

GUIDELINES FOR THE NEW GRIEVANCE PROCEDURES FOR THE PUBLIC SERVICE

INTRODUCTION.

1. These Guidelines must be read in conjunction with the New Grievance Rules as published in Government Gazette No 25209 dated 25 July 2003.
2. These Guidelines are recommendations and Departments may draft their own internal grievance policy and or Guidelines, provided that they shall be within the framework of the aforementioned New Grievance Rules. The headings in these Guidelines generally correspond with the headings in the Grievance Rules.

PURPOSE AND APPLICATION

1. These Guidelines are intended to help employers and employees address a grievance that has arisen from official acts or omissions. Examples of official acts or omissions that could lead to grievances are –
 - (a) Personnel evaluation.
 - (b) Non-granting of notch increases
 - (c) Filling of posts
 - (d) Non-granting of merit awards
 - (e) Victimisation
 - (f) Discrimination/harassment
2. The above list is not exhaustive. There are other acts or omissions that may lead to the lodging of a grievance.
3. The objective of the grievance procedure is to resolve an employee's dissatisfaction relating to, or concerning an official act or omission that may adversely affect the employment relationship.
4. Supervisors are urged to assist employees to resolve such concerns using informal discussions. This will minimise the need for employees to lodge a formal grievance in regard to a matter that could have been resolved by means of an informal discussion and by the provision of information relevant to the grievance.
5. If an informal approach does not work, an employee may lodge a formal grievance with the **Designated Employee** using the prescribed grievance form.
6. It is part of the supervisor's duty to inform all their staff of the relevant legislation as well as the departmental policies and practices. The provision of information to resolve grievances will improve labour relations, promote a healthy working environment and result in sound management practices.
7. The new Grievance Rules and procedures are applicable to all employees appointed in terms of the Public Service Act, 1994.

DEFINITIONS

There are specific definitions for certain key words that are clarified in the new Grievance Rules.

The following points are worth noting:

1. Please note that the definition of the word "designated employee" has inadvertently been omitted from the list of definitions. A "Designated Employee" is an employee who performs the role of the 'Investigating Officer'. S/he facilitates the investigation and resolution of a grievance lodged in a Department. S/he must be fully familiar with all aspects of relevant public service legislation/ regulations/ and prescripts, and who is furthermore conversant with dispute resolution in the public service and whom the Head of Department should appoint for the purposes of grievance resolution.
2. The word "days" means working days and not calendar days. Depending upon circumstances eg shift workers, the 'days' may not necessarily be those of the supervisor/manager/ or the Designated Employee. Where there is any doubt, the working days of the aggrieved must be considered. Remember that Rule F8 determines that a grievance must be resolved within the 30 working day period. Public holidays and weekends are generally excluded unless the aggrieved works on those days.

MANAGING A GRIEVANCE (underlying principles)

1. A grievance must as far as possible be resolved by the Department and as close to the point of origin as possible. It is incumbent upon supervisors and managers to treat all grievances seriously, to ensure transparent human resource practices and to ensure efficient and effective public administration.
2. The Department, through the Designated Employee, must ensure that a grievance is dealt with in a speedy, fair, impartial and unbiased manner and that the principles of natural justice are observed. No employee may be victimised or prejudiced directly or indirectly as a result of lodging a grievance.
3. It is the duty of the Designated Employee to ensure that the grievance is attended to and resolved within 30 working days. It is also important for supervisors to inform an aggrieved employee of his/her right to representation by a fellow employee, a shop steward, or a union official. The Designated Employee should also ensure that an aggrieved is advised of this right when investigating a grievance. Legal representation is not allowed.
4. Lodging a grievance is a right, and should preferably be discussed with supervisors before using the grievance procedure unless the grievance involves the supervisor. Please refer to duties of the Designated Employee below.
5. Grievances that emanate from a disciplinary action should be resolved through the disciplinary appeal mechanism. Designated Employees should advise employees accordingly.
6. A grievance must be lodged in writing and all decisions taken during the process must be in writing. It is the duty of the Designated Employee to regularly inform the aggrieved of the progress and the finalisation of the grievance (Rule F5 and Rule F6). Refer also to other duties of the Designated Employee below.
7. This procedure shall be used to resolve individual grievances (Rule B1 (c) (iii). Collective grievances may be addressed through other avenues. An employee should not lodge insignificant or malicious grievances or abuse the procedure by repeatedly lodging a grievance on the same matter.
8. In large departments and those with regional offices, the need may arise to appoint a number of Designated Employees to deal with grievances. A Designated Employee at a regional office may refer an unresolved grievance to a Designated Employee at Head Office in order to expedite a grievance in compliance with Rule F8 (30 working day Rule). Departments should issue their own policy directives in this regard, or incorporate them in the department's internal Grievance policy.
9. It is also recommended that departments appoint a Designated Employee at its Head Office level to receive and facilitate the resolution of the grievance by the Head of Department and the Executing Authority.

