 working days (e.g. a pattern of regular sick leave on Mondays or Fridays). If the employee fails to submit the required medical certificate, the Head of Department must notify the employee that if the prescribed medical certificate is not received within 2 working days, the sick leave period will be either regarded as unpaid leave or annual leave. If the employee fails to submit the medical certificate on time, the relevant absence must be covered by annual leave (with the employee's consent) and/or unpaid leave if insufficient annual leave credits are available and if the employee failed to notify the Head of Department of his/her choice. Failure by the employee to submit his/her medical certificate within the stated period must be viewed in a serious light and disciplinary steps in terms of the Disciplinary Code of Conduct must be taken against the employee.
- (ii) For purposes of sick leave and temporary incapacity leave the employer only accepts medical certificates issued and signed by practitioners registered with the Health Professional Council of South Africa and who are legally certified to diagnose and treat patients. Such medical certificates must describe that the illness or injury is temporary and, if the employee has given his/her informed consent, the nature and extent of the employee's illness or injury.
- (iii) The employer must, in accordance with the constitutional rights to privacy, the Code of Conduct in the Public Service Regulations treat at all times any information regarding the medical condition of an employee with the necessary respect and confidentiality. Such information may therefore not be disclosed to any other person(s) not authorised to receive such information. If an employee discloses such confidential information of one employee to any other unauthorized person, it must be viewed in a serious light



and disciplinary steps in terms of the Disciplinary Code of Conduct must be taken against the transgressing employee.

#### **I. LEAVE FOR OCCUPATIONAL INJURIES/DISEASES**

- (i) An employee who, as a result of his/her work, suffers an occupational injury or contracts an occupational disease, shall be granted occupational and disease leave for the duration of the period they cannot work.
- (ii) If an employee suffers a work-related injury as a result of an accident involving a third party, the Head of Department 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 Occupational Injuries and Diseases Act of 1993) received to recompense as far as possible for the cost arising from the accident.
- (iii) The Head of Department shall take reasonable steps to assist an employee to claim compensation according paragraph (ii) above.
- (iv) When an employee is injured on duty or contracted an occupational disease the employer must pay the employee's medical expenses in terms of the provisions of the Compensation on Occupational and Injury and Disease Act. The employer may, depending on the circumstances, recover certain expenses in the event where a third party was involved in the accident.

#### **J. FAMILY RESPONSIBILITY LEAVE**

- (i) This leave applies to full time and temporary employees.
- (ii) The department shall require proof of an event for which this type of leave is required.
  - (a) In the event of death the employee must attach a death certificate.
  - (b) In the event of sickness the employee must attach a medical certificate.
  - (c) All relevant information or documentation for family responsibility leave must accompany the leave application form, on the first day on assumption of duty.
- (iii) Employees are entitled to the following family responsibility leave benefits:
  - (a) 5 working days' family responsibility leave per annual leave cycle for utilization if the employee's spouse or life partner gives birth to a child; or the employee's child, spouse or life partner is sick; and
  - (b) 5 working days leave per annual leave cycle for utilisation if the employee's child, spouse or life partner dies; or an employee's immediate family member dies.
- (iv) Immediate family member for purposes of paragraphs (iii)(b), respectively, means the employee's parent, adoptive parent, step parent, parents- in-law, sister- and brother-in-law, grandparent, child, adopted child, stepchild, grandchild or sibling. For the purposes



of this provision “child” means the employee’s son or daughter, and where applicable son- or daughter-in-law, of any age. The granting of family responsibility leave must be taken with due consideration of the employee’s cultural responsibilities. Where the latter discretion is exercised.

