



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

BUKALO VILLAGE COUNCIL

No. 1 2019

BUKALO VILLAGE COUNCIL PERSONNEL RULES: LOCAL AUTHORITIES ACT, 1992

The Village Council of Bukalo, under section 27(1)(c)(i) and (ii)(bb) of the Local Authorities Act, 1992 (Act No. 23 of 1992), with the approval of the Minister of Urban and Rural Development -

- (a) has made the personnel rules set out in the Schedule; and
- (b) withdraws the personnel rules published under General Notice No.475 of 30 November 2016.

C. SIYAUYA
CHAIRPERSON
BY ORDER OF THE COUNCIL

Bukalo, 27 November 2018

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PART 1
INTRODUCTORY PROVISIONS

Definitions

1. In these rules, a word or expression to which a meaning has been assigned in the Act has that meaning and unless the context otherwise indicates -

“chief executive officer” means the village secretary of the Council;

“close relative” means a spouse, a child, a parent, a grandparent, a grandchild, a sibling, a sister or brother-in-law, an uncle, an aunt, a cousin, a nephew or a niece of the staff member;

“Council” means the Village Council of Bukalo;

“grading committee” means the committee referred to in rule 3(2);

“grading system” means the job grading system referred to in rule 2;

“medical practitioner” means a medical practitioner as defined in section 1 of the Medical and Dental Act, 2004 (Act No. 10 of 2004); and

“the Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992).

PART 2
DETERMINATION OF REMUNERATION AND BENEFITS

Grading system

2. The Council must, with the approval of the Minister and after consultation with the relevant trade unions, approve a job grading system and determine procedures to grade posts on its fixed establishment.

Wage structure and grading committee

3. (1) The Council must adopt a wage structure and the wage structure must include market related benefits.

(2) After the implementation of the wage structure contemplated in subrule (1), the Council must establish a grading committee to implement the wage structure.

(3) The grading committee must consist of the following seven members -

(a) the head of the human resources department, as the chairperson of the committee and two representatives from that department;

(b) two trade union representatives;

(c) the chief executive officer or a staff member designated by the chief executive officer; and

(d) a head of department designated by the chief executive officer.

(4) The grading committee must -

- (a) evaluate job descriptions;
- (b) grade the post in terms of key performance areas; and
- (c) grade the posts created on the establishment of the Council.

Basic salary

4. (1) The Council must pay a basic monthly salary to a staff member into the bank account of the staff member at a banking institution registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998) on the last Friday of every calendar month or where the last day of a calendar month falls on a weekday, on that day, whichever day is the earliest.

(2) For the purpose of subrule (1) the staff member must furnish the human resources department with his or her banking details.

(3) On the termination of service of a staff member, the staff member's final salary must be paid at the end of the month, as prescribed in subrule (1), in which the service is terminated.

(4) The salaries of staff members are subject to incremental progression as determined by the grading committee.

(5) The grading committee may determine and award rewards to staff members based on performance and the rewards are independent of salary structures or salary notches.

(6) A salary notch increase is not influenced by any additional qualifications obtained by a staff member unless the staff member successfully applies for a higher position where that qualification is a prerequisite.

(7) The Council may, after five years of service of a staff member, horizontally adjust the salary of the staff member.

(8) A salary notch increase must be made by a structural percentile adjustment or across the board percentile adjustment that applies to all staff members.

(9) Where a staff member is paid a salary of a higher scale or notch than the staff member is graded for, the Council must adjust the salary to the correct scale or notch and the staff member and the Council must together agree on how the excess salary paid to that staff member must be paid back to the Council.

(10) Where a staff member is paid a salary of a lower scale or notch than the staff member is graded for, the Council must adjust the salary to the correct scale or notch and the staff member must be paid back the arrears.

Calculation of remuneration

5. The salary of a staff member is calculated in accordance with one of the following methods:

(a) Monthly Remuneration = $\frac{\text{Annual Remuneration}}{12}$

(b) Weekly Remuneration = $\frac{\text{Annual Remuneration}}{52}$

- (c) Daily Remuneration = In the case of a staff member who works a five day working week:

$$\frac{\text{Annual Remuneration}}{250}$$

- (d) Hourly Remuneration = In the case of a staff member who works a five day working week:

$$\frac{\text{Annual Remuneration}}{250} \times \frac{1}{\text{number of working hours per working day}}$$

Advance on salary

6. (1) Only a permanent staff member qualifies for an advance on his or her salary.

(2) A staff member must apply to the chief executive officer for an advance on his or her salary and the chief executive officer must consider the application and may approve or not approve the advance, with reasons.

(3) An advance on the salary of the staff member is only payable in the event of a serious illness or death of a close relative or when a staff member is going on leave as contemplated in rule 20(6).

(4) An advance on a salary may not exceed an amount equal to the pro-rata salary earned by the staff member at the date of the application contemplated to in subrule (2).

(5) The same requirements set out in rule 26 regarding proof for compassionate leave apply to the application for an advance in salary.

(6) The Council must recover an advance on a salary by deducting the amount in one instalment at the end of the month following the month in which the advance was approved by the chief executive officer.

