

SAMOA

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2002, No. 16

AN ACT to amend the Public Service Act 1977 to provide for changes relating to probation, values, principles and conduct, disciplinary action, appeals and grievances.

[9th July 2002]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

1. Short title and commencement-(1) This Act may be cited as the Public Service Amendment Act 2002.

(2) This Act shall come into force on the day on which the Head of State assents to it.

(3) In this Act a reference to the principal Act is a reference to the Public Service Act 1977.

2. Interpretation – Section 2 of the principal Act is amended by deletion of the definition of Permanent Head and by insertion of the following words:

““Permanent Head” means the permanent head of a department and includes the term Head of Department.”

3. Probation – Section 9 of the principal Act is repealed and the following section substituted:

‘9. Appointment to be on probation-(1) Every person (except a temporary employee) who is appointed to the public service is to be on probation for an initial period of six months.

(2) The Commission may, at any time in writing during the initial period of probation, extend the period of probation by a period of up to three months.

(3) The Commission may, at any time, in writing, confirm or terminate the appointment of a probationer.

(4) Subject to subsection (5), if a probationer’s appointment in the Public Service has not been confirmed before the end of the period of probation (including any extension of that period) and the probationer has not been charged with or convicted of any offence under this Act the probationer’s appointment is deemed to have been confirmed at that time.

(5) The confirmation of the appointment of a probationer who has been charged with or convicted of any offence under the Act shall require the consent in writing of the Commission.

(6) Every promotion of a probationer is to be notified in the Public Service Official circular.’

4. Employees may be transferred – Section 14 of the principal Act is amended by omitting the words “and, except as provided in section 45 of this Act, there shall be no right of appeal against any such transfer.”

5. Failure to comply with a direction to transfer – Section 15 of the principal Act is repealed.

6. Payment of employees – Section 19 of the principal Act is amended by omitting the proviso to section 19(1).

7. Classification, grading and salaries –Section 21 of the principal Act is amended by omitting section 21(3).

8. Values, Principles and Code of Conduct – Sections 27, 28, 29 and 30 of the principal Act are repealed and the following sections are substituted:

‘27. Values of the Public Service-(1) Subject to the Constitution and the rule of law every employee and all Heads of Department must uphold the following values in their work:

- (a) Honesty – acting honestly, being truthful and abiding by the laws of Samoa;
- (b) Impartiality – providing impartial advice, acting without fear or favour, and making decisions on their merits;
- (c) Service – serving the people well, through faithful service to the Government;
- (d) Respect – treating the people, the Government and colleagues with courtesy and respect;
- (e) Transparency – taking actions and making decisions in an open way;
- (f) Accountability – being able to explain the reasons for actions taken, and taking responsibility for those actions; and
- (g) Efficiency and effectiveness – achieving good results for Samoa in an economical way.

(2) Subject to the Constitution and the rule of law, the Commission shall uphold the values set out in subsection (1).

28. Principles of employment-(1) It is the duty of each member of the Public Service Commission to ensure that the Commission acts as a good employer in the performance of its functions.

(2) As a good employer, the Public Service Commission shall, subject to the Constitution and the rule of law, carry out its functions according to the following principles:

- (a) Appointments and promotion must be made on the basis of merit;
- (b) Decisions on employment matters must be made fairly and properly;
- (c) Employees must have access to a simple and fair grievance system;
- (d) Employees must have reasonable access to training and development opportunities;
- (e) Employees must receive reasonable remuneration and reasonable terms and conditions of employment;
- (f) Eligible persons shall have a reasonable opportunity to apply for employment in the Public Service;
- (g) There must be equal employment opportunity in the Public Service;
- (h) Employees must be provided with a safe environment to work in; and
- (i) That there is the requisite number of employees working in the Public Service as is necessary for it to function efficiently and effectively.

29. Code of Conduct for employees -Every employee and every Head of Department shall:

- (a) Be honest and impartial;
- (b) Work carefully and diligently;
- (c) Treat everyone with respect and courtesy and without coercion or harassment;
- (d) Comply with all laws that apply to them;
- (e) Comply with all lawful and reasonable direction given to them by persons who have authority to give those directions;
- (f) Disclose, and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment;
- (g) Use Government resources properly;
- (h) Use official information only for official purposes;

- (i) Act with integrity and not misuse their status or authority to seek or obtain a benefit for themselves or any other person or body;
- (j) Uphold the values of the Public Service set out in section 27 of this Act;
- (k) Comply with any other conduct requirements set out in the regulations; and
- (l) Uphold the good reputation of the Public Service.’

