



**Salaries & Remuneration
Commission**

Rewarding productivity

Ref. No: **SRC/ADM/CIR/1/13 VOL. IV (28)**

14th October, 2019

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REVISED GUIDELINES ON COLLECTIVE BARGAINING IN THE PUBLIC SERVICE

The Salaries and Remuneration Commission (SRC) in discharging its advisory mandate issued Circulars Ref. No. SRC/ CG/ VOL III dated 4th July 2012 and SRC/ADM/CIR/1/13/(118) dated 21st March, 2014, which provided guidelines on determination and review of remuneration in the Public Service with respect to Collective Bargaining Negotiations.

The SRC has however, noted with concern that the Guidelines have not been strictly adhered to. This has often resulted in delays in decision making and subsequent provision of advice to institutions by the Commission. In this regard, the Commission hereby issues revised Guidelines for Collective Bargaining in the Public Service. The Guidelines outline the principles of pay determination including those provided for in Article 230(5) of the Constitution of Kenya and sets out a framework through which SRC and Employing Agencies shall engage on remuneration and benefits aspects of Collective Bargaining Negotiations (CBNs).

The Guidelines shall apply to public institutions that have employees who are members of a Trade Union and has a recognition agreement with a Trade Union. In giving advice to the

employers, SRC is guided by the following principles which all public sector employers should take cognizance of, as they submit requests for advice on Collective Bargaining Negotiations:

- (a) The need to ensure that the total public compensation bill is fiscally sustainable;
- (b) The need to ensure that the public sector is able to attract and retain the skills required to execute its functions;
- (c) The need to recognize, promote and reward productivity;
- (d) Transparency and fairness; and
- (e) Equal remuneration to persons for work of equal value.

In providing parameters for negotiations, the Commission shall be guided by the following factors in line with the principles set out above.

- 1. Affordability:** This is the capacity of an institution to cater for the resultant cost of a CBA. In determining affordability, the institution must as a minimum consider its resource capacity in terms of profits, surplus or deficits and/or, budgetary allocations using audited financial statements for the past five (5) years. Any Financial statements with an adverse or disclaimer opinion shall not form a basis for consideration by the Commission.
- 2. Sustainability:** This is the ability to maintain payment of the resultant CBA remuneration and benefits over time and go hand-in-hand with the affordability principle. The institution must as a minimum consider the audited financial performance and position of the immediate past five (5) years and projected three years trend in budget projections. Liquidity ratios will also be considered under this factor.
- 3. Comparability:** This is the relationship between remuneration and benefits obtaining for similar jobs within and without institutions in the same sector. Salary ranges shall be used to assess external equity and compression ratios shall be used to determine internal equity.
- 4. Cost of living adjustment (COLA):** This is a periodic increase in wages or salaries, to compensate for loss in purchasing power of money due to inflation. The Commission considers consumer price index (CPI) to compensate for COLA and takes into account any automatic salary increase.
- 5. Job Evaluation Salary Structure:** The Job Evaluation grading and salary structure shall guide the Commission in ensuring equal remuneration to persons for work of equal value.
- 6. Existing CBAs:** The existing CBAs or salary structure shall form a basis for advice by the Commission.
- 7. Legal Compliance:** All Collective Bargaining Negotiations shall comply with the legal requirements provided by Constitution of Kenya, labour laws and other statutes governing employment relationships and public finance management in Kenya.
- 8. Government Policies and Guidelines:** Collective Bargaining Negotiations should adhere to existing policies and guidelines such as the Minimum Wage Guidelines, Public Service Commission Human Resource Policies and Procedures Manual, State Corporation guidelines and various SRC advisories.

9. Performance and Productivity: Collective Bargaining Negotiations shall take into consideration the constitutional principles of rewarding performance and productivity.

In order to provide the parameters for negotiation, the Commission shall require all Public Service institutions seeking advice to provide the following documents/data:

- (a) A copy of running/existing CBA, where applicable. In the absence of an existing CBA, the existing salary structure for the unionized employees, should be provided;
- (b) Union demands covering a four year cycle;
- (c) Management's recommendation and justification for each recommendation taking into account the factors provided herein;
- (d) The existing salary structure for management staff indicating the date of last salary review;
- (e) The existing rate of annual increment, if any;
- (f) Number of in-post tabulated against job grades for both management and unionizable staff;
- (g) The organization's Audited Financial Statements for the last five (5) financial years;
- (h) Organization's projected income and expenditure for three (3) years;
- (i) Financial analysis of the organization's financial statements for the past five (5) years and projected three (3) years including:
 - (i) Ratios and Trends in Profitability/Surplus, Liquidity, Leverage etc;
 - (ii) Personnel emoluments vis- a-vis Revenues; and
 - (iii) Recurrent budget absorption levels (Expenditure and revenue levels).
- (j) Evidence of budgetary allocation from either internally generated funds or allocation from the National Treasury for implementation of the recommended reviews if approved; and
- (k) Performance rating for the organization for the last five years.

