



**COUNTY GOVERNMENT
OF BUNGOMA**

COUNTY ASSEMBLY OF BUNGOMA

SEPARATION POLICY MANUAL

February, 2024

COUNTY ASSEMBLY SERVICE BOARD

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FOREWORD

The County Assembly of Bungoma is cognizant of the fact that after years of public service employees must exit the service. The Exit and Separation of employment refers to the event that an employee ceases to be part of the County Assembly's workforce.

An employee may be separated as consequence of resignation, removal, death, permanent incapacity, discharge or retirement. The employee may also be separated due to the expiration of an employment contract or as part of downsizing of the workforce. Regardless of the cause of exit, all employees of the County Assembly of Bungoma are encouraged to prepare for their exit from service when time comes.

County Assembly of Bungoma has developed this comprehensive Exit and Separation operational procedure manual to treat the departing employees equitably and ensure smooth transition for them.

The County Assembly Service Board commits to handle any cases of termination of employment as dictated by law with discretion, professionalism and official documentation. The County Assembly will provide a process for the effective separation of employees with appropriate consideration of organizational needs, whilst ensuring a transparent and fair process, the provision of associated entitlements, and clear communication of important and sensitive Information.

A handwritten signature in blue ink, reading "Emmanuel M. Situma". The signature is stylized with a large, sweeping initial "E" and a long horizontal line above the name.

Hon. Emmanuel M. Situma
Chairperson, County Assembly Service Board

PREFACE



Employee separation constitutes the final stage in the staffing process of an organization. An employee can leave the organization for any reason which he deems fit for seeking separation.

Voluntary separation refers to the separation of employees on their own request, while involuntary separation means the separation of employees for organizational reasons which are beyond the control of the employees. The separation can be voluntary through retirement, resignation and transfer by request or involuntary through dismissal, termination, suspension and retrenchment.

Usually, an employee leaves the organization after several years of service. Employee separation is a sensitive issue for the County Assembly and thus, requires discretion, empathy and a great deal of planning. All Information relating to the termination of employment or separation of employees will remain confidential to those involved in the process.

The County Assembly will provide an opportunity for all voluntarily terminating employees to participate in a confidential exit survey or interview to discuss the organization's strengths and weaknesses, provide feedback about their reasons for leaving and to assist with better understanding the variety of experiences of working at the County Assembly.

A handwritten signature in blue ink, consisting of a large, stylized 'C' followed by several smaller, less distinct characters.

Charles W. Wafula
Secretary, County Assembly Service Board

Definition of Terms

“Authorized Officer” A person who has been appointed by the County Assembly Service Board to perform certain compliance and enforcement duties.

“Board” Refers to the County Assembly service Board.

“Rare knowledge, skills and competencies” means knowledge, skills and competencies that are scarce, unique and not readily available in the job market.

“Redundancy” means loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.

CHAPTER ONE

1.0 INTRODUCTION

Separation of employment refers to the event that an employee ceases to be part of the County Assembly's workforce. It is beneficial for all parties that the employment separation process is as clear as possible so misunderstandings and distrust between the employee and the organization is avoided. The organization is bound to handle any cases of termination of employment as dictated by law with discretion, professionalism and official documentation.

1.1 Scope

This Separation of Employment Manual applies to all prospective or current employees of the County Assembly of Bungoma concerning possible separation of employment.

1.2 Principles

The County Assembly will provide a process for the effective separation of employees with appropriate consideration of organizational needs, whilst ensuring a transparent and fair process, the provision of associated entitlements, and clear communication of important and sensitive Information.

All Information relating to the termination of employment or separation of employees will remain confidential to those involved in the process.

The County Assembly of Bungoma will provide an opportunity for all voluntarily terminating employees to participate in a confidential exit survey or interview to discuss the organization's strengths and weaknesses, provide feedback about their reasons for leaving and to assist with better understanding the variety of experiences of working at the County Assembly.

Heads of Department /Supervisors are responsible for ensuring all County Assembly property of departing employees is returned in good condition prior the cessation date.

Separation or termination of employment will be managed in accordance with the requirements of relevant legislation and as specified in the County

Assembly Separation Operational Manual.

CHAPTER TWO

SEPARATION FROM SERVICE.