Overtime

7. (1) The chief executive officer must on a regular basis assess the workforce and financial state of affairs of the Council and must specify the departments within the Council in which staff members may perform work on an overtime basis.

(2) The annual budget for overtime payments may not exceed 2% of the annual wage or salary budget of the Council.

(3) Staff members on the management level may not receive overtime payments.

(4) A staff member on leave may not be called back to work overtime.

(5) The Council must ensure that proper records are kept of staff members who are working overtime.

Annual bonus

8. (1) An annual bonus or a thirteenth cheque, equal to the monthly basic salary of a staff member, is payable to the staff member at the end of his or her birthday month.

(2) An annual bonus is only payable to a permanent staff member.

(3) An annual bonus received by a staff member is taxable but pension may not be deducted from the bonus.

(4) The chief executive officer does not qualify for an annual bonus where the chief executive officer receives a performance bonus in terms of his or her conditions of service.

Performance bonus

9. The Council may, with the approval of the Minister, pay a performance bonus to a staff member based on his or her grading in terms of the performance management system of the Council or in the case of a chief executive officer in terms of his or her conditions of service.

Housing benefits

10. (1) Subject to this rule, every staff member of the Council is entitled to a housing allowance or subsidy where the staff member owns and occupies a house or leases and occupies a house unless that staff member occupies accommodation provided by the Council.

(2) A staff member who does not own a house must receive a housing allowance subject to the approval of the Minister from time to time through circulars or ministerial directives and a staff member who owns a house must receive a housing subsidy subject to the approval of the Minister from time to time through circulars or ministerial directives.

(3) The chief executive officer must receive a housing allowance subject to the approval of the Minister from time to time through circulars or ministerial directives but may not receive collateral for the purchasing of a house.

(4) Subject to the housing schemes contemplated in Part XII of the Act, the Council may upon application by a staff member provide collateral of 20% of the annual pensionable salary of a staff member where the staff member purchases a house.

(5) Any outstanding debt on the collateral must, with consent of the staff member given at the time of signing the guarantee, be recovered from the leave gratuity or the pension benefit of the staff member at resignation, retirement, death or discharge of the staff member from Council.

(6) The staff member must submit proof of a bond or a lease agreement to the human resources department when he or she applies for a housing allowance or subsidy from the Council.

(7) An exemption from normal tax, wholly or partly, in terms of the housing benefit of a staff member is subject to section 16A of the Income Tax Act, 1981 (Act No. 24 of 1981).

(8) A staff member who resides in accommodation provided by the Council must pay -

(a) where he or she occupies a residence with air-conditioning, 4% of his or her basic monthly salary to the Council; or

(b) where he or she occupies a residence without air-conditioning, 2% of his or her basic monthly salary to the Council.

(9) The staff member who resides in accommodation provided by the Council is responsible for the payment of water or electricity charges in respect of the premises.

(10) The Council may not deduct pension from the housing allowance or subsidy offered by the Council.

(11) The housing allowance or subsidy forms part of calculation of leave gratuity.

Medical aid fund

11. (1) A staff member -

(a) may apply to become a member of the medical aid of the Council;

(b) may belong to a medical aid fund of his or her choice; and

(c) may not be forced to be a member of the medical aid fund of the Council.

(2) A staff member must apply on the form obtainable by the Council to indicate his or her intention to be a member of the medical aid fund of the Council.

(3) The contribution to the medical aid is as follows -

(a) the Council must contribute a percentage, approved by the Minister from time to time through circular or ministerial directive, of the total monthly contribution in respect of each staff member; and

(b) a permanent staff member must contribute a percentage, approved by the Minister from time to time through a circular or ministerial directive, of the remaining total of the amount monthly contribution contemplated in paragraph (a) to the medical aid fund.

(4) The Council does not have an obligation to provide medical aid to a retired staff member or a staff member that resigned, except where that obligation was included in a separation agreement between the Council and the staff member.

Pension fund

12. The Council must contribute in respect of each permanent staff member an amount equal to 21.7% of the total pension contribution made by the permanent staff members to a pension fund approved by the Council.

Motor vehicle allowance

13. (1) The Council must provide motor vehicle allowance to the chief executive officer.

(2) The total annual motor vehicle allowance is subject to the approval of the Minister from time to time through circulars or ministerial directives and is payable in 12 monthly instalments.

(3) Unless otherwise authorised to do so by the Council in writing, a staff member who benefits from a motor vehicle allowance may not make use of a motor vehicle of the Council.

(4) Only a permanent staff member may benefit from the motor vehicle allowance scheme.

(5) Seventy five percent of the motor vehicle allowance awarded is taxable but pension may not be deducted from the allowance.

(6) A staff member who benefits from the motor vehicle allowance must at all times have a reliable motor vehicle available that will enable the staff member to perform his or her official duties.

(7) The Council may at any time three months after the date of allocation of the motor vehicle allowance, cancel the allowance in writing, if the conditions specified for the allocation of the allowance are not complied with by the relevant staff member.

(8) To qualify for a motor vehicle allowance, the staff member must provide to the Council proof of the purchase of a motor vehicle or where that staff member already owns a motor vehicle the staff member must provide proof of his or her ownership of or the monthly instalment paid for the motor vehicle.

