



KWAZULU-NATAL PROVINCE

TREASURY
REPUBLIC OF SOUTH AFRICA

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PROCEDURE TO DEAL WITH ABSCONDMENT

1. Introduction

Section 23 of the Constitution (of the Republic of South Africa) guarantees everyone a right to fair labour practices. Therefore, it is imperative that absconding is effected in a fair manner. Absconding is regulated by section 17(3) of the Public Service Act, 103, 1994, as amended. Absconding occurs when an employee/official absents himself/herself from work for a period of one calendar month without permission of his/her supervisor or head of section (even then, the employee must ensure that the supervisor is aware).

2. Prescripts provisions

2.1 The Constitution Act 106 of 1996 at section 23(1) stipulates “everyone has the right to fair labour practices”.

2.2 Public Service Act 103 of 1994, as amended, provides as follows:

Section 17(3)(a)(i) an employee, ... who absents himself or herself from his or her official duties without permission of his or her head of department, office or institution for a period exceeding one calendar month, shall be deemed to have been dismissed from the public service on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.

(ii) “if such an employee assumes other employment, he or she shall be deemed to have been dismissed as aforesaid irrespective of whether the said period has expired or not”.

(b) “if an employee who is deemed to have been so discharged, reports for duty at any time after the expiry of the period referred to in paragraph (a), the relevant executive authority may, on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that employee in the public service in his or her former or any other post or position, and in such a case the period of his or her absence from official duty shall be deemed to be absence on vacation leave without pay or leave on such other conditions as the said authority may determine”.

3. Procedure

When an employee absents himself/herself from work/official duties without permission of his/her supervisor after seven (7) consecutive days (inclusive of weekends and/or public



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holiday/s), the supervisor must (with the assistance of Human Resources {HR} if deemed necessary):

3.1 Inform the head of section thereof immediately.

3.2 Inform Human Resources (HR) immediately (so that measures can be put in place to avoid undue salary payment/s).

3.3 Make every attempt to determine the whereabouts of the employee.

3.4 Contact the employee telephonically, via email, and follow up with sending the employee a registered letter to his or her last known address (which could be obtained from his or her personnel file/records stored at Human Resources division), clearly informing him/her to come to work on the day immediately succeeding the date of his/her receipt of the said letter. Proof of sending the said letter must be retained.

3.5 Clearly state, in the said letter, that if he/she does not return to work, at the end of the calendar month period (i.e. from the date of his/her first absence from work), his/her services will be deemed to have been terminated by operation of law (i.e. in terms of the section 17(3)(a)(i) of the Public Service Act, as amended).

3.6 At the expiry of the one calendar month period, the supervisor through the head of section must forward a (comprehensive) memorandum informing Human Resources (HR), particularly, the Director: Human Resources, the Employee Relations Sub-directorate, HR Practices - of the employee that has gone absent without permission of his/her supervisor. The said memorandum must clearly provide detailed information pertaining to attempts made to make contact with the employee, which includes dates, etc. That will help HR (i.e. Employee Relations) to ascertain whether it is in fact an abscondment or not.

3.7 If the employee returns to work before the expiry of the one calendar month period, take disciplinary actions against him or her provided he or she does not have a legitimate reason for his/her absence.

3.8 If the employee returns to work after the expiry of the one calendar month, the supervisor, through the head of section/directorate, must inform HR immediately for advice and do not allow the said employee to assume work until such advice has been provided by HR) otherwise abscondment will become nullified.

3.9 Based on the written information provided to HR with respect to the preceding paragraph, HR will submit the matter to the Head of Department for a determination in terms of section 17(3)(b) of the Public Service Act 103 of 1994 as amended.

4. Concluding remarks

It is imperative that the Business Units' management, which includes supervisors, monitor the calendar month period strictly for implementation purposes. However, if the employee reports for duty thereafter, then the provisions of section 17(3)(b) referred to herein at paragraph 2.2 above, can be implemented. Otherwise, should an employee who is deemed to have been so discharged report for duty and is allowed to perform his or her



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duties/functions, he or she will be deemed to have been implicitly reinstated {*Ramonetha v Department of Roads and Transport Limpopo and Another* (JA 104/2016) [2017] ZALAC 68; [2018] 1 BLLR 16 (LAC); (2018) 39 ILJ 384 (LAC) (1 November 2017)}.

It is important to note that in spite of the Public Service Act stipulating "... shall be deemed to have been dismissed from the public service on account of misconduct...", the employer does not make/take any decision to terminate or dismiss the employee, but merely implements the provisions of the Public Service Act, (i.e. s17(3)(a)(i) of the Public Service Act). That is why it is referred to as termination by operation of law. There is a plethora of case law to that effect.

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DATE