



education

Department:
Education
PROVINCE OF KWAZULU-NATAL

GIFTS AND HOSPITALITY POLICY

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1. INTRODUCTION

The Kwa-Zulu Natal Department of Education (“the Department”) commits itself to ensuring that its employees display the highest possible standard of ethical behaviour and that they maintain the highest levels of professionalism and integrity in their interaction with the Public as well as other stakeholders.

It has been acknowledged that the acceptance of gifts, donations and sponsorships is an emotive issue because South Africa is characterised by diverse communities with diverse cultures. Because of such diversity the acceptance and non-acceptance of gifts, donations and sponsorships is not as clear. In the Public Service measures or regulations are in place to regulate the acceptance of gifts, donations and sponsorships.

It further emphasises that the acceptance of any gifts, donations and sponsorships or items of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the performance of an employees’ duties may only be accepted with the express written approval of the Head of Department. The Code of Conduct stresses that no gift may be received without the approval of the Head of Department.

This has necessitated the development of policy guidelines in order to supplement the Code of Conduct for the Public Service.

2. PURPOSE

This Policy is designed to regulate and control the acceptance and giving of gifts / invitations to hospitality events with external parties within the Department’s business environment.

3. OBJECTIVES

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The Department recognises that in executing its business and in applying the industry norm, employees may be required to accept or give gifts as a means of gratitude or cultural diplomacy. It is also the objective of the Department to engage in business based on the principles of service excellence and openness and transparency in order to avoid any impropriety in the acceptance and giving of gifts, donations and sponsorships.

The primary objectives of this policy therefore are:

- To provide clear guidance on the acceptance of gifts and other benefits, given the contradiction in terms of the legal framework regulating gifts;
- To provide clear guidance to employees on the behaviours expected in accordance with the Department's culture and / or values;
- To promote transparency, uncompromised integrity, honesty and objectivity of judgment and avoid business-related conflicts;
- To ensure fairness in the interests of employees;
- To comply with the requirements of the law relating to the prohibition of corruption;
- To assist the Department in managing possible conflicts of interest which may arise due to public servants accepting gifts while undertaking their official duties.

By ensuring the above is implemented, the Department will be able to:

- Allow employees, where appropriate, to accept and give gifts and / or invitations to hospitality events, provided that these gifts / hospitality events do not interfere with, or have the potential with, their responsibilities to the Department, or to improperly influence the judgements expected of them when acting on behalf of the Department, or amount to corruption in any way; and
- Avoid any unjustified perception of bias or self-interest by employees acting in situations where the Department has approved the acceptance and giving of gifts / invitations to hospitality events by employees.

4. DEFINITIONS OF THE TERMS

“Bribery” means to promise, offer or give something, often illegally, to an employee to receive services or gain influence or confidential information.

“Business courtesies” means a gift or a favour from a person or an entity, regardless of whether a business relationship exists between the Department and that person or entity, for which retail value is not paid by the recipient. A business courtesy may be a tangible or intangible benefit gained, such as non-monetary gifts, entertainment, recreation, transportation, discounts, ticket passes, promotional items such as advertising material, use of a donor’s time, materials or equipment, hospitality packages to sports, art or culture events and invitations to business meals and drinks.

“Commission” means a fee paid to an employee for transacting a piece of business or performing a service.

“Conflict of interest” includes, inter alia, a situation where:

- An employee has a Personal Financial Interest; or
- An employee has private interests or personal considerations or has an Affiliation or a Relationship which affects, or may affect, or may be perceived to affect his/her judgment in acting in the best interests of the Department, or could corrupt the employee’s motivation for acting in a particular manner, or which could result in, or be perceived as Favouritism or Nepotism; or
- An employee uses his/her position, or privileges or information obtained while acting in the capacity as an employee for private gain or advancement; or
- The expectation of private gain, or advancement, or any other advantage accruing to the employee or any member of his/her family, or friends or business associates.

“Corruption” means where any employee of the Department, either directly or indirectly, accepts or agrees to accept any gift and/or invitation, or alternatively, gives or offers to give, or agrees to offer, to any other person any gift or invitation to a hospitality event, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner:

- that amounts to the dishonest, unauthorised, illegal, incomplete, or biased carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation
- that amounts to the misuse or selling of information or material acquired in the course of the exercise
- that amounts to the abuse of a position of authority, a breach of trust, or the violation of a legal duty or a set of rules
- that is designed to achieve an unjustified result
- that amounts to any other unauthorised or improper inducement to do or not to do anything.

