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GOVERNMENT NOTICE

DEPARTMENT OF COOPERATIVE GOVERNANCE

No. 21

17 January 2014

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 (ACT NO. 32 OF 2000)

LOCAL GOVERNMENT: REGULATIONS ON APPOINTMENT AND CONDITIONS OF EMPLOYMENT OF SENIOR MANAGERS

I, Solomon Lechesa Tsenoli, Minister for Cooperative Governance and Traditional Affairs, subject to applicable labour legislation and after consultation with organised local government representing local government nationally, the bargaining council established for municipalities, the Minister for Public Service and Administration and, where applicable, the Minister of Health and the Minister of Finance, hereby, under section 120, read with section 72, of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), make the regulations in the Schedule.

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SCHEDULE

CHAPTER 1

INTERPRETATION AND APPLICATION

Definitions

1. In these regulations, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, unless the context otherwise indicates –

“Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

“chief financial officer” means a person designated in terms of section 80(2)(a) of the Municipal Finance Management Act;

“Compensation for Occupational Injuries and Diseases Act” means the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

“competence” means having the necessary higher education qualification, work experience and knowledge to obtain at least a competent level of achievement;

“conditions of employment” in relation to a senior manager have a corresponding meaning as the terms or conditions of employment as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“department” in relation to a municipality means an administrative component of a municipality, headed by a manager appointed in terms of section 56 of the Act;

“the Disciplinary Regulations” means the Local Government: Disciplinary Regulations for Senior Managers, (Government Notice No. 344), as published in Government Gazette No. 34213;

“employment contract” means a contract as contemplated in section 57 of the Act;

“Employment Equity Act” means the Employment Equity Act, 1998 (Act No. 55 of 1998);

“executive committee” means an executive committee established in terms of section 43 of the Municipal Structures Act;

“financial year” means the financial year of a municipality commencing on 1 July each year and ending on 30 June of the following year;

“Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“Mayor” means the mayor or executive mayor of a municipality as elected in terms of the Municipal Structures Act;

“medical practitioner” for purposes of these regulations includes a practitioner as defined by the Health Professions Council of South Africa, and who is legally certified to diagnose and treat patients;

“Medical Schemes Act” means the Medical Schemes Act, 1998 (Act No. 131 of 1998);

“Municipal Finance Management Act” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and any regulations made under that Act;

“Municipal Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

“Pension Funds Act” means the Pension Funds Act, 1956 (Act No. 24 of 1956);

“performance agreement” means an agreement as contemplated in section 57 of the Act;

“post” means a post on the approved staff establishment of a municipality which has been budgeted for;

“senior manager” means a municipal manager or acting municipal manager, appointed in terms of section 54A of the Act, and includes a manager directly accountable to a municipal manager appointed in terms of section 56 of the Act;

“speaker” has the meaning assigned to it in the Municipal Structures Act;

“staff establishment” means the approved posts created for the normal and regular requirements of a municipality;

“the Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

“total remuneration package” means the total cost of a senior manager’s remuneration to a municipality and includes the salary, pension contributions, medical aid contributions and other forms of payment or benefit.

Scope of application

2. (1) These regulations apply to—
 - (a) municipalities in the Republic of South Africa;
 - (b) municipal entities; and
 - (c) senior managers.
- (2) These regulations must be read in conjunction with—
 - (a) any regulations or guidelines issued in terms of section 120 of the Act concerning matters listed in section 54A, 56, 57A and 72; and
 - (b) the Local Government: Municipal Regulations on Minimum Competency Levels, 2007, issued in terms of the Municipal Finance Management Act, as published under Government Notice No. 493 in Government Gazette No. 29967 of 15 June 2007.

CHAPTER 2

STAFF ESTABLISHMENT

Human resource planning

3. A municipal council must—
- (1) assess the human resources necessary to perform its functions, with particular reference to—
 - (a) the number of senior managers required; and
 - (b) the competencies that a senior manager must have.
 - (2) assess existing human resources by race, gender and disability, and department with reference to their—
 - (a) competencies;
 - (b) training needs; and
 - (c) employment capacities.
 - (3) plan within the available budgeted funds, including funds for the remaining period of the relevant medium-term expenditure framework, for the recruitment, retention and development of human resources according to the municipality's requirements determined in terms of paragraph (a), which plan must, as a minimum, include—
 - (a) realistic goals and measurable targets for achieving representativeness, taking into account paragraph (b); and
 - (b) targets for the training of senior managers per occupational category and of specific senior managers, with specific plans to meet the training needs of persons historically disadvantaged.

Staff establishment

4. (1) A municipal manager must, within 12 months of the promulgation of these regulations, review the municipality's staff establishment having regard to the principles set out in these regulations, the functions and powers listed in Part B of Schedule 4 to the Constitution, Part B of Schedule 5 to the Constitution, Chapter 5 of the Municipal Structures Act, and based on—
 - (a) a municipality's strategic objectives; and
 - (b) a municipality's core and support functions.
- (2) Notwithstanding subregulation (1), a municipality must at least provide for the following departments on the staff establishment to—
 - (a) provide development and town planning services;
 - (b) provide public works and basic services to communities;
 - (c) provide community services;
 - (d) manage the finances of a municipality; and
 - (e) render corporate support services.
- (3) The municipal manager must review the municipality's staff establishment within 12 months in any of the following instances:
 - (a) the election of a new municipal council;
 - (b) the adoption of the integrated development plan of the municipality as contemplated in section 25 of the Act;
 - (c) material changes to the functions of the municipality; or
 - (d) the determination of new municipal boundaries.
- (4) The staff establishment must provide for—
 - (a) permanent posts; and
 - (b) fixed term posts.

