



REPUBLIC OF NAURU

PUBLIC SERVICE (DISCIPLINARY PROCEDURES) REGULATIONS 2016

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The Minister makes the following regulations under section 97 of the *Public Service Act 2016*:

PART 1 - PRELIMINARY

1 Citation

These regulations may be cited as the *Public Service (Disciplinary Procedures) Regulations 2016*.

2 Commencement

These regulations commence on the day they are notified in the Gazette¹.

3 Interpretation

(1) In these Regulations, unless the context otherwise requires:

'employee' includes public service employees, contract employees, temporary employees and all other persons and officers employed under the Act;

'Secretary' means the Head of Department as established under section 13 of the Act;

'the Act' means the *Public Service Act 2016*;

'the Minister' means the Minister for Public Service.

(2) All other words and phrases not defined in this section have the same meaning as given in the *Public Service Act 2016*.

PART 2 – DISCIPLINARY PROCEDURES

4 Classification of misconduct

(1) The different classification of misconduct include but are not limited to those listed in the table in the Schedule to these Regulations.

(2) An employee who breaches the Code of Conduct in the Act will be dealt with under these Regulations.

5 Minor misconduct

In cases of minor misconduct, the Secretary may reprimand the employee by:

¹ Gazette No. 53/G.N.No. 233/2016

- (a) issuing to the employee a written warning;
- (b) reprimanding the employee in writing;
- (c) providing performance counselling to the employee;
- (d) requiring the employee to undertake training and development;
- (e) developing and implementing a performance management plan for the employee; or
- (f) suspending the employee for not more than one month.

6 Record of minor breaches

- (1) A record of minor misconduct and any action taken under regulation 5 must be made and given to the employee and a copy made and kept in the employee's personal folder.
- (2) Minor misconduct committed more than three times constitutes serious misconduct.

7 Serious misconduct

- (1) In cases of serious misconduct or repeated minor misconduct under regulation 6(2), the Secretary must enquire into the misconduct.
- (2) If the Secretary determines during or after an enquiry under sub-regulation (1) that no serious misconduct has been committed, the inquiry will end and the Secretary must record in writing that the inquiry concluded that there was no serious misconduct committed and the reasons for the determination, and keep a copy of that decision in the employee's personal file.
- (3) Where it appears that a criminal offence may have been committed the Secretary must report the matter to the police and forward a complete report of the case to the Chief Secretary.
- (4) If the Secretary determines that there has been serious misconduct, or repeated minor misconduct, the Secretary may charge the employee with serious misconduct and forward to the Chief Secretary a copy of the charge and a complete report which must include the following:
 - (a) the charge laid against the employee;
 - (b) any complaint made against the employee, whether by a public servant or a member of the public;
 - (c) the reasons that the breach is deemed by the Secretary as serious misconduct;

- (d) the facts gathered from the enquiry conducted under regulation 7(1);
- (e) official records or documents relevant to the serious misconduct;
- (f) a report from the police, if any;
- (g) any internal correspondence from, or to, the employee relating to the misconduct, including emails;
- (h) any representation from the employee;
- (i) any statements from witnesses;
- (j) any record of previous disciplinary cases committed by the employee if it is a case of repeated minor misconduct;
- (k) any other document that is relevant to the misconduct.

8 Disciplinary procedures for serious misconduct

- (1) Where a charge of serious misconduct has been reported to the Chief Secretary under these Regulations, the Chief Secretary may:
 - (a) within 7 working days of receipt of the report, convene a Committee consisting of a Secretary other than the Head of Department that laid the charge, the Secretary for Justice and Border Control or his nominee and the Chief Secretary or if any of the persons named is unavailable, a nominee may sit on the committee; and
 - (b) provide to the Committee a copy of the Secretary's report submitted under regulation 7(4).
- (2) If the Committee finds after perusal of the charge and the report that there is no prima facie case, the Committee may dismiss the charge without any further action.
- (3) Upon receipt of a charge under regulation 7(4), where the employee does not dispute the charge, the employee must inform the Chief Secretary in writing within 7 working days and may include mitigation.
- (4) The Chief Secretary, upon receipt of the information under sub-regulation (3), must:
 - (a) bring the matter to the Committee (convened under sub-regulation (1) for a decision; and
 - (b) advise the employee in writing of the decision of the Committee.

- (5) Upon receipt of a charge under regulation 7(4), where the employee disputes the charge, the employee must give a written reply regarding the charge to the Chief Secretary within 7 working days.
- (6) The Chief Secretary must, upon receipt of the response under sub-regulation (5), forward the response to the Committee and the Committee must:
 - (a) consider the case provided and that the employee has the right to make oral or written representation if the employee requests; and
 - (b) decide the case and through the Chief Secretary, advise the employee in writing of its decision.
- (7) Where the employee does not reply within the specified time under these Regulations, the Chief Secretary must proceed with the matter as if a reply had been received.
- (8) The Chief Secretary may extend the time required for a reply but such extension must not exceed one month.
- (9) Any decision of the Committee is taken to be a decision of the Chief Secretary of the public service.

