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EMPLOYMENT

What lies ahead with respect to the employment of national Director-Generals amidst the new ministerial appointments?

3 July 2024 *3 min read*

As we tread new territory with a diverse cabinet, firmly moving into a new dispensation in our public administration, it is not unreasonable to imagine that the Director-Generals ("**DGs**") are contemplating what their fate might be in light of the ministerial changes.

The employment of DGs in the public service is governed primarily by the Public Service Act (Proclamation 103 of 1994) ("**PSA**") and the Labour Relations Act 66 of 1995 ("**LRA**"). Any appointments or terminations must accord with these statutes and, therefore, would not fall prey to the prevailing reformed political landscape.

The President has the power to appoint DGs and to make decisions in relation to other career incidents of DGs in national departments or any national government component in terms of section 12(1) of the PSA. Our Courts have adopted a wide meaning of *career incidents* to include a DGs terms and conditions of employment. These terms and conditions of employment extend to a DG's tenure in the Department.

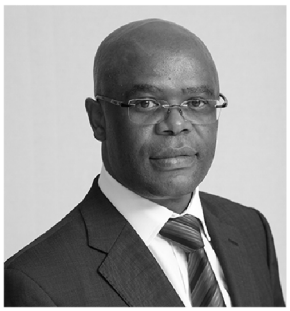
Consequently, a Minister does not have the power to terminate a DG's employment. The confinement of powers to appoint and terminate a DG's employment to the President serves as an effective checks and balances mechanism. In effect, this mechanism ensures that DGs are able to exercise their powers independently, in the interests of a Department without fear of reprisal. This is an essential element to a functional democracy that upholds the principles of transparency and accountability.

In order to shield against arbitrary terminations, the President's power to terminate a DG's employment is not unfettered. Any termination must be justified in light of the permissible grounds for dismissal under the PSA and LRA, namely misconduct, incapacity, or operational requirements.

The PSA envisages a level of independence in the duration of a DGs employment. A DG's employment is not contingent upon the tenure of a Minister. A DG's employment is subject to a fixed term contract which may not exceed 5 years, unless extended. Thus, if there are any ministerial changes before the DG's fixed or extended term contract expires, the DG's tenure will remain unaffected by that change.

Importantly, section 197(3) of the Constitution stipulates that "*[n]o employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause*". Discharging DGs along political lines would not only be in contravention of the statutory grounds for dismissal, but would further be in violation of the Constitution.

Our current statutory framework effectively caters for the adverse consequences that may be occasioned by the ebb and flow of ministerial dynamics by introducing a necessary distance between the changing political climate and the operations of Departments.



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