

DECISION OF THE ADMINISTRATIVE BOARD on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union

THE ADMINISTRATIVE BOARD OF THE EUROPEAN MARITIME SAFETY AGENCY,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials of the European Union ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Articles 12b, 15, 37, 40, 110(2) and Article 33 of Annex XIII of the Staff Regulations and Articles 11, 17, 52 and 91 of the CEOS,

Having regard to Council Regulation (EC) N° 1406/2002 of 27 June 2002, as amended, establishing the European Maritime Safety Agency,

Having regard to the Communication C(2014) 6543 final of 26 September 2014 from Vice- President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations by way of Commission Decision C(2015) 5320 final of 28 July 2015,

After consulting the Staff Committee,

Whereas:

- (1) Article 40 of the Staff Regulations concerning leave on personal grounds and Article 17 of the CEOS concerning unpaid leave on compelling personal grounds have been amended with effect as of 1 January 2014.
- (2) The new Article 52 of the CEOS concerning unpaid leave regarding temporary staff referred to in Article 2(f) of the CEOS has been introduced with effect as of 1 January 2014.
- (3) On 17 December 2013, the Commission informed EMSA that it adopted Decision C(2013) 9054 of 16 December 2013 on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union.
- (4) Pursuant to Article 110(2) of the Staff Regulations, implementing rules referred to in Recital 3 shall apply by analogy to EMSA. By way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules. The Commission may, instead of accepting or rejecting the request, require the agency to submit for its agreement implementing rules which are different from those adopted by the Commission.
- (5) Commission's Decision C(2013)9054 is not suitable to apply by analogy to temporary and contract staff of EMSA because it does not cover temporary staff referred to in Article 2(f) of the CEOS to whom specific rules on unpaid leave apply. In addition, the internal organisation of EMSA does not

¹ OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15.

allow putting in place the same mechanism to organise the return to work as the ones provided for in the Commission Decision.

- (6) It is therefore necessary to adopt a decision on leave on personal grounds for officials and unpaid leave for temporary and contract staff within EMSA.
- (7) For reasons of clarity and legal certainty, the Decision of EMSA's Administrative Board of 24/11/2006 concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff should be repealed and replaced by this Decision.

HAS DECIDED AS FOLLOWS:

Chapter I - Provisions for officials

Article 1 – Conditions for granting leave on personal grounds

Leave on personal grounds may be granted by the Appointing Authority at the request of the official concerned. The Appointing Authority shall take a decision on granting that leave after consulting the applicant's immediate superiors, having examined the request in detail and taken into account all relevant factors, in particular the reason for the leave, its duration and the immediate needs of the service. The official shall be notified of his precise obligations when the decision is taken to grant or extend leave on personal grounds.

Article 2 – Duration

1. The duration of leave on personal grounds shall not be less than one month. However, for major family reasons, leave on personal grounds may be granted for a period of 15 days if there are no other possibilities of reducing working time (parental leave, family leave or part time working). Without prejudice to paragraph 2, the duration of the leave provided for in the Staff Regulations shall be restricted to one year, extendable several times for one year. The total duration of leave on personal grounds may not exceed twelve years over an official's whole career.

As a transitional measure, for those officials who on 31 December 2013 have been on leave on personal grounds for more than ten years over their entire career, the total duration of leave will remain limited to fifteen years.

For the purposes of calculating the total cumulative duration of leave on personal grounds, the following periods of leave on personal grounds granted shall not be taken into account:

- personal leave taken in order to follow his spouse, the latter also being an official or other servant of the Union required in the course of his duties to establish his usual residence at such a distance from the applicant official's place of employment that establishing the conjugal residence in such a place would inconvenience the applicant official in the performance of his duties; or
- personal leave taken in order to bring up a child who is considered dependent within the meaning of Article 2(2) of Annex VII to the Staff Regulations and who suffers from a serious mental or physical handicap recognised by the medical officer performing that duty for the Agency and requiring constant supervision or care; or

- personal leave taken in order to assist his spouse, a relative in the ascending line, a relative in the descending line, a brother or a sister in the case of medically certified serious illness or disability.
 - personal leave granted to an official who has been elected or appointed to public office.
2. The period of leave on personal grounds granted to an official elected or appointed to public office shall be restricted to the duration of the term of office.
 3. Other than in exceptional cases (serious illness of a close relative, election to public office, etc.), leave on personal grounds shall start on the 1st or 16th of the month and end on the 15th or last day of the month.