Note: A checklist to ensure submission of all requisite data/information is attached as Appendix. 1


The following process shall be followed in providing parameters to institutions for purposes of Collective Bargaining Negotiations:

- (i) An employer upon receipt of the Union demands, shall submit to the Commission the union demands, recommendations and justifications for each item that has financial implication and request for advice on parameters to guide negotiations. The request shall be accompanied by documents outlined above;
- (ii) Once the request for advice is received, the Commission shall analyze, deliberate and make decision on the request taking into consideration factors provided above;
- (iii) The Commission shall communicate its decision to the employer by providing negotiation parameters on items with financial implications;
- (iv) Upon receipt of the parameters for negotiations from the Commission, the employer shall give a counter offer to the Union taking into consideration the parameters provided by the Commission;

- (v) The employer and the Union shall engage in negotiations with a view to concluding the negotiations within the parameters provided by the Commission;
- (vi) Once negotiations are concluded within the parameters provided, the employer shall submit a copy of concluded CBA to the Commission for issuance of clearance letter to facilitate registration at the Employment and Labour Relations Courts; and
- (vii) In the event of a stalemate in negotiations after the parameters have been provided by the Commission, the employer shall revert to the Commission with recommendations on rates it proposes for review taking into consideration the factors as stated herein. The Commission shall consider the request for review and provide its advice.

The Commission endeavors to have a seamless process which fosters industrial harmony. The public service has in the past experienced industrial unrests occasioned by delays in initiating and concluding the Collective Bargaining process. In view of this, attached **Appendix 2** spells out the timelines which all the parties involved in negotiations, should adhere to. Further, Institutions that have their employees represented by different Trade Unions should endeavour to undertake negotiations simultaneously to ensure parity of treatment among all employees.

This Circular takes effect immediately and your office should ensure compliance with the contents. The Circular supersedes the previous circulars Ref. No. SRC/ CG/ VOL III dated 4th July 2012 and SRC/ADM/CIR/1/13/(118) dated 21st March, 2014 on determination and review of remuneration in the Public Service, on matters relating to Collective Bargaining.



Lyn C. Mengich (Mrs.)
CHAIRPERSON

Copy to: Chairperson Council of Governors
Chairpersons, Constitutional Commissions
Registrar, Employment and Labour Relations Court
All County Governors
Speaker, National Assembly
All Speakers, County Assemblies
Inspector General, Inspectorate of State Corporations
Secretary, State Corporations Advisory Committee

Appendix 1: Checklist of Information to be submitted to Salaries and Remuneration Commission by Public Service institutions seeking advice

No	Type of Document/Information	Status (Mark "√" to denote presence and "X" to denote absence of required document).
1.	A copy of running/existing CBA, where applicable.	
2.	A four year CBA proposal from the Trade Union (s).	
3.	Management's recommendation and justification on each item in the proposed CBA.	
4.	The existing salary structure for unionisable staff and date of last salary review, if there is no existing CBA.	
5.	The existing salary structure for management staff indicating the number of in-post by grade and date of last salary review.	
6.	The existing rate of annual increment, if any.	
7.	Number of unionized in-post staff tabulated per job grades.	
8.	Organization's Audited Financial Statements for the last five financial years.	
9.	Organization's projected income and expenditure for three years.	
10.	Financial analysis of the organization's financial statements for the past five (5) years and projected three (3) years.	
11.	Evidence of budgetary allocation from either internally generated funds or allocation from the National Treasury for implementation of the recommended reviews of the CBA, if approved.	
12.	Performance rating for the organization for the last five years.	

Appendix 2: Timelines for Collective Bargaining Negotiation Process

No	Action	By (Institution)	Who	By When (Timeline)
1.	Request for Trade Union demand proposal.	Employers	to Trade Union	Within a period of one year before expiry of the running CBA.
2.	Submission of Demands.	Trade Union	to Employer	Within Sixty (60) days upon receipt of the employers request.
3.	Submission of request for advice on the negotiation.	Employer Commission	to	Within Thirty (30) days upon receipt of the demands from Trade Union.
4.	Provision of parameters for negotiation.	Commission	to Employer	Within thirty (30) days upon receipt of the request for advice.
5.	Issuance of a Counter offer and Negotiations.	Employer and Trade Union	and	<p>Within Sixty (60) days upon receipt of the parameters from the Commission. Once the negotiations are concluded within the advised parameters by the Commission, the employer would request for clearance to have the CBA registered.</p> <p>In case of a stalemate, an employer will submit an appeal to the Commission within Fourteen (14) days.</p>
6.	Request for clearance letter to facilitate registration of CBA.	Employer Commission	to	Within Fourteen (14) days.
7.	Issue Clearance Letter.	Commission	to Employer	Within Five (5) days.