

PUBLIC SERVICE (DISCIPLINARY PROCEDURES) REGULATIONS

Explanatory Notes

(These notes do not form part of the Regulations but are only intended to explain its general meaning)

These Regulations is the first to be passed to give effect to the Public Service Act 2002. The Regulations will provide procedures and rules for civil servants replacing the Estacode.

These Regulations set out the disciplinary procedures for employees of the Public Service. These include differentiating between minor and serious breaches of discipline. The procedures for dealing with these matters are separately set out from the time an incident is reported to the appeal process. The Regulations also set out the penalties that the Commission may impose upon an employee found guilty of a breach of discipline. These range from reprimands to dismissal depending on the severity of the breach. The procedures in these Regulations have been developed and used since the late 1980's to discipline civil servants and have been proven to be efficient and effective and emphasizes natural justice principles including the importance of giving the civil servant an opportunity of being heard.

Part 1 – Preliminary

1. This is the short title of the Regulations
2. The regulation sets out definitions of some of the words used in the Regulations for clarity.

Part II – Disciplinary Procedures

3. The Head of Department has the discretion of determining whether a breach of discipline is minor or serious.
4. In matters of minor breaches of discipline, the Head of Department may verbally reprimand the employee.
5. In cases of serious breaches of discipline the Head of Department is to make a full report of the matter and forward it to the Secretary of the Commission.
6. Where there are serious financial irregularities picked up the Audit Department, the Auditor General shall give a complete report of it to the Head of Department and Secretary and may include recommendations regarding it.
7. The regulation sets out the procedure for dealing with serious breaches of discipline or repeated minor breaches of discipline by setting out how the charge is formed, how the charge is sent to the employee and the actions taken upon receipt of the employee's response whether he admits the charge or not.
8. In any matter before the Commission, it may appoint a Committee of Enquiry to further investigate the matter.
9. A employee charged with a serious breach of discipline may be suspended without pay from duty.
10. This regulation sets out the range of penalties that the Commission may impose when a charge of serious breach of discipline is proved.

11. When an employee is dismissed from the Public Service, all benefits, privileged and entitlements are withheld.
12. The regulation ensures that where an employee is acquitted of a charge for a serious breach of discipline or repeated minor breaches of discipline, the employee if suspended shall be reinstated with full pay for that period.
13. This regulation gives that employee a right of appeal to Cabinet and sets out the procedures of an appeal.
14. This regulation states that where there has been a loss to government because of a breach of discipline, the Commission may direct that a portion of the employee's salary may be withheld towards the cost of this loss, if the employee however is dismissed, the full amount of the loss shall be taken out of the employee's gross salary.

PUBLIC SERVICE (DISCIPLINARY PROCEDURES) REGULATIONS 2003

Arrangement of Regulations

Part 1 – Preliminary

1. Short Title
2. Interpretation

Part II – Disciplinary Procedures

3. Classification of disciplinary case
4. Minor disciplinary cases
5. Serious disciplinary cases reported by Head of Department
6. Serious disciplinary cases reported by Auditor General
7. Procedure for serious disciplinary charges
8. Committee of Enquiry
9. Suspension
10. Penalties
11. Effect of dismissal
12. Acquittal
13. Appeals
14. Recovery of loss

15. PUBLIC SERVICE ACT 2002

(Sections 21 & 22)

PUBLIC SERVICE (DISCIPLINARY PROCEDURES) REGULATIONS 2003

In exercise of the powers conferred by sections 21 and 22 of the Public Service Act 2002, the Prime Minister with the consent of Cabinet makes the following Regulations:

PART I PRELIMINARY

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| Short title | 1. | These Regulations may be cited as the Public Service (Disciplinary Procedures) Regulations 2003. |
| Interpretation | 2. | In these Regulations, unless the context otherwise requires –

“Commission” means the Public Service Commission established under the Public Service Act 2002;

“employee” means all persons employed in the Public Service; and

“Secretary” means the Secretary appointed under the Public Service Act 2002. |

PART II DISCIPLINARY PROCEDURES

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| Classification of disciplinary case | 3. | Subject to these Regulations, the Head of Department shall decide whether a breach of discipline is minor or serious. |
| Minor disciplinary cases | 4. | (1) In a minor breach of discipline, the Head of Department may admonish, counsel or reprimand an employee.