- (v) An employee who has a child(ren) with severe special needs shall be granted five (5) working days’ family responsibility leave per calendar year.
  - (a) A child with severe special needs is a child who has a mental, emotional or physical disability, certified by a medical practitioner, which requires health and related services of a type or amount beyond that required by children generally. For the purposes of this provision “child” means the employee’s son or daughter of any age.
  - (b) An application for family responsibility leave should be supported by reasonable proof to demonstrate the severe special needs of the employee’s child.
- (vi) An employee’s unused entitlement to leave in terms of this item lapses at the end of the annual leave cycle.
- (vii) Employees who have used all their family responsibility leave may, subject to the approval of the Head of Department or his/her delegated official, apply to use available annual leave or use up to 184 calendar days of unpaid leave.
- (viii) Family responsibility leave may be taken for part of a day. For example, an employee who takes three hours off to attend to a family responsibility would use only three hours of their family responsibility leave entitlements.
- (ix) For purposes of utilising family responsibility leave entitlements, fractions or decimals must be utilised as they are. In other words, fractions or decimals must not be rounded off.

#### **K. PATERNITY LEAVE**

- (i) An employee shall be granted three (3) working days’ paternity leave per calendar year for utilisation if the employee’s spouse or life partner gives birth to a child or adopts a child not older than two (2) years.
- (ii) An employee who has used all his/her paternity leave may, subject to the approval of the Head of Department, apply to:
  - (a) use his/her part or all of 5 working days’ family responsibility leave provided for in paragraph J.(iii)(a), above; or
  - (b) use available annual leave; or
  - (c) use up to 184 calendar days of unpaid leave.
- (iii) An application for paternity leave shall be supported by reasonable proof.





**L. LEAVE FOR OFFICE BEARERS OR SHOP STEWARDS OF RECOGNISED EMPLOYEE ORGANISATIONS**

- (i) Office bearers or shop stewards of recognised employee organisations shall receive up to 15 working days paid leave per annum for activities related to his/her union position.
- (ii) The 15 working days shall be pooled per recognised trade union. Office bearers or shop stewards belonging to the same recognised trade union may apply for leave days from the pool.
- (iii) The Head of Department shall appoint an administrator of the pool. The Administrator should preferably be the Human Resource Manager of the Department. The Head of Department shall develop standard operating procedures to ensure that the utilisation of the pool is properly managed, recorded and monitored to ensure that the leave days available in the pool is not exceeded and/or abused.
- (iv) A shop steward may apply for leave from the pool in respect of the recognised employee organisation she/he belongs to only. An individual shop steward may apply due to the union activities attached to his/her union position for either less than or more than 15 working days in a leave cycle. However, the shop stewards accessing the same pool of leave may not exceed the total number of leave days available in the pool.
- (iv) Shop steward leave may only be utilised for activities related to the employee's union position. All applications for this type of leave must be submitted in writing on the prescribed leave application form, together with supporting documentation.
- (v) The employee's supervisor shall liaise with the Labour Relations Manager and Human Resource Manager to validate the employee's involvement in a union activity/business and whether sufficient credits are available in the leave pool.

**M. UNPAID LEAVE**

- (i) If an employee has utilised all his/her annual leave with full pay, the Head of Department or his/her delegated official may grant him or her unpaid leave.
- (ii) Only in exceptional circumstances shall the Head of Department grant the employee more than 184 calendar days of unpaid leave in a period of 18 months.
- (ii) Unpaid leave should be regarded as calendar days.

**N. PRE-NATAL LEAVE**

- (i) A pregnant employee will be entitled to 8 working days' pre-natal leave, per pregnancy, allowing the employee to attend medical examinations by a medical practitioner or midwife, and tests related to the pregnancy.
- (ii) An employee can utilize a full day or part of a day for pre-natal leave. The Head of Department shall maintain a system to record episodes where the employee utilised



part of a day. One day's pre-natal leave shall be deducted once the duration of absences equates the employee's prescribed daily working hours (8 hours).

- (iii) An application for pre-natal leave should be supported by reasonable proof that the employee attended a doctor's appointment and/or went for tests related to the pregnancy.
- (iv) An employee who has used all her pre-natal leave may, subject to the approval of the Head of Department, apply to use available annual leave and/or unpaid leave.
- (iv) Absences related to medical complications during the pregnancy will be covered by sick leave.

