

POLICY : STANDARDISATION OF EMPLOYMENT CONTRACTS

Item HR 1-2003
CAC 27.1.2003

STANDARDISATION OF EMPLOYMENT CONTRACTS, REMUNERATION
AND BENEFITS : TEMPORARY FIXED TERM EMPLOYEES AND
INDEPENDENT CONTRACTORS

RESOLVED:

1. **That** the report from the Executive Director: Human Resource Management and Development in respect of the proposed uniform contract employment for temporary employees, **BE NOTED**.
2. **That** the proposed uniform contract of employment for temporary employees attached to the report **BE APPROVED**.
3. **That** the stipulations of the contract regarding remuneration and benefits **BE APPLIED** to new temporary contract employees as well as the existing temporary employees as from the date of renewal of their contracts.
4. **That** all new temporary employees **BE REMUNERATED** on the first notch of the applicable positions' salary scale but existing temporary employees retain their present levels of remuneration and benefits.

STANDARDISATION OF EMPLOYMENT CONTRACTS, REMUNERATION AND BENEFITS: TEMPORARY FIXED TERM EMPLOYEES AND INDEPENDENT CONTRACTORS

PURPOSE OF REPORT

To obtain approval and implement the proposed standardisation of employment contract, remuneration and benefit: Temporary fixed term employees and independent contractors.

MOTIVATION

The utilisation of temporary employees to fill vacancies of a critical nature instead of advertising and filling such vacancies permanently, originated a number of years ago when the process of transformation began gathering momentum. In virtually all Service Delivery Centres some form of this took place covered to a greater or lesser extent by various short-term employment contracts and or arrangements.

Due to the extensive rationalisation of the former eleven East Rand Council's, which now make up the Ekurhuleni Metropolitan Municipality, almost all critical positions that became vacant since December 5, 2000, were filled on a fixed term or independent contractor basis and which contracts were constantly renewed. This practise is still continuing as natural attrition of staff takes its monthly toil with resignations, abscondments and deaths constantly diminishing the permanent staff establishment numbers. The recent Mayoral Committee Resolution further concluded that the extension of these contracts can be continued with until placement has been finalised.

DIFFERENT APPROACHES IN REMUNERATION AND BENEFITS

Basically the problem at present is namely that a wide variety of approaches toward appointing temporary employees still exist as they were utilised in the previous municipalities (New SDC's) and the time has now come for a standardised legally defensible approach be implemented throughout the Ekurhuleni Metropolitan Municipality.

UNIFORM EMPLOYMENT CONTRACT

Again a variety of employment contracts exist for temporary employees in the various SDC's and it becomes necessary to standardise such a contract for the whole of the Ekurhuleni Metropolitan Municipality.

PRINCIPLE OF LEGITIMATE EXPECTATION

Much has been said of the risk of becoming embroiled in Labour Court cases with temporary employees whose contracts have been extended a number of times and the exact rights of such employees were consequently also reviewed.

The legal viewpoint of the Ekurhuleni Metropolitan Municipality's Legal Division, is supported to the effect that any such employee may have obtained the legitimate expectation.

This is especially true if the temporary employment contract was correctly worded and the temporary employee was made aware of the terms and conditions of his/her employment and specifically its temporary nature at the outset.

CONTRACT EMPLOYEES PREVIOUSLY EMPLOYED BY THE NOW DEFUNCT EGSC AND OTHERS

In this case number of employees were employed as "independent contractors" for various periods of time. Contracts to that effect were issued which differ from those of other temporary contracts of the SDCs.

It also appears as though renewals were not always carried out on schedule.

These contractors should be placed on the new standardised temporary employment contracts together with all other temporary employees and be attended to individually once the new organisational structure of the Metro has been finally implemented and the placement of all permanent personnel has been completed.

Such contractors should retain the remuneration and benefits applicable in the previous agreements so as not to prejudice the incumbents.

REMUNERATION OF TEMPORARY EMPLOYEES AND THE "COST TO COMPANY" PRINCIPLE

In terms of the Law the designation of a "temporary employee" does not exist. All employees are employees and should be treated in the same way.

In terms of remuneration and benefits new temporary employees should be appointed on the first notch of the salary scale of the particular post they are appointed in and be compensated for the benefits that permanent employees are receiving on a cost to company basis.

THE COST TO COMPANY PRINCIPLE

This basically means that an employee gets the value in financial terms of what it costs the

Council to maintain a permanent employee in the same position.