(5) In the case of fixed term posts, the municipal manager must have due regard to the following:

- (a) the financial implications of such post to the municipality;
- (b) any existing contractual obligations of the incumbent manager and the financial implications thereof on the budget of the municipality;
- (c) the need of the municipality to retain institutional memory and scarce skills, and to promote stability and continuity within the municipality; and
- (d) the sustainability of the municipality.

(6) The municipal manager must, within 14 days of finalising the staff establishment, submit the staff establishment, a detailed report and recommendations on the staff establishment to the municipal council for approval.

(7) The report contemplated in subregulation (6) must outline the process followed in developing the staff establishment, which must include—

- (a) a summary of the mandate and service delivery priorities of the municipality and how the proposed staff establishment addresses these;
- (b) a summary of the proposed posts that are envisaged to—
 - (i) materially change;
 - (ii) change to a limited or non-material degree;
 - (iii) be abolished; and
 - (iv) not be affected by the changes;
- (c) a motivation of the proposed changes, including an analysis of the strengths, weaknesses and limitations of the current staff establishment;
- (d) job descriptions, duties, functions, competency requirements and responsibilities according to which one or more posts of the same grade are established, including the grading or relative size and value of a job;
- (e) details of the financial implications of the changes including, but not limited to, the outcomes of job evaluation processes, remuneration costs for senior managers, costs for relocation, new facilities and equipment, if any;
- (f) non-financial implications of the changes, including the impact on existing staff, key stakeholders and other processes within the municipality;
- (g) a project plan that specifies the timeframes within which the implementation is envisaged to take place; and
- (h) the stakeholders and change management requirements.

(8) The municipal council must at its next meeting following receipt of the staff establishment, approve the staff establishment, with or without amendments, as proposed by the municipal manager.

Creation and filling of senior manager posts

5. (1) When creating or filling a post of a senior manager, the municipal council must have due regard to the staff establishment, report and recommendation contemplated in regulations 4(6) and (7) of these regulations.

(2) The municipal council must—

- (a) confirm that the municipality requires the post to meet its strategic objectives;
- (b) ensure that a job description has been developed for the post;
- (c) attach to that post the remuneration and other conditions of employment; and

- (d) ensure that sufficient budgeted funds, including funds for the remaining period of the medium-term expenditure framework, are available for filling the post.

CHAPTER 3

RECRUITMENT, SELECTION AND APPOINTMENT

Principles of recruitment

6. (1) The recruitment, selection and appointment of senior managers must take place in accordance with the municipal systems and procedures contemplated in section 67 of the Act that are consistent with sections 54A, 56, 57A and 72 of the Act.
- (2) A senior manager post must be filled through public advertising, in accordance with the procedures contemplated in regulation 10.
- (3) Selection must be competence-based to enhance the quality of appointment decisions and to ensure the effective performance by municipalities of their functions.

Determination of recruitment needs

7. (1) When the post of a senior manager becomes vacant, or is due to become vacant, the mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must, upon receipt of official notification that the post of a senior manager will become vacant, obtain approval from the municipal council for the filling of such post in its next council meeting or as soon as it is reasonably possible to do so.
- (2) A vacant senior manager post may not be filled, unless—
- (a) approval to fill the post has been granted by the municipal council; and
 - (b) the post has been budgeted for.
- (3) Notwithstanding subregulation (1), the speaker may convene a special meeting to obtain municipal council approval for the filling of a senior manager post.

General requirements for appointment of senior managers

8. (1) No person may be appointed as a senior manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she—
- (a) is a South African citizen or permanent resident; and
 - (b) possesses the relevant competencies, qualifications, experience, and knowledge set out in Annexures A and B to these regulations.
- (2) An appointment may not take effect before the first day of the month following the month during which the municipal council approved the appointment.

Competence requirements for senior managers

9. (1) A person appointed as a senior manager in terms of these regulations must have the competencies as set out in Annexure A.
- (2) A person appointed as a senior manager in terms of these regulations must comply with the minimum requirements for higher education qualification, work experience and knowledge as set out in Annexure B.

Advertising of vacant posts

10. (1) The municipal manager must, within 14 days of receipt of the approval referred to in regulation 7, ensure that the vacant post is advertised.

(2) A vacant senior manager post must be advertised in a newspaper circulating nationally and in the province where the municipality is located.

(3) An advertisement for a vacant senior manager post must specify the—

- (a) job title;
- (b) term of appointment;
- (c) place to be stationed;
- (d) annual total remuneration package;
- (e) competency requirements of the post, including minimum qualifications and experience required;
- (f) core functions;
- (g) need for signing of an employment contract, a performance agreement and disclosure of financial interest;
- (h) the need to undergo security vetting;
- (i) contact person;
- (j) address where applications must be sent or delivered; and
- (k) closing date which must be a minimum of 14 days from the date the advertisement appears in the newspaper and not more than 30 days after such date.