Pursuant to the County Assembly of Bungoma Human Resource Manual, 2022, the key forms of exit from the Assembly service include:

- a) Resignation
- b) Termination
- c) Expiry of Contract
- d) Retirement
- e) Dismissal
- f) Death.

Resignation

Resignations in the County Assembly Service shall be handled in accordance with Section 78 of the Employment Act. Resignation in this manual means exit from the Assembly Service at the instance of an officer.

- a) An officer may resign his /her appointment by giving one (1) months' notice or by paying one month's gross salary in lieu of such notice;
- b) An officer on contract may resign his appointment in accordance with the terms of the contract;
- c) On resignation, an officer shall settle any outstanding personal liabilities to the Board, failure to which the matter shall be referred to the County Assembly Legal Department and/or any amounts due to the officer shall be withheld and applied towards the sum due from him /her;
- d) An officer whose terminal benefits are determined under the Pensions Act shall not be eligible for pension or gratuity on leaving the Service except in the specific circumstances defined in the Pensions Act or letter of appointment;
- e) An officer who resigns cannot, if subsequently re-employed after a break of service, count his previous service for pension;
- f) An officer who is a member of the Public Service Superannuation Scheme or CPF shall, on resignation, be eligible for terminal benefits in accordance with the terms set out in the scheme
- g) The CASB shall not reject a resignation except on account of:

- i) fraud or conspiracy where the concerned public officer is innocent;
- ii) duress where the concerned public officer has proved that the resignation was occasioned by threats or coercion by a person in authority over the officer;
- iii) involuntary decision by the concerned public officer by reason of infirmity of mind arising from ill health or involuntary intoxication;
- iv) resignation is aimed at avoiding anticipated or on-going disciplinary case; or
- v) Outstanding liabilities owed by the officer to the County Assembly.

Procedure

1. Subject to section 78 (2) of the Employment Act, a resignation letter may be sent by electronic mail or registered post or delivered by hand to the Authorized Officer and, where sent by registered post, relevant evidence of postage shall be produced as proof of delivery where required.
2. The resignation letter shall be submitted to Clerk one month prior. Verbal resignation is not acceptable.
3. The Clerk shall comment on the resignation and forward it to the Head of Human Resource.
4. A notice is expected by the employee consistent with the minimum notice requirement as stipulated in the Employment Act and Human Resource Manual so the County Assembly can arrange alternatives for handling the remaining workload of the position.
5. If an employee leaves the job without written resignation notice, he/she will forfeit his/her salary will not be claimable.
6. During one month resignation notice period, if an employee wants to withdraw from his/her resignation, management will decide either to retain or not.

7. The Human Resource Department in liaison with the Finance Department shall verify his/her inventory, outstanding assets and liabilities and submit the report to Clerk.
8. The officer shall be required to settle any outstanding liabilities to the County Assembly and obtain a clearance certificate.
9. If the employee is cleared, the clearance form shall be duly processed and submitted to the Human Resource Department for processing his/her dues within 90 days of completion of his/her notice period, accordingly.
10. Resignation shall take effect thirty days from the date of the delivery or registration of the resignation letter at the post office.

Termination of Appointments

The Board shall, before terminating the employment of an employee on ground of misconduct, poor performance or physical incapacity, explain to the employee the reason for which the Board is considering termination. The employee shall be entitled to have a representative of his/her choice present during this explanation.

The Board shall before terminating the employment or summarily dismissing an employee, hear and consider any representations which the employee or/and their representative make.

Proof for Termination

1. In any claim arising out of termination of a contract, the Board shall be required to prove the reason or reasons for the termination. If the employer fails to prove the reason, the termination shall be deemed to have been unfair
2. The reason(s) for termination of a contract are the matters that the Board at the time of termination of the contract genuinely believed to exist and which caused the Board to terminate the services of the employee.
3. The reasons shall be documented and produced as material evidence when the employee is given fair hearing.

Termination of Contracts

The employment of an officer serving on contract may be terminated by the Board in accordance with the provisions of the officer's agreement or by giving appropriate period of notice or gross salary in lieu of notice

Termination of Probationary Contract

1. A probationary period shall not be more than six months, but it may be extended for a further period of not more than six months with the agreement of the employee
2. The Board shall not employ an employee under a probationary contract for more than stipulated time.
3. The Board may terminate the contract of an employee on probation by giving not less than seven days' notice of termination or payment of to the employee seven days wages in lieu of notice.