“Customers” means existing and potential customers, external to the Department.

“Donations” are items given by or received by the employee as a token of appreciation.

“Employees” means permanent employees, fixed-term contract employees and temporary employees of the Department.

“External parties” means entities or persons with a business relationship or potential business relationship with the Department, over which the Department has no direct control, other than by agreement or contract.

“Gifts” means the receipt of physical presents, awards, rewards, hospitality, donations, money, sponsorships, commissions or any other benefit or gratification that is received by an employee in his/her official capacity. This

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policy includes all items received by employees that have a residual or resale value, and may include other remuneration

"Gifts excluded from this policy" means those received from family members or friends in a personal capacity which cannot be linked to an employee's employment within the Department or his/her official capacity or official involvement with the other party.

"Gratification" means as defined in Section 1 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004.

"Gratuity" includes any sum of money paid in respect of any defined task or project other than the remuneration paid by the Department.

"Hospitality" means the offer or provision of any facility for free or at a reduced rate, which is designed to increase the comfort and pleasure of the recipient. Free or reduced rates, inter alia, include entertainment and meals, but exclude accommodation, travel or car hire.

"Kickbacks" means a form of negotiated bribery in which a commission is paid to the bribe-taker, in exchange for services rendered. The remuneration (money, goods or services handed over) is negotiated ahead of time.

"Official donations" means official resources that flow from the national or international donor community to the Department in the form of grants, technical co-operation and financial co-operation, where the Department is held at least partially responsible or accountable for the management of such resources.

"Sponsorship" refers to the support given to the person, financially or through the provision of products or services.

"Suppliers" means existing and potential contractors, vendors, service providers, distributors and consultants, who supply goods or services to the Department including internal contractors, as well as other third parties who may in future become suppliers or vendors of goods or services to the Department.

“**Values**” are enduring beliefs that influence opinions, actions and the choices and decisions we make.

5. SCOPE OF APPLICABILITY

This policy is applicable to all employees of the Department, including those employed on fixed term contracts, as well as customers and suppliers of the Department.

6. AUTHORISATION

The following statutory provisions have a bearing on this matter:

- The Code of Conduct for the Public Service;
- The Public Service Act, No. 103 of 1994 (as amended);
- The Public Service Regulations 2016;
- Section 195 (i) (a) of the Constitution of the Republic of South Africa, 1996;
- The Public Finance Management Act 1 of 1999;
- Treasury Regulations;
- The Prevention and Combating of Corrupt Activities Act 12 of 2004;
- The Public Service Integrity Management Framework;
- SMS Handbook
- Financial Disclosure Framework;
- Treasury Practice Note Number: FM-19 of 2006 (amendment 1 of 2010)
- King IV Corporate Code of Governance Principles, 2009.

7. EXAMPLES OF GIFTS

7.1 Gratification

Includes, but is not limited to favours, donations, gifts, grants and sponsorships that directly or indirectly benefit the employee.

7.2 Donation

Aid offered for charitable purposes or to benefit a cause.

7.3 Hospitality

Can be food, drink, entrance to events, accommodation or entertainment provided free of charge or heavily discounted and for which no direct or indirect contractual obligation are implied (If it only entails food and drinks, it is called "civility").

7.4 Mementos

THIS IS A GIFT THAT IS INTENDED AS INNOCENT KEEP SAKE AND/OR INNOCENT REMINDER OF A BUSINESS interaction and the attendance of a meeting, event and/or function.

7.5 Promotional Gift

This refers to advertising material provided to Public Servants, such as caps, pens and diaries during official occasions. These gifts may or may not have any logos displayed on it.

7.6 Sponsorship

Refers to either cash and/or in-kind fee paid on behalf of an employee.

7.7 Gift

Is a token which is bestowed voluntarily without any expectation of tangible compensation, and for which no direct or indirect contractual obligations are imposed.

7.8 Tokens

Can be offered or accepted within normal standards of courtesy or protocol by any entity.

7.9 Civility

This is a gift that constitutes non-alcoholic liquid refreshments and food offered to someone as it is considered to be polite and appropriate. (If any form of entertainment is added, it is called "hospitality").

7.10 Corporate Gift

Refers to gifts bearing the logo of the company often offered at conferences and other official functions and events either organised by the company or which the company is sponsoring. (It includes gifts presented to or by foreign delegations or departments).

