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Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA



NATIONAL TRAFFIC

indaba

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Minimizing And Mitigating The Impact Of Road Carnages And Fatalities: Determination Of Working Hours Of Traffic Officers

Presenter: Department of Public Service and
Administration

Kenny Govender

Overview

- Legal framework
- The DPSA's role and responsibility on Working Time
- Shift system/working time arrangement for Provincial Traffic Inspectors
- Possible challenges



LEGAL FRAMEWORK

Legal Framework

- In terms of section 7(3)(b) of the Public Service Act, 1994, as amended, the Head of Department shall be responsible for the efficient management and administration of his or her department, including the effective utilisation and training of staff, the maintenance of discipline, the promotion of sound labour relations and the proper use and care of State property, and he or she shall perform the functions that may be prescribed.
- Section 1 of the Act defines '**head of department**', '**head of a department**' or '**head of the department**' as the incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 and includes any employee acting in such post. E.g. the Head of Department of the Provincial Departments of Roads and Transport.

Legal Framework

- Regulation 51 of the Public Service Regulations, 2016, subject to any collective agreements and the Code of Good Practice on Arrangement of Working Time issued in terms of section 87 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), authorises a head of department shall determine—
 - the work week and daily hours of work for employees; and
 - the opening and closing times of places of work of the department, taking into account—
 - the needs of the public with due regard to the department's service delivery improvement plan; and
 - the needs and circumstances of employees, including family obligations and transport arrangements.
- Section 49 of the Basic Conditions of Employment Act permits the variation of conditions of service provided for in the Act provided that it is consistent with the purpose of the Act and does not reduce the core rights contained in the Act.

Legal Framework

- In 2007 PSCBC Resolution 1 of 2007 on the improvement of salaries and other conditions of service was concluded.
 - This collective agreement among others has as its objective to provide for the alignment of the public service with the requirements of the Basic Conditions of Employment Act, 1997 and matters incidental thereto.
 - Clause 9 of the collective agreement deals with various issues pertaining to working hours
 - The issues pertaining to working time from this collective agreement are being implemented through the clause 9 with various issues pertaining to working hours issued by the Minister for Public Service and Administration.

Legal Framework

- The following aspects dealt with in the PSCBC Res 1 of 2007, read with the clause 9 with various issues pertaining to working hours are highlighted:
 - The averaging model (as provided for in section 12 of the Basic Conditions of Employment Act) has been adopted as the shift model for the Public Service. The workings of the averaging model has to be defined in the sectors.
 - The principles contained in sec 12 of the BCEA
 - The working hours and overtime are to be averaged over a period of up to four months.
 - The average working hours may not exceed 45 hours
 - The average overtime per week over the agreed period may not exceed 5 hours.
 - The rates for compensation for ordinary work (shifts) on Sundays and Public Holidays are determined.
 - Sundays: 1.5 x employees daily wage
 - Public Holidays: 2 x employees daily wage
 - Refer to the Determination and Directive on Working Time for the computation of these rates.
 - Night work in the Public Service is defined to be between 18:00 to 06:00 or 19:00 to 07:00.
 - The relevant sectoral bargaining council or chamber has to agree, with due consideration to the operational requirements of the sector/department which hours should be applicable.
 - Not only will employees who will be required to perform shifts between these hours receive the night shift allowance for work rendered during these hours, but the Basic Conditions of Employment Act confer certain responsibilities on the employer with regard to the employees' health for working during these hours, e.g. they must be made aware of the health hazards of working at night.

Legal Framework

- In respect of the areas on working time that are not varied through PSCBC Resolution 1 of 2007, the provisions in the Basic Conditions of Employment Act prevail, i.e. in the arrangement of the working time of an employee, s/he will among others be entitled to-
 - a meal break (sec 14) after five (5) hours of continuous work
 - The meal interval can be an hour but it can be reduced to 30 minutes by means of a collective agreement.
 - Cognisance must be taken that a meal interval is not counted towards the completion of a work day. and
 - a daily and weekly rest period (Sec 15)
 - Daily: at least 12 hours between ending and recommencement of work
 - Weekly: 36 hours unless agreed otherwise
 - A written agreement may provide for a-
 - Weekly rest periods of 60 hours every two weeks
 - Daily rest period of 8 hours in any week provided that the rest period be equally increased in the following week.