Termination on account of Redundancy

- a) The Board shall not discharge any employee without adequate reason or without giving notice. Such an occurrence may be damaging for the Assembly's respectability and may result in unnecessary litigations.
- b) An officer may be discharged on redundancy either following abolition of the office he holds or upon re-organization of the department in which he serves. It may also follow introduction of new technology or reduction of staff numbers (retrenchment) for efficiency in service delivery

Procedures

1. Discharge without cause can occur when the County Assembly decides that the services of an employee are no longer needed. In general, this does not refer to an employee's conduct.
2. In cases where an employee must be terminated without cause, the County Assembly is obliged to give notice for a specified duration of time prior to the date of termination
3. The Authorized Officer shall meet the following conditions before termination on grounds of redundancy:
 - a) where an officer is a member of a trade union, notify the trade union and labour office of the reasons, extent of the redundancy

- and the intended termination not less than a month prior to termination;
- b) where an officer is not a member of a trade union, notice the employee personally in writing and the labour office;
 - c) Have due regard to seniority, age ,time of service, skill, ability and reliability of the employee considered for termination on account of redundancy;
4. The employer shall settle any accrued leave days in cash
 5. When severance pay is appropriate it will be officially stated in writing and paid at a rate not less than fifteen days for each completed year in office
 6. If the employee has to stop working before the date of termination, the Assembly will still provide compensation for the time remaining, specified as “pay in lieu of notice”.
 7. The company may compensate the terminated employee for accrued vacation time when appropriate. Severance pay may apply to cases of discharge without cause but not discharge for cause.

Retirement

Retirement under the ‘50-year’ rule

1. On attaining the age of 50 years, an officer may opt to retire any time thereafter
2. An officer who may wish to retire under the ‘50-year’ rule shall apply in writing to the Authorized Officer and provide one (1) months’ notice of his intention to do so.
3. An application for retirement may be sent by electronic mail or registered post or delivered by hand to the Authorized Officer and relevant evidence of registered postage shall be produced as evidence of delivery where required.
4. Retirement shall take effect at the expiry of three months from the date of the delivery or registration of the application for retirement at the post office.
5. An officer who is a member of the Public Service Superannuation Scheme Pensions Act, CPF and Lap-Fund, and opts to retire under the ‘50-year’ rule shall be eligible for benefits under the Scheme

6. However, if he has less than ten years' service, he shall be eligible for a gratuity in accordance with the Pensions Regulations ;
7. Applications from officers to retire under the '50-year' rule shall be subject to approval by the Board;
8. The Board shall not reject a request for retirement on attainment of fifty years except on account of
 - i) fraud or conspiracy where the concerned public officer is innocent;
 - ii) subject to the provisions of section 68 (2) and (3) of the Act and regulation 50;
 - iii) duress where the public officer has proved that the application for retirement was occasioned by threats or coercion by a person in authority over the officer;
 - iv) involuntary decision by the public officer by reason of infirmity of mind arising from ill health or involuntary intoxication; or
 - v) retirement aimed at avoiding anticipated or on-going disciplinary cases.

Retirement on medical grounds/ill health

1. Where an Authorized Officer considers that an employee is unfit for continued service due to ill-health, the officer may be considered for retirement on medical grounds
2. Where it is necessary to convene a medical board to determine an officer's fitness for further service or otherwise, the Authorized Officer shall refer the case to the department responsible for health services
3. The Department responsible for Health Services shall, within a period of one (1) month, convene a medical board meeting to determine the fitness of the officer for continuation in service. After such meeting, the medical board shall present a report to the Authorized Officer with recommendations, which the Authorized Officer;
4. The Authorized Officer shall notify the Board in writing, setting out the observations and the Board shall determine whether or not to retire afflicted officer on the ground of ill health or make any other relevant determination.