(4) A municipality may utilise a recruitment agency to identify candidates for posts: Provided that the advertising, recruitment and selection procedures comply with these regulations.

(5) The mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must provide monthly reports to the executive committee regarding progress on the filling of the vacant senior manager post.

Application for vacant post

11. (1) An application for the vacant post of a senior manager must be submitted on an official application form, attached as Annexure C, accompanied by a detailed curriculum vitae.

(2) Notwithstanding subregulation (1), a municipality that has on-line application procedures in place may use an on-line application form: Provided that the on-line application form substantially corresponds to the application form in Annexure C, and complies with these regulations.

(3) An application not made on the official form, as contemplated in subregulations (1) or (2) must not be considered.

(4) An applicant for a senior manager post must disclose—

- (a) his or her academic qualifications, proven experience and competencies;
- (b) his or her contactable references;
- (c) registration with a relevant professional body;
- (d) full details of any dismissal for misconduct; and
- (e) any disciplinary actions, whether pending or finalised, instituted against such applicant in his or her current or previous employment.

(5) Any misrepresentation or failure to disclose information contemplated in subregulation (3) and (4) is a breach of the Code of Conduct for Municipal Staff as provided for in Schedule 2 to the Act and shall be dealt with in terms of the Disciplinary Regulations.

(6) The municipality must compile and maintain a record of all applications received, which must contain—

- (a) the applicants' biographical details and contact information;
- (b) the details of the post for which the applicants were applying;
- (c) the applicants' qualifications; and
- (d) any other requirements outlined in the application form.

Selection panel

12. (1) A municipal council must appoint a selection panel to make recommendations for the appointment of candidates to vacant senior manager posts.

(2) In deciding who to appoint to a selection panel, the following considerations must inform the decision:

- (a) the nature of the post;
- (b) the gender balance of the panel; and
- (c) the skills, expertise, experience and availability of the persons to be involved.

(3) The selection panel for the appointment of a municipal manager must consist of at least three and not more than five members, constituted as follows:

- (a) the mayor, who will be the chairperson, or his or her delegate;
- (b) a councillor designated by the municipal council; and
- (c) at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

(4) The selection panel for the appointment of a manager directly accountable to a municipal manager must consist of at least three and not more than five members, constituted as follows:

- (a) the municipal manager, who will be the chairperson;
- (b) a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
- (c) at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

(5) A panel member must disclose any interest or relationship with shortlisted candidates during the shortlisting process.

(6) A panel member contemplated in subregulations (3) and (4) must recuse himself or herself from the selection panel if—

- (a) his or her spouse, partner, close family member or close friend has been shortlisted for the post;
- (b) the panel member has some form of indebtedness to a short-listed candidate or *vice versa*; or
- (c) he or she has any other conflict of interest.

(7) A panel member and staff member must sign a declaration of confidentiality as set out in Annexure D to these regulations, to avert the disclosure of information to unauthorised persons.

(8) A staff member may provide secretarial or advisory services during the selection process, but may not form part of the selection panel.

Compiling shortlist of applicants

13. (1) A mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, in consultation with the selection panel, must compile—

- (a) a list of all applicants who applied for an advertised post; and

- (b) a shortlist consisting of all applications received for a specific post, evaluated against the relevant competency requirements, as set out in Annexures A and B to these regulations.
- (2) The shortlisting must be finalised within 30 days of the closing date of the advertisement.
- (3) The municipality must keep a record of all the applicants who applied for vacant posts.
- (4) The municipal manager must ensure that the information contained in the applications is kept confidential and stored in a secure site on the municipality's premises.
- (5) The lists contemplated in subregulation (1) must be submitted, together with the shortlisted applications, to the selection panel before the interviews.

Screening of candidates

- 14.** (1) Screening of the shortlisted candidates must take place within 21 days of the finalisation of the shortlisting by—
- (a) conducting the necessary reference checks;
 - (b) contacting a candidate's current or previous employer;
 - (c) determining the validity of a candidate's qualifications; and
 - (d) verifying whether a candidate has been dismissed previously for misconduct or poor performance by another employer.
- (2) A written report on the outcome of the screening process must be compiled by the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, before the interviews take place.

Interviews

- 15.** (1) The selection panel must conduct interviews within 21 days of screening the candidates.
- (2) The selection panel for a specific post must remain the same throughout the screening and interviewing process.
 - (3) The selection panel must keep records of every panel member's individual assessment of the interviewed candidates.
 - (4) The determination of candidates to be recommended for appointment must be considered by way of consensus between the members of the selection panel.
 - (5) If consensus cannot be reached, a dissenting member may record his or her concerns in the minutes, whereafter the issue may be voted upon, with each member of the selection panel entitled to one vote.
 - (6) The selection panel must recommend the second and third suitable candidates to minimise delays that may arise in the filling of the post if the first choice candidate declines or does not accept the offer of employment.

