

# **PUBLIC SERVICE (EMPLOYMENT) INSTRUCTIONS 2010**

**IN EXERCISE** of the powers granted to it by section 23 of the Public Service Act 2002, the Public Service Commission issues the following Instructions:

## **PART I—PRELIMINARY**

### **1 Short Title and Commencement**

- (1) These Instructions may be cited as the Public Service (Employment) Instructions 2010.
- (2) These Instructions shall come into force on a date to be declared by the Public Service Commission.

### **2 Interpretation**

In these Instructions, unless the context otherwise requires —

“**casual employee**” means a person who is employed for a non-continuous period for a specific short-term event.

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

“**employee**” means all persons employed in the Public Service, including salaried, contract, daily paid and casual employees.

### **3 Objectives**

The objectives of these instructions are to:

- (a) Provide guidance to the public service for implementing the provisions regarding recruitment in the Public Service Commission Policy Manual 2006, and relevant Cabinet decisions regarding employment in the public service; and
- (b) establish uniform compliance by the public service as a whole, for consistency, fairness and efficiency.

## **PART II— PRINCIPLES**

### **4 Principles**

These Instructions are made based on the following principles:

- (a) A Ministry's or Department's Salaries & Wages budget estimate for the full financial year is the chief measure for monitoring and controlling the cost of labour or labour expenditure within Government.
- (b) There is a need for flexibility and accountability to determine and source critical employees in accordance with a Ministry's or Department's approved programs, subject to maintaining the aggregate Salaries and Wages budget for the full year.
- (c) There will be some flexibility to allow employee numbers to fluctuate to cope with Returning Scholars and needs of various programs, in the sure knowledge that this will be off-set with employee exits throughout the year.
- (d) The Ministry of Finance will, with the endorsement of the Cabinet's Expenditure Review Committee, determine the appropriate percentage of Government's total annual estimates that will be allocated for expenditure for labour costs;
- (e) The total allocation for labour costs by all Ministries and Departments in every financial year shall not exceed the percentage determined under sub-section (d);
- (f) The total actual expenditure for labour costs by all Ministries and Departments in every financial year shall not exceed the percentage determined under sub-section (d);
- (g) Each Ministry or Department shall allocate a percentage of its allocated budget for labour expenditure, and such percentage shall be within the percentage determined under sub-section (d);
- (h) Each Ministry or Department shall allocate a percentage of its allocated budget for operational expenditure;
- (i) A Ministry or Department may utilise any savings it makes from its labour expenditure allocation for operational expenditure;
- (j) the number of, and expenditure for, public servants will be gradually downsized in future; and

- (k) Employment contracts shall be used in the public service to employ specialist and professional employees, and casual employees. This will be gradually adopted over the coming years as the public service transitions to more performance based systems.

## **PART III— EMPLOYMENT**

### **5 New Employees**

No new employee shall be recruited by a Ministry or Department, unless the recruitment is due to:

- (a) recruitment of returning scholars;
- (b) Government restructuring, involving any changes made to the structure of a ministry or department, including the splitting or amalgamation of a ministry or department;
- (c) obligations on a ministry or department to contribute to an aid donor project particular employees, including professional or administrative employees; or
- (d) recruitment of administrative or clerical employees due to:
  - (i) the necessary skills for administrative or clerical activity that is not available within the public service;
  - (ii) redeployment from another Ministry or Department, agreed to by the Heads of Department concerned (if on a temporary basis) and approved by the Commission (if on a permanent basis);
  - (iii) recruitment is required by the Ministry of Health or Ministry of Education; or
  - (iv) recruitment is of an emergency nature in the opinion of the Public Service Commission .