8. POLICY PROVISIONS

- The Head of Department is obliged to promote high ethical standards and ensure that these matters are handled in such a manner that the objectiveness of employees is never questioned and that all actions can be accounted for in public.
- An individual employee should under no circumstances accept a gift, donation or sponsorship where he/she could be compromised or bound in his/her work or his/her judgement could be influenced. The acceptance / giving of gifts, donations or sponsorships must be recorded in a gifts, donations or sponsorships register to be kept by each Directorate.
- Public Servants are only allowed to accept a token that falls within the normal standards of courtesy or protocol (hereafter called tokens). This means that the gift presented is done so without any expectations to obtain a favour in return and that it is done in an open and transparent way. This includes gifts offered to delegates attending official functions and events (including promotional and corporate gifts – such as conference packages). Public Servants are also allowed to accept gifts offered by external entities (such as foreign delegations) on behalf of a department.
- The Head of Department will only consider any gifts, donations and sponsorships or invitations beyond those as mentioned above on the grounds of a prior written request, and such request must be submitted timeously and supported by comprehensive motivation.

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- Employees shall be prohibited from directly or indirectly soliciting or accepting gifts, hospitality or private benefits of any value from any person (natural or juristic) that is contracted to the Department for which the employee is working.
- Any person or entity, when rendering service to the Department shall be prohibited from offering gifts, hospitality or private benefits to employees or their immediate families and relatives.
- If an employee is presented a gift that is clearly intended as a bribe, the employee should report the matter to the authorising authority, so that charges of corruption can be instituted against the giver of the gift. Also, other officials are encouraged to report non-complying colleagues.
- Employees shall not receive or accept any gift from any person in the course and scope of his or her employment, (other than from a family member), to the cumulative value of R 350 per year, unless prior approval is obtained from the relevant executive authority;
- Under no circumstances should gifts, business courtesies or hospitality packages be accepted from or given to prospective suppliers participating in a tender process at the Department, regardless of retail value. This situation should continue from the inception of the supply chain management process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and/or improper influence on the evaluation process.
- Gratification, bribery or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes personal favours, money, loans, equity, special privileges, benefits and/or services. Such favours will constitute corruption.
- Employees are not permitted to accept gifts or acquire goods or services from suppliers, customers or external parties at artificially low prices, which are not available to the public at those prices, or accept personal favours and hospitality which may be deemed by others to impact on the employee's sound business judgment.

- Overseas visits on invitation by, and at the expense of prospective suppliers, will under no circumstances be permitted. Should such overseas visits be deemed necessary for the purposes of evaluating technical capability etc. of the supplier, this should be for the Department's own account and be fully motivated in terms of the Delegation of Authority Framework.

9. CONDITIONS FOR GIVING OR ACCEPTING GIFTS

- Giving and accepting of gifts, donations and sponsorships, regardless of value, must be recorded in the Gift Register of The Department.
- Employees can only accept / give gifts, donations and sponsorships up to three times in a financial year; however, these should not be from the same supplier.
- Deviation from such provisions must be noted and managed according to departmental procedure.

10. DECLARATION OF GIFTS

- Each business unit must have a gift register that employees will use to disclose gifts received.
- Quarterly reporting using the reporting form attached as Annexure A, must be submitted to the Managers of each business unit who will then prepare and provide a gift register report to Human Resources on a quarterly basis.
- Gifts received whilst on overseas business trips and from foreign delegates which exceed the limit set out in this Policy may be accepted, declared and submitted to the office of the Director: Internal Control & Risk Management, for recording and safekeeping. The gifts should be displayed or donated to employees leaving the employment of the Department or who have served the Department for a long period or to a charitable organisation.

- Annual reporting to be done as per Treasury regulations 21.2.4 which requires that all gifts, donations or sponsorship received and made in cash or otherwise during the course of a financial year be disclosed as a note to the Annual Financial Statements of the Department.

11. PROHIBITIONS FOR ACCEPTING AND GIVING GIFTS

Employees are prohibited from:

- Giving and receiving cash or monetary gifts.
- Soliciting gifts and hospitality packages, or anything of value, for their own benefit, or the benefit of any member of his/her family or friends or business associates, in return for business, services or information that is proprietary or confidential to the Department or its customers.
- Receiving gifts from service providers who provide training. Any training service providers offering gifts such as laptops, iPads, etc. as part of the training package must be reported to the Director: Internal Control and Risk Management.