ADHERENCE TO TIME LIMITS:

1. Upon receipt of the grievance by the Designated Employee the first day of the grievance period shall be regarded as the next working day (refer to Rule D1). The thirty-day period (ito Rule F8) commences one working day after the designated employee has received the grievance. Please remember the 30 working day time limit for departments to resolve a grievance.
2. To ensure an expeditious resolution of grievances, it is recommended that if an extension of the time limit is required, such extension should be fair and reasonable. Consent should not unreasonably be withheld and should be in writing. The time limits are set to make this procedure effective and efficient both for the employee who is aggrieved, as well as the employer.
3. The onus is on the Designated Employee to ensure that the grievance has been lodged timeously i.e. within 90 working days of the employee becoming aware of the official act or omission (Rule D3). The Rules do not make provision for condonation of a "late" grievance.
4. Rule D4 determines that an employee may demand that his or her grievance be referred to the Commission within ten days after receiving the Executing Authority's decision (see Rule F 7). The employee may also be reminded that s/he may also lodge the grievance with the relevant sectoral bargaining council (see Rule F11).
5. Should a Department fail to comply with Rule F8, such failure could be viewed as an aggravating circumstance, which is prejudicial to the aggrieved, and the possibility exists that the Commission will make a recommendation in favour of the aggrieved. In terms of Rule G1 the Commission can only proceed with its functions once '*all information has been received from the Executing Authority*'.

PROVISION OF INFORMATION

1. Every employee has a Constitutional right of access to all information held by the State or any of its organs at all levels of government in so far as such information is required for the exercise or protection of any of his or her rights. If an employer should refuse to release such information, or any part thereof, comprehensive reasons for such refusal shall be provided. Other information on any document, which an employee is not entitled to, may be deleted. The officer requesting the information will have to satisfy the department that the information is required to assist him/her in the proper preparation and lodging of his/her grievance. No confidential information about an employee may be divulged.
2. The right of access to information has certain limitations imposed by law. These limitations can be found in section 36 of the Constitution, sections 14 and 16 of the Labour Relations Act, 1995, as well as the Promotion of Access to Information Act.
3. An aggrieved must at all times be provided with information about the status of the grievance and the progress made towards the finalisation of the grievance. This is an inherent part of the duty of a Designated Employee (Rule E3).