Selection

- 16.** (1) The candidates recommended for appointment to the post of a senior manager must undergo a competency assessment.
- (2) The competency assessment tools must—
 - (a) be capable of being applied fairly; and
 - (b) not be biased against any person or group of persons.
 - (3) A municipality must provide in its medium term budget, funding for purposes of competency assessment and testing.

(4) Notwithstanding subregulation (3) and upon good cause shown, a municipality encountering cash flow problems may apply to the Local Government Sector Education and Training Authority to make use of the discretionary grants to fund the competency assessment for purposes of filling a vacant senior manager post.

(5) The selection panel must submit a report and recommendation on the selection process to the municipal council on the suitability of candidates who comply with the relevant competency requirements of the post as set out in Annexures A and B, in order of preference.

Resolution of municipal council on appointment of senior managers and reporting

17. (1) Before making a decision on an appointment, a municipal council must satisfy itself that—

- (a) the candidate meets the relevant competency requirements for the post, as set out in Annexures A and B to these regulations;
- (b) screening of the candidates has been conducted in terms of regulation 14; and
- (c) the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to these regulations.

(2) A municipal council must, subject to subregulation (1), take a decision on the appointment of a suitable candidate.

(3) A municipal council must—

- (a) inform all interviewed candidates, including applicants who were unsuccessful, of the outcome of the interview; and
- (b) within 14 days of the decision referred to in subregulation (2), submit a written report to the MEC for local government regarding the appointment process and outcome.

(4) The report contemplated in subregulation (3)(b) must contain—

- (a) details of the advertisement, including date of issue and the name of newspapers in which the advert was published, and proof of the advertisement or a copy thereof;
- (b) a list of all applicants;
- (c) a report contemplated in regulation 14(2) on the screening process and the outcome thereof;
- (d) the municipal council's resolution approving the selection panel and the shortlisted candidates;
- (e) competency assessment results;
- (f) the minutes of the shortlisting meeting;
- (g) the minutes of interviews, including scoring;
- (h) the recommendations of the selection panel submitted to the municipal council;
- (i) the details of executive committee members and recommendations, if the selection panel comprised of all members of the executive committee;
- (j) the recommendation of the executive committee or executive mayor to the municipal council, if any;
- (k) the municipal council resolution approving the appointment of the successful candidate;
- (l) the application form, curriculum vitae, proof of qualifications and other supporting documentation of the successful candidate;
- (m) a written confirmation by the successful candidate that he or she does not hold political office as contemplated in section 56A of the Act, as at the date of appointment;

- (n) the letter of appointment, outlining the term of contract, remuneration and conditions of employment of the senior manager; and
- (o) any other information relevant to the appointment.

Re-employment of dismissed persons

18. (1) A person who has been dismissed for misconduct in a municipality may not be employed as a senior manager in any municipality before the expiry of a period, as set out in column 3, in respect of such category of misconduct as set out in column 2 of Schedule 2.

(2) Subregulation (1) does not apply to a senior manager who has lodged a dispute in terms of applicable legislation.

(3) If a senior manager is dismissed for more than one categories of misconduct as set out in subregulation (1), the periods set out in column 3 of the table attached as Schedule 2, run concurrently.

(4) For purposes of subregulation (1), a person dismissed for misconduct is prohibited from re-employment in any municipality for a period as set out in column 3 of Schedule 2 in respect of such category of misconduct calculated from the date of dismissal or conviction.

(5) Any senior manager who has been dismissed for any misconduct other than the categories of misconduct as set out in column 2 of the table attached as Schedule 2 may not be subjected to a waiting period before such a staff member may be re-employed in a municipality.

(6) A municipality must maintain a record of staff members dismissed for misconduct and staff members who resigned prior to the finalisation of any disciplinary proceedings.

(7) A record contemplated in subregulation (6) must be submitted within 14 days of such dismissal or resignation to the MEC for local government and the Minister.

(8) The record contemplated in subregulation (6) must include the following information:

- (a) The name and surname of the staff member;
- (b) the name of municipality;
- (c) the post title; and
- (d) the nature of the misconduct, including—
 - (i) the date of suspension, if applicable;
 - (ii) the conditions of suspension;
 - (iii) the date of commencement of the disciplinary hearing;
 - (iv) information regarding any pre-dismissal arbitration;
 - (v) the finding and category of misconduct;
 - (vi) the date on which the misconduct was referred for arbitration;
 - (vii) costs incurred by the municipality towards the finalisation of the disciplinary case;
 - (viii) the date of resignation or dismissal of the senior manager; and
 - (ix) whether the dismissal has been appealed and the status of the appeal, if applicable.

Re-advertisement of posts

- 19.** (1) If no suitable candidate has been identified, the municipal council—
- (a) must inform all shortlisted candidates that their applications were unsuccessful; and
 - (b) may re-advertise the post.

