



MOGALE CITY LOCAL MUNICIPALITY

# DRAFT TRANSFER AND SECONDMENT POLICY

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Approved

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## 1. EXECUTIVE STATEMENT

Mogale City Local Municipality seeks to ensure the seamless delivery of services therefore, a smooth transfer of employees from one department to another is important. As a result of change, there is an increased need for skills acquisition, transfer, and secondment in order to enhance service delivery.

## 2. ABBREVIATION AND DEFINITIONS

### 2.1 Abbreviations

HCA	Human Capital Administration
MCLM	Mogale City Local Municipality
ODD	Organisational Development and Design
PDP	Personal Development Plan
LRA	Labour Relations Act 66 of 1995 as amended
PFA	Pensions Fund Act

### 2.2 Definitions

Term	Definition
Transfer	Transfer of employees involves the deployment of competent human capital to areas where their skills are most needed on permanent bases.
Secondment	Secondment of employees involves the deployment of competent human capital to areas where their skills are most needed on temporary bases.

### **3. POLICY OBJECTIVES**

The objective of the policy is to streamline the procedure through which mobility of personnel between the municipality 's departments will be affected and handled.

It also seeks to ensure consistency in the treatment of personnel on transfer or secondment from one department to the other, from one sub-division to the other and from one municipality to another government entity

To that effect, due consideration is given to various aspects such as relevant Legislation, balancing the service delivery needs of departments and expectations of employees, their entitlements and financial affordability.

### **4. LEGAL FRAMEWORKS**

- 4.2.1 Labour Relations Act 66 of 1995 as amended
- 4.2.2 Basic conditions of Employment Act 75 of 1997
- 4.2.3 The Constitution of Republic of South Africa, Act No. 108 of 1996
- 4.2.4 Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)
- 4.2.5 Local Government: Municipal Staff Regulations (2021)
- 4.2.6 Municipal Finance Management Act N0. 56 of 2003
- 4.2.7 Skills Development Act 97 of 1998

### **5. POLICY CONTENT**

A municipality may transfer any employee in the service of the municipality to any equivalent post within the municipality or, subject to 197 of LRA or second an employee with relevant competencies to act in a post that is vacant within the department or in another department. The Municipality may also transfer or second its employee to another municipality or request an organ of state to second its employee to the MCLM until such time a suitable candidate is appointed.

#### **5.1. Principles of Employee Transfer**

- 5..1.1 Before any transfer can take place there must be a vacancy.
- 5.1.2 All transfers must be done on a lateral basis (transfers are not meant to promote or demote an employee), the staff member's salary and benefits remain the same.
- 5.1.3 Transferred employees must match the skills and the minimum requirements of the post they are being transferred to.

- 5.1.4 Before the transfer takes effect there must be an agreement between the current department, the new department; or the transferring and receiving departments acting jointly.
- 5.1.5 The conditions of service for the receiving department take effect from the date of transfer.
- 5.1.6 The salary and other conditions of service of an employee should not be affected by a transfer without the written consent of the employee concerned.
- 5.1.7 Should an employee be transferred with a record of misconduct, such as a written warning, that record will remain in an employee's file notwithstanding the transfer.
- 5.1.8 The transfer does not interrupt an employee's continuity of employment; an employee's contract of employment continues with the new department.
- 5.1.9 The post vacated by the transferred employee shall be deemed to be vacant and thus be filled by the transferring department whenever a need arises.
- 5.1.10 All transfers shall be deemed permanent.

### **6.1.2 Procedure for transfer within the Municipality**

- 6.1.2.1 An employee may request or consent to transfer in writing specifying the post and Department to be transferred to, subject to circumstances justifiable within the Labour Relation Act.
- 6.1.2.2 In the absence of consent and if the transfer is due to operational requirements and the transfer of the employee would address such requirements: the relevant Executive Director must:
  - 6.1.2.2.1 Allow written representations from the employee prior to the proposed transfer.
  - 6.1.2.2.2 Explain the extent to which the interests and circumstances of the employee may be reasonably accommodated.
- 6.1.2.3 The initiator of the transfer must first verify with ODD if the identified position for transfer exists, vacant and funded before embarking on the transfer process.
- 6.1.2.4 The current/initiating Executive Director must then initiate discussions with the employee concerned to establish a willingness to be transferred to or from the Department.
- 6.1.2.5 If the employee is the initiator of the transfer, he/she must write a motivation(report) to the current Executive Director requesting a transfer. The latter Executive Director must respond directly to the employee indicating agreement or disagreement.
- 6.1.2.6 If there is an agreement between the Executive Director and the employee, the same Executive Director must initiate discussions regarding the transfer with the Executive Director of the potentially new Department.
- 6.1.2.7 If the employer is the initiator of the transfer, the employer must:

- 6.1.2.7.1 First establish the existence of the vacant post in the new department and the willingness of the new Department to accept the transfer.
- 6.1.2.7.2 Establish the availability of funds for the post with the Budget and Treasury division.
- 6.1.2.7.3 Consult the employee and explain the reasons for a transfer; the new post and Department to be transferred to; and the new direct report in consultation with the HCA and/or employee representative (Labour)
- 6.1.2.7.4 Negotiate the transfer of tools of trade and/or budget with the receiving Department before the finalization of the transfer process.
- 6.1.2.7.5 Should the transferred employee require additional skills, the receiving Department must put together a personal development plan (PDP) that will address the skills gaps identified.
- 6.1.2.8 Upon agreement with both parties, an official transfer letter must be written by the Human Capital Administration indicating the date and conditions of transfer coupled with a new PR13.

