



Tonga

PUBLIC SERVICE (GRIEVANCE AND DISPUTE PROCEDURES) REGULATIONS

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PUBLIC SERVICE (GRIEVANCE AND DISPUTE PROCEDURES) REGULATIONS

Arrangement of Regulations

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Tonga

PUBLIC SERVICE (GRIEVANCE AND DISPUTE PROCEDURES) REGULATIONS¹

Made under sections 21 and 22 of the Public Service Act

Commencement [3 April 2006]

PART I - PRELIMINARY

1 Short title

These Regulations may be cited as the Public Service (Grievance and Dispute Procedures) Regulations.

2 Interpretation

In these Regulations, unless the context otherwise requires —

“**association**” means an employee association registered according to law;

“**Chief Executive Officer**” means any person in charge of the administration of a Ministry, who is employed under a fixed contract of employment under the Act;²

“**Commission**” means the Public Service Commission established under the Public Service Act;³

“**designated officer**” means any person designated by the Commission under these Regulations;

“**employment dispute**” means a dispute between the employer and an association relating to terms and conditions of employment;

“**employee**” means a person employed in the Public Service and includes a daily paid worker;⁴

“**employer**” means the Commission or the Chief Executive Officer on behalf of Government;⁵

“**employment grievance**” means a grievance that an employee, may have against the employer or another employee where he claims that —

- (a) his employment, or one or more conditions of it, is or are affected to his disadvantage by unjustifiable action taken by the employer; or
- (b) that his employment conditions disadvantage or discriminate against him;

“**industrial action**” means any collective action by an association with the purpose of improving wages, salaries or conditions of employment;

“**Secretary**” means the Secretary of the Public Service Commission appointed under the Public Service Act;

“**Secretary of the Tribunal**” means the Secretary of the Public Service Tribunal;⁶ and

“**Tribunal**” means the Public Service Tribunal established under the Act.⁷

PART II - EMPLOYMENT GRIEVANCE RESOLUTION

3 Interpretation

For the purposes of this Part of these Regulations —

“**employer**” means the Chief Executive Officer or Commission.⁸

4 Notice of employment grievance⁹

An employee who has an employment grievance shall give notice to the —

- (a) Chief Executive Officer, where the employment grievance relates to another employee in the Public Service;
- (b) Commission, where the employment grievance relates to the Chief Executive Officer; or
- (c) Chairperson where the employment grievance relates to a decision by the Commission,

within a period of 10 working days from the date the action alleged occurred or the employee was notified or had knowledge.

5 Confidentiality

The employment grievance shall be kept confidential between the parties.

6 Grievance Process: informal

- (1) The employer shall call a meeting with the employee within 5 working days from receipt of the notice.
- (2) The employer and the employee shall in the meeting called under this regulation discuss the employment grievances in the notice.
- (3) The purpose of the discussions under sub-regulation (2) is to resolve the employment grievances.
- (4) The outcome of the discussions and the meeting shall be recorded by the employer in writing.
- (5) Each party is entitled to have a third party for moral support and shall not participate in the discussion at such a meeting.

7 Grievance Process: formal¹⁰

The employee shall, where the employment grievance is not resolved in the meeting called under regulation 6, within a period of 14 working days from the date of impasse, give to the employer a written statement setting out the —

- (a) nature of the grievance;
- (b) facts giving rise to the grievance; and
- (c) remedy sought.

8 Response to employee's statement

The employer shall, within 10 working days of receipt of the employee's statement of the employment grievance provide to the employee a written response setting out his —

- (a) understanding of the facts; and
- (b) decision with reasons.

9 Remedies - employment grievances ¹¹

The employer may in resolving employment grievances under these Regulations —

- (a) reinstate the aggrieved employee to the conditions before the decision was made;
- (b) *Repealed by GS 34/2010*

- (c) pay wages or salary lost;
- (d) make appropriate recommendations concerning future behaviour or actions of the parties involved;
- (e) maintain the status quo; or
- (f) give any other appropriate remedy.

10 Right of appeal¹²

- (1) The employee shall have a right of appeal to the Tribunal against —
 - (a) any decision of the employer under regulation 8; or
 - (b) non compliance by the employer with the procedural requirements of this Part of the Regulations.
- (2) The employee shall, within 14 working days of receipt of the decision on the employment grievance file an appeal with the Secretary together with the prescribed fee set out in Schedule II.
- (3) The Secretary of the Tribunal shall within 3 working days from the date the appeal was filed, submit the appeal to the Tribunal.

11 Determination of appeal¹³

The appeal shall be determined within 20 working days from the date the appeal was filed with the Secretary of the Tribunal.

PART III - EMPLOYMENT DISPUTE - RESOLUTION

12 Notice of employment dispute¹⁴

- (1) In an employment dispute an association which is a party to the dispute shall give the Secretary of the Tribunal written notice stating the —
 - (a) facts;
 - (b) grounds or basis; and
 - (c) remedy sought.