### **6 Recruitment Process**

- (1) Prior to advertising a vacant position, the recruiting Ministry shall:
  - (i) obtain written confirmation from the Secretary for Finance that funding is available;
  - (ii) submit the job description(s) of the vacant position(s) to the Secretary for the Secretary of the Public Service Commission for endorsement
- (2) All vacancies shall be advertised within the Public Service unless approved by the Commission to advertise outside the public service,

- (3) All interview panel members shall be approved by the Secretary of the Public Service Commission prior to the interview,
- (4) The Interview Panel shall comprise of three members. One from the Public Service Commission Office, one from the recruiting Ministry and one from another Ministry who possess similar skills, qualifications or experience with those of the advertised position and subject to sub section (3) above.
- (5) The Interview Panel shall ensure that applicants meet the minimum requirements of the advertised position.
- (6)
  - (a) Where more than one applicant meets the minimum requirements, the Interview Panel shall short list the candidates
  - (b) Where the Interview Panel shortlists more than five applicants, only the top five applicants shall be further assessed by the Interview Panel.
- (7) The Interview Panel shall use the recruitment checklist and forms provided by the Public Service Commission Office for interviews.
- (8) Notwithstanding sub-sections (1) and (2), a Ministry or Department may recommend the appointment of a returning scholar to fill a vacancy without advertising the vacancy, if such returning scholar is qualified to fill the vacancy.

## **7 Employment Contracts**

The following shall apply during the financial year commencing on 1 July 2010:

- (a) Any employee who is recruited or promoted shall be employed under an employment contract.
- (b) All returning scholars who are recruited and appointed shall be:
  - (i) appointed on contract, if joining the public service for the first time; or
  - (ii) promoted to an established post, if already employed in the public service.
- (c) Any employee recruited to undertake a part time work activity that is continuous for more than 12 months shall be employed under an employment contract.
- (d) Any employee who entered into a provisional employment contract before 1 July 2010 may elect to either continue to be employed under an employment contract, on no lesser terms or conditions which they enjoyed under the provisional employment contracts, or be employed on a permanent post.

**8 Daily paid labourer and casual employees**

- (1) No employee shall be employed by a Chief Executive Officer on a daily paid or casual basis for a specified term unless:
  - (a) the Commission agrees that such recruitment is of a casual nature and for the purposes of achieving the core roles of the ministry or department; and
  - (b) the Ministry of Finance confirms that:
    - (i) there is sufficient funds for wages; and
    - (ii) the recruitment will not affect the percentage of total labour expenditure determined under section 4(d).
- (2) A new daily paid or casual employee recruited after 1 July 2010 shall be employed on contract for a period not exceeding four months, or on a total accumulated contract period not exceeding seven months in any financial year.
- (3) Subject to sub-section (1), a daily paid or casual employee shall be deemed an employee with effect from the date of approval of the Minister responsible for the Ministry or Department.
- (4) All existing employees who are employed in the public service as daily paid labourers before the date these Instructions come into force, shall be employed under contract in the form set out in **Schedule I**, with:
  - (i) the same and terms and conditions offered to a daily paid labourer;
  - (ii) a specified time period not exceeding 2 years; and
  - (iii) any other term or condition which the Chief Executive Officer deems as necessary and expedient for achieving the core roles of the ministry or department.

**9 Replacement of daily paid labourers and casual employees**

- (1) The Chief Executive Officer shall be entitled to appoint a replacement of any daily paid or casual employee who ceases to be a daily paid or casual employee before the expiry of the daily paid or casual employee's employment contract.
- (2) The Chief Executive Officer shall not be required to comply with the appointment requirements under section 8(1) when appointing a replacement under sub-section (1).
- (3) The Chief Executive Officer shall be entitled to appoint any person whom he deems fit and qualified to perform the role of a daily paid or casual employee, provided that:

- (a) the Chief Executive Officer shall advise the Public Service Commission Office and the Ministry of Finance of the relevant information of the replacement daily paid or casual employee;
- (b) such replacement shall only be employed for the remainder of the term of appointment of the daily paid or casual employee who has ceased to be a public servant; and
- (c) the Chief Executive Officer and the replacement daily paid or casual employee shall sign a new daily paid or casual employee contract for the remainder of the term of appointment.