### **7.1.3 Procedure for transfer to another Municipality (Sec 197 of LRA)**

- 7.1.3.1 Any transfer of an employee from one municipality to another must follow Section 197 of the Labour Relations Act
  - 7.1.3.1.1 The new employer must ensure that the transferred employee's terms and conditions are no less favourable to those that were offered by the old employer unless they are determined by a collective agreement.
  - 7.1.3.1.2 For the purposes of this subsection (7.1.3.1.1 above), the collective agreements and arbitration awards referred to are agreements and awards that bound the old employer in respect of the employees to be transferred, immediately before the date of transfer.
  - 7.1.3.1.3 Pensions Funds Act requires the registrar to be satisfied that any scheme to amalgamate or transfer funds is reasonable and equitable and accords full recognition to the rights and reasonable benefit expectations of the persons concerned in terms of the fund rules, and to additional benefits which have become established practice.
- 7.1.3.2 The old employer must:
  - 7.1.3.2.1 Agree with the new employer to a valuation as at the date of transfer of:
    - (i) The leave pay accrued to the transferred employees of the old employer.

(ii) The severance pay that would have been payable to the transferred employees of the old employer in the event of a dismissal by reason of the employer's operational requirements; and

(iii) any other payments that have accrued to the transferred employees but have not been paid to employees of the old employer.

7.1.3.2.2 Conclude a written agreement that specifies:

(i) Which employer is liable for paying any amount referred to in paragraph 7.1.3.2.1, and in the case of the apportionment of liability between them, the terms of the apportionment; and

(ii) What provision has been made for any payment contemplated in paragraph 7.1.3.2.1, if any employee becomes entitled to receive a payment.

7.1.3.2.3 Disclose the terms of the agreement contemplated in paragraph 7.1.3.2.2) to each employee who after the transfer becomes employed by the new employer.

7.1.3.2.4 Take any other measure that may be reasonable in the circumstances to ensure that adequate provision is made for any obligation on the new employer that may arise in terms of paragraph 7.1.3.1.1.

7.1.3.3 The old and new employer are jointly and severally liable in respect of any claim concerning any term or condition of employment that arose prior to the transfer.

## **7.2 Secondment**

### **7.2.1 Factors that should motivate the need for secondment of employees:**

7.2.1.1 Duties to be undertaken must be clearly spelt out.

7.2.1.2 The importance of the duties to be undertaken in terms of service delivery, efficiency, etc.

7.2.1.3 The skills, competencies, and minimum requirement of the job.

7.2.1.4 Desired period for secondment.

7.2.1.5 Before any transfer can take place there must be a vacant post in the receiving department.

### **7.2.2 Arrangement and conditions that Govern the Secondment of Employees**

7.2.2.1 The employee's secondment occurs with retention of an individual's conditions of services.

7.2.2.2 The relinquishing department remains responsible for all the personnel and salary administration issues relating to the second employee.

7.2.2.3 The employee who is seconded remains under the authority of the relinquishing department in respect of all his /her career incidents leave, disciplinary measures etc.

7.2.2.4 Specific arrangements with the receiving department should be made to include supervision and reporting on performance, leave taken and approval of overtime remuneration.

7.2.2.5 The post left by the employee in the relinquishing department is deemed not to be vacant and thus cannot be advertised/ filled.

7.2.2.6 The receiving department shall, unless otherwise agreed, bear the costs of the secondment by accepting responsibility to pay for expenses such as relocation costs

### **7.2.3 Procedure for Secondment within the Municipality**

7.2.3.1 A request for secondments must be sent to the Human Capital Administration Section by the interested department.

7.2.3.2 Depending on the competencies required employees may be engaged individually or recruited through an advertisement.

7.2.3.3 Engagement of employees must recognize that secondment is subject to the employee's consent.

7.2.3.4 Engagement should be transparent in terms of nature of duties period of secondment, arrangement regarding service benefits, and conditions such as supervision, leave, performance assessment and travelling if applicable.

7.2.3.5 The date of secondment must be determined with the respective Department/ Section.

7.2.3.6 The date of secondment must be issued to the respective employee and all the other arrangements and conditions related to the secondment.

7.2.3.7 Secondments must be confirmed in writing to the receiving Department.

### **7.2.4 Procedure for Secondment to another Municipality**

7.2.4.1 MCLM may second its employee with relevant competencies to act in a vacant post of another municipality.

7.2.4.2 MCLM and the receiving municipality must have a written agreement which specifies the following:

- a) The receiving municipality must be responsible for the costs of secondment.
- b) The duration of the secondment which may not exceed a period of 12 months.
- c) The department and the person to whom the seconded employee must report to the receiving municipality.

- d) The place at which the seconded employee must work.
- e) The new job description of the seconded employee.

**7.2.5 Procedure for Secondment of other government employee to MCLM**

7.2.5.1 MCLM may request the national or provincial government or any state organ to second a person with relevant competencies to act in a vacant and funded position for a specified period of time until such time that a suitable candidate has been appointed.

7.2.5.2 The conditions of service for a seconded employee may not be inferior to what the employee currently has but may be the same, subject to the conditions of service for that position.

7.2.5.3 MCLM must enter into a written agreement regarding the secondment specifying conditions set out in section 7.2.5.2 above.

7.2.5.4 MCLM must inform both the MMC of the relevant department in Mogale and the relevant MEC of the seconding organ of state.

**8. SCOPE AND APPLICABILITY**

This policy is applicable to all permanent employees of MCLM.

**9. COMPLIANCE**

It is expected that management familiarize themselves with the policy contents hereof. It is furthermore the responsibility of each manager to ensure that the policy is adhered to and implemented accordingly.

**10. APPROVAL**

Council:	
Signature:	
Date Approved:	
Effective Date:	