13 Commencement date of employment dispute

An employment dispute commences from the date the association gives written notice of the employment dispute to the Secretary.

14 Dispute Process: informal

- (1) The Secretary shall call a meeting with the association within a period of 10 working days of receipt of the notice, to discuss the employment dispute with a representative of the association with an attempt to resolve the employment dispute.
- (2) Where the employment dispute is not resolved in discussion between the representative of the association and the Secretary, the Secretary shall, within a period of 14 working days from the date of impasse, forward the written notice of employment dispute with details to the Commission.

15 Dispute Process: formal

The Commission shall, within 15 working days of receipt of notice of an employment dispute, designate an officer to investigate the dispute.

16 Investigation¹⁵

The investigator shall —

- (a) commence investigation of the employment dispute within 7 working days of his designation and meet with the association or their representative and Chief Executive Officer; and
- (b) within 15 working days of his investigation, compile and forward a written report to the Commission and association.

17 Determination of dispute¹⁶

The commission shall, within 20 working days of receipt of the report from the investigator —

- (a) determine the employment dispute; and
- (b) give a written decision with reasons.

18 Decision served on association

The Secretary shall, within 3 working days of receipt of a decision from the Commission, provide the association with a copy.

19 Right of Appeal of Association¹⁷

- (1) The association shall have a right of appeal to the Tribunal against —
 - (a) any decision of the Commission; or

- (b) non-compliance by the employer with the procedural requirements of this Part of the Regulations.
- (2) An appeal shall be in the prescribed form set out in Schedule I to these Regulations.
- (3) The association shall file its appeal with the Secretary of the Tribunal within 14 working days of receipt of the decision together with payment of the prescribed fee set out in Schedule II.
- (4) The Secretary of the Tribunal shall acknowledge receipt of the notice.

19A Contents of notice¹⁸

The appellant's notice shall be signed and dated by or on behalf of the appellant and shall state —

- (a) the name and the address for the service of the appellant;
- (b) the name and address of the Tribunal;
- (c) details of the decision of which the application is made; and
- (d) the grounds for the application.

20 Determination of appeal¹⁹

The appeal shall be determined within 20 working days from the date the appeal was filed with the Secretary of the Tribunal.

PART IV - MISCELLANEOUS

21 Notice of participation in industrial action²⁰

An employee who intends to participate in industrial action shall give written notice to the Chief Executive Officer, no less than 15 working days before participating in industrial action.

22 Remedies - employment disputes²¹

The Tribunal or the Commission may in resolving employment disputes under these Regulations —

- (a) maintain the status quo;
- (b) make appropriate recommendations concerning future behaviour or actions of the parties; or
- (c) give any other appropriate remedy.

23 Sanction

- (1) The breach by an employee of any provision of these Regulations shall constitute a serious breach of discipline and such employee shall be dealt with under the Public Service (Disciplinary Procedures) Regulations.
- (2) Any association or employer who is in breach of these Regulations commits an offence and shall be liable to a fine not exceeding \$5,000 for each breach.
- (3) Any fine under this Regulation shall be paid to the Tonga Government Fund.²²

SCHEDULE I ²³

NOTICE OF APPEAL

1 To
Secretary of the Public Service Tribunal
NUKU‘ALOFA

I/ We
of

hereby give notice that I/we appeal to the Public Service Tribunal under section of the Public Service Act, against the decision made by the Public Service Commission on:

Date **Decision number**

2 Grounds of Appeal

The grounds of my appeal are as follows:

.....
.....
.....

3 Address for Service

All communications regarding the Appeal should be addressed to:

.....
.....
.....

Signature

Date

If the notice is signed on behalf of the appellant, the person who signs it must state below in what capacity or authority they sign.

SCHEDULE II ²⁴

FEES

Appeal to the Public Service Tribunal	\$100
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ENDNOTES

¹ **GS 12A/2006**

Amending Gazettes

Amending Gazettes	Commencement
GS 34/2010	10 December 2010

² Inserted by GS 34/2010

³ Cap. 04.36

⁴ Amended by GS 34/2010

⁵ Amended by GS 34/2010

⁶ Inserted by GS 34/2010

⁷ Inserted by GS 34/2010

⁸ Amended by GS 34/2010

⁹ Amended by GS 34/2010

¹⁰ Amended by GS 34/2010

¹¹ Amended by GS 34/2010

¹² Substituted by GS 34/2010

¹³ Amended by GS 34/2010

¹⁴ Amended by GS 34/2010

¹⁵ Amended by GS 34/2010

¹⁶ Amended by GS 34/2010

¹⁷ Substituted by GS 34/2010

¹⁸ Inserted by GS 34/2010

¹⁹ Amended by GS 34/2010

²⁰ Amended by GS 34/2010

²¹ Amended by GS 34/2010

²² Amended by GS 34/2010

²³ Inserted by GS 34/2010

²⁴ Inserted by GS 34/2010