



PHSDSBC

**PUBLIC HEALTH AND SOCIAL DEVELOPMENT
SECTORAL BARGAINING COUNCIL**

RESOLUTION 03 OF 2018

**AGREEMENT ON THE TRANSFER OF EMPLOYEES FROM THE NATIONAL
DEPARTMENT OF HEALTH (NDoH) TO THE SOUTH AFRICAN HEALTH
PRODUCTS REGULATORY AUTHORITY (SAHPRA)**

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1. NOTING THAT:

- 1.1. The legislature has enacted the amendment of the Medicines and Related Substances Act, 101 of 1965 (the Act) to provide for the establishment of the South African Health Products Regulatory Authority (SAHPRA), hereafter referred to as the Authority.
- 1.2. The South African Health Products Regulatory Authority (SAHPRA) will be an organ of state but outside the public service.
- 1.3. The formation of SAHPRA will result in the transfer of the functions and mandate of the current Medicines Control Council and all other employees from the NDOH who are engaged in the regulation of medicines, medical devices and in vitro diagnostics and radiation control to the newly established SAHPRA in accordance with section 26(4)(a) of the Medicines and Related Substances amendment Act, 14 of 2015 read in conjunction with section 197 of the Labour Relations Act, 66 of 1995 (the LRA).

Now therefore Parties agree as follows-

2. SCOPE OF APPLICATION

This Agreement binds –

- 2.1. The National Department of Health;
- 2.2. The South African Health Products Regulatory Authority;
- 2.3. Employees who are members of the trade unions admitted to the Council and who fall within the registered scope of the Council; and
- 2.4. Employees who do not belong to a trade union and who fall within the registered scope of the Council.

3. PURPOSE

- 3.1. To ensure the smooth transfer of employees from the Department to the



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SAHPRA in terms of section 26(4)(a) of the Medicines and Related Substances amendment Act, 14 of 2015 read with section 197 of the Labour Relations Act 66 of 1995 , without disruption of the regulatory mandate of the public entity in its full encompass.

3.2. To ensure adequate protection for the rights of the transferred employees.

4. AGREEMENT

- 4.1. The concerned parties recognize the importance of ensuring the smooth transfer of the regulation of medicines, medical devices and in vitro diagnostics and radiation control functions from the Department to the Authority and, as such, agree that the transfer shall not interrupt an employee's employment and all the rights and obligations between the old employer and an employee at the time of the transfer continue in force as if they had been rights and obligations between the Authority and the employee.
- 4.2. The transfer of the relevant functions will not result in the dismissal, on the basis of operational requirements, of any employee transferred to the Authority.
- 4.3. Such transfers will be carried out in a fair, equitable and transparent manner. The transfer of the functions listed in section 26(4)(a) of the Medicines Act 101 of 1965 inclusive of its amendment acts shall be the only criterion to qualify for transfer.
- 4.4. The transfer of the employees thus designated shall be automatic as envisaged and set out in terms of section 197 of the Labour Relations Act 66 of 1995 except where agreement is reached on specific employees who will not be transferred to the new employer. Employees who thus elect not to be transferred must first individually make a reasonable case for their refusal to be transferred which will then be considered on its merit and if accepted will be the subject of other alternative employment options with the old employer.



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- 4.5. The transferring employees will continue as members of the Government Employees Pension Fund (GEPF) and will be subject to the provisions of the Government Employees Pension Law, 1996, regulations promulgated thereunder and any amendments thereto.
- 4.6. The transferring employees will continue as members of the Government Employees Medical Scheme (GEMS) and any other recognised medical scheme that employees might have belonged to at the time of transfer and will be subject to the rules of these funds and any amendments thereto including adjustments of the applicable medical aid subsidies.
- 4.7. The National Department of Health shall transfer all concomitant resources, including personnel, to the Authority;
- 4.8. The Authority shall accept accountability for the services on the date of the transfer which will be on the date at which SAHPRA will commence its operations.
- 4.9. The National Department of Health, which is deemed the old employer, shall retain accountability for all related obligations and liabilities towards employees originating prior to the date of transfer.
- 4.10. The transfer of funds shall take place in accordance with the requirements of the Treasury Regulations and memorandum of understanding between the Department and the Authority and the Department will ensure that adequate provision is made for all financial obligations arising from the transfer of employees including future liabilities related to the transfer in respect of the Department's responsibilities. (Annexure A of this agreement, refers).
- 4.11. All transferred employees shall report to the Authority a day immediately after their transfer which date will be determined by the Minister of Health in conjunction with the Authority;
- 4.12. Such transfer shall be carried out in a fair, equitable and transparent manner in terms of the criteria set out in Section 197 of the Labour Relations Act 66 of 1995, provided such employees were so appointed and placed to execute

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functions as provided for in the Medicines and Related Substances Amendment Act 14 of 2015.