12. COMPLIANCE MONITORING

- The Human Resource unit must ensure that the content of this Policy is communicated to all employees of the Department.
- The Declaration of Gifts Received and Given Forms must be monitored, maintained and reviewed by the managers of the respective business units as and when the forms are received.
- A quarterly Gift Register report will be submitted to the General Manager: Human Resources.
- The Declaration of Gifts Received and Given Forms must be stored for a minimum period of 3 (three) years for auditing purposes. Evidence of the monitoring processes undertaken should be retained for audit purposes.

- Any patterns in the receiving or giving of gifts must be investigated.

13. NON-COMPLIANCE

Employees are encouraged to report any suspicions of fraud, corruption and other economic crimes through the **National Anti-Corruption Hotline number 0800 701 701**.

Breaches of this policy will be seen in a very serious light. Employees who do not conform to this Policy may be subject to disciplinary action in terms of the applicable Disciplinary Policy of the Department.

14. ROLES AND RESPONSIBILITIES

The success of this Policy Framework depends on the consideration and cooperation of all employees.

All employees share the responsibility of adhering to and enforcing the Policy in their respective business units. The specific roles and responsibilities are as follows:

Accountable: Accounting Officer

Responsible: All managers and employees

Informed: All employees and Human Resources

Supports: Human Resources

Monitoring: Internal Audit Unit

Policy Owner: Accounting Officer

15. MONITORING, EVALUATION, REPORTING AND REVIEW

- The Directorate: Human Resource Management and Development is responsible for the development of and regular review of this policy document.

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- This policy will be reviewed and updated every year and / or when necessary.
- Any inputs or amendments regarding this policy can be directed to the abovementioned components for the attention Manager: Human Resource Management and Development.

16. COMMUNICATION

The Directorate: Human Resource Management and Development is responsible for communicating this Policy to all employees within the Department.

17. IMPLEMENTATION DATE

This Policy will come into effect on the date of signature by the Accounting Officer.



Signature of Accounting Officer

27/11/2020

Date

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ANNEXURE A: APPLICATION FORM

ACCEPTANCE OF GIFTS, REWARDS, AWARDS, SPONSORSHIPS, DONATIONS AND HOSPITALITY BY EMPLOYEES

DETAILS OF APPLICANT: *Treasury Practice Note Number: FM -19 of 2006 (amendment 1 of 2010):*

7.1 For the purposes of this practice note, "Individual employees" are deemed to include next-of-kin.

Full Name: _____ Persal No. _____

Business Unit: _____ Rank: _____

DETAILS OF GIFTS, REWARDS, AWARDS, SPONSORSHIPS, DONATIONS AND HOSPITALITY BY EMPLOYEES

Treasury Practice Note Number: FM -19 of 2006 (amendment 1 of 2010):

7.2 Gifts with a retail value of less than R350.00 may be accepted by individual employees e.g. flowers, chocolates, pens and calendars. The subject to notify the Head of the Directorate. The aforementioned Head of the Directorate may instruct that the gift be returned, should the acceptance thereof be deemed prejudicial to the State or gives rise to a potential conflict of interest.

7.8 When considering approval to attend a function, the Accounting Officer must determine whether:

(a) The invitation is based on the employee's official position or is it a social gathering of acquaintances. Approval should only be given to employees attending in their official capacity; and

(b) Attendance may be perceived as a benefit that may influence or impact on commercial dealings between the organization hosting the function and the Department. If there is any doubt, approval to attend should not be granted.

Name of Service Provider:

Description of Gifts, Rewards, Awards, Sponsorships, Donations or Hospitality:

Estimated Value:

SIGNATURE OF APPLICANT

DATE

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COMMENTS:

APPROVED / NOT APPROVED

DATE:

NAME (HEAD OF BUSINESS UNIT)
UNIT)

SIGNATURE (HEAD OF BUSINESS
UNIT)

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ANNEXURE C: REGISTER OF GIFTS AND HOSPITALITY GIVEN

DEPARTMENT:

DIRECTORATE/DISTRICT:

DATE:

Date given	Name of Organisation/ Institution/Service Provider	Names of persons /Service providers	Description of Gift, Venue and Type of Hospitality	Declared by	Estimated (valuation / maintenance / cost of gift/hospitality)	Approved Head Business Unit
	NAME:		DATE:		SIGN:	