

MOHOKARE LOCAL MUNICIPALITY

HUMAN RESOURCE
OVERTIME POLICY

2017/2018

INTERNAL POLICY

MOHOKARE LOCAL MUNICIPALITY	
SUBJECT: OVERTIME POLICY	POLICY NO: HRM 105
LAST REVIEW DATE: 30 JUNE 2016	
CURRENT REVIEW DATE:	COUNCIL ITEM:
EFFECTIVE DATE: 01 July 2016	
MUNICIPAL MANAGER:	
MAYOR:	

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1. INTRODUCTION

The human resource management process consists of a variety of sub-processes which provides human resources one. The human resources supply sub-process consists of a series of activities, most of which are addressed in this document.

2. DEFINITIONS

In this policy, unless the context indicates otherwise-

- I. **"Overtime"** means that a portion of any period worked by an employee, recommended by the Head of Department and authorized by the Municipal Manager, in a week or any day which is longer than the maximum permissible weekly or daily ordinary hours of work.;
- II. **"Emergency Work"** means work that is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work.
- III. **"Department"** means an employee who by the Board under section 56 of the Municipal Systems Act as a department head appointed and who is responsible for managing one or more votes, and includes any person who is lawfully in a department where in general post;
- IV. **"Municipal Systems Act"** means the Local Government: Municipal Systems 2000 (Act No. 32 of 2000)
- V. **"Municipality"** Mohokare Local Municipality;
- VI. **"Employee"** means a person who works for or renders a service to the municipality, regardless of the shape of his / her employment contract and to which any factor listed in section 200A (1) of the Labour Relations Act applies.
- VII. **'Workplace'** - means any indoor, enclosed or partially enclosed area in which employees perform the duties of their employment;
- VIII. **"Bargaining council"** means a bargaining council registered in terms of the Labour Relations Act, 1995, and, in relation to the public service, includes the bargaining councils referred to in section 35 of that Act;

- IX. “**Basic condition of employment**” means a provision of the Basic Conditions of Employment Act (Act 75 of 1997) or sectoral determination that stipulates a minimum term or condition of employment;
- X. “**Collective agreement**” means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand—
- i) one or more employers;
 - ii) one or more registered employers' organisations; or
 - iii) one or more employers and one or more registered employers' organisation;

3. OBJECTIVES

- a. To provide a framework for the employees for additional duties they perform in a specific circumstances in excess of their prescribed hours of work by order of the Head of Department or his/her delegate.
- b. To regulate the performance of overtime duty and the condition under which unpaid overtime should be performed and compensated
- c. The municipality's human resources activities provide effective and efficient running of overtime management.

4. CURRENT STATUTORY FRAMEWORK

4.1. Constitution of the Republic of South Africa

- a) The municipality's human resources provide activities in such a manner to be conducted, that the rights in the Bill of Rights, respect, protect, promote and are realized.
- b) In terms of section 160 (1) (d) of the Constitution, the Council such staff take for the effective performance of the municipality's functions needed.
- c) The human resource supply activities in the municipality which are undertaken, forms an integral part of the municipality's administration, which in turn is part of the public administration part. The human resource supply activities must therefore comply with democratic principles and values contained in the Constitution and especially to the values in section 195 (1) of the Constitution set out.

4.2. Local Government: Municipal Structures 1998 (Act No. 117 of 1998)

The Council under section 82 of the Local Government: Municipal Structures 1998 (Act No. 117 of 1998) appoints a municipal manager and, if necessary, an acting municipal manager appointed. A person appointed as municipal manager, must have the skills and expertise to perform the duties associated with that job.

4.3. Local Government: Municipal Systems 2000

The Municipal Manager is head of the administration, subject to the policy directions of the Board and the "Employment Equity Act 1998" (Act No. 55 of 1998), under section 55 (1) (e) of the Municipal Systems Act responsible and accountable for the appointment of staff other than managers who reports directly to him / her. According to Article 56 of the Municipal Systems Act, the Council, after consultation with the Municipal Manager, appoints managers who report direct to the Municipal Manager. A person who is a manager who is directly accountable to the Municipal Manager, must possess the skills and expertise needed to perform the duties associated with the particular job to, taking into account the protection or development of persons or categories of persons disadvantaged by unfair discrimination.

Section 57 of the Municipal Systems Act requires that a municipal manager and a manager who is directly accountable to her / him under a written contract be subject to a written performance agreement concluded annually. The minimum content of both employment contracts and performance agreements of municipal managers and managers who direct them accountable is prescribed in the Municipal Systems Act, the Local Government: Municipal Finance Management Act 2003 (Act No. 56 of 2003) and "Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers 2006 "(Government Notice Number R.805 of 1 August 2006).

