



## NEWSLETTER

**WRONG** ← → **RIGHT**  
**SUSPENSION WITH FULL PAY**  
-an irksome misuse of funds or a legal reality?

### Suspension with full pay - an irksome misuse of funds or a legal reality?

For the last few years, certainly since 2016, there have been regular instances of a public figure placed 'on suspension with full pay'.

Media exposure has brought many of these cases to light, with the current - and welcome - determined to expunge the almost overwhelming waste of the taxpayer's money on those sitting at home on full salaries, often for years.

We read that 'Prince Makhwathana, a former manager of the Covert Support Unit, sat at home collecting a salary of **R6 million** while the State Security Agency decided on possible disciplinary action against him; Minister of Transport, Dipuo Peters has revealed that her department has paid R62.2 million in salaries to suspended workers over the past three years; Two senior officials implicated in the transfers that led to the deaths of more than 100 Esidimeni patients have received **R1.169 million** while suspended on full pay; Suspended cops cost SA millions'. In a more recent case Mdluli is reported to have received his **full salary** and bonuses in more than six years of suspension: Phiyega was suspended in October 2015 on her full annual salary of R1.9-million.

*The figures make shocking reading, and the question is invariably 'Is this legal?'*

**Yes, it is. It is shockingly wasteful, but legal.**

#### The law on the suspension of an employee

As with so many legal decisions faced by an employer, the law provides one solution, while seeming to counteract it with another. In the case of suspension, the Labour Relations Act Schedule 8 Section 4 allows the suspension in the case where there is an investigation where disciplinary action is likely to be taken - the employer can suspend an employee pending a hearing. However, in the same Labour Relations Act, the aforementioned statement is counteracted in Section 186 (2) (b), where the suspension of an employee could be deemed unfair, and therefore an unfair labour practice.

#### The decision to suspend

An employer is entitled to suspend an employee pending an investigation into gross misconduct or any other serious disciplinary matter.

The conditions under which suspension is allowed should preferably be outlined in an employee's contract. If these are not available in an employee's contract, it is advisable for the employer to have a detailed Suspension Policy in place.

Whether or not to suspend an employee will depend on whether there is sufficient evidence to support the allegations of gross misconduct and if removing the employee from the workplace would be advisable.

#### There are two types of suspension: 'preventative suspension' and 'punitive suspension'.

**Preventative suspension:** Preventative suspension takes place BEFORE a disciplinary hearing and the employee receives full pay whilst on suspension.

**Punitive suspension:** Punitive suspension takes place AFTER a disciplinary hearing and the employee does not receive any remuneration.

#### **Reasons for immediate suspension would include:**

- To minimise the effect on the business of the misconduct
- To prevent the continuance of the alleged misconduct with immediate effect
- To disallow any interaction or communication with fellow employees or clients
- To enable the facilitation of the investigations without any undue interference from the employee

It should be noted, however, that suspending an employee is not in itself a disciplinary action. The results of the investigations into the reasons for suspension could lead to termination of employment, for example. Until then, the employee is allowed the benefit of a full salary while on suspension. However, the matter is to be resolved as swiftly as possible, within weeks.

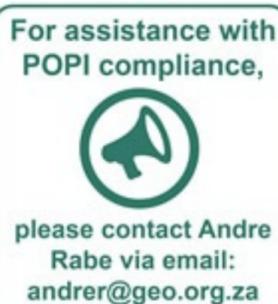
**Suspending an employee without pay - i.e. punitive suspension - is a risky process and you should contact your GEO expert before embarking on this process.**

Which brings us back to the original question surrounding the suspension with pay of government workers and Ministers.

**Is suspension legal? Yes.**

Regards  
Andre Rabe

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#### **Summary**

The law on the suspension of an employee



#### **PREVENTATIVE SUSPENSION:**

Preventative suspension takes place BEFORE a disciplinary hearing and the employee receives full pay whilst on suspension.

#### **PUNITIVE SUSPENSION:**

Punitive suspension takes place AFTER a disciplinary hearing and the employee does not receive any remuneration.