

BERGRIVIER MUNICIPALITY



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1. Introduction

Bergrivier Municipality strives to attract and appoint the most suitable candidates, creating and maintaining a diverse workforce for all positions. Bergrivier Municipality recognises that staff is its most important asset in ensuring that effective and efficient services are rendered in accordance with the priorities as set out in its vision and Integrated Development Plan (IDP). The objective of the policy is the regulation of the appointment of temporary staff. Such temporary appointments are subject to the provisions of the Basic Conditions of Employment Act, 1997 (Act 75 of 1997).

2. Terms and definitions

Term	Definition
Bargaining Council	<i>The South African Local Government Bargaining Council and specifically the division of the Western Cape.</i>
BCEA	<i>Basic Conditions of Employment Act, 1997 (Act 75 of 1997)</i>
Black People (as per Employment Equity Act, 1998 (Act 55 of 1998))	<i>Is a generic term which means Africans, Coloureds and Indians</i>
Candidate	<i>For the purposes of this policy is an applicant for a temporary position</i>
Collective Agreement	<i>A collective agreement concluded in terms of the Constitution of the Bargaining Council (SALGBC)</i>
Competency	<i>For the purposes of this policy refers to knowledge, skills, attitude or behaviour pertinent to the temporary position</i>
Day	<i>Means Monday to Friday, excluding public holidays, unless indicated otherwise by context</i>
Designated group (as per Employment Equity Act, 1998 (Act 55 of 1998))	<i>Means black people, women and people with disabilities</i>
Earnings threshold (as per Collective Agreement on Conditions of Service)	<i>Means the top notch of the salary scale (T-grade) within which the Basic Conditions of Employment Act , 1997 (Act 75 of 1997) earnings threshold determination falls, as amended from time to time</i>
Employee	<i>Means any person, excluding an independent contractor who works for another person or for the State and who receives, or is entitled to receive remuneration (as per Main Collective Agreement) and as per Employment Equity Act, 1998 – means any person who in any manner assists in carrying on or conducting the business of an employer</i>
Employer	<i>Means Bergrivier Municipality</i>
Fixed Term Contract	<i>A contract of employment for a fixed period or which terminates on a specified event or in specified circumstances.</i>

Term	Definition
LRA	<i>Labour Relations Act, 1995 (Act no. 66 of 1995)</i>
Municipality	<i>Means Bergrivier Municipality</i>
Permanent Employee	<i>An employee employed on an indefinite contract at a full time capacity</i>
People with disabilities (as per Employment Equity Act, 1998 (Act 55 of 1998))	<i>Means people who have a long term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in employment</i>
Project	<i>Can be any planned piece of work with a beginning and an end that falls within the legitimate scope of the municipality's activities and must not be in conflict with any legal requirements. Documents used to plan and define it would serve as evidence of its nature and parameters. It does not need to be a registered project, although registration, where applicable, would be further evidence of its existence.</i>
Reasonable Accommodation (as per Employment Equity Act, 1998 (Act 55 of 1998))	<i>Means any modification or adjustment to a job or the working environment that will enable a person from a designated group to have access to or participate or advance in employment</i>
Regulation of Non-Standard Employment and General Provisions (as per Labour Relations Act 1995 (Act 66 of 1995), Section 198 (b-d))	<i>Section 198B-Fixed term contracts with employees earning below the earning threshold Section 198C – Part-time employment of employees earning below the earning threshold Section 198D – General provisions applicable to Sections 198A to 198C</i>
Selection	<i>For the purposes of this policy is the process of making a choice from a list of candidates, the person or persons who best meet the selection criteria or the set performance standards for the position available</i>
Suitably Qualified person (as per Employment Equity Act, 1998)	<i>Means a person contemplated in sections 20(3) and (4): Section 20(3) - a person may be suitably qualified for a job as a result of any one of, or any combination of that person's- (a) formal qualifications (b) prior learning (c) relevant experience (d) capacity to acquire, within a reasonable time, the ability to do the job Section 20(4) – when determining whether a person is suitably qualified for a job, an employer must- (a) review all the factors listed in sub-section (3), and (b) determine whether that person has the ability to do the job in terms of any one, or any combination of those factors</i>
Temporary Employee	<i>An employee employed on a fixed term contract for a limited period.</i>

