



Province of the
EASTERN CAPE

**COOPERATIVE GOVERNANCE
& TRADITIONAL AFFAIRS**

LABOUR RELATIONS POLICY

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Date Completed	12 November 2020
Date of Approval	13 November 2020
Date For Next Review	30 November 2023
Related Policies	Leave Management,

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SIGN OFF

I. Head of Department

This Policy on the Labour Relations has been recommended by Andile Fani in my capacity as the Head of Department of Cooperative Governance and Traditional Affairs.

I am satisfied and concur with the contents of this Policy.


The development of the Labour Relations Policy will ensure that the Department is able to exercise its powers in compliance with the law and guide decision-making in the Department.

Signed:	
Designation:	Head of Department
Date:	12/11/2020

II. Executive Authority

The Department of Cooperative Governance and Traditional Affairs has unprecedented opportunity to improve the lives of the people by effectively rendering services that it is expected to provide. We have envisaged a department that has the required capacity to respond adequately to the challenges of its people.

I, therefore, trust that guidance from this Policy will contribute to the effective curbing/prohibition of unfair labour practice in the Department.

Signed:	
Designation:	MEC: X.E. Nqatha of Cooperative Governance and Traditional Affairs
Date:	13/11/2020

1. PREAMBLE

The Department of Cooperative Governance & Traditional Affairs commits itself in promoting sound labour relations in the workplace. The policy seeks to ensure an effective mechanism for communication, participation, safe and stable work environment as well as commitment and motivation of all staff to disciplined processes for service delivery.

2. PURPOSE

- 2.1 To clarify the position of the department in respect of areas of labour relations.
- 2.2 To create an orderly interaction between parties to the employment relationship.
- 2.3 To promote adherence and compliance to legislation that governs employment relations within the Department.
- 2.4 To provide for consistency in management decisions regarding employment relation.
- 2.5 To provide a framework for the practical application of the principles of the law.

3. DEFINITIONS

Terms and definitions that will be used throughout the procedure that need clarification for the reader, this can also include any keywords, technical terms and abbreviations that may be used in this document.

Words/Terms	Definition (with examples if required)
Unionization	The process of organizing employees into a labour union which will act as an intermediary between the employees and management.
Employee	<ol style="list-style-type: none">a. Any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; andb. Any other person who in any manner assists in carrying on or conducting the business of an employer, and 'employed' and 'employment' have meanings corresponding to that of 'employee'.
Organizational rights	They are rights regulating the relationship between employers, employees and trade unions.
Collective agreements	The oral or written contract entered into between an employer or group of employers

	and a union that is negotiating on behalf of all the employees that the union represents.
Disputes of interests	Involves the formulation of new rights such as higher wages (always results in a strike action).
Disputes of rights	Concerns the infringement, application of or interpretation of an existing right contained in a contract of employment.
Strike	Partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to 'work' in this definition includes overtime work, whether it is voluntary or compulsory.
Protected strike	It is any industrial action that complies with the requirements of Sections 64 & 65 of the LRA.
Unprotected strike	It is any industrial action that is in contravention of Sections 64 & 65 of the LRA.
Protest action	Is a public demonstration or organized effort to show disapproval about something, especially a government policy or practice.
Picketing	Is an industrial action by unionized workers who either are on, or are trying to gather support for a strike by assembling near the entrance to the employer's premises in order to persuade co-workers to join an industrial action.

4. APPLICATION & SCOPE

This policy applies to all employees of the Department of Cooperative Governance & Traditional Affairs.