Secondment

- 20.** (1) If a person is seconded to a municipality to act as a municipal manager in terms of section 54A(6) of the Act, an agreement must be entered into between the relevant seconding authority and receiving municipality.
- (2) The agreement contemplated in subregulation (1) must specify—
- (a) the duration of the secondment;
 - (b) the party responsible for the costs of the secondment; and
 - (c) the job description of the seconded official.
- (3) Notwithstanding subregulation (4), the cost of secondment must be borne by the receiving municipality, taking into consideration the financial capacity of the municipality.
- (4) A person seconded in terms of subregulation (1) must report monthly to the MEC or the Minister, in terms of section 54A(6), on the following:
- (a) steps taken to fill the vacant post to which he or she is seconded;
 - (b) the development and implementation of any municipal institutional recovery plan for which the seconded official is responsible;
 - (c) monitor and assess the adherence to policy, principles and frameworks applicable to the municipality;
 - (d) develop a turnaround strategy for the municipality including a strategy to promote good governance;
 - (e) ensure implementation of municipal council resolutions by the administration;
 - (f) implement a system to control and approve all expenditure;
 - (g) implement all governance systems and procedures; and
 - (h) ensure implementation of financial systems, policies and procedures.
- (5) A person seconded in terms of subregulation (1) must—
- (a) be paid an allowance equal to the difference between the seconded's current salary and the minimum budgeted salary of the position that the seconded acts in; and
 - (b) be compensated for subsistence and travel incurred during the course and scope of his or her duties, in accordance with the relevant policy of the municipality.

CHAPTER 4**CONDITIONS OF EMPLOYMENT****Ordinary hours of work**

- 21.** (1) Except as otherwise provided, a senior manager's ordinary hours of work must be stipulated in the employment contract and be in accordance with the operational requirements of the municipality.
- (2) Notwithstanding subregulation (1) a senior manager must work at least 40 ordinary hours per week from Monday to Friday.

Overtime

- 22.** A senior manager may be required to work overtime without additional remuneration.

Annual leave

- 23.** (1) In this regulation the annual leave cycle is calculated from 1 January to 31 December.
- (2) A senior manager must apply for annual leave on an official leave form attached as Annexure E to these regulations.
- (3) Notwithstanding subregulation (1), a municipality that has an on-line application form may use an on-line application form: Provided that the on-line application form substantially corresponds to the application form in Annexure E and complies with these regulations.
- (4) The paid annual leave to which a senior manager is entitled must be stipulated in the employment contract.
- (5) A senior manager who commences employment after 1 January is entitled to paid annual leave on a *pro rata* basis.
- (6) A senior manager is entitled to not more than two working days leave on full remuneration for every month which the senior manager worked in any annual leave cycle.
- (7) A senior manager does not accrue leave during any period of unpaid leave or if the senior manager is absent from work without permission.
- (8) The accrual of leave must be reduced on a *pro rata* basis in accordance with the number of unpaid leave days or days on which the senior manager was absent without permission.
- (9) A senior manager must take at least 10 working days annual leave in each annual leave cycle: Provided that the remaining days must be taken before the end of the following annual leave cycle, failing which they are forfeited.
- (10) A senior manager may only take annual leave with the prior written approval of the mayor or municipal manager, as the case may be.
- (11) A senior manager's application for annual leave may not be unreasonably disapproved.
- (12) A senior manager whose annual leave application is not approved as a result of operational requirements must be informed in writing of the refusal, the reasons for the disapproval and the future arrangements for rescheduling the annual leave.
- (13) A senior manager who is recalled from leave due to operational requirements must be credited with the number of annual leave days forsaken.
- (14) The municipality must—
- (a) encourage senior managers to take their annual leave in the annual leave cycle in which they accrue; and
 - (b) establish a system to record accurately the leave taken by senior managers.

Sick leave

- 24.** (1) In this regulation, "sick leave cycle" means the period of 36 months employment with the municipality, calculated from 1 January.
- (2) A senior manager must apply for sick leave on an official leave form attached to these regulations as Annexure E.
- (3) A senior manager is entitled to 36 working days paid sick leave during each sick leave cycle.
- (4) A senior manager who is appointed after 1 January will be entitled to paid sick leave on a *pro rata* basis.
- (5) Sick leave may not be carried over from one sick leave cycle to the next sick leave cycle.
- (6) A senior manager whose—
- (a) sick leave is depleted within a sick leave cycle may take annual leave in lieu of sick leave for the purposes of recovery;

(b) sick leave and annual leave are depleted, may, at the discretion of the municipality and to a maximum of 30 days, be granted unpaid leave.

(7) Notwithstanding subregulation (6), the municipality may, with the consent of the senior manager, reduce the pay to which the senior manager is entitled to in respect of any day's absence due to illness or injury if the municipality complies with the conditions set out in section 22(6) of the Basic Conditions of Employment Act.

Proof of sickness or injury

25. (1) A senior manager who takes sick leave for more than two consecutive days or on more than two occasions during an eight week period must provide an original medical certificate that complies with subregulations (2) and (3).

(2) The medical certificate contemplated in subregulation (1) must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.

(3) The medical certificate contemplated in subregulation (1) must, in addition to the requirement in subregulation (2), contain the following information:

- (a) A clear indication of the name, address and qualification of the medical practitioner;
- (b) the name of the patient, which must correspond with the name of the senior manager;
- (c) the identity number of the senior manager;
- (d) the date and time of the medical evaluation;
- (e) an indication of—
 - (i) the medical practitioner's personal observations during an examination;
 - (ii) information received from the patient during the consultation and which is based upon acceptable medical grounds;
 - (iii) with the consent of the senior manager, a description of the sickness or injury in layman's terms, or, if the senior manager refuses to provide consent, specifying that the senior manager is unfit for work due to sickness or injury;
 - (iv) whether the patient is totally indisposed for duty or whether the patient is able to perform less strenuous duties;
 - (v) the precise period of recommended sick leave;
 - (vi) the date of issue of the medical certificate; and
 - (vii) in the case of a *pro forma* medical certificate, the deletion of the wording not applicable to the patient.