Unless an Act provides otherwise a councilor may, under item 11 of the Rules of Conduct for Councilor's, not –

- interfere in the management or administration of a department unless she / he is authorized by Council;
- give instruction to an employee, or purport to give, except when she / he is authorized to do so;
- prevent an employee to implementation a decision of the Council or a Committee of Council;
- do anything that will cause mismanagement or contribute to, encourage participation.

- An employee may not use his / her position or privileges for personal gain or to improperly influence another person.

4.4. Local Government: Municipal Finance Management Act 2003 (Act No. 56 of 2003)

Pursuant to section 83 of the Local Government: Municipal Finance Management Act, the accounting officer (Municipal Manager), senior managers, the Chief Financial Officer and other financial officials of the Municipality must meet the prescribed financial management competency levels. Section 119 of the Act provides that the accounting officer (Municipal Manager) and all other officers of the municipality where the supply chain management policy is concerned, comply with the prescribed competency levels.

4.5. Labour Relations Act 1995

Section 5 of the Act prohibits the Municipality of –

- require a job seeker not to be a member of a union or to abandon membership of a union;
- prevent a job seeker any right to practice under the Act or participate in any proceedings under the Act;
- to prejudice a job seeker as a result of –
 - past, present or anticipated membership of a trade union,
 - participation in the establishment of a trade union or federation,
 - participation in the lawful activities of a trade union or federation,
 - failure or refusal to do anything that an employer may not legally require you to do or employee may allow you to do
 - disclosure of information which the employee is legally required to divulge
 - exercise of any right granted under the Act or participate in any proceedings under the Act;
- a job seeker benefit or favor to promise in return for not exercising a right granted under the Act or for not participating in any proceedings under the Act.
- Section 199 of the Labour Relations Act provides that a service contract –

- may provide that an employee remuneration is paid less than the remuneration provided by a collective agreement or arbitration award;
- may provide that an employee in a manner treated, or that a benefit to an employee is granted, which is less favorable than the benefits provided by a collective agreement or arbitration award may be prescribed, or
- the application of any provision of a collective agreement or arbitration award may not be discontinued.

Under item 8 of Schedule 8 (Code of Good Practice: Dismissal) to the Labour Relations Act, the Municipality of a newly appointed employee is required to have a trial period before his / her appointment is confirmed. The purpose of the probationary period gives the municipality an opportunity to evaluate the employee's performance before the appointment is confirmed. The municipality may not use probationary appointment –

→ for purposes not contemplated under the Code, and

→ to deprive employees the status of permanent employment.

The probation period shall be determined in advance and must be of reasonable duration. The duration of the probation period, is determined by the nature of the work and the time taken for the employee's suitability for continued service.

The employee's performance should be assessed at the end of probation. The municipality must give an employee reasonable evaluation, instruction, training, guidance or counseling to enable the employee to allow for satisfactory service. If the municipality finds that the employee's performance is unsatisfactory, the Municipality must inform him / her in advance of the specific ways in which she / he does not meet the required standards.

The municipality may extend the probation period or dismiss an employee only after the municipality invites her / him to make representations and the representations made, considered. The probation period may be extended only with regard to the purpose of probation. The period of extension should be proportionate to the legitimate purpose that the Municipality is trying to achieve. A trade union representative or fellow employee may make representations on behalf of the employee. If the municipality decides to dismiss the employee or the probation period, the Municipality must inform his / her of his / her right to refer the matter to the SALGBC or to the Commission for Conciliation, Mediation and Arbitration proceedings.

4.6. Act, Basic Conditions of Employment 1997 (Act No. 75 of 1997)

Pursuant to section 29 of the Basic Conditions of Employment Act, the Municipality, when an employee begins employment with the employer, the employer must supply him / her with an extensive list of details, in writing. When any of the details contained in the list is changed, the written information must be reviewed to reflect the change and that the employee receives a copy of the document that reflects the changes. If an employee cannot understand the written details, the Municipality must ensure that the changes are explained in a language that he / she understand. The Municipality should keep the written information for a period of three years after employee's termination.

Section 10 of the Basic Conditions of Employment Act prohibits the municipality to require an employee to work overtime, except pursuant to an agreement. An agreement to work overtime that an employee incurred when she / he starts work, or during the first three months of his / her employment, lapses after one year.