9 Misconduct by Secretary

- (1) If the Chief Secretary becomes aware or has received a report of misconduct committed by a Secretary, the Chief Secretary may:
 - (a) in the case of minor misconduct, reprimand or caution the Secretary; or
 - (b) in the case of serious misconduct or a repetition of minor misconduct, charge the Secretary and provide a report to the Minister.
- (2) Upon receiving a charge and report under sub-regulation (1) (b), the Minister must present the report to Cabinet for determination.
- (3) Cabinet, after considering the charge and the report, may:
 - (a) if they are of the opinion that there is no prima facie case, dismiss the charge; or
 - (b) if they are of the opinion that the Secretary is guilty of the charge, Cabinet may reprimand or caution the Secretary or terminate the Secretary's appointment.

10 Committee

- (1) The Committee convened under regulation 8(1)(a) may become a Committee of Enquiry tasked with undertaking an investigation for any allegation of serious misconduct.
- (2) In cases of misconduct involving money, breaches of financial procedures or serious financial irregularity, the Committee must include the Auditor General or a nominee.
- (3) The Committee has the power to:
 - (a) conduct an investigation into any allegation of misconduct;
 - (b) recommend to the Chief Secretary that the employee be suspended;
 - (c) direct the relevant Secretary, through the Chief Secretary, to provide further information within 7 working days;
 - (d) make a determination of a charge; and
 - (e) dismiss an allegation of serious misconduct due to lack of sufficient evidence.

11 Suspension

- (1) Upon receipt of a report under regulation 7, the Chief Secretary may suspend the employee pending a final decision.
- (2) Suspension under these Regulations may be without pay.

12 Penalties

Subject to regulation 8, where an employee is found guilty of serious misconduct or the repetition of minor misconduct, the Committee, through the Chief Secretary, may impose one or more of the following penalties:

- (a) caution or reprimand the employee;
- (b) reduce the salary payable to the employee;
- (c) cease the payment of salary by way of restitution (in whole or part) of loss or damage caused by the employee;
- (d) cease any future increments or remove any current increments;
- (e) demote the employee;
- (f) suspend the employee;

- (g) transfer the employee;
- (h) terminate the employee (after giving the employee an opportunity to resign);
- (i) terminate the employee (without giving the employee an opportunity to resign); and
- (j) any other action that the Committee may consider necessary.

13 Information notice

The requirements for an information notice for employees are found in the Act.

14 Acquittal

Where an employee is acquitted of serious misconduct or the repetition of minor misconduct, the Chief Secretary will, if the employee was suspended, reinstate and pay the employee in full the salary for the period of suspension.

15 Compliance with natural justice

- (1) Any person making any decision under these Regulations must comply with the rules of natural justice in making the decision.
- (2) However, it is not a contravention of a rule of natural justice only because the Chief Secretary or any other person tasked is unable, after reasonable attempts to do so, to contact the employee before making the decision.

16 Appeals

- (1) Subject to any provision of the Act, an employee has the right to appeal to the Public Service Appeals Board against any decision of the Committee or the Chief Secretary made under these Regulations.
- (2) The procedure for appeal is provided in the Act.

17 Recovery of loss

- (1) Where an employee has been disciplined under these Regulations and the Committee is satisfied that the misconduct has resulted in an assessable loss to Government, the Committee may direct that any amount up to the full extent of the loss be recovered from the employee by deduction from the employee's salary or entitlements.
- (2) Any deduction made under sub-regulation (1) must be no more than 30% of the gross payable salary of the employee, provided that if

the employee is terminated, the total amount of the assessable loss owing is deducted.

SCHEDULE

Reg. 4

MISCONDUCT	SERIOUS MISCONDUCT
Neglect of duty	Wilful and persistent neglect of duty
Work performance below average despite warnings;	Express or implied, misrepresentation by the employee in respect of his or her skills or qualifications
Absent from work without leave	Persistent and unexplained absences from work without leave
Disobedience of lawful or reasonable orders given by the head of department or the Chief Secretary	While on duty, being under the influence of an intoxicating, illegal, or unauthorized stupefying drug, including alcohol
Operating any business for own benefit during working hours or within Government premises;	Harassment of any kind
Engaging in outside employment without the authorization of the Chief Secretary	Sentenced in any court of law to at least 1 month imprisonment for an offence punishable by 12 months imprisonment or more
Loss of Government funds caused by willful or gross negligence - if the amount lost is over \$1000 then it becomes serious misconduct	Discrimination of any kind
	Assaulting, or attempting to assault, or threatening to assault, another employee or other person while on duty

	Serious damage to Government property caused by willful or gross negligence
	In the case of a teacher or other public officer who, in the course of his or her duties, engages in a sexual relationship with a student or a child under that officer's mentorship, authority, control or care
	Acts of theft, misappropriation or willful dishonesty against the Government, another employee or client of Government
	Willful disclosure of confidential information where such disclosure has not been authorised by Government or pursuant to any law or court order or is likely to be detrimental to the interests of the Republic
	Participating in any political activity
	Falsifying records or any other documentation used for official purposes
	Offering or receiving a bribe