(4) A municipality that doubts the authenticity of a medical certificate provided by a senior manager or that claims that the medical certificate does not substantially and materially comply with subregulation (3) must furnish the senior manager with its reasons in writing.

(5) In respect of a senior manager who fails to provide an authentic medical certificate that substantially and materially complies with subregulations (2) and (3) the municipality may—

- (a) debit the number of annual leave days that are due to the senior manager by the number of sick days taken; or
- (b) if a senior manager has no annual leave due to him or her, grant the senior manager unpaid leave for the number of sick days taken by the senior manager.

(6) If there is a reasonable suspicion that the senior manager is abusing sick leave, the municipality may at its own cost, require the senior manager to be examined by a medical practitioner of the municipality's choice.

Occupational accidents and diseases

26. The provisions of regulations 23(13) and 28 do not apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, except in respect of any period which no compensation is payable in terms of the Compensation for Occupational Injuries and Diseases Act.

Reporting sickness or injury

27. (1) A municipal manager who is unable to report for duty due to sickness or injury must, as soon as reasonably possible, inform the mayor about his or her absence and expected duration of absence.

(2) A manager directly accountable to a municipal manager who is unable to report for duty due to sickness or injury must, as soon as reasonably possible, inform the municipal manager about his or her absence and expected duration of absence.

Sickness or injury during leave

28. A senior manager who falls sick or who is injured during any period of leave other than sick leave must complete that period of leave before sick leave may be granted.

Maternity leave

29. (1) A senior manager is entitled to at least four consecutive months maternity leave.

(2) A senior manager must apply for maternity leave on an official leave form attached as Annexure E to these regulations.

(3) A senior manager who has been employed by the municipality for one year or more is entitled to full remuneration for four months, while on maternity leave.

(4) The maternity leave must commence—

(a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or

(b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the senior manager's health or that of her unborn child.

(5) A senior manager who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for at least six weeks after the miscarriage or stillbirth, whether or not the senior manager had commenced maternity leave at the time of the miscarriage or stillbirth.

(6) A senior manager who adopts a child who is younger than three months at the time of the adoption may be granted up to four consecutive months maternity leave.

(7) No senior manager may commence work for six weeks after the birth of her child, unless a medical practitioner certifies that she is fit to do so.

(8) A senior manager must notify the municipality in writing, unless the senior manager is unable to do so, of the date on which she intends to—

(a) commence maternity leave; and

(b) return to work after maternity leave.

(9) A senior manager contemplated in subregulation (8) must notify the municipality—

- (a) at least four weeks before the senior manager intends to commence maternity leave; or
- (b) if it is not reasonably practicable to do so, as soon as it is reasonably practicable.

Family responsibility leave

30. (1) A senior manager is entitled to five working days family responsibility leave per annual leave cycle for utilisation if the senior manager's—

- (a) spouse or life partner gives birth to the senior manager's child;
- (b) child, spouse or life partner is sick; or
- (c) child, spouse or life partner, or a senior manager's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling, dies.

(2) A senior manager must apply for family responsibility leave on an official leave form attached as Annexure E to these regulations.

(3) A municipality may require reasonable proof of an incident in respect of which family responsibility leave is granted.

Study leave

31. (1) A senior manager must apply for study leave on an official leave form attached as Annexure E to these regulations.

(2) If a senior manager plans to attend a training programme that forms part of the senior manager's personal development plan, the municipality may, upon receipt of official proof of the programme, grant the senior manager up to twenty working days' leave per year, ten days of which must be for examinations linked to formal qualifications and ten days to attend classes or lectures.

(3) Notwithstanding subregulation (2), a senior manager may be granted leave to attend workshops, conferences or seminars associated with continued professional development: Provided that the mayor or municipal manager has approved the senior manager's attendance at such workshop, conference or seminar.

(4) A senior manager who is required to attend a training programme in relation to a priority skill identified by the municipality in terms of the senior manager's personal development plan must be granted paid time off to attend the training in addition to the senior manager's entitlement to leave.

(5) A municipality may grant appropriate flexible working arrangements to a senior manager who is required to complete a structured learning programme.

Special leave

32. (1) A municipality may grant special leave to a senior manager in accordance with the policies of the municipality.

(2) A senior manager must apply for special leave on an official leave form attached as Annexure E to these regulations.

(3) The municipality must adopt a special leave policy that defines—

- (a) circumstances and conditions under which special leave is granted; and
- (b) as far as possible, events for which senior managers may be granted special leave.

(4) The policy contemplated in subregulation (3) may provide for paid leave to a senior manager for such occasions as military service, collective bargaining or other labour relations requirements, participation in sport on provincial or national level, sabbaticals, where appropriate, or the treatment of substance abuse.