- 4.13. All the organisational rights and obligations between the recognised Trade Unions and the old employer as at the date of the transfer shall transfer to the new employer and such Trade Unions until such time that new organisational rights are negotiated in a recognised bargaining structure.
- 4.14. All vacant positions shall be filled in accordance with the ordinary recruitment processes.
- 4.15. The payment of salaries and benefits of those employees transferred to the Authority shall be paid by the Department until such time the Authority has full capacity to do so.
- 4.16. For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when employment is taken up at the Authority by an employee transferred in accordance with this agreement.
- 4.17. Any proceedings against a person transferred to the Authority that were pending immediately before the transfer date must be reasonably disposed of as if that person had not been transferred.
- 4.18. The Department will be liable for any claims and damages associated with and arising from pending disciplinary matters, grievances and disputes prior to the date of transfer unless not related to the transfer process.

5. DISPUTE RESOLUTION PROCEDURES

- 5.1. Any dispute about the interpretation and application of this agreement may be referred to the PHSDSBC and shall be dealt with in terms of the dispute resolution procedure of the Council.


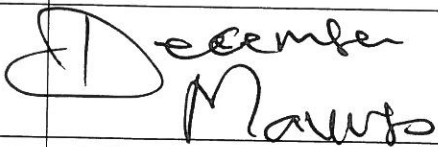
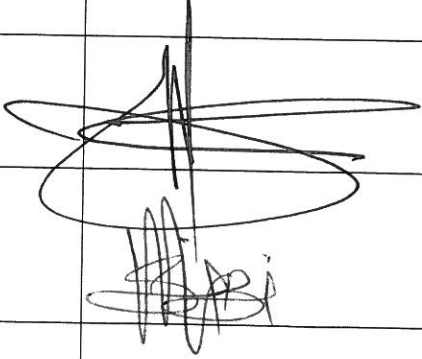

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5.2. Any dispute between the new employer and the transferred employees about the interpretation and application of this agreement will be referred to the Commission for Conciliation Mediation and Arbitration (CCMA) for adjudication.

6. RATIFICATION

6.1. This agreement will only be enforceable after ratification by the Council or after 30 days of being served and considered by the Council.

THUS, DONE AND SIGNED AT CENTURION ON THIS 10th DAY OF OCTOBER 2018.

ON BEHALF OF THE EMPLOYER		
STATE AS THE EMPLOYER	NAME	SIGNATURE
	JNGARE MAILETHOMAS	
ON BEHALF OF THE TRADE UNION PARTIES		
TRADE UNION	NAME	SIGNATURE
NEHAWU		
DENOSA	Thandeka Msibi	
PSA		

HOSPERSA		
NUPSAW		

DEFINITIONS

“Admitted trade union” means a trade union admitted to Council in accordance with clause 7 of the Constitution of Council.

“Alternative employment options” means a considered arrangement outside of the provisions of section 197 of the LRA that pursues possible employment placement for deserving employees in lieu of a transfer to the new employer provided that a case has been made out for such consideration to be made in the first instance.

“Date of Transfer” means a date to be determined by the Minister of Health in conjunction with the Board of SAHPRA after having satisfied all the operational requirements and the applicable collective labour and bargaining processes have been complied with.

“Memorandum of Understanding” means a legal instrument between the old and new employer intended to ensure continued support to SAHPRA by the National Department of Health during the transitional phase as intended to enable the SAHPRA to execute its mandate in line with the provisions of the Medicines and Related Substances Amendment Act 14 of 2015, until such time SAHPRA can execute its mandate on its own.

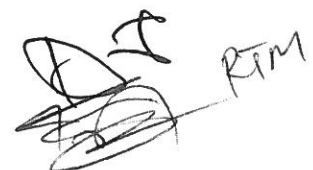
“Reasonable case” means a logical explanation or deduction that substantiates an employee’s representation in so far as alternative employment options are requested on their part and this will be considered on the merits of each case.

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“Trade Union” means a trade union registered in terms of the Labour Relations Act, 1995, and shall include, unless the context indicates otherwise, two or more trade unions acting jointly.

“Treasury Regulations” means regulations giving effect to the prescripts of the Public Finance Management Act, 1999.

“Voluntary Retrenchment” means consensual termination of an employment relationship whereby the employer and employee enter into a written agreement in full and final settlement of all claims, and the employee accepts a voluntary retrenchment package in accordance with the rules of the Government Employees Pension Fund.

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