Legal Framework

- The Code of Good Practice on the Arrangement of Working Time referred to in the Public Service Regulations is the Code issued by the Minister of Labour in terms of the provisions of section 87 of the Basic Conditions of Employment Act.
- The Code of God Practice provides information and guidelines to employers and employees concerning the-
 - arrangement of working time
 - the impact of working time on health, safety
 - family responsibilities of employees



THE DPSA'S ROLE AND RESPONSIBILITY ON WORKING TIME

- The Department of Public Service and Administration, in relation to the determination of working time, is in terms of its legal mandate responsible to -
 - Develop (and where applicable negotiate) the overarching legal framework as entrenched in Public Service Regulations, PSCBC Resolution 1 of 2007.
 - Implement the said collective agreement through directives the MPSA has issued in terms of the Public Service Act; in this case the Determination and Directive on Working Time.
 - The maintenance of rates published in terms of Determination and Directive on Working Time, i.e. the night shift allowance.
 - Provide technical support to departments on the interpretation and application of the legal framework outlined above. For example the DPSA has been advising the RTMC on, among others-
 - The legal framework governing the working time arrangements in the Public Service, as well as the interpretation and application thereof.
 - Critical work needed between the RTMC and the Heads of Department of the Provincial Departments of Roads and Transport.
 - The need for the relevant Heads of Department’s mandate with due consideration to their legal authority pertaining to working time.
 - Consultation required with National Treasury – Budget Office on issues of cost/funding
 - The mandating and negotiations processes.
- The DPSA will only get involved in negotiations if an agreement in a Departmental Chamber must be ratified in the GPSSBC or if a transversal agreement for the GPSSBC must be negotiated. The latter is subject to specific details/processes, e.g. a properly crafted mandate, position paper, costing, concurrence from the relevant Treasury and a mandate from the MPSA.



**SHIFT SYSTEM/WORKING TIME
ARRANGEMENT FOR PROVINCIAL
TRAFFIC INSPECTORS**

Shift system/working time arrangement for Provincial Traffic Inspectors

- The Heads of Department, in this instance the Provincial Departments of Roads and Transport (or Department responsible for this portfolio) holds the legal authority to determine the working time of their departments and/or categories of staff within his/her department, in this instance the Provincial Traffic Inspectors, with due consideration to the-
 - legal framework must be taken into account.
 - departments service delivery mandates/responsibilities. Since our Provincial roads are used 24/7 by road users and it is critical that the laws pertaining to the usage of these roads must be enforced it is incumbent on the relevant Heads of Department to determine worktime arrangements for the Provincial Traffic Inspectors to ensure that the roads are patrolled and laws enforced 24/7.
- This means that the Head of Department may for example determine employees maximum hours of work and start and end times of work following a consultative process.
- However, a 24/7 service requires a shift system that spans over the –
 - 24 hours in a day and
 - 7 days of the week.

Shift system/working time arrangement for Provincial Traffic Inspectors

- What is required to introduce a shift system-
 - A position paper outlining, among others-
 - The averaging model detailing the workings of the model in the department (over at least a 12 month period)
 - An analysis re the health and safety of employees having to work at night with a view to introduce mitigating measures.
 - The survey results determining the need and extent to which e.g. employees family responsibilities should be accommodated in the shift system.
 - The survey results determining employees preference regarding working at night or day.
 - The resources needed to support the shift system, i.e. the number of Inspectors required to perform the shifts as per the roster.
 - The costs attached to the shift system
 - Is it budgeted for?
 - Concurrence from relevant Treasury
 - Costing should include the salaries, additional pay for ordinary work on Sundays and Public Holidays, Night Shift Allowance and overtime. Overtime should be only when a post is vacant or a colleague is absent and additional shifts over and above must be performed.

Shift system/working time arrangement for Provincial Traffic Inspectors

- What is required to introduce a shift system (cont...)-
 - A draft collective agreement for negotiation in the Departmental Chamber and ratified in the GPSSBC.
 - Mandate from the Head of Department.
 - **If intended to introduce the same shift system for all Traffic Inspectors across the Public Service, the following approach is suggested:**
 - A position paper and draft agreement on the subject matter
 - The written concurrence of each HOD with the mandate.
 - Each HOD will have to pronounce on the resources required and the funding thereof. The availability of resources and funds. If additional resources and funding will be required, the HOD must indicate how it will be addressed.
 - National Treasury – Budget Office must be approached for concurrence on the cost implications in preparation of a mandate to table in the GPSSBC
 - A request to be forwarded the DPSA to approach the MPSA for a mandate to negotiate the shift model in the GPSSBC. All the above the above information must be included.
 - Negotiations in the GPSSBC with technical support from DPSA, RTMC and relevant departments.



POSSIBLE CHALLENGES

Possible Challenges

- Reduction of overtime work and pay where the 24/7 service is covered by either '9 to 5' workdays from Monday to Friday and the remainder of the period is covered by overtime.
 - Funds utilised for overtime pay can be utilised to fund posts if additional resources must be created to support a proper shift system.
- Resistance to change can be expected which can potentially result in deadlocks, litigation, labour action.