Unauthorised absence from work

33. (1) If a senior manager is absent from work without permission—
- (a) such absenteeism will be regarded as leave without pay;
 - (b) the senior manager will be regarded as having deserted his or her post and therefore resigned—
 - (i) if the period of absence exceeds fifteen (15) or more consecutive working days; and
 - (ii) if the municipality has taken reasonable steps to trace the senior manager without success.
- (2) The provisions of subregulation (1) do not apply to a senior manager who shows good cause that he or she was unable to inform the municipality of the reasons for the absenteeism.

Calculation of unpaid leave

34. For purposes of calculating unpaid leave, the following formula applies:

$$\frac{A \times B}{365}$$

Where –

- (a) “A” represents the senior manager’s basic annual salary notch per annum;
- (b) “B” represents the number of leave days without pay; and
- (c) “365” represents the number of days in a year.

Upper limit of total remuneration package of senior managers

35. (1) The Minister must by notice in the Gazette annually determine the upper limit of the total remuneration package of senior managers according to different categories of municipalities.

(2) The upper limit of the total remuneration package of senior managers for a financial year, must be determined by the Minister before 31 March of the following financial year, after consultation with the Minister for Public Service and Administration, the Minister of Finance, the MECs for local government, and organised local government, by notice in the Gazette after taking into consideration—

- (a) the classification of municipalities according to different grades;
- (b) the respective duties, powers and functions and responsibilities of the municipality;
- (c) the affordability of different levels of remuneration, the number of municipal employees, and the salary and wage bill of the municipality;
- (d) the population, operating budget and assets of the municipality;
- (e) the current principles and levels of remuneration in society in general;
- (f) the need for the promotion of equality and uniformity of salaries, allowances and benefits for equal work performed;
- (g) the provision of uniform norms and standards nationally to address disparities; and
- (h) inflationary increases.

Disclosure of benefits and interests

36. (1) A senior manager who enters into an employment contract in terms of these regulations must—

- (a) within 60 days after his or her appointment; and
- (b) annually thereafter, from the commencement of the new financial year of a municipality,

declare his or her benefits and interests.

(2) The benefits and interests contemplated in subregulation (1) may include any shares, directorships or property, which may potentially be in conflict with the senior manager's official duties.

(3) A senior manager must disclose all his or her registerable interests on the form attached as Annexure F to these regulations.

(4) If the circumstances change significantly after an initial disclosure has been made, and new or additional facts become material, the senior manager must disclose such facts as soon as reasonably possible.

(5) Failure to disclose benefits and interests is a breach of contract and must be dealt with in terms of the Code of Conduct for Municipal Staff as provided for in Schedule 2 to the Act, read in conjunction with the Disciplinary Regulations.

CHAPTER 5

BENEFITS

Retirement or pension fund membership

37. (1) A senior manager must belong to a retirement or pension fund registered in terms of the Pension Funds Act.

(2) A senior manager must annually submit proof of membership of the retirement or pension fund to the municipality.

(3) A senior manager must be afforded an opportunity to make a once-off choice in respect of a retirement or pension fund to which he or she wants to become a member, including a retirement or pension fund accredited by the bargaining council designated for municipalities: Provided that such fund must be registered in terms of the Pension Funds Act.

Medical scheme membership

38. (1) A senior manager must belong to a medical aid registered in terms of the Medical Schemes Act.

(2) A senior manager must submit annually proof of membership of the medical aid scheme to the municipal council.

(3) A senior manager must annually be afforded an opportunity to make a once-off choice in respect of a medical aid scheme to which he or she wants to become a member, including a medical scheme accredited by the bargaining council designated for municipalities: Provided that such scheme must be registered in terms of the Medical Schemes Act.

Motor vehicle

39. (1) A senior manager must have a motor vehicle available for the proper performance of his or her functions and official duties: Provided that he or she must secure his or her own financing for the vehicle.

(2) In the event that a senior manager utilises his or her private vehicle to carry out official duties, he or she must be compensated for the kilometres travelled in respect of the official trip in accordance with the relevant policy of the municipality.

(3) Official distances travelled may be claimed in accordance with the relevant policy of the municipality, but may not exceed the applicable tariffs prescribed by the Department of Transport on a monthly basis for the use of privately-owned vehicles.

(4) For purposes of claiming motor vehicle and maintenance allowances, a senior manager must keep a logbook acceptable to the South African Revenue Service reflecting the official and private kilometres travelled per month.

Mobile phone and data card

40. A senior manager is entitled to compensation for the use of a mobile telephone and data card for official purposes in accordance with the relevant policy of the municipality.

CHAPTER 6

TERMINATION OF SERVICE

Retirement

41. (1) A senior manager has the right to retire, and must retire, on the first calendar day of the month following the day on which he or she turns 65 years of age.

(2) Notwithstanding subregulation (1), a municipal council may, after consultation with the MEC for local government, and upon good cause shown, apply in writing to the Minister, for a waiver of the requirement in subregulation (1) in the case of a person with scarce skills for effective service delivery by the municipality.

(3) Notwithstanding subregulations (1) and (2), a municipality may, at the request of a senior manager, allow the senior manager to retire after attaining the age of 55 years.