## **PART IV— MISCELLANEOUS**

### **10 Re-designation of posts**

The Chief Executive Officer may re-designate titles of posts to ensure relevance of the role to the Ministry or Department, subject to the current Classification of Posts and the approval of the Public Service Commission.

### **11 List of Employees**

- (1) Each Ministry or Department shall submit to the Commission and the Ministry of Finance a List of Employees, as at 31 December and 30 June of every year, as part of the budget preparation process for every upcoming financial year.
- (2) The List of Employees shall consist of all employees, comprising:
  - (a) Employee Name;
  - (b) Date of Birth;
  - (c) Gender; and.
  - (d) Position Title;
  - (e) Level;
  - (f) Employee Category;
  - (g) Entered Service Date;
  - (h) Date of Appointment; and
  - (i) Salary or Wages;
- (3) The list of employees is to provide baseline personnel cost data for budget estimate and Human Resources information.
- (4) The Public Service Commission Office and the Ministry of Finance shall finalise the List of Employees in consultation with the Chief Executive Officer of the Ministry or Department, before the Government's annual estimates is approved by Cabinet for submission to the Legislative Assembly.

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**12 Policy Manual and Cabinet Decisions**

These Instructions shall be subject to the Public Service Commission Policy Manual 2006, and Cabinet Decisions numbers 1318 of 17 December 2008 and 688 of 19 August 2009.

Made at Nuku'alofa on this                      day of April 2010.

Ms Mishka Tu'ifua  
**Chairperson of the Public Service Commission**

**SCHEDULE I**

**DAILY PAID/CASUAL EMPLOYEE EMPLOYMENT CONTRACT**

Made at Nuku'alofa on this                      day of                      20

**BETWEEN**                      **[MINISTRY/DEPARTMENT]**, of the Government of the Kingdom of Tonga, having its head office at **[LOCATION OF HEAD OFFICE]** ('the **[Ministry]/[Department]**');

**AND**                              **[NAME OF EMPLOYEE]**, of **[RESIDENTIAL ADDRESS]** ('the Employee');

**WHEREAS:**

- A        The Ministry/Department wishes to employ the Employee on a [daily paid] [casual] basis as a [TITLE OF POST].
- B        The Employee is willing to be employed on a [daily paid] [casual] basis as a [TITLE OF POST].

**NOW, THEREFORE, the Parties agree as follows:**

**1        DURATION OF CONTRACT**

This Contract shall be in force from [COMMENCEMENT DATE] until [TERMINATION DATE].

**2        EMPLOYEE'S RESPONSIBILITIES**

The Employee shall perform the Job Description set out in Schedule to this Contract with all due skill, care, and diligence, and shall be subject to and comply with all PSC regulations and policies, and the laws of the Tonga.

**3        WAGES**

The Department shall pay the Employee wages at a rate of [WAGES RATE] per day of work

**4        GOVERNING LAW**

This Contract shall be governed and administeredd in accordance with the laws of the Kingdom of Tonga.

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WHEREFORE, the above terms and conditions, the Parties attest their signatures and seals as follows:

[SIGNATURE OF HOD]

[SIGNATURE OF EMPLOYEE]

[NAME OF HEAD OF DEPARTMENT

[NAME OF EMPLOYEE]

[NAME OF MINISTRY/DEPARTMENT]

[POST OF EMPLOYEE]

Date:

Date:

Witness Signature:

Witness Signature:

Name of Witness:

Name of Witness:

Post of Witness:

Post of Witness:

Date:

Date:

**SCHEDULE**

**[TITLE OF EMPLOYEE] JOB DESCRIPTION**

POST:

[TITLE OF EMPLOYEE]

RESPONSIBLE TO:

[POST OF ULTIMATE SUPERVISOR]

SUPERVISOR:

[NAME AND POST OF IMMEDIATE SUPERVISOR]

DUTIES:

AUTHORITY:

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QUALIFICATION