Article 3 – Professional activity

An official who, during leave on personal grounds, envisages engaging in a professional activity or changing from the professional activity already authorised, must obtain prior permission from the Appointing Authority pursuant to Article 12b of the Staff Regulations and in accordance with the rules applicable within the Agency on outside activities and assignments.

In accordance with these rules, such permission shall not be granted to an official for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his Agency and which could lead to the existence or possibility of a conflict with the legitimate interests of the Agency.

The Joint Committee shall be informed of the decisions that have been taken by the Appointing Authority pursuant to Article 12b of the Staff Regulations.

Article 4 – Link with the Agency

During leave on personal grounds, the official shall maintain a link with the Agency entity in charge of human resources, for the purposes of approving a request for extending that leave or for engaging in a professional activity. If, during leave on personal grounds, reorganisation takes place entailing transfer of the official's former tasks to another Agency or Institution, the official shall come under the new Agency or Institution to which the tasks have been assigned in accordance with the legal act(s) governing the transfer of the official's former tasks.

The official shall inform the Agency of his contact details during his leave on personal grounds and keep this information updated at all times.

Article 5 – Career development

In accordance with Article 40(3) of the Staff Regulations, during leave on personal grounds an official shall not be entitled to advancement to a higher step or promotion in grade.

Article 6 – Vacancy of posts

A post which is unoccupied following departure on leave on personal grounds for a period of six months or more shall be considered vacant from the first day of that leave on personal grounds.

Article 7 – Extension

Extension of leave on personal grounds must be applied for by the official two months before expiry of the current period and may be granted by the Appointing Authority, provided that the conditions set out in Article 2 are met.

Article 8 – Return to work

At the latest three months before the end of the leave on personal grounds, and if the official has not already submitted an application to return to work, the Agency entity in charge of human resources shall contact the official and request a written notification of his wish to extend his leave on personal grounds or to return to work, in which case he should provide an updated curriculum vitae which includes details of any professional activity engaged in and new knowledge acquired while on leave.

In order to facilitate the return to work and the identification of the appropriate post, the Agency entity in charge of human resources shall take the measures necessary for the official, on expiry of the period of leave on personal grounds, to return to work in the Agency in the first vacant post in his function group that corresponds to his abilities. The official's application shall be examined as a priority before any publication of the posts to be filled. The vacant post may only be published if the official returning to work does not possess the abilities required for the post to be filled or if he has a personal interest, in particular a family or a financial interest, or represents any other interests of third parties which would impair his independence in the course of his duties in the specific post, such as to lead to an actual or potential conflict of interest.

In order for the Agency to assess the existence of such a conflict of interest, the official shall prior to his reinstatement, inform the Appointing Authority, using a specific form, of any personal interest, in particular a family or a financial interest, or representation of any other interests of third parties such as described above, in order to allow the Appointing Authority to take any appropriate measure as provided for in Article 11a(2) of the Staff Regulations; such measure may not, however, prevent the reinstatement of the official. The assessment carried out by the Appointing Authority shall be made considering the situation of the official after his reinstatement.

Article 9 – Dismissal

An official who has asked to return to work may refuse the first offer of a post corresponding to his function group; in the event of a second refusal, the official may be dismissed after consultation of the Joint Committee. The same procedure applies to an official who has reached the cumulative total of years of leave on personal grounds provided in Article 2(1) of this Decision or who can no longer claim the exemptions set out in Article 2 and who does not apply to return to work.

Article 10 – Secondment

An official on leave on personal grounds who is seconded in the interests of the service shall return to work in his Agency. The official's rights to advancement in step and eligibility for promotion shall recommence from the date on which secondment takes effect.

An official on leave on personal grounds who is then seconded at his own request shall enjoy the right to advancement in step from the date on which secondment takes effect.

At the end of the secondment period, the official shall either:

- apply to return to work in accordance with Article 8 above;
- apply for a new period of leave on personal grounds, provided that the conditions for granting it are met;
- tender his resignation.

Chapter II – Provisions for temporary and contract staff

Title 1 General provisions

Article 11 - Conditions for granting unpaid leave

Unpaid leave may be granted by the authority authorised to conclude contracts ('AACC') at the request of the temporary or contract staff concerned ('staff member'). The AACC shall take a decision on granting unpaid leave after consulting the staff member's immediate superiors, having examined the request in detail and taken into account all relevant factors, in particular the reason for the leave, its duration and the immediate needs of the service. The staff member shall be notified of his precise obligations when the decision is taken to grant or extend unpaid leave.