## **O. MATERNITY LEAVE**

- (i) Employees are entitled to 4 consecutive calendar months' maternity leave to commence:
  - (a) *at any time from four weeks before the expected date of birth; or*
  - (b) *on a date from which the attending medical practitioner certifies that it is necessary for the employee's health or that of the unborn child.*
- (ii) It is preferable that an employee commences her maternity leave at least two weeks prior to the expected date of birth.
- (iii) For at least six weeks after the birth, no employee may commence with normal official duty unless the attending practitioner certifies that the employee is fit to do so.
- (iv) Maternity leave may only be interrupted if:
  - (a) *the baby is born prematurely and is hospitalised during maternity leave; or*
  - (b) *the baby becomes ill and is hospitalised for a period longer than a month during the maternity leave.*
- (v) The provisions contained in paragraph (iv) are only applicable to an employee, who chooses to interrupt her maternity leave in these circumstances.
- (vi) If an employee referred to in paragraph (iv)(a) and (b) above, chose to interrupt her maternity leave and failed to return to work after the six weeks mentioned in paragraph (iii) above, such a period must be covered with annual leave or unpaid leave if she does not have enough annual leave available.
- (vii) Maternity leave may be extended upon application by:
  - (a) *the granting of sick leave as a result of a medical complication;*
  - (b) *the granting of up to 184 calendar days' unpaid leave; or*
  - (c) *the granting of annual leave.*
- (viii) Employees, who, during the third trimester of their pregnancy, experience a miscarriage, still birth or termination of the pregnancy on medical grounds, shall be eligible for six consecutive week's maternity leave, where after, section (vii)(a) shall apply in the event of a medical complication.



- (ix) Provisions in (viii) above shall also apply to an employee who experiences a miscarriage, stillbirth or termination of pregnancy on medical grounds after the commencement of maternity leave. The period prior to the miscarriage, stillbirth or termination of pregnancy shall be regarded as special leave with full pay.

## **P. ADOPTION AND SURROGACY LEAVE**

- (i) An employee who adopts a child who is younger than two years qualifies for a maximum of 45 working days' adoption leave. For extension of this leave the following shall apply:
- (a) *Annual leave may be used; or*
  - (b) *The HOD may grant unpaid leave to a maximum of 184 days*
  - (c) *If both spouses or life partners are employed in the public service, both partners qualify for adoption leave but the combined leave may not exceed 45 working days.*
- (ii) Adoption leave can commence at least a week before the arrival of the child and this week is inclusive of the 45 days.
- (i) An employee must provide proof of adoption.

## **Q. SURROGACY LEAVE**

### **Commissioning Parent**

- (i) With effect from 8 June 2018 an employee who is a commissioning parent in terms of a surrogate motherhood agreement confirmed by the High Court as contemplated in the Children's Act, 2005, is entitled to four (4) consecutive calendar months paid leave commencing from the date of the birth of the child.
- (ii) The employee referred to in paragraph (i), above, must notify an employer in writing at least one (1) calendar month before a child is expected to be born as a result of a surrogate motherhood agreement, of the date on which the employee intends to commence with surrogacy leave.
- (ii) If both commissioning parents are employed in the public service, only one (1) such parent will qualify for the surrogacy leave.
- (iii) An application for surrogacy leave shall be supported by a surrogate motherhood agreement.

### **Surrogate Mother**

- (i) An employee who is a surrogate mother, in terms of a surrogate motherhood agreement is entitled to six (6) consecutive weeks' maternity leave.
- (ii) An employee who is a surrogate mother may commence with normal official duty within the six (6) week period only if the attending practitioner certifies that the employee is fit to do so.

- (iii) It is incumbent on the employee to notify the employer of the surrogate motherhood agreement and submit a copy thereof as soon as it has been confirmed by the High Court.
- (iv) The employee's application for leave shall be supported by the surrogate motherhood agreement.

#### **R. LEAVE DURING SUSPENSION PERIOD**

Officials who are suspended for purposes of a disciplinary enquiry, must apply for leave during his/her suspension period. The terms and conditions attached to the granting of the above types of leave, as well as the provisions contained in: paragraph(s) A, B, E, F, H, J, K, N, O, P and Q (where applicable) apply *mutatis mutandis* to officials who are suspended.