Notice of termination

42. (1) An employment contract of a senior manager may be terminated only on notice of—

- (a) two weeks, if the senior manager has been employed for six months or less;
- (b) four weeks, if the senior manager has been employed for 12 months or less; or
- (c) one calendar month, if the senior manager has been employed for more than 12 months.

Dismissal for misconduct, incapacity or operational requirements

43. (1) A senior manager may be dismissed for misconduct, for incapacity or for operational requirements if the municipality has complied with the relevant provisions of the Labour Relations Act.

(2) If the municipality is of the opinion that a senior manager is incapable of carrying out the duties attached to the senior manager's post as a result of continuous ill-health or injury, the municipality may require the senior manager to undergo a medical examination by a registered medical practitioner nominated by the municipality and at the municipality's expense.

(3) The record of any medical examination performed must be kept confidential and may be made available only—

- (a) in accordance with the ethics of medical practice;
- (b) if required by law or court order; or

- (c) if the senior manager has consented in writing to the release of such record.
- (4) The municipality may, on the basis of medical evidence, consider the dismissal of a senior manager on account of ill-health.
- (5) A dismissal on account of ill-health or injury must be done with due regard to items 10 and 11 of Schedule 8 of the Labour Relations Act.
- (6) If a senior manager applies for a discharge from service on account of continuous ill-health or injury, the provisions of subregulations (2) to (5) apply, with the necessary changes required by the context.
- (7) If a senior manager refuses or fails to be subjected to a medical examination, the senior manager may be dismissed for misconduct, subject to the Labour Relations Act.

Nomination of beneficiaries and payment of accruing benefits

- 44.** (1) A senior manager may for purposes of implementation of these regulations, designate one or more beneficiaries to whom accruing benefits to him or her may be paid in the event of the senior manager's death.
- (2) A municipality must ensure that a senior manager nominates beneficiaries on appointment or as and when circumstances change to avoid any financial hardships on the pay-out of benefits to beneficiaries due to delays.
- (3) The benefits of a senior manager who died before nominating beneficiaries must be dealt with in terms of the Administration of Estates Act, 1965 (Act No. 66 of 1965).

CHAPTER 7

GENERAL

Transitional arrangements

- 45.** (1) Employment contracts for all senior managers, entered into before these regulations became operational, remain in force until the contract lapses or is terminated.
- (2) When an employment contract referred to in subregulation (1) lapses or is terminated, the vacant post must be advertised in accordance with these regulations.
- (3) A municipality that has reviewed its staff establishment within two years prior to the coming into operation of these regulations is exempted from the provisions of regulation 4(1) of these regulations.

Repeal

- 46.** These regulations repeal regulations 6, 7, 9, 10, 11, 12, 13, 15, 26(8), 35, 36, 37, and 38 of the Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers, (Government Notice No. 805) as published in Government Gazette No. 29089 of 1 August 2006.

Short title

- 47.** These regulations are called the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers.

SCHEDULE 2**CATEGORIES OF MISCONDUCT AND TIME PERIODS THAT MUST EXPIRE BEFORE A PERSON MAY BE RE-EMPLOYED IN A MUNICIPALITY**

No.	CATEGORY OF MISCONDUCT	PERIOD THAT MUST EXPIRE BEFORE A PERSON MAY BE RE-EMPLOYED IN A MUNICIPALITY
1.	Financial misconduct contemplated in section 171 of the Municipal Finance Management Act, corruption or fraud.	Ten (10) years
2.	Misconduct involving elements of dishonesty or negligence.	Five (5) years
3.	(a) Assault with intent to do grievous bodily harm where a senior manager has been criminally charged and convicted.	Five (5) years
	(b) Sexual harassment.	Five (5) years
4.	Colluding to or acceding to an influence of any councillor not to enforce an obligation in terms of this Act, any other legislation or by-law or a decision of the municipal council of the municipality, and who has been found guilty of an offence and convicted to a fine or to imprisonment for a period not exceeding one year.	Five (5) years
5.	Facilitating or aiding an occupier of premises in a municipality to deny an authorised representative of the municipality or a service provider access at all reasonable times to the premises in order to read, inspect, install, or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service.	Five (5) years
6.	Convicted to an offence and sentenced to more than twelve (12) months imprisonment without the option of a fine.	Five (5) years
7.	(a) Use the position as a senior manager or confidential information for private gain or improperly benefit another person.	Five (5) years
	(b) Disclosure of any privileged or confidential information obtained as a senior manager of a municipality to an unauthorised person or persons.	Five (5) years
	(c) Take a decision on behalf of the municipality concerning a matter that the senior manager's spouse, partner or business associate, has a direct benefit or private business interest.	Five (5) years
8.	Being party to or beneficiary under a contract for the provision of goods and services to any municipality or any municipal entity established by a municipality.	Five (5) years
9.	Soliciting or accepting directly or indirectly any gift or favour that may influence the exercise of his or her functions, the performance of his or her duties, or judgment.	Five (5) years
10.	Discrimination against others on the basis of race, gender, disability, sexual orientation or other grounds prohibited by the Constitution.	Five (5) years
11.	Breach of the Code of Conduct for Municipal Staff as contained in Schedule 2 of the Act, other than misconduct referred to in item 1 to 10 in this table.	Two (2) years