(9) The motor vehicle allowance is linked to the salary of a staff member and it will be reduced proportionately with any leave of absence without remuneration.

(10) The motor vehicle allowance forms part of the calculation of leave gratuity.

Transport allowance

14. (1) The Council must pay a monthly transport allowance, subject to the approval of the Minister from time to time through circulars or ministerial directives, to every permanent staff member except to staff members who benefit from the motor vehicle allowance.

(2) The transport allowance is linked to the salary of a staff member and is reduced proportionately against any leave taken without remuneration.

(3) The transport allowance is taxable but the Council may not deduct pension from the allowance.

(4) The transport allowance forms part of the calculation of leave gratuity.

Subsistence and travelling allowance

15. (1) Where the Council requires or directs a staff member to travel on official business outside the borders of the Village of Bukalo, the Council must pay to that staff member a subsistence and travelling allowance at the daily rate in accordance with the latest P.S.M Circular as follows -

(a) to the chief executive officer a subsistence and travelling allowance equivalent to that of a Director in the P.S.M. Circular;

(b) to a head of department a subsistence and travelling allowance equivalent to that of a Deputy-Director in the P.S.M. Circular; and

(c) to a staff member a subsistence and travelling allowance equivalent to that of a staff member in the P.S.M. Circular.

(2) The Council must ensure that the delegation on an official trip does not exceed three staff members unless otherwise approved by the Minister.

(3) The Council must limit the use of the subsistence and travelling allowance to necessary official trips only.

(4) All official trips outside the borders of Namibia may only be undertaken with the approval of the Minister.

(5) The Council may pay a staff member who uses his or her private motor vehicle on an official trip, an amount approved by the Minister from time to time through circulars or ministerial directives.

Foreign expert

16. (1) For the purposes of this rule, “foreign expert” means a person who is not a Namibian citizen or does not have permanent residence but has expert knowledge or expertise in a field where there is a lack of knowledge or expertise in Namibia.

(2) The Council may, in line with the affirmative action laws and policies of Namibia, appoint a foreign expert to train staff members of the Council in a field where there is a lack of knowledge or expertise in Namibia or may appoint a foreign expert on a contract basis as a staff member of the Council.

(3) The Council may assign a staff member as an understudy to a foreign expert who is appointed on contract basis.

(4) A foreign expert appointed in terms of this rule must at the end of every term of appointment furnish a report to the Council denoting the progress of all the understudies assigned to the foreign expert.

Acting allowance

17. (1) A staff member may not claim extra remuneration from the Council for performing additional duties beyond his or her job description unless the Council has entered into a written agreement with a staff member for him or her to perform duties in an acting capacity.

(2) The chief executive officer in terms of the powers delegated to him or her in terms of the Act may appoint a staff member to act in a higher post for a period not exceeding three months.

(3) The chief executive officer may only extend the acting period of a staff member once more after the first three months lapse with a further period not exceeding three months.

(4) The Council must pay an acting allowance to an acting staff member equal to the difference between the basic monthly salary of the acting staff member and the minimum notch of the basic monthly salary of the post in which the staff member is acting.

(5) A staff member appointed in an acting position is not entitled to any allowances, special conditions of service or any other form of remuneration linked to the higher position.

(6) The acting allowance is not paid to the acting staff member where that staff member is absent for a continuous period in excess of 30 days.

(7) An acting allowance is not payable in the circumstances where the staff member in the higher position is on leave, on a course of study or on suspension.

(8) The chief executive officer may not retrospectively appoint a staff member in a acting position.

(9) An acting allowance does not form part of the calculation of leave gratuity upon the resignation, retirement, death or the discharge of the staff member who is in a acting position.

(10) The Council must take all necessary steps to ensure that the vacant position for which a staff member is acting is filled as soon as possible.

Cellular phone allowance

18. (1) The chief executive officer qualifies for a cellular phone allowance.

(2) The Council must purchase a cellular phone of a value approved by the Minister from time to time through circulars or ministerial directives or make the cellular phone available to the chief executive officer.

(3) A cellular phone purchased by the Council and allocated to a chief executive officer remains the property of the Council and the cellular phone must be returned to the Council in good repair when the relevant staff member becomes disqualified from receiving a cellular phone allowance or where the service of that staff member is terminated.

(4) A chief executive officer to whom a cellular phone is allocated must at all-time take proper care of the cellular phone.

(5) A chief executive officer to whom a cellular phone is allocated must keep that cellular phone with him or her during working hours and make the cellular phone number of that cellular phone available to the Council and to the public when requested.

(6) The Council must pay the relevant contract charges relating to the cellular phone and pay the monthly airtime charges as approved by the Minister from time to time through a circulars or ministerial directives.

(7) The Council must settle the amount paid for the cellular phone, the contract fees and the airtime with the relevant service providers and no amount in this regard may be paid out to the staff member concerned.

(8) The cellular phone allowance does not form part of the salary of the chief executive officer.

(9) The cellular phone allowance is only allocated for official purposes and is not payable during a period of unpaid leave.