LOGGING A GRIEVANCE

1. Rule F1 determines that an employee may lodge a grievance with an official designated to facilitate the resolution of grievances in the department. It is the duty of the Designated Employee to accept the grievance. Designated Employee's should remember to advise aggrieved employees that they should discuss their grievances with their immediate supervisors first before lodging such grievance. It is NOT the function of the Designated Employee to intervene in a dispute on behalf of an aggrieved employee, eg if there is a dispute concerning a performance evaluation, the Personnel Advisory Committee may assist in adjudicating on a dispute concerning the performance evaluation. Departments may appoint any number of Designated Employee's depending upon a department's own needs. Nothing precludes a Department or a Provincial Administration from appointing specialists in Personnel, Procurement or Financial matters as "Designated Employees". Departments must advise the Commission with regard to their grievance policies.
2. Departments should ensure that there are sufficient stocks of the prescribed grievance forms reasonably available to all employees (Rule F2).
3. It is the duty of the Designated Employee to liaise with those relevant structures of authority to resolve a grievance (Rule F3). It is expected of officials in the relevant structures of authority to be helpful in resolving grievances.
4. Rule F4 determines that a grievance may be resolved by 'any person' within the relevant structures of authority who has the 'authority' to do so. Where a grievance may be resolved by an official who has the requisite authority to do so, there is no need for the grievance to be referred to the Executing Authority or the Head of Department. Senior officials at various levels of management have existing delegated authority to eg (a) ratify the appointment of employees after a fair and transparent recruitment process (b) agree on the recommendations of Personnel Advisory Committees (c) approve housing and transport benefits. It is incumbent upon departments to ensure that officials have the delegated responsibilities to deal with specific administrative line functions.
5. The Designated Employee will, at all times, keep the aggrieved informed on a regular basis, in writing, on the progress made in attempting to resolve a grievance (see Rule E 3 and Rule F5), and the Designated Employee shall inform the aggrieved in writing of the resolution of a grievance (Rule F6).
6. Rule F 7 determines that if a grievance cannot be resolved, the Executing Authority must inform the aggrieved accordingly (using Part C of the prescribed form).
7. Rule F8 determines that the department, including the Executing Authority, has 30 working days to deal with a grievance. This is a very important Rule and departments should observe it judiciously. Departments must ensure that they have a process in place whereby the Designated Employee may fast-track a grievance to the Executing Authority. Given the busy schedules of Executing Authorities and the large geographical areas of some departments, departments must ensure that procedures are in place to facilitate the resolution of a grievance through the Designated Employee. Departments should advise the Commission of their policies/ Departmental Guidelines in this regard. Where Departments foresee that they cannot finalise the grievance within the 30 working day period, they should negotiate with the employee and his or her representative for an extension of the 30 working day period (Rule F 8). Such negotiations should be done in good faith.
8. Rule F9 determines that if an employee remains dissatisfied s/he must inform the Executing Authority within 10 working days. The Executing Authority must then forward the grievance and the relevant documentation to the Commission

within 5 working days of being informed by the employee. All of the aforementioned days are inclusive of the 30 working day period referred to in Rule F 8.

9. Rule F10 determines that if the grievance constitutes an 'alleged unfair labour practice', the employee may inform the Executing Authority in writing that s/he wishes to refer the grievance to the relevant sectoral bargaining council. It is an accepted practice within labour law that a grievance shall be lodged with an employer first before the assistance of outside dispute resolution agencies are sought.
10. Rule F11 provides that where there is failure on the part of the department to resolve a grievance within the 30 working day prescribed period, an aggrieved officer may lodge his/her grievance directly with the Commission or in the case of alleged unfair labour practice, with the relevant sectoral council. Employees alleging that a department failed to comply with Rule F8 are expected to provide proof of the employer's alleged negligence. Aggrieved officials of Provincial Administrations may make use of the Regional Offices of the Commission to lodge their grievances and officials at National Departments may direct such grievances to the Head Office of the Commission.
11. In instances where it has been established that there has been negligence on the part of the department in resolving the grievance within the specified time frames and an extension of time has not been negotiated with the aggrieved employee and or his/her representative, the Commission will, in terms of its Constitutional mandate, report such matters to Parliament and the Provincial Legislatures as the case may be.

REFERRAL TO THE PUBLIC SERVICE COMMISSION

1. Rule G1 determines that after the Commission has received all information from the departments it shall inform the Executing Authority of its recommendations within 30 working days. If the Commission is unable to finalise the matter within the prescribed period, it should request for an extension from the relevant Department. Departments must submit copies of the following documentation to the Commission -
 - [i] a copy of the employee's grievance form;
 - [ii] all other correspondence between the relevant employee and the employer with regard to his/her grievance;
 - [iii] the letter of appointment of the Designated Employee;
 - [iv] the report of the Designated Employee together with all supporting evidence;
 - [v] the submission to the Head of Department and / or Executing Authority which accompanied the Designated Employees report;
 - [vi] the Executing Authority's decision as communicated to the employee; and
 - [vii] any other related information/documentation relevant to the grievance.
2. The Commission will, after receipt of the aforementioned information, forward its recommendation to the Executing Authority. Rule G1 also determines that after receiving the Commission's recommendation/s the Executing authority must inform the aggrieved employee as well as the Commission of its decision.

GRIEVANCES OF HEADS OF DEPARTMENT

A grievance of a Head of Department at Provincial level shall be forwarded to the relevant Premier of that Province and a grievance of a Head of Department of a national department shall be referred to the President (Rule H).

EVALUATION OF THE GRIEVANCE PROCESS BY THE PUBLIC SERVICE COMMISSION

1. Rule I 1 determines that departments must keep a record of all grievances resolved from the beginning of each calendar year and report thereon to the Commission on a six monthly basis.
2. The Commission shall, in terms of section 196 [6] of the Constitution of South Africa, 1996, report to the National Assembly and in respect of its activities in a province, to the legislature of that province.