5. LEGISLATIVE FRAMEWORK

- 5.1 Constitution of the Republic of South Africa of 1996
- 5.2 Public Service Act (Act 101 of 1994) as amended by Act 30 of 2007
- 5.3 Labour Relations Act (Act 66 of 1995) as amended by Act 6 of 2014
- 5.4 Public Service Regulations, 2001 as amended

- 5.5 Basic Conditions of Employment Act (Act 75 of 1997) as amended by Act 20 of 2013
- 5.6 Employment Equity Act (Act 55 1998) as amended by Act 47 of 2013
- 5.7 Promotion of Administrative Justice Act (Act 3 of 2000)
- 5.8 Promotion of Access to the Information Act (Act 2 of 2000)
- 5.9 Promotion of Equity and Prevention of Unfair Discrimination Act (Act 4 of 2000)
- 5.10 PSCBC and GPSSBC Collective Agreements.
- 5.11 Public Finance Management Act (Act 1 of 1999 as amended)
- 5.12 Occupational Health & Safety Act (Act 181 of 1993)
- 5.13 Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993)
- 5.14 SMS Handbook 2003 (Chapter 7) as amended
- 5.15 Protected Disclosures Act (Act 26 of 2000)
- 5.16 Batho Pele Principles

6. POLICY STATEMENT

The Department of Cooperative Governance and Traditional Affairs is mindful of the labour relations landscape in South Africa that has radically shifted post 1994 with the dawn of the constitutional democracy that resulted in the promulgation of the Labour Relations Act 66 of 1995 (LRA).

7. POLICY PRINCIPLES

- 7.1 Consistency
- 7.2 Transparency
- 7.3 Communication
- 7.4 Fairness
- 7.5 Service delivery.

8. LABOUR RELATION MATTERS

8.1 MEMBERSHIP TO UNIONS

- 8.1.1 Freedom of association by employees is recognized
- 8.1.2 Employees who elect not to join a trade union will pay an agency shop fee.
- 8.1.3 Senior Management Services are exempted from agency shop fee
- 8.1.4 Senior Management Services are free to join or not to join any trade union
- 8.1.5 The principles of full time shop stewards, where possible are supported in terms of a GPSSBC Resolution 3 of 2001 as amended.
- 8.1.6 Any disruptive action (*Perpetual conduct that is in conflict with the dictates of the LRA*) by a trade union could lead to suspension of organizational rights that had been conferred in terms of this policy.

8.2 ORGANIZATIONAL RIGHTS

8.2.1 Access to Workplace

8.2.1.1 Unions must notify the Employer in writing of all meetings to be held at least 5 days prior to the date of the meeting.

8.2.1.2 Trade Unions are entitled, without being unreasonably denied access to the Department's premises. Approval must be obtained.

8.2.1.3 Trade union representatives/shop stewards/union officials/union office bearers shall have the right of access to the premises of the Department during working hours, outside working hours and during lunch breaks by prior arrangement, in order to:

- a) Recruit members;
- b) Communicate with members;
- c) Serve members' interest; and
- d) Hold Meetings.

8.2.1.4 All arrangements regarding access will be facilitated through Labour Relations Directorate for approval by the Head of Department.

8.3 MEETINGS AND PROTEST/STRIKE ACTIONS

8.3.1 Convening of General and Special Meetings is subject to the provisions of the GPSSBC Resolution 3 of 2014.

8.3.2 All other gatherings such as protest, picket and or strike actions shall be in compliance with the provisions of the Labour Relations Act 66 of 1995 as amended.

8.4 TRADE UNION REPRESENTATION

8.4.1 Distribution

Each union will qualify to elect union representatives' /shop stewards at a place of work as provided for in the **GPSSBC Resolution 3 of 2014** on the following basis:

8.4.2 Membership composure

NUMBER OF MEMBERS	NUMBER OF UNION REPS/SHOP STEWARDS
10	4
11-50	4
51-100	5
101-150	5

151 – 200	7
201 – 250	7
251 – 300	7
301 – 400	8
401 – 500	9
501 – 600	10
601- 800	11
801 – 1000	12
1001 – 1500	13
1501 – 2000	14
2001 – 2500	15
2501 – 3000	16
3001 – 3500	17
3501 – 4000	18
4001 – 4500	19

8.4.3 The constitution of respective Trade Union governs the nomination, election, term of office and removal from office of a trade union representative.

8.4.4 Trade union representatives elected in terms of this agreement will be formally recognized once the union has informed the Head of Department in writing of the names of the elected union representatives/shop stewards.