Temporary Employment Services	<p><i>means any person who, for reward, procures for or provides to a client other persons-</i></p> <p>(a) <i>who render services to, or perform work for, the client; and</i></p> <p>(b) <i>who are remunerated by the temporary employment service.</i></p>
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3. Applicable legislation and agreements

- 3.1 Basic Conditions of Employment Act, Act no. 75 of 1997.
- 3.2 Labour Relations Act, Act no. 66 of 1995.
- 3.3 Employment Equity Act, Act no. 55 of 1998.
- 3.4 Local Government: Municipal Systems Act, Act no. 32 of 2000.
- 3.5 The South African Local Government Bargaining Council Collective Agreement on Conditions of Service.

4. Purpose of the policy

- 4.1 This Policy is intended to set out clear guidelines and processes to regulate the use of temporary employment in meeting the needs of the Municipality.
- 4.2 This Policy sets out to promote the following objectives and must be interpreted and applied with a view to achieving these objectives to the fullest possible extent:
 - 4.2.1 efficiency and control in the use of temporary employees;
 - 4.2.2 compliance with applicable legislation;
 - 4.2.3 compliance with applicable administrative processes and municipal policies;
 - 4.2.4 fair treatment of temporary employees;
 - 4.2.5 sustainable financial management by curtailing excessive expenditure on temporary employment;
 - 4.2.6 optimised allocation of resources in achieving appropriate staffing solutions;
 - 4.2.7 continuous service delivery;
 - 4.2.8 transparency, confidentiality, objectivity, ethical and non-discriminatory; and
 - 4.2.9 each appointment must be rationally and objectively justifiable by reference to the strategic and operational needs.

5. Scope

- 5.1 This Policy applies to the employment of all temporary employees and excludes employees from the Extended Public Works Programme (EPWP), specific job creation projects, or any other Provincial or National Government driven projects.
- 5.2 This Policy does not apply to employees employed by Temporary Employment Services.
- 5.3 Temporary appointments who earn above the statutory threshold is excluded from the application of Section 198B of the Labour Relations Act, however possible reasonable expectation of renewal and permanency disputes can arise and therefore Section 198B will be applicable on all temporary appointments.

6. Appointment of temporary employees in temporary positions

- 6.1 A temporary employee may only be appointed if there is a budget for doing so or if funds are available for the appointment.
- 6.2 Where there is an urgent and unanticipated need to employ temporary staff and budgetary provision cannot be or has not been made or funding has not been secured, the Municipal Manager in consultation with the relevant Director(s) must determine whether the appointment should be made, after considering the operational needs of the Municipality, the impact on current staff and the financial and budgetary implications.
- 6.3 Bergvriër Municipality is a designated employer in terms of the Employment Equity Act and as such preference will be given to suitably qualified candidates who are members of designated groups as defined in section 1 of the Employment Equity Act, Act 55 of 1998.
- 6.4 Section 198B(3) of the Labour Relations Act expressly states that “An employer may employ an employee on a fixed term contract or successive fixed term contracts for longer than three months of employment” only if the work itself is temporary or if a justifiable reason exists.
- 6.5 Section 198B(5)) of the Labour Relations Act adds that “Employment in terms of a fixed term contract concluded or renewed in contravention of subsection (3) of the Labour Relations Act is deemed to be of indefinite duration.
- 6.6 A temporary employee can be appointed in another temporary capacity, for after his/her first contract expires, only if the second temporary position is genuinely different from the first position, and the purpose and effect of doing

so is not merely to circumvent section 198B by – for example – rotating an employee between different positions at three-monthly intervals.