Classification of leave

19. (1) The categories of leave within the Council are as follows -

(a) vacation leave with or without remuneration;

(b) sick leave;

(c) special leave with or without remuneration;

(d) maternity leave; and

(e) compassionate leave.

(2) The granting of leave by the Council classified under subrule (1) does not influence the granting of a leave classified under any other rule, except where it is specifically otherwise provided for.

- (3) A staff member must -
- (a) at least five working days before he or she intends to take leave, apply for leave on the form obtainable by the Council and submit the application to the relevant head of department for approval; and
- (b) when it is impossible to apply for leave as contemplated in paragraph (a), apply for leave not later than two working days after he or she has returned from the leave taken, subject to the staff member having acquired prior verbal approval of his or her head of department.
- (4) The Council or the relevant head of department may approve or not approve the leave applied for as contemplated under subrule (3), depending on the grounds for leave applied for and the work commitment of the staff member.
- (5) When application for leave has been approved the head of department must forward the application form to the human resources department.
- (6) The human resources department must record the leave taken by every staff member.
- (7) The record kept in terms of subrule (6) must be available during office hours for inspection by the staff member.
- (8) Where the Council erroneously grants more leave than the staff member is entitled to, the Council may after informing the staff member of the error deduct the number of excess leave days granted from the leave days which stand to the credit of the staff member or which may in future accrue to that staff member.

Vacation leave

- 20.** (1) The Council must grant 25 working days leave with full remuneration to a staff member in respect of each period of 12 consecutive months for which the staff member is in service of the Council.
- (2) Every staff member must take at least 18 days of vacation leave after a leave cycle has lapsed, but the period of leave must be reduced by the number of days which the staff member is granted occasional leave on full remuneration during the relevant preceding leave cycle.
- (3) The Council may not except in an emergency require or permit a staff member to perform work during vacation leave taken by the staff member.
- (4) Where a staff member works a five-day working week from Monday to Friday, a workday constitutes a day within that five-day working week and leave taken does not include Saturdays, Sundays and public holidays.
- (5) Where a staff member shows good reason for his or her intention to take vacation leave without remuneration, the Council may grant the leave for a period not exceeding 60 working days in a leave cycle.
- (6) The Council may pay to a staff member an advance on the salary where the leave is for a period of not less than 10 consecutive working days and this rule applies to staff members that work five days a week.
- (7) Subject to subrule (6), the staff member concerned must request the payment of an advance on the salary not later than one week before the staff members last working day before the commencement of his or her leave.

(8) When making an advance payment under subrule (7), the Council may not pay more than 50% of the monthly net salary earned by the staff member during the month the staff member applied an advance.

Cancellation, interruption or postponement of vacation leave

21. (1) A staff member may not accumulate paid vacation leave days in excess of 60 days leave.

(2) Vacation leave days with remuneration in excess of 60 days lapses after a leave cycle.

(3) Despite subrule (2), a staff member is granted an additional four months after the lapse of the leave cycle in which he or she may take the leave in excess of the leave contemplated under subrule (1).

(4) The Council may not grant leave to a staff member that runs concurrently with any period of sick leave granted in terms of these rules or with a period of notice of termination of service.

(5) Where in an emergency the Council cancels, postpones or interrupts the vacation leave of a staff member, the Council must -

(a) compensate the staff member for expenses irrecoverable by the staff member for commitments incurred by the staff member before the staff member was notified of the cancellation, postponement or interruption; and

(b) where the staff member was required to travel in order to resume duty, pay the travelling expenses of the staff member and the staff member is regarded as being on duty while travelling.

(6) The Council must confirm the cancellation, postponement or interruption of vacation leave in writing.

(7) Where the Council refuses an application for vacation leave or cancels, postpones or interrupts vacation leave, the Council must record the reasons for the refusal, cancellation, postponement or interruption of vacation leave in the leave register.

(8) Where the Council has refused, postponed or cancelled vacation leave, the Council must credit the number of vacation leave days remaining to the staff member and that staff member must take that leave within 12 months from the date of crediting.

Compulsory vacation leave

22. The Council may require a staff member who has more than 60 days vacation leave to his or her credit to take leave for the days that are in excess of the provided 60 days during a period determined by the staff member and the Council.

Sick leave

23. (1) For the purposes of this rule “incapacity” means inability to work resulting from an illness or injury.

(2) Despite the definition for “incapacity” in subrule (1), the Council may regard alcoholism or an addiction to an intoxicating substance as incapacity and may -