Article 12 – Professional activity

1. A staff member who, during unpaid leave, envisages engaging in a professional activity or changing from the professional activity already authorised, must obtain prior permission from the AACC pursuant to Article 12b of the Staff Regulations,² and in accordance with the rules applicable within the Agency on outside activities and assignments.
2. In accordance with these rules, such permission shall not be granted to a staff member for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his Agency and which could lead to the existence or possibility of a conflict with the legitimate interests of the Agency.
3. The Joint Committee shall be informed of the decisions that have been taken by the AACC pursuant to Article 12b of the Staff Regulations.³

Article 13 – Link with the Agency

1. During unpaid leave, the staff member shall maintain a link with the Agency entity in charge of human resources, for the purposes of approving a request for extending that leave or for engaging in a professional activity. If, during unpaid leave, reorganisation takes place entailing transfer of the staff member's former tasks to another Agency, the staff member shall come under the new Agency to which the tasks have been assigned in accordance with the legal act(s) governing the transfer of the staff member's former tasks.
2. The staff member shall inform the Agency of his contact details during his unpaid leave and keep this information updated at all times.

Article 14 – Career development

During unpaid leave, a staff member shall not be entitled to advancement to a higher step in grade and shall not be entitled to reclassification in grade.

² Applicable to temporary and contract staff by virtue of Articles 11 and 81 of the CEOS respectively.

³ See footnote 2.

**Title II Specific provisions for temporary staff referred to in Article 2(f) of the CEOS
with a contract for an indefinite period**

Article 15 – Duration

1. In accordance with Article 52 of the CEOS, the duration of unpaid leave requested by a staff member shall be restricted to one year, extendable several times for one year. The total duration of unpaid leave may not exceed twelve years over a staff member's whole career.
2. The duration of unpaid leave shall not be less than one month. However, for major family reasons, unpaid leave may be granted for a period of 15 days if there are no other possibilities of reducing working time (parental leave, family leave or part time working).
3. Other than in exceptional cases (serious illness of a close relative, election to public office, etc.), unpaid leave shall start on the 1st or 16th of the month and end on the 15th or last day of the month.
4. If the temporary staff member requests unpaid leave to serve a term in public office, that leave shall be restricted to the duration of the term of office.

Article 16 – Vacancy of posts

A post which is unoccupied following departure on unpaid leave for a period of six months or more shall be considered vacant from the first day of that unpaid leave.

Article 17 – Extension

Extension of unpaid leave must be applied for by the staff member two months before expiry of the current period and may be granted by the AACC, provided that the conditions set out in Article 15 are met.

Article 18 – Return to work

At the latest three months before the end of the unpaid leave, and if the staff member has not already submitted an application to return to work, the Agency entity in charge of human resources shall contact the staff member and request a written notification of his wish to extend his unpaid leave or to return to work, in which case he should provide an up to date curriculum vitae which includes details of any professional activity engaged in and new knowledge acquired while on leave.

In order to facilitate the return to work and the identification of the appropriate post, the Agency entity in charge of human resources shall take the measures necessary for the staff member, on expiry of period of unpaid leave, to return to work in the Agency in the first vacant post in his function group that corresponds to his abilities. The staff member application shall be examined as a priority before any filling of the posts. The vacant post may only be filled by another person if the staff member returning to work does not possess the abilities required for the post to be filled or if he has a personal interest, in particular a family or a financial interest, or represents any other interests of third parties which would impair his independence in the course of his duties in the specific post, such as to lead to an actual or potential conflict of interest.

In order for the Agency to assess the existence of such a conflict of interest, the staff member shall prior to his reinstatement, inform the AACC, using a specific form, of any personal interest, in

particular a family or a financial interest, or representation of any other interests of third parties such as described above, in order to allow the AACC to take any appropriate measure as provided for in Article 11a(2) of the Staff Regulations;⁴ such measure may not, however, prevent the reinstatement of the staff member. The assessment carried out by the AACC shall be made considering the situation of the staff member after his reinstatement.

Article 19 – Termination of contract

A staff member who has asked to return to work may refuse the first offer of a post corresponding to his function group; in the event of a second refusal, employment may be terminated by the