OTHER PROCEDURES

1. Rule J determines that when an aggrieved employee uses this procedure to lodge a grievance, s/he must disclose whether s/he is using any other grievance procedure.



TRANSITIONAL MEASURES

1. The new Grievance Rules were promulgated on 25 July 2003 and only became operational on 19 September 2003. Therefore, the transitional measures in Rule K 2 should read as follows - “ A grievance lodged before the **commencement** of these grievance rules, must be dealt with and concluded in terms of the Interim Grievance Rules promulgated in Government Gazette No 20231 of 1999”.
2. The Interim Grievance Rules are therefore operational until 18 September 2003. However, since such amendment must be effected in a new Government Gazette, this will remain pending until other similar amendments to the Rules are effectively dealt with through the appropriate negotiating forums.

GENERAL

1. Departments are organised differently, and as a result departments will differ from one employer to the other.
2. Departments may formulate their own Grievance Guidelines or policies to suit their own circumstances. Departments are requested to forward a copy of their Grievance Guidelines or policy to the Commission.
3. It is important for departments to develop the investigative skills of the Designated Employee who will undertake investigations.
4. Generally the Head of Department may, in terms of section 7 (3) (b) read with section 9 of the Public Service Act, 1994, appoint the Designated Employee. The Designated Employee should be a person from the department's-
 - Personnel Office
 - The Industrial Relations Office
 - The Labour Relations Office
 - A person familiar with all aspects of dispute resolution
 - A proper and fit person as identified by the Head of Department
5. The Head of Department should provide the Designated Employee with a general letter of authority that will clearly outline the terms of reference of the investigation/s.
6. Nothing precludes a department/provincial administration from securing the services of a Designated Employee from another department/ office to assist in resolving an employee's grievance.

DUTIES OF THE DESIGNATED EMPLOYEE

1. The purpose of the Designated Employee is, in terms of Rule B. 1 [c] of the Grievance Rules “to promote the speedy, impartial and equitable handling of grievances” .
2. Specifically the Designated Employee is tasked with the following:

Receive and expedite the resolution of a grievance.

Record and report all grievances received to the Labour Relations component/ Head of Department immediately and keep them informed of progress made.

Actively assist in removing any obstacles for the resolution of a grievance.

Investigate the grievance, request the necessary Managers/ Supervisors to assist with the resolution thereof (Rule F4), draft the necessary report/s, request the Head of Department for a decision, and where necessary inform the Executing Authority.

At all times keep the aggrieved informed, in writing, of the progress made towards finalising the grievance (Rule F5)

Where necessary, inform an aggrieved of his her rights in terms of the grievance rules.

Ensure that a grievance is resolved within the time frames as contemplated in Rule F.8 (30 working day period). A Designated Employee may submit his report directly to the HOD and or the Executing Authority. Departments may prescribe this step in their internal grievance policy/guidelines.



When drafting a report for the consideration of the Head of Department/Executing Authority the Designated Employee should discuss every grievance individually, in the following manner-

- [a] Grievance of employee.
 - [b] Enabling legislation
 - [c] Directives and circulars used as reference
 - [d] Reasoning
 - [e] Finding.
 - [f] Reasons for finding.
 - [g] Recommendation
3. Designated Employees may give priority to cases of alleged harassment, victimisation etc. Such cases may be brought to the attention of the Head of Department for urgent attention, if necessary.
 4. It is not the purpose of the Designated Employee to usurp the authority or to challenge the managerial prerogative of a manager or supervisor. Employees should always discuss their grievances with their respective supervisors/managers.
 5. The Public Service Commission will amend these Guidelines as determined by 'best practice' within the public service.

DUTIES OF THE HEAD OF DEPARTMENT

1. The Head of Department should appoint the Designated Employee.
2. The Head of Department, or delegated official, shall keep records of all grievances and inform the Public Service Commission on a six monthly basis (Rule I 1). The first reporting period shall be 30 June 2004 and the second reporting period shall be 31 December 2004. Similar reporting periods will be applicable in each successive year thereafter.
3. The Head of Department, or delegated official should ensure that grievances are finalised within 30 working days, and may negotiate the extended period referred to in Rule F8.
4. The Head of Department, or delegate, should issue the Terms of Reference to the Designated Employee.