- (a) grant to a staff member sick leave with full remuneration; or
 - (b) where a staff member is on probation, terminate in accordance with applicable laws his or her service upon diagnoses by a medical practitioner of alcoholism or addiction to an intoxicating substance.
- (3) Subject to subrule (4) and the conditions of service applicable to a staff member on the day immediately before the commencement of these rules, the Council must grant sick leave to every staff member who is absent from work through incapacity on the basis of 120 working days in aggregate on half remuneration during each period of 36 consecutive months, in this rule referred to as the “sick leave cycle”.
- (4) Sick leave accrues to a staff member from the first day of a sick leave cycle as follows -
- (a) for the first year of service, four days sick leave on full remuneration and four days sick leave on half remuneration may be granted to a staff member for every completed month of service; and
 - (b) after the first year of service and the accrual of sick leave, the full complement of the sick leave accrued may be granted to the staff member.
- (5) Sick leave lapses at the end of the sick leave cycle and is not transferable to the next sick-leave cycle.
- (6) Despite subrule (5) -
- (a) one day accumulated sick leave with full remuneration for every eight days sick leave with full remuneration not used by the staff member by the end of the former sick leave cycle, must be transferred to the next sick leave cycle;
 - (b) one day accumulated sick leave with half remuneration for every eight days sick leave with half remuneration not used by the staff member by the end of the former sick leave cycle, must be transferred to the next sick leave cycle.
- (7) Where a staff member is absent from service through incapacity for a period of more than two consecutive days, sick leave may be granted to the staff member only if he or she furnishes to the Council a certificate of incapacity by a medical practitioner in which it is declared that the staff member is unable to perform his or her official duties and which indicates the period necessary for recovery.
- (8) Despite subrule (7), the Council may where it is satisfied that the absence of the staff member was in good faith due to incapacity and that good reasons exist why a certificate of incapacity was not submitted, exempt that staff member from the submission of the certificate in respect of a continuous period of sick leave, not exceeding 14 consecutive days.
- (9) The Council may require a staff member who applied for sick leave to subject him or herself to a medical examination by a medical practitioner of the choice of the Council and where the certificate of incapacity differs significantly from the diagnoses of the chosen medical practitioner, the Council may cancel or withdraw the sick leave granted to a staff member and replace it with vacation leave with or without remuneration, where vacation leave is available.
- (10) The Council may on application by a staff member, where the staff member becomes incapacitated during his or her vacation leave, convert that portion of the vacation leave of the staff member into sick leave, on condition that the staff member submits a certificate of incapacity by a medical practitioner in terms of this rule.

(11) The Council may, on application by a staff member, grant vacation leave to the staff member where the staff member has sufficient vacation leave to his or her credit, where sick leave was granted with no remuneration or with half remuneration.

(12) Nothing in this rule precludes a staff member from leaving the service of the Council on the grounds of ill health before any period of sick leave has been granted.

(13) In the instance where the medical practitioner appointed by the Council declares a staff member medically unfit the Council may terminate the service of that staff member from the date on which the staff member is so declared to be medically unfit.

(14) At the commencement of these rules every staff member retains the existing sick leave of the former three-year sick leave cycle under his or her former conditions of service with the Council, where applicable.

Special leave

24. (1) The Council may, subject to the conditions as it may determine, grant special leave of up to 21 days per 12 month cycle to a staff member who -

- (a) is selected by a recognised non-professional sports association to -
 - (i) take part as a member of an organised sports group in a sports tour outside Namibia whether as competitor, coach or manager;
 - (ii) represent Namibia, as a competitor, coach or manager at an international sporting event in Namibia; or
 - (iii) accompany a foreign national team visiting Namibia, as a representative of the Namibia sports association organising the tour;
- (b) is absent from duty as a result of isolation on medical instructions where he or she was in contact with a person who has contracted or is suspected of having contracted an infectious disease;
- (c) is arrested or has to appear before a court on criminal charge and he or she is subsequently acquitted or the charge is withdrawn;
- (d) is subpoenaed as witness in proceedings before a court of law, a commission of enquiry, tribunal or body established by law;
- (e) has to study and sit for an examination approved by the Council, but the special leave under this paragraph -
 - (i) may not be taken more than 60 days before examination;
 - (ii) may be granted only once per approved paper per subject;
- (f) has no vacation leave to his or her credit and the Council is satisfied that due to special circumstances not otherwise referred to in these rules, special leave should be granted to him or her;
- (g) is appointed as a board member of a company in which the Government holds shares or a professional body established by law for board meetings and conferences;

- (h) is attending a congress, seminar, conference or workshop on behalf of the Council; or
- (i) is unable to perform his or her duties on account of an accident to which the laws providing for employees compensation provides for.

(2) Every staff member who applies for special leave must, in support of his or her application, submit a certificate or written reasons or other proof as may be required by the Council.

Maternity leave

25. (1) The Council must grant to a female staff member who has completed six months continuous service with the Council, with a view to her confinement, at least four weeks of maternity leave before the expected date of her confinement and at least eight weeks after the date of confinement.

(2) The date of confinement mentioned in subrule (1), must be certified by a medical practitioner.

(3) Maternity leave is taken with basic benefits but without a basic salary.

(4) A female staff member who has been granted maternity leave may not be deprived of any right, except the right to basic salary for the period of maternity leave, that has vested in her by virtue of her conditions of service directly before the date on which her maternity leave commences and the rights continue as if her service is uninterrupted during the maternity leave granted to her.

(5) The monthly contribution towards the pension fund of a female staff member is suspended during the maternity leave granted to her until the staff member resumes service.

(6) In so as far as these rules are more advantageous to a staff member than the labour law, these rules have precedence otherwise these rules are subject to the labour law.