5. An officer who retires on the ground of ill health shall be eligible for applicable retirement benefits.

Mandatory retirement

1. The Board shall call upon an officer to retire from the Service at any time following the officer attaining the age of 60 years.
2. A notice shall be given to the officer six months preceding the 60th birthday.
3. The officer may also, on his own volition, exercise the option to retire on or after attaining the age of 50 years by giving six months' notice
4. Persons Living with Disabilities shall retire at the age of 65 years with an option to retire early
5. Where documentary evidence of an officer's age is unobtainable or inconclusive, his assumed age will be determined by reference to the date in his identity card together with the recommendations of a medical officer of health. In such case the anniversary of his birthday shall be deemed to be 31st December
6. Any appeal arising from the decision of the medical officer shall be heard by an independent medical officer
7. In the case of an officer who has expressed a wish to retire or whom the Board has required to retire, such officer shall take terminal leave in addition to any leave days which he has accrued
8. The date of his retirement shall be deemed to be the day following the last day of his terminal leave
9. The Board shall meet transport costs of an officer travelling to his/her retirement destination within Kenya
10. The cost of transport in this case will be limited to the cost of road and rail transport, and in respect of the officer, his nuclear family and baggage.
11. An employee who has successfully served and attained the retirement age shall be entitled to a retirement package capped at Kshs. 100,000
12. Subject to the Constitution, the Retirement Benefits Act, 1997, and the rules of a retirement benefits scheme where an officer attains the mandatory retirement age while undergoing disciplinary proceedings, the officer shall retire with the applicable pension benefits

13. Subject to section 80 (2) of the Employment Act, in determining whether to engage an officer after attainment of retirement age, the Board shall determine and document the rare knowledge, skills or competencies that the officer possesses.

Retirement on grounds of abolition of office

An officer may be retired either following abolition of the office he holds or upon re-organization of the department in which he serves. It may also follow introduction of new technology or reduction of staff numbers (retrenchment) for efficiency in service delivery.

Procedures

1. Subject to the provisions of section 28 (3) of the Employment Act, where the Board intends to retire an officer on the ground of abolition of office, the Authorized Officer shall inform the officer that his or her retirement is being considered and invite the officer, within reasonable time, being not less than thirty days, to make representation thereon, if any
2. Upon receiving the representation or failing to receive any representation within the prescribed time, the Authorized Officer shall notify the Board in writing together with the officer's representation, if any, with recommendations justifying the retirement or retention of the officer
3. The Board shall not retire any officer on grounds of abolition of office unless there is written evidence that the specified County Assembly office has been abolished
4. If the employee has to stop working before the date of termination, the Assembly will still provide compensation for the time remaining, specified as "pay in lieu of notice"
5. The Assembly may compensate the retired employee for accrued leave days when appropriate. Severance pay may apply to cases of discharge without cause but not discharge for cause.

Retirement in public interest

1. To justify retirement in public interest, it shall be established through an evidential report with sufficient grounds that the public officer has offended public policy as contained in:

- a) a prescribed government policy
 - b) a provision of the constitution or legislation
 - c) a binding decision made by a competent court of law
2. On receipt of complaints requiring an officer to be retired in public interest, the Clerk shall take action as follows:
- a) Hand over such report and complaints to the Staff Advisory Committee, which shall consider the complaints raised in the report and statements advanced on the matter;
 - b) On finding that there are sufficient grounds to warrant action in retirement of an officer in public interest, the Committee shall serve the officer with a letter setting out the particulars of the complaint and asking the officer to make representation within a reasonable time;
 - c) Upon receipt of the representation, the Committee shall consider the circumstances of the matter and report to the Clerk with appropriate recommendations;
 - d) If the officer fails to submit the representation within the prescribed time, the Committee shall, on considering the issues raised on the subject, recommend to the Clerk appropriate action;
 - e) Based on the Committee's recommendations and having considered such recommendations, the Clerk shall forward the matter to the Board for appropriate decision.

Voluntary Retirement

1. An officer may, pursuant to section 79 (1) (f) of the Employment Act, voluntarily retire from service upon serving for a period of five years in the Assembly ;
2. The officer shall be entitled to a pension in accordance with the written law relating to pensions.
3. An officer who opts to voluntarily retire from service shall give the Authorized officer one months' notice in writing.

Dismissal

Interdiction/Suspension

The Board may dismiss an employee summarily when the employee has, by his/her conduct indicated that he/she has fundamentally breached obligations under the contract of service.