- 6.7 A temporary employee on a contract for longer than 3 months' employment must receive the same remuneration and benefits as a comparable permanent employee, unless there is a justifiable reason for the difference in treatment (see clause 10.2.2 – Section 198D(2) of the Labour Relations Act).
- 6.8 Section 198B places no restrictions on genuinely temporary employment, defined as employment of 3 months or less. However, if such contracts are repeatedly entered into with the same employee, it may create a reasonable expectation of continued employment on either a fixed-term or permanent basis, depending on the facts.
- 6.9 A "cooling-off" period of 3 months will be valid for all temporary employment contracts of three months or less. A person appointed for three months or less can only be temporarily employed again after a period of three months after the end date of his/her previous temporary contract. ***The "cooling-off" period not be abused for work of repetitive nature.***
- 6.10 A temporary contract linked to a specific project should run for the period of the project.
- 6.11 Canvassing, i.e. attempting to solicit the influence of any person who could substantially influence the selection process by job applicants, or any other person on behalf of job applicants, for posts within the municipality's service, is prohibited and evidence thereof will disqualify such person's application for that appointment.
- 6.12 The procedure set out in **Annexure A** to this Policy should be followed for the appointment of temporary employees who fall within the scope of this Policy.
- 6.13 The performance of every temporary employee must be evaluated as set out in **Annexure B**.

7. Fixed term contract for longer than twelve (12) months

The recruitment process for the appointment of permanent employees as outlined in the Recruitment Policy, must also be followed for the appointment of temporary workers for longer than 12 months.

8. Temporary employees employed for less than three months

- 8.1 All temporary employees employed in terms of this category must be registered on and be appointed from the Municipality's database.
- 8.2 A temporary employee may be employed on a fixed term contract for a period of less than three months if there are operational reasons for doing so.
- 8.3 A fixed term contract for less than three months must also comply with the justifiable reasons as contemplated in clause 9.3 and may only be renewed or extended if there is a reason justifying the renewal or the extension.¹
- 8.4.1 Temporary appointments should be **avoided**:
- 8.4.1.1 for periods of less than one week, unless the relevant line manager can provide good reason for doing so related to unforeseen circumstances or unavoidable urgency;
- 8.4.1.2 for the replacement of permanent staff who are on annual leave in situations where the annual leave should not have been granted because of foreseeable operational needs, unless the relevant line manager can provide good reason for granting such leave based on compassionate or other compelling grounds; and
- 8.4.1.3 for dealing with performance problems of one or more staff members in the relevant department, unless the relevant line manager can provide clear evidence that the performance problems are being addressed, that the appointment of temporary staff is an interim solution and there is a need to provide short-term support to address an increase in workload while the performance problems are resolved.

9. Temporary employees employed for more than three months, but less than 12 months

- 9.1 All temporary employees employed in terms of this category must be registered on and be appointed from the Municipality's database.
- 9.2 A temporary employee employed for more than 3 months may only be employed for a justifiable reason contemplated in clause 9.3.

¹ Note that the renewal or extension of a fixed term contract may lead to a reasonable expectation of a further renewal or indefinite employment in terms of section 186(1)(b) of the LRA.

9.3 The following are justifiable reasons for the employment of a temporary employee for more than three months, but less than 12 months:

9.3.1 as a replacement of an employee who is temporarily absent from work;

9.3.2 because of an increase in the volume of work that is not expected to endure for more than 12 months;

9.3.3 as a student or recent graduate employed for the purpose of being trained or getting work experience in order to enter a job or profession;

9.3.4 employed exclusively on a specific project that has a limited or defined duration;

9.3.5 employed to undertake and complete a specific task with a maximum duration of 12 months;

9.3.6 employed as a non-citizen who has been granted a work permit for a defined period;

9.3.6.1 employer as a seasonal employee;

9.3.6.2 employed in terms of an official public works scheme or similar public job creation scheme;

9.3.6.3 because the post is funded by an external source for a limited period;

9.3.6.4 the employment of a retiree who has reached the normal or agreed retirement age; or

9.3.6.5 for any other clear justifiable reason.

9.4 If an employee employed for a fixed period of more than 3 months for a reason other than a justifiable reason contemplated in clause 9.3 above, the employee is deemed under the LRA to be employed on a permanent basis irrespective of whether there is a vacant position for that employee on the staff establishment.

10. Prohibition against the rolling over of fixed term contracts

10.1 Temporary employment contracts must not be rolled over unless there are compelling operational reasons for doing so.

10.2 The period for which the employee's services will be required should be determined at the outset and the contract should be drawn up accordingly.

- 10.3 The rolling over of a fixed term contract may lead to a reasonable expectation of further renewal or employment on a permanent basis in which case, the decision not to roll over may expose the Municipality to a claim of unfair dismissal under the LRA.