Compassionate leave

26. (1) The Council may on application by a staff member grant compassionate leave with full remuneration of not more than 10 days in one 12 month cycle.

(2) Compassionate leave is granted to a staff member where a close relative of the staff member has died or where a close relative of the staff member has fallen ill with a serious illness and the member has to personally attend to the close relative.

(3) A staff member must apply for compassionate leave on the form provided by the Council and must together with the application -

- (a) in the case where a close relative of the staff member has died, submit a copy of the death certificate of the deceased close relative;
- (b) in the case where a close relative has fallen ill with a serious illness, submit a certificate by a medical practitioner treating the close relative in which certificate the medical practitioner names the serious illness and states why the staff member must personally attend to the close relative.

(4) Compassionate leave lapses at the end of a 12 month cycle and is not transferable to the next 12 month cycle.

(5) The compassionate leave cycle starts on 1 January and ends on 31 December on which day the compassionate leave for that cycle lapses.

(6) Compassionate leave does not form part of vacation leave and is not paid out to a staff member on termination of his or her service.

Payments of vacation leave on termination of service

27. (1) Where a staff member dies while he or she is in the service of the Council the Council must pay to the estate of the staff member the value of the vacation leave with full remuneration to the credit of the staff member at the date of his or her death, which vacation leave days may not exceed 60 days.

(2) Where the service of a staff member with the Council is terminated, the Council must pay to that staff member the value of the vacation leave with full remuneration to the credit of the staff member at the date of the termination of the staff member, which leave days may not exceed 60 days.

PART 3 MISCONDUCT, DISCHARGE AND SUSPENSION

Discipline

28. (1) This Part must be read with section 29 of the Act.

(2) In this Part the term “staff member” includes the chief executive officer and a head of department and where the term chief executive officer is used in relation to a staff member the term “Council” must be used where a rule is applied to a chief executive officer or a head of department.

(3) In terms of section 29(1) of the Act, the Council may discharge -

- (a) the chief executive officer with the prior approval of the Minister;
- (b) a head of department; and
- (c) any other staff members of the Council.

(4) The Council and the chief executive officer must -

- (a) discipline the staff members of the Council;
- (b) ensure that the rules of substantive fairness and procedural fairness are applied consistently and fairly; and
- (c) inform the staff members of the Council of the disciplinary rules and possible actions which can be taken.

(5) A staff member must perform his or her duties with the necessary diligence and dedication and he or she must behave in a proper manner towards the Council, other staff members and the customers of the Council.

(6) The conditions of service, the relevant labour laws and the relationship of trust between the staff member and the Council form the basis for the service relationship between the staff member and the Council.

Guidelines in dealing with actions that constitutes misconduct

29. (1) The following offences can be used as guidelines when dealing with actions that constitute misconduct and very serious offences are the following -

- (a) theft;
- (b) fraud, bribery, malicious damage to the property of the Council;
- (c) unauthorised possession of Council property;
- (d) driving an official vehicle under the influence of stupefying substance without prescription from a medical practitioner, dentist or other health professional registered as such in terms of the Medical and Dental Act, (Act No. 10 of 2004);
- (e) intimidation;
- (f) incitement;
- (g) perjury;
- (h) assault;
- (i) making false statements when applying for employment or undergoing medical examinations;
- (j) disobeying or disregarding work-related orders;
- (k) intoxication or under the influence of a stupefying drug without a prescription from a medical practitioner, dentist or other health professional;
- (l) sexual harassment;
- (m) revealing confidential information to unauthorised persons;
- (n) illegal strikes under the Labour Act, 2007 (Act No. 11 of 2007);
- (o) racism;
- (p) tribalism;
- (q) nepotism;
- (r) gross abuse of authority; and
- (s) gross negligence.

(2) In relation to the very serious offences set out under subrule (1), the relevant person contemplated in section 29(6)(a) of the Act may charge a staff member upon a first offence with misconduct and a formal disciplinary inquiry must be held upon the charge.

- (3) The following are the serious offences -
- (a) disregard of safety standards;

- (b) misuse of Council property for private purposes;
- (c) being under the influence of alcohol or a stupefying substance without any prescription during working hours;
- (d) abuse of sick leave;
- (e) sleeping on duty;
- (f) repeated absence from the workplace while on duty;
- (g) repeated unauthorised or excommunicated absenteeism;
- (h) using abusive language;
- (i) failure to report an accident or damage;
- (j) reckless driving of the motor vehicles of the Council;
- (k) insolence; and
- (l) indolence.

(4) In relation to the serious offences set out under subrule (3), the chief executive officer may -

- (a) upon a first offence, issue a first written warning to the staff member concerned;
- (b) upon a second offence, issue a final written warning to the staff member concerned; and
- (c) upon a third or further offence, cause the relevant person contemplated in section 29(6)(a) of the Act to charge the staff member concerned with misconduct, upon which a formal disciplinary inquiry must follow.

(5) The following are minor offences -

- (a) poor time control;
- (b) improper conduct;
- (c) carelessness;
- (d) not reporting for overtime without a reasonable excuse, after agreeing in writing to work overtime; and
- (e) not dressed in a clean, decent and tidy manner.