ADVANTAGES

1. Although there is no discrimination there still remains a differentiation between the way temporary employees are remunerated vis a vis permanent employees.
2. This differentiation is vital to forestall any claims of implied permanency if such temporary employees are treated exactly the same as permanent employees by allowing them for example to belong to pension and medical funds etc, all of which imply permanency.
3. No arrangements which imply recognition of a long term employer/employee relationship should be put into place. The above as well as long term study loans, computer loans and the like should not form part of temporary employment contracts.
4. Instead temporary employees should simply be paid the monetary equivalent of such benefits on a month to month basis in cash and no discrimination then exists.
5. Arrangements regarding the payment of certain "option" benefits like housing subsidy must be subject to proof of bonded homeownership as per the same rules applicable to permanent employees.

6. Travelling allowance must in all cases paid on an ad-hoc basis for real distances travelled with private vehicles and calculated on a monthly basis outside the cost to company packages as with all employees who travel on an ad hoc basis. A fixed travelling allowance will not be applicable in such cases.
7. The administrative work involved in administering such payment must be alleviated by arranging with the suppliers of the computerised payments system to add a module or file which will deal with temporary employees separately. A simple computer program needs to be developed and integrated into the system to manage this function.

They should thus receive the value of the regular benefits in cash as part of a cost to company pay package. This option is much easier to administer and control than placing temporary staff on the pension fund and medical aid for short periods of time. If this approach is followed these issue become the temporary employees responsibility. In legal terms this also differentiates between temporary employees and permanent employees without discriminating between them.

IMPLICATIONS

In terms of the Basic Conditions of Employment Act, the Labour Relations Act and the Employment Equity Act, it is incumbent on Council to regularise the current inconsistencies and discriminatory practices in the employment and remuneration of "Temporary Employees" (including the Independent Contractors).

Failure to make these appointments legally sound could result in the following:

- Disputes
- Labour Court Applications
- Arbitration Awards
- Severe financial Costs

From a financial point of view the cost to company approach will not result in overspending as all positions are currently budgeted for on a cost to company basis.

CONCLUSION

In view of the afore going it is requested that the following be implemented with effect from 01 August 2002:

- (a) That all current temporary employees, independent contractors and new temporary employees be subjected to the terms and conditions of the Basic Conditions of Employment Act and the Conditions of Employment Agreements of the workplaces where they are employed.
- (b) That the attached uniform employment contract be implemented in all instances where temporary employees (inclusive of independent contractors) are employed pending the finalisation of the Ekurhuleni Metro's final establishment and organisation structure.

A pro-forma contract, duly scrutinized and sanctioned by the Corporate and Legal Services Department for implementation, is attached as **Annexure "A"**.

COMMENTS FROM THE FINANCE DEPARTMENT

"This report is silent as to whether any retrospective payment or not will be applicable to existing temporary employees. Furthermore, a monetary quantification of the cost thereof should be performed by Department: Human Resources to determine the financial impact thereof on the total Human Resources budget."

ANNEXURE 'A'

**TEMPORARY EMPLOYMENT CONTRACT (FIXED TERM)
TEMPORARY EMPLOYEES - FIXED ESTABLISHMENT**

A temporary employee is an employee excluding an independent contractor, appointed to a post on the fixed establishment of the Council in a temporary capacity for a continuous period as indicated in this contract and in line with existing Council Resolutions.

The existence of this contract and all its stipulations is informed by the need for continued service delivery whilst the Ekurhuleni Metropolitan Municipality is in the process of reorganisation and transforming its Organisational Structure and staff establishment.

MEMORANDUM OF AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN

EKURHULENI METROPOLITAN MUNICIPALITY - _____
SERVICE DELIVERY CENTRE

PHYSICAL ADDRESS

(hereinafter referred to as the "Employer")

and

(FULL NAMES AND SURNAME)

(IDENTITY NUMBER)

PHYSICAL ADDRESS

(hereinafter referred to as the "Employee")

WHEREAS the employer is desirous to engage the Employee for a fixed period as a temporary employee in a post on the fixed establishment of Council, / or its Kempton Park Service Delivery Centre for the period as indicated in this contract.

AND WHEREAS the Employee is desirous to accept employment with the Employer for such a fixed period.

NOW BEFORE THESE PRESENT WITNESSES

- 1) The Employer hereby offers employment to the Employee on the terms and conditions set out hereunder and the Employee hereby accepts the employment on those terms and conditions.