#### **S. GENERAL LEAVE PROVISIONS**

- (i) Employees who agreed with their Unit Heads/Senior Managers to work over a weekend/lunch hour and/or after official working hours should be granted time off/day off in lieu of hours that they have accumulated. The Unit Head/Supervisor shall keep record of these of cases and update the comments column of the attendance register on the day on which they agree to take the day off.
- (ii) Based on the service delivery requirements of the Department, the Employer may request employees or the majority of employees to take annual leave at a specific time (December holidays). This must be communicated to staff members in the beginning of the annual leave cycle. Unit Heads/Senior Managers and employees must during January develop leave plans taking into consideration the operational requirements of the department.

#### **T. LEAVE PROVISIONS FOR TEMPORARY EMPLOYEES**

A temporary employee is eligible to the following types of leave on a pro rata basis linked to the duration of his/her contract. The utilisation of these leave types is subject to the rules that govern the relevant type of leave:

##### **(i) Annual leave**

A temporary employee shall at the beginning of his/her contract period be granted annual leave that is proportional to his/her term of employment at a rate of one-twelfth of the annual leave credit applicable to the employee category, per calendar month of service.

##### **(ii) Normal Sick Leave**

A temporary employee shall at the beginning of his/her contract period be granted normal sick leave that is proportional to his/her term of employment at a rate of 1-day normal sick leave per calendar month of service.



**(iii) Maternity Leave**

A temporary employee shall be granted paid maternity leave that is proportional to her of contract at a rate of 10 calendar days' maternity leave with full pay calculated at each calendar month of her term of contract to a maximum of 4 calendar months, where after maternity leave without pay shall be granted. The total period granted in respect of maternity leave shall not exceed four consecutive calendar months.

**(iv) Adoption and Surrogacy Leave**

(a) A temporary employee who adopts a child that is younger than two years, shall qualify for adoption leave at a rate of 4 working days paid leave for each calendar month of his/her term of contract to a maximum of 45 working days.

(b) The aforementioned provisions apply *mutatis mutandis* to a temporary employee who in terms of a surrogacy arrangement is the committing parent.

**(v) Pre-Natal Leave**

A temporary employee who is pregnant shall qualify for pre-natal leave at a rate of 1 working day paid leave for each calendar month of her term of contract to a maximum of 8 working days.

**(vi) Paternity Leave**

A temporary employee whose spouse or life partner gives birth to a child or adopts a child not older than two (2) years shall qualify for paternity leave at a rate of 1 working day paid leave for each calendar month of his/her term of contract to a maximum of 3 working days.

**(vii) Other Provisions**

The terms and conditions attached to the granting of the above types of leave, as well as the provisions contained in: paragraph(s) C, D, F, G, H, I, J and R (where applicable) apply *mutatis mutandis* to temporary employees.

**5. COMMUNICATION**

Upon approval, this policy will be circulated to all employees of Department of Agriculture, Environment Affairs, Rural Development and Land Reform.

**6. MONITORING AND EVALUATION**

It is the responsibility of each Senior Manager/Unit Head to ensure that this policy is carefully followed within the Department. All managers should make members of their Units aware of the obligation to familiarize themselves with and follow this policy. The Human Resource Administration Directorate shall monitor and evaluate the effectiveness of this policy on an annual basis.

## 7. POLICY REVIEW AND AMENDMENTS

### 7.1. Review


This policy will be reviewed when the need arises or in case of the occurrence of extenuating circumstances (pronouncement by legislation and/ regulations). The Head Human Resource will be required to submit all relevant information pertaining to this policy in conjunction with a signed memo with all amendments (addition or omission). Any deviations from the policy prescripts and amendments to the policy will only be done with the written consent of the Head of Department.

### 7.2. Amendments

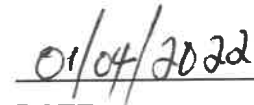
No amendments may be made to any section of this policy without such amendments first being consulted with all stakeholders and approved and signed by the Head of the Department.

## 8. APPROVAL OF POLICY

The Leave of Absence policy is hereby approved / not approved.

  
MR LMM WA MODISE

Acting Head of Department

  
DATE