(6) In relation to the minor offences set out under subrule (5), the chief executive officer may -

- (a) upon a first offence, issue a verbal warning to the staff member concerned;
- (b) upon a second offence, issue a first written warning to the staff member concerned; and

(c) upon a third offence, issue a final written warning to the staff member concerned.

(7) The types of misconduct set out in subrule (1), (3) and (5) and the possible actions to be taken against a staff member by the chief executive officer set out in subrule (2), (4) and (6) serve as guidelines only and the chief executive officer may, depending on the seriousness of the offence and on consideration of the circumstances, in accordance with the Act take a different course of action.

(8) The relevant person contemplated in section 29(6)(a) of the Act must charge a staff member on a form corresponding with Form A of the Annexure and the charge sheet must set out the charge or charges against a staff member and the procedure to be followed by the staff member.

(9) In the circumstances where the chief executive officer intends to issue a verbal warning or a written or final warning to a staff member, the chief executive officer must first conduct or cause to be conducted, an informal inquiry into the alleged misconduct during which the staff member must be granted an opportunity to present his or her case.

(10) An informal inquiry contemplated in subrule (9) must be attended by the staff member, the chief executive officer or his or her representative and a third impartial party to record the proceedings.

(11) Where the chief executive officer or his or her representative is upon the conclusion of the informal inquiry not satisfied with the explanation of the staff member, the chief executive officer or his or her representative may issue a verbal warning or issue a written or final warning to the staff member and the warning must be recorded on the personal file of the staff member.

(12) The staff member who is issued with a verbal, written or final warning may appeal to the Council in writing if he or she does not agree with the verbal, written or final warning of which the Council must make a final decision regarding the validity of the warning.

Type of warnings

30. (1) The types of warnings set out in subrule (2) serve as guidelines for the application of -

(a) section 29(6)(f)(i)(bb) of the Act after the conclusion of a formal disciplinary inquiry; and

(b) an informal disciplinary inquiry as contemplated in rule 29(9) to (11).

(2) The types of warnings are as follows -

(a) the first type of warning is a verbal warning given in less serious circumstances and it is normally valid for a period not exceeding three months;

(b) the second type of warning is a first written warning and is normally given where verbal warnings for minor offences have been unsuccessful or in the case of a first serious offence and it is normally valid for a period not exceeding six months; and

(c) the third type of warning is a final written warning and is normally given where written warnings for serious offences have been unsuccessful or in the case of a very serious offence and it is normally valid for a period not exceeding 12 months.

Procedural fairness during disciplinary inquiry

31. (1) The Council, the chief executive officer and the staff members concerned must observe the disciplinary procedures set out in the Act and in these rules.

(2) The persons conducting a formal disciplinary inquiry may only consider or apply punitive measures after an inquiry has been finalised.

(3) A staff member has the right to an interpreter where he or she requires an interpreter during a disciplinary inquiry.

(4) The staff member must be in a fit, conscious and sober state of mind during a disciplinary inquiry.

(5) A staff member or his or her representative who requires additional time to prepare the staff member's case, must request the chairperson of the formal disciplinary inquiry in writing for a postponement of the inquiry after the disciplinary inquiry committee has convened for the first time.

(6) Despite subrule (5), the chairperson of a formal disciplinary inquiry may where he or she suspects that a staff member is unduly delaying the inquiry -

(a) warn the staff member to not unduly delay the inquiry; and

(b) where the delay continues, the chairperson may set a time frame within which an inquiry must be concluded.

(7) The staff member who is charged with misconduct has the right to a procedurally and substantively fair disciplinary inquiry even though evidence exists that warrants an immediate dismissal.

Substantive fairness during disciplinary inquiry

32. (1) A staff member must have been reasonably aware of the provision of the Act or the rule that he or she has transgressed in order for the disciplinary inquiry to find him or her guilty of misconduct.

(2) The staff member must fully understand the charge against him or her and the person charging the staff member must, where requested, explain the charge to the staff member.

(3) Before a staff member is charged with misconduct, the person charging that staff member must ensure that there is sufficient proof of misconduct on the balance of probabilities.

Suspension

33. (1) The chief executive officer may, at any time before or after a staff member is charged with misconduct, suspend a staff member in terms of section 29(6)(b) of the Act with or without pay, where the nature of the misconduct dictates that the staff member be removed from his or her place of duty or if the possibility exists that the staff member may interfere or tamper with witnesses or evidence.

(2) In terms of section 29(6)(b) of the Act the chief executive officer may only be suspended with the written approval of the Minister.

(3) The chief executive officer must determine the period of suspension of a staff member.

- (4) A staff member may be suspended without pay for -
- (a) the duration of the formal disciplinary inquiry; or
 - (b) for a period not exceeding six months,

whichever period is the shortest.

(5) A staff member who has been suspended with or without pay, may within seven days after he or she is notified of the suspension, appeal in writing to the Council against the validity of his or her suspension or against his or her suspension without pay.

(6) Upon considering the appeal of the staff member in subrule (5), the Council must make a final decision as to the validity of the suspension of that staff member or to the suspension of that staff member without pay.