From _____ to _____

- 2) The "job title" for the position hereby offered and accepted is as follows:

(JOB DESCRIPTION ATTACHED HERETO AS ANNEXURE "A")

Additional information regarding temporary employee

Working days	
Working hours	
Benefits (e.g. travelling allowance)	

- 3) The post on the fixed establishment against which this appointment will take place is and the vote number is
- 4) It is expressly agreed that if the work required by the employer is not performed to the satisfaction of the Employee the Employer reserves the right to terminate contract forthwith, with a 24-hour notice period, subject to the required legal procedures being followed.
- 5) It is expressly agreed by the Employee that should the work as set out herein, temporarily be unavailable he will be prepared to perform any Other suitable work which falls within his vocational abilities provided that it shall be without loss of or reduction in pay.
- 6) It is expressly agreed that should the work contracted for the terminated at an earlier date than agreed upon for whatever reason the Employer may terminate the Employee's services as such earlier date.
- 7) **WAGES**
- 7.1) The wage offered and accepted shall be R_____ per annum, which is equivalent to cost to company, unless otherwise agreed.
- 7.2) The Employee hereby authorises the Employer to deduct from his wages a pro-rata amount for periods not worked such as stay-aways, strikes or absence.
- 7.3) All other remuneration and benefits shall be in line with the Conditions of Employment applicable in the specific workplace.
- 8) Normal working hours of the specific workplace will be applicable.
- 9) No work other than that of the Employer may be performed by the Employee during working hours.

- 10) The Employee specifically agrees to work overtime as and when required to do so. Remuneration for overtime work will be paid in accordance the applicable Conditions of Employment. Payment for overtime work will take place in accordance to the applicable Conditions of Employment.
- 11) The principle of no work no pay will be applicable throughout.
- 12) This contract shall expire automatically at the end of the period in Clause I supra or whenever the final structures of the Ekurhuleni Metropolitan Council are in operation and placement of staff has been completed, whichever occurs first.
- 13) The Employee declares that all information, documentation and credentials presented to the Employer in connection with his application for employment are authentic and that any information, documents or credentials subsequent proved to be false will be grounds for summary dismissal.
- 14) The Employee accepts that any legal right he has to be on the Employer's premises or on the premises where the Employer is engaged in activities is dependant upon the adequate performance of the duties allocated to him by the Employer.
- 15) The Employee accepts that re-employment after expiry of the initial contract will not be considered except where such re-employment has been specifically approved by Council and fixed in writing in the form of this or a similar contract.
- 16) The Employee accepts that any equipment, safety clothing or other items issued by the Employer remain the property of the Employer and must be returned to the Employer upon termination of this contract.
- 17) The Employee specifically agrees therefore that should he decide for whatever reason, not to continue with the performance of his allocated duties and refuse to perform the agreed duties and functions, he/she shall leave the premises immediately.
- 18) This agreement may not be ceded or assigned by either party without the prior written consent of the other party and such consent shall be made subject to the terms and conditions as may be negotiated between the parties. This agreement and the annexures thereto constitute the sole and entire agreement between the parties, and they acknowledge herewith that:
- 19) No other representation, warranty, or undertaking where given, either verbally or in writing, by any party itself or by its representative that coerces any of the parties to enter into this agreement, shall be valid.
- 20) No indulgence of any one of the parties to the other will affect such party's rights or be interrupted as a waiver or novation of his rights.
- 21) No agreement that deviates from the terms and conditions of this agreement, or that pretends to amend, alter, add, change, vary, renew or cancel it will be of effect unless it is in writing and signed by both parties hereto.
- 22) The term his include a reference to her, the singular to the plural, legal entity to a natural person and vice versa.

- 23) The contents of this contract with respect to terms and conditions of employment and other arrangements shall be applicable from the date of appointment stated in this contract forwards, and shall have no retrospective effect whatsoever.
- 24) Notwithstanding any stipulation in this agreement constituting the contract, no expectations, prospects, rights or claim for appointment is created in terms of this agreement and this contractual relationship between the parties hereto expires in its entirety upon termination hereof. NO expectation of permanent employment is therefore pre-supposed or implied.
- 25) **DOMICILIUM**
 - 25.1) Both parties choose as their respective Domicilium Citandi Et Executandi the address as indicated in the introduction of this agreement, for the services of all notices and legal processes.
 - 25.2) Any notification shall be sent by prepaid post to the addresses reflected above and shall be deemed to have been received by either party within five (5) days from date of posting.

SIGNED AT _____ THIS _____ DAY OF _____

AS WITNESSES

- 1) _____
- 2) _____

Contract has been interpreted in an understandable language and Employee has indicated that he understands the contents.

EMPLOYEE

FOR THE EMPLOYER