9. Conviction for offence – Section 31 of the principal Act is repealed and the following section is substituted:

‘31 Conviction for offence-(1) Where an employee is charged with having committed an offence (other than an offence against or made under the Road Traffic Ordinance 1960 which is not punishable by imprisonment), the Commission may transfer the employee to other duties or suspend from duty.

(2) Suspension under this section is without pay unless the Commission directs otherwise.

(3) If the employee is convicted of the offence, the Commission may, after giving the employee an opportunity to be heard on the matter, impose on the employee any of the penalties set out in section 36.

(4) If the employee is acquitted of the charge or if the charge is withdrawn or otherwise dealt with such that the charge is not sustained against the employee the employee is entitled to be reinstated without loss of any benefit or status and to be paid the salary he or she lost as result of suspension from duty.’

10. Offences against the Public Service Act – Section 32 of the principal Act is repealed.

11. Breach of the Code of Conduct – Section 33, 34 and 35 of the principal Act are repealed and the following section is substituted:

‘34. Breach of the Code of Conduct-(1) Where a Head of Department believes that an employee may have breached the Code of Conduct set out in section 29, the Head of Department may appoint an officer of the department to consider the matter and:

- (a) Charge the employee in writing; or
- (b) Give the employee a warning; or
- (c) Take no further action.

(2) Where an employee has been charged with a breach of the Code of Conduct set out in this Act, the Commission must appoint an officer from a department other than the department in which the charged employee works, to investigate the charge and to make recommendations to the Commission.

(3) The procedure for investigating and determining the charge is set out in the regulations, but as a minimum, that procedure must provide:

- (a) That the charged employee is to be informed of the case against him;
- (b) That the charged employee has a right to be heard on the question of his guilt and on the question of any penalty to be imposed on him;
- (c) That the person who investigates the charge and the person who decides on the guilt or innocence of the employee and decides on any penalty to be imposed on the employee must not be biased in the matter.’

12. Recovery of amount of damage or loss-(1) Section 37 of the principal Act is repealed and the following section is substituted:

‘37. Recovery of loss-(1) Where:

- (a) A charge under section 34 is established against an employee; and
- (b) The Commission is satisfied that the breach of the Code of Conduct resulted in assessable loss to Government,

the Commission 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) For the purpose of removing any doubt Part XV of the Public Finance Management Act 2001 shall apply in addition to any matter provided for under this Act.’

13. Suspension and temporary transfer – Section 38 of the principal Act is repealed and the following section is substituted:

‘38. Suspension and temporary transfer-(1) Where:

(a) A person has been appointed under section 34(1) to consider whether a charge should be made against an employee; or

(b) A charge has been made against an employee under section 34(2),

the Commission may, after giving the employee an opportunity to be heard on the matter suspend the employee from duty or temporarily transfer the employee to other duties pending the determination of the charge.

(2) Subject to the following subsections, suspension is without pay.

(3) An employee who has been suspended may apply on the ground of personal hardship to the Commission for suspension to be with pay, and the Commission may determine that the suspension is to be on that basis.

(4) Where an employee is not charged under section 34(2) within 21 days of the imposition of a suspension under this section, the Commission must revoke the suspension and the employee is entitled to be paid for the period of the suspension.

(5) Where an employee who has been suspended is acquitted of the charge or if the charge is withdrawn or otherwise dealt with such that the charge is not sustained against the employee, the employee is entitled to be paid for the period of the suspension.’

14. Unauthorised absence – Section 39 of the principal Act is amended by omitting from subsection (1) the words “the provisions of section 32, 33 and 34” and substituting the words “any other provisions of this Act.”

15. Offences by Permanent Head – Section 40 of the principal Act is repealed.

16. Appeals – Section 46 of the principal Act is amended by:

- (a) Omitting from subsection (1) the words “21 days” and substituting the words “14 days”; and
- (b) Adding, after subsection (1), the following subsection:

“(1A) The Board may not hear an appeal unless the Commission has certified that it has attempted to mediate the dispute and that mediation has failed.”

17. Offence to attempt to influence Board – Section 47 of the principal Act is repealed.

18. Grievances – Insert, after section 59 of the principal Act, the following section:

‘59A. Grievances-(1) An employee is entitled to lodge with the Head of Department a grievance and to have that grievance determined.

(2) The subject matter in relation to which a grievance may be lodged, and the procedure for determining grievances, are set out in the regulations.’