(7) A staff member who has been suspended must be permitted to reassume his or her official duty and must be paid his or her full remuneration for the period of his or her suspension -

- (a) if no charge of misconduct is brought against him or her under section 29(6)(a) of the Act;
- (b) if he or she is found not guilty on any charge of misconduct;
- (c) if his or her appeal is successful against any finding that he or she is guilty on any charge of misconduct; or
- (d) if an action under section 29(6)(f)(i)(bb) or (cc) of the Act is taken against the staff member.

(8) A staff member who has been suspended and against whom an action under section 29(6)(f)(i)(dd) has been taken, must assume duty at the reduced salary or the lower grade or both at the reduced salary and in the lower grade and the reduced salary must be paid to the staff member for the period of suspension unless payment at the former higher salary has already taken place during that period.

(9) The suspension of a staff member may at any time be cancelled by the Council if in its opinion the reason for the suspension has lapsed, but the cancellation of the suspension may not affect any proceedings in connection with the charge of misconduct.

Persons conducting disciplinary inquiry

- 34.** (1) For the purpose of section 29(6) of the Act the Council may appoint -
- (a) a legal practitioner contemplated in section 29(7) of the Act to hold the inquiry and to act as chairperson;
 - (b) a staff member of the Council contemplated in that section to inquire into a charge; or
 - (c) a staff member or any other person having knowledge and experience in labour law to inquire into the charge.

(2) The person appointed to inquire into the charge as contemplated in section 29(6)(d) of the Act must act as an investigating officer collecting evidence and leading the inquiry against the staff member so charged with misconduct.

Appeals

35. (1) This rule is subject to the appeal procedures set out in section 29(6)(g)(i) and 29(6)(gA)(i) of the Act.

(2) An appeal contemplated in section 29(6)(g)(i) or 29(6)(gA)(i) must be lodged on a Form substantially corresponding with Form B of the Annexure and must be delivered within seven days of notification of the finding contemplated in section 29(6)(f)(ii) or 29(6)(gA)(i) to the Council.

(3) A staff member appealing against the outcome of the inquiry may appeal on the following grounds -

- (a) an error of fact or in law which lead to a wrongful conviction in terms of section 29(6)(f)(i);
- (b) severity of the penalty or the action taken, in terms of section 29(6)(g)(ii);
- (c) procedural and substantive inconsistencies and unfairness in terms of but not limited to the provisions of rule 31 or 32; or
- (d) a discovery of new evidence discovered after the conviction that could lead to an acquittal of the charges against him or her.

FORM A

CHARGE SHEET

BUKALO VILLAGE COUNCIL

vs.

.....

Be informed that in terms of section 29(6)(a) of the Local Authorities Act, 1992 and the Personnel Rules of Bukalo Village Council, 2018, you are hereby charged with misconduct in that you contravened the following section(s) of the Act / rule(s) of the Personnel Rules, 2018*:

- 1.
- 2.

Particulars of the alleged Misconduct

.....

.....

.....

.....

You are requested to plead to the abovementioned charges. Upon a plea of guilty, you are requested to furnish the Head of the Human Resources Department with a written explanation (why you are pleading guilty) within seven (7) days from the date you receive this notice.

- 1. I plead guilty / not guilty to charge 1.
- 2. I plead guilty / not guilty to charge 2.

I attach / do not attach* a statement hereto:

.....
SIGNATURE

.....
DATE

Be further informed that at the hearing, you:

- * have the right be represented by your shopsteward, work place trade union representative, fellow staff member of your choice or any other person of your choice;
- * the right to present your case;
- * the right to call witnesses to give evidence in support of your case;
- * the right to controvert evidence produced against you;

- * the right to cross-examine witnesses;
- * the right of access to documents produced in evidence or in connection with the alleged misconduct;
- * the right to appeal against the decision, if found guilty of misconduct; and
- * the right to appeal against the action taken after being found guilty of misconduct.

(* Delete whichever is not applicable.)

FORM B

NOTICE OF APPEAL

.....

And

BUKALO VILLAGE COUNCIL

Kindly take Notice that I
(full names and surname of staff member) hereby note an appeal against -

- (a) being found guilty of misconduct; or
- (b) the action taken upon being found guilty of misconduct; or
- (c) both (a) and (b),

during a Formal Disciplinary Inquiry held on, on the following grounds:

1. Appeal against a decision made in terms of section 29(6)(f)(i) of the Local Authorities Act, 1992

The Council or the chief executive officer has not proven on a balance of probabilities that I am guilty of misconduct, for the following reasons -

- (a)
- (b)
- (c)

2. Appeal against an action taken in terms of section 29(6)(f)(i) of the Local Authorities Act, 1992

The Council or the chief executive officer has taken the wrong or an unreasonable action after I was found guilty of misconduct for the following reasons:

- (a)
- (b)
- (c)

3. Appeal on the grounds that the disciplinary inquiry was substantively or procedurally unfair, in terms of but not limited to the provisions in rules 31 or 32 of the Personnel Rules, 2018

(a)

(b)

(c)

Dated at Bukalo on this of 20

.....
SIGNED APPELLANT/ REPRESENTATIVE