The following matters may amount to gross misconduct so as to justify summary dismissal:

- a) When without leave or other lawful cause, an employee absents himself/herself from the place appointed for the performance of his/her work;
- b) During working hours, by becoming or being intoxicated ,an employee renders himself/herself unwilling or incapable to perform his/her work properly;
- c) An employee willfully neglects to perform any work which it was his/her duty to perform, or if he/she carelessly and improperly performs any work which from its nature it was his/her duty, under the contract to have performed "carefully and properly"
- d) An employee uses abusive or insulting language or behaves in a manner insulting to the employee or to a person placed in authority over him/her by the employer
- e) An employee knowingly fails/refuses to obey a lawful and proper command which was within the scope of his/her duty to obey; issued by the employer or a person placed in authority over him/her;

- f) An employee is arrested for a cognizable offence punishable by imprisonment and is not released within fourteen days on bail or bond or set free.;
- g) An employee commits or is reasonably suspected to have committed a criminal offense against or to the detriment of the employer or employer's property.

Procedures

1. Before any action is taken to dismiss an employee, the Staff Advisory Committee shall give the officer a fair hearing and make recommendations to the Management Committee and the Board for determination.
2. An officer whose pension is determined under the Pensions Act or CPF and is dismissed from the Service, shall not be eligible for pension benefits
3. However, he will be entitled to the employer's contribution under NSSF Act and the Widows and Children Pension Scheme

Death

A termination due to the death of an employee will be made effective as of the date of death.

Procedures

1. Upon receiving notification of the death of an employee, the employee's supervisor/Head of Department shall immediately notify the Human Resource Department.
2. The Human Resource Department shall then notify the Burial and Benevolent Committee to process all appropriate beneficiary payments from the BBF.
3. The Board shall provide transport facilities for a deceased officer and immediate family members to the place of burial when such officer dies while still in the service. This provision shall also apply if one spouse or dependent unmarried children aged twenty five (25) years and below die while the officer is still in the service.

4. In addition, the Board shall provide a contribution of Ksh.50, 000 to defray funeral expenses for a deceased officer, one spouse and up to four (4) children aged twenty five (25) years and below.
5. Where official transport may not be available, a private hearse may be hired for that purpose. An officer appointed to represent the Board at such burial shall be provided with official transport.
6. Upon the death of an officer, the legal beneficiary shall be paid death gratuity and dependants' pension, if any. In addition, in case of death of an officer who was contributing to Widows and Children Pension Scheme, the legal beneficiary shall be paid the benefits thereof.

CHAPTER THREE

3.0 CLEARANCE

Final Pay

1. An employee who resigns or is discharged will be paid through the last day of work, plus any unused paid time off (PTO), less outstanding loans, advances or other agreements the employee may have with the company, in compliance with labour laws.
2. In cases of an employee's death, the final pay due to that employee will be paid to the deceased employee's estate or as otherwise required under law.

Health Insurance

Medical insurance coverage terminates on the last day of the month the employee separates employment or is terminated.

Return of Property

1. Employees must return all company property at the time of separation, including uniforms, keys, laptops and identification cards.
2. Employees are obliged to maintain record confidentiality post separation. Before separating from the County Assembly, Employees must ensure all information constituting public records (including electronic mail) has been captured and retained in the Assembly's record keeping system
3. Supervisors are reminded of their obligation in this regard to ensure compliance with the record keeping requirements
4. Failure to return some items may result in deductions from the employee's final paycheck
5. An employee will be required to sign a wage deduction authorization to deduct the costs of such items from the final paycheck.

Eligibility for Reemployment

1. An employee who leaves the County Assembly in good standing with proper notice may be considered for reemployment.
2. Former employees must follow the normal application and hiring processes and must meet all minimum qualifications and requirements

of the position. The officer shall be required to produce a clearance certificate obtained after resignation.

3. An officer who has resigned shall not, if subsequently reemployed after a break of service, count his previous service when determining his or her pensionable service.
4. Employees who are terminated or dismissed involuntarily by the County Assembly for cause or who resign in lieu of termination are ineligible for rehire.
5. In addition, employees who resign without providing adequate notice or who abandon their job will not be considered for rehire.

Certificate of service

1. The Board shall issue to an employee a certificate of service upon termination of his/her employment, unless the employment has continued for a period of less than four consecutive weeks.
2. A certificate of service issued under subsection (1) shall contain—
 - a) the name of the employer and his postal address;
 - b) the name of the employee;
 - c) the date when employment of the employee commenced;
 - d) the nature and usual place of employment of the employee;
 - e) the date when the employment of the employee ceased; and
 - f) such other particulars as may be prescribed.
3. Subject to subsection (1), no employer is bound to give to an employee a testimonial, reference or certificate relating to the character or performance of that employee.



**COUNTY
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