11. Contractual requirements

- 11.1 All temporary employment contracts must:

11.1.1 be in writing;

11.1.2 be signed by the temporary employee and Municipal Manager by no later than the employee's first day of work;

11.1.2 be in accordance with section 29 of BCEA; and

11.1.3 include, amongst others, the following:

11.1.3.1 The date on which the employee's employment commences;

11.1.3.2 The date on which the employee's employment will terminate or, if the date of termination cannot be determined precisely, the event by which or circumstances under which it will terminate;

11.1.3.3 the temporary nature of the work;

11.1.3.4 the nature of the project and its duration;

11.1.3.5 identify the reason contemplated in clause 9.3 or state any other justifiable reason for the fixed term in clear terms; and

11.1.3.6 an clause stating that because of the temporary nature of the contract, the temporary employee acknowledges that there is no expectation of its renewal or extension or of permanent employment after its expiry.

12. Remuneration of temporary employees

12.1 Temporary employees employed for less than three months

- 12.1.1 The SALGBC Salary and Wage Collective Agreement applies to all employers and all employees who fall within the scope of the Council, with the exception of Municipal Managers and Managers directly accountable to Municipal Managers.

12.1.2 Temporary employees, regardless of the period of their appointment, are not excluded or dealt with separately, unless they were appointed in terms of the EPWP.

12.1.3 Temporary employees employed for less than 3 months must therefore be paid the minimum wage stipulated in the Salary and Wage Collective Agreement or, where applicable, remunerated on the first notch of the same T-scale as their permanent counterparts, excluding any benefits.

12.2 Temporary employees employed for more than three months

12.2.1 Temporary employees who are employed for more than 3 months may not be treated less favourably than a permanent employee performing the same or similar work unless a justifiable reason exists for the difference in treatment.

12.2.2 A justifiable reason includes a collective agreement that permits a difference in treatment or provision in a policy for differential treatment based on:

12.2.2.1 seniority, experience or length of service;

12.2.2.2 merit;

12.2.2.3 the quality or quantity of the work performed; or

12.2.2.4 any other criteria of a similar nature.

12.3 These employees must therefore be remunerated according to the first notch of the relevant T-scale, plus benefits (Salary and Wage Collective Agreement), except if there is a justifiable reason for difference in remuneration as contemplated in clause 12.2.2.

13. Deviation

Any deviation from the approved process must be recommended by the relevant Director to the Municipal Manager for approval, before the requisition for temporary employment is submitted to the Department Human Resource Services.

14. Non-compliance with this Policy

14.1 The failure of an employee of the Municipality to comply with this Policy which leads to an employee being deemed to be a permanent employee or exposes the Municipality to a claim of unfair dismissal, constitutes serious misconduct.

PROCESS FOR THE APPOINTMENT OF TEMPORARY EMPLOYEES PRIOR TO THE COMMENCEMENT OF WORK

(Excluding temporary employees employed for longer than 12 months, Expanded Public Works Programme and Municipal Infrastructure Grant employees)

NO.	STEPS	FORM	RESPONSIBLE OFFICER
1.	Request unemployed database from Human Resources.	Database	Human Resources Officer
2.	In relation to temporary appointments into bulk and/or generic positions selection must be done in numerical order from the Municipality's unemployed database and on a rotation basis.	Database	Human Resources Officer and Relevant Manager and/or his or her Delegate
3.	In relation to temporary appointments where specific skills is required selection can be done randomly from the Municipality's unemployed database and on a rotation basis.	Database	Human Resources Officer and relevant Manager and/or his or her Delegate
4.	Completion of requisition stating the reason for the temporary appointment, and the period of the proposed appointment	Requisition	Relevant Manager and/or Delegate
5.	Recommendation of requisition	Requisition	Director and/or his or her Delegate
6.	Submission of requisition to Human Resources at least 10 working days before commencing service	Requisition	Relevant Manager and/or his or her Delegate
7.	Reviewing of requisition by Human Resources	Requisition	Human Resources Officer
8.	Reviewing of requisition by Budget Office	Requisition	Manager: Financial Management & Reporting and/or Accountant: Budget & Statements
9.	Approval of requisition	Requisition	Municipal Manager and/or his or her delegate
10.	Preparation of contract	Temporary Employment Contract	Human Resources Officer
11.	Appointment of temporary employee by Municipal Manager (signing of fixed term contract)	Temporary Employment Contract	Human Resources Officer
12.	Signing of fixed term contract by temporary employee	Temporary Employment Contract	Relevant Manager and/or his or her Delegate
13.	Load temporary employment contract on Payday	Temporary Employment Contract	Human Resources Officer
14.	Provide temporary employment contract to the salary office and a copy to the temporary employee	Temporary Employment Contract	Human Resources Officer