4.7. Employment Equity Act 1998 (Act No. 55 of 1998)

Pursuant to section 6 of the "Employment Equity Act," the Municipality may not directly or indirectly unfairly partake in any employment policy or practice against any employee or applicant which discriminates on any of the following grounds: race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, belief, political opinion, culture, language or birth. Affirmative action and distinctions between persons on the basis of the inherent requirements of a job is not unfair discrimination.

Section 7 of the Act prohibits the municipality to require an employee or applicant to undergo a medical test, unless some other law requires or permits, or if it is justified in light of medical facts, employment conditions, social policy, fair allocation of employment benefits or the inherent requirements of the job. Testing of an employee or applicant to determine his / her HIV status is specifically prohibited, unless the Labour Court determined that this is justified. Pursuant to section 8 of the Act, the Municipality may not submit an employee or job seeker to psychometric tests, unless such tests are scientifically proven as reliable and valid, fair to all employees or job seekers and can be applied and not biased against any employee, job seeker or group.

4.8 SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL – COLLECTIVE AGREEMENT FOR THE FREE STATE DIVISION OF THE SALGBC

The employer and the employee are expected to adhere to the requirements of the concluded agreement.

5. SCOPE OF APPLICATION

- a) This determination shall apply to all employees of all units that form part of Mohokare Municipality, being Smithfield, Rouxville and Zastron.
- b) Subject to the agreements of a bargaining council in terms of Labour Relations Act, 1995.
 - a. Employees who belong to the senior management service do not qualify for compensation for overtime.
 - b. A member of senior management shall recommend the overtime work at all times to ensure full compliance and monitoring of the work done.

6. CONDITIONS

- a. As far as possible overtime be performed to a minimum of one hour but a maximum of 3 hours after working hours and 15 hours per week.
- b. Overtime to a maximum of three hours per day or ten hours per week unless otherwise agreed by all parties concerned.
- c. Officers/Employees are not entitled to work overtime when on:
 - Sick Leave
 - Vacation Leave
 - Special Leave
- d. The reason for overtime remuneration must be clearly motivated on prescribed form and duly signed off by the Head of Department.
- e. Before applications are considered management must look at other alternatives to manage alternative task.
- f. In overall, no employee is allowed to work an excess of 60 hours per month. Anything over and above the 60 hours will be taken as time-off. No exceptions to the rule.

7. CALCULATION OF OVERTIME REMUNERATION

- a. Overtime must be paid at 1.5 times the employee normal wage or an employee may agree to receive paid time off.
- b. An employee who occasionally works on Sunday must receive double pay (x2.0).

- c. An employee who ordinarily works on Sunday must be paid at 1.5 time's normal wage
- d. Employees must be paid for any Public holidays that fall on a working day. Work on public holiday is by agreement and be paid.
- e. Overtime rates are calculated according to the formula based on Guidelines from the legislation.

Normal overtime is calculated as follows:

Salary per hour X 1.5 X hours worked.

Overtime 2, which is the Public holiday

Salary per hour X 2 X hours worked.

8. CRITERIA FOR OVERTIME DUTY APPROVAL

- a. When the necessity for overtime arises, each Head of Department is expected to perform on his/her own record of unpaid overtime duty within reasonable limits.
- b. When considering overtime, the Head of department must also take into account the following:
 - The circumstances which necessitated the performance of overtime
 - The steps which were taken to prevent the performance of overtime duty.
- c. The pre-approval form for each task performed must be completed together with the overtime form, signed-off by the employee, the Supervisor, the Unit Manager and/or the Manager and the Head of Department

9. COMPENSATION FOR OVERTIME: NONMOMENTARY

- a. If overtime is not possible, due to financial constraints, the Head of Department or his/her delegate may approve the granting of time off / flexible hours to employees who performed overtime in specific circumstances in excess of their hour of attendance provided that the employee does not perform additional hours in order to arrange for time off to suit his/her own needs. The employee shall be granted time off equal to time worked.
- b. The time off granted must be made within one month of the employee becoming entitled to it unless if an agreement in writing is made to increase the period to a maximum of 3 months.

c. Time off granted should be done in the basis of an agreement between the relevant employee and his/her immediate Supervisor and may not prejudice the service delivery of the office.

10. EXTENT AND PERIOD OF OVERTIME DUTY

The extent and period of remunerated overtime shall be determined by circumstances of work, nature or urgency of work to be undertaken and the target set.

Overtime approval will be limited to a maximum period of two continuous months and must be renewed before lapsing of the approval granted.

11. CONTRACT WORKER'S NOT ELIGIBLE FOR OVERTIME

Contract workers appointed for the execution of particular task that result from specific circumstances and requires the completion of a specific period, shall not be eligible for remunerative overtime unless in an emergency situation or if in national interest.