(2) A record of such minor breach of discipline and punishment shall be given to the employee and placed on his personal file by the Head of Department. |
| Serious disciplinary cases reported by Head of Department | 5. | (1) In the case of a serious breach of discipline or repeated minor breaches of discipline, the Head of Department shall inquire into and forward a complete report of the case to the Secretary.

(2) Where it appears that a criminal offence may have been committed the Head of Department shall report the matter to the Police and forward a complete report of the case to the Secretary. |
| Serious disciplinary cases reported by Auditor General | 6. | (1) In cases of serious financial irregularity, the Auditor General shall initiate serious disciplinary action by giving a complete report to the appropriate Head of Department and to the Secretary. |

Head of Department and to the Secretary.

- (2) The Auditor General may make any recommendations to the Commission on any serious financial irregularity.

Procedure for
serious
disciplinary
charges

7. (1) Where a serious breach of discipline has been reported to the Secretary under these Regulations against an employee, the Secretary shall -
- (a) within 7 working days of receipt of the report convene a committee consisting of the Head of Department, Solicitor General, Auditor General and the Secretary which shall formulate the charges;
 - (b) charge the employee in writing within 14 working days of receipt of the report;
 - (c) attach to the charge, a copy of the report from the Head of Department or the Auditor General as the case may be; and
 - (d) subject to this Regulation, specify the time within which a written reply may be made.
- (2) Upon receipt of the charge, where the employee does not dispute the charge, he shall inform the Secretary in writing within 14 days and shall include mitigation, and the Secretary shall -
- (a) forthwith bring the matter to the Commission for a decision; and
 - (b) advise the employee in writing of the decision.
- (3) Upon receipt of the charge, where the employee disputes the charge, he may give a written reply regarding the charge to the Secretary within 14 working days.
- (4) The Secretary shall forthwith forward the charge, report from the Head of Department and the reply from the employee to the Commission and the Commission shall -
- (a) consider the case provided that the employee shall have the right to make oral representation if he so requests; and
 - (b) decide the case and the Secretary shall advise the employee in writing of its decision.
- (5) Where the employee does not reply within the specified time under this Regulations, the Secretary shall proceed with the matter as if the reply has been received.

- (6) The Secretary may extend the time required for a reply but such extension shall not exceed 1 month.
- Committee of Enquiry 8. In any serious disciplinary action, the Commission may appoint a Committee of Enquiry to undertake an investigation.
- Suspension 9. (1) Upon receipt of a report under regulation 5 relating to a serious breach of discipline, the Commission may suspend the employee pending a final decision.
- (2) Suspension under these Regulations shall be without pay.
- Penalties 10. Subject to regulation 7, where an employee is found guilty of a serious breach of discipline or the repetition of minor breaches of discipline, the Commission may impose one or more of the following penalties -
- (a) reprimand;
- (b) stoppage of pay by way of restitution (in whole or in part) of loss or damage caused by the employee;
- (c) stoppage of a future increment removal of an increment or increments;
- (d) transfer to another post or locality;
- (e) demotion;
- (f) suspension;
- (g) dismissal; or
- (h) any other action that the Commission may consider necessary.
- Effect of dismissal 11. An employee dismissed from the Public Service shall forfeit all benefits, privileges and entitlements.
- Acquittal 12. Where an employee is acquitted of –
- (a) a serious breach of discipline; or
- (b) the repetition of minor breach of discipline;
- the Commission shall, if the employee was suspended, reinstate and pay the employee in full the salary for the period of suspension.
- Appeals 13. (1) An employee has the right to appeal to Cabinet against any decision of the Commission.

- (2) An employee shall lodge his written appeal with the Secretary within 30 days following receipt by the employee of the written communication of the decision.
- (3) The Secretary shall forward the appeal within 7 days of receipt to Cabinet, which may confirm, rescind or amend the decision of the Commission.
- Recovery of loss 14. (1) Where an employee has been disciplined under these Regulations and the Commission is satisfied that the breach has resulted in an 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) The deduction referred to in sub-regulation (1) shall be no more than 30% of the gross payable salary of the employee, provided that if the employee is dismissed, the total amount of the assessable loss owing shall be deducted.

Made at Nuku'alofa this day of 2003.