MUNISIPALITEIT BERGRIVIER MUNICIPALITY

EVALUERING VAN TYDELIKE/EPWP WERKERS EVALUATION OF TEMPORARY/EPWP EMPLOYEES

Naam Van Tydelike Werker/Name Of Temporary Employee						
ID nommer/ID number						
Naam van Toesighouer/Name of supervisor						
Departement/Department						
Afdeling/Section						
Posbenaming/Post title						
Tydperk/Period						
WERK REKORD/EMPLOYMENT RECORD: <i>Merk met "x" in die toepaslike kolom/Mark with an "x" in the appropriate column</i>						
Tydsbestuur/Time management	5	4	3	2	1	0
<u>Opmerkings of Rede vir punt/Comments or Reason for mark:</u>						
Gedrag/Behaviour	5	4	3	2	1	0
<u>Opmerkings of Rede vir punt/Comments or Reason for mark:</u>						

Werksprestasie/Work performance	5	4	3	2	1	0
<u>Opmerkings of Rede vir punt/Comments or Reason for mark:</u>						
Bywoning/Attendance	5	4	3	2	1	0
<u>Opmerkings of Rede vir punt/Comments or Reason for mark:</u>						
Sal u die persoon aanbeveel vir permanente aanstelling/Would you recommend this employee for permanent employment:	Ja/Yes		Nee/No			
..... HANDTEKENING/SIGNATURE		 DATUM/DATE			

TOEKENNING VAN PUNTE / POINTS AWARDED

0	Onaanvaarbaar / Unacceptable	Die werknemer doen nie die take soos omskryf by “Bevoeg” nie. / The employee does not perform the duties as defined in “Competent”.
1	Swak / Weak	Die werknemer doen weinig die take soos omskryf by “Bevoeg”. / The employee perform a few of the duties as defined in “Competent”.
2	Potensiaal / Potential	Die werknemer doen die take soos omskryf by “Bevoeg”, maar kort nog baie leiding en hulp. / The employee performs the duties as defined in “Competent”, but still needs a lot of guidance and help.
3	Bevoeg/Competent	Die werknemer doen die take soos deur die Toesighouer aan hom/haar opgedra. Die werknemer is fisies gesond om die werk te verrig en werk getrou volgens die werksure soos aangestel. Die werknemer dien die munisipaliteit getrou en eerlik en lê redelike noukeurigheid en vaardigheid aan die dag in die uitvoering van sy/haar pligte. Die werknemer kom alle

		wettige en redelike opdragte na wat binne sy/haar werksvermoë is, ongeag of sodanige werk binne die bestek van die betrokke tydelike werk val. / The employee performs all the duties as assigned to him/her by the Supervisor. The employee is physically healthy to perform the work and works according to the working hours as appointed. The employee serves the municipality faithfully and honestly and shows reasonable accuracy and skill in the performance of his/her duties. The employee complies with all legal and reasonable assignments that are within his/her work capacity, regardless of whether such work falls within the scope of the temporary work in question.
4	Bogemiddeld / Above average	Die werknemer doen meer as die gemiddelde werker soos omskryf by “Bevoeg”, bv. neem inisiatief om take aan hom/haar opgedra spoedig te voltooi. / The employee does more than the average worker as defined in “Competent”, e.g. takes the initiative to complete tasks assigned to him/her as soon as possible.
5	Uitstekend / Outstanding	Die werknemer doen baie meer as die gemiddelde werker soos omskryf by “Bevoeg”, bv. neem inisiatief, voltooi opdragte ywerig, verleen hulp aan ander, ens. / The employee does much more than the average worker as defined in “Competent”, e.g. takes initiative, complete tasks diligently, provide assistance to others, etc.