8.5 RIGHTS OF TRADE UNION REPRESENTATIVES.

8.5.1 A trade Union representative has the right to perform the following functions:

8.5.1.1 At the request of the employee in the place of work, to assist and represent the employee in grievance and disciplinary proceedings.

8.5.1.2 To monitor the Departmental Compliance with the provisions of the Labour Relations Act and any law or Collective Agreement regulating terms and conditions of employment.

8.5.1.3 To perform any other function agreed to between the Union and the Department.

8.6 LEAVE FOR TRADE UNION ACTIVITIES

8.6.1 Leave is in terms of the GPSSC Resolution 3 of 2014.

8.6.2 Request for such leave shall be facilitated through Labour Relations Directorate.

8.7 DISCLOSURE OF INFORMATION

8.7.1 The Department and Trade Unions shall disclose to each other all relevant information that will enable them to engage effectively in consultation or negotiations with due regard to the provisions of section 16(5) of the Labour Relations Act, 1995, which states that the Department is not required to disclose information –

- a) that is legally privileged
- b) that would contravene a prohibition by any law or order of any court;
- c) that is confidential and if disclosed may cause substantial harm to an employee or a Department; and
- d) that is private, personal information relating to an employee, unless the employee consents to the disclosure of that information.

8.7.2 The request for disclosure of information by the unions shall be directed to the Head of Department for approval.

9. MANAGEMENT- LABOUR FORUM

9.1 The Management-Labour Forum is consultative in nature and does not replace Provincial Collective Bargaining structures.

9.2 Recognized trade unions shall be represented by the elected shop stewards in the Management/Labour Forum.

10. DESIGNATION OF ESSENTIAL SERVICES

10.1 The department must first ensure that such service complies with the definition of essential services in terms of the LRA.

10.2 The department will take a decision and approach the Essential Services Committee to designate a service as an essential services.

10.3 Prior to approaching the Committee, the DPSA will be consulted to determine the impact of such designation to service delivery.

10.4 Collective agreements on maintenance of minimum service may be entered into by the employer in the sector and with relevant trade union.

10.5 Where a trade union demands designation of a service, the department will approach the DPSA for a view.

11. DISCIPLINE

- 11.1 Section 16B of the Public Service Act as amended (Act 30 of 2007) is applicable in its entirety *mutatis mutandis*.
- 11.2 Discipline is a Management function and this should be reflected in Managers' Performance Agreements.
- 11.3 All line Managers are responsible for maintaining discipline in their directorates and transgressions must be dealt with fairly, promptly, consistently in accordance with relevant prescripts.
- 11.4 The provisions of the Disciplinary Code and Procedures (PSCBC Res 3/2001) are applicable to all employees on salary levels 1 to 12. The Senior Management Services Handbook (Chapter 7) is applicable to SMS employees (levels 13 upwards).

12. INCAPACITY

- 12.1 This occurs as a result of either poor performance or ill-health / injury.
- 12.2 Both forms of incapacity must be dealt with in terms of the applicable collective agreements or legislative/policy prescripts.

13. COMMUNICATION OF THE POLICY

- 13.4 It will be communicated by means of workshops and circulars to all employees of the department

14. DISPUTE RESOLUTION MECHANISM

In the event of disputes arising out of the Labour Relations processes, such disputes must be dealt with in terms of the Grievance Procedure and Labour legislation applicable in the Public Service.

15. APPROVAL OF THE POLICY

The Policy shall be recommended by the Head of Department (HoD) and must be approved by the Member of Executive Authority (MEC) as per the updated Departmental Delegations and the Policy will become official on the date it is signed by the Executive Authority (MEC Cooperative Governance and Traditional Affairs).

16. REVIEW OF THE POLICY

This Policy shall be reviewed and amended in line with future legislative promulgations and Collective Bargaining agreements.

17. VERSION CONTROL AND CHANGE HISTORY

Version Control	Date Effective	Approved By	Amendment
Start from	YYMMDD (the date the Policy takes effect)	Contact person – full name & title.	
2016	10 March 2016	MEC F.D Xasa	
2020	13 November 2020	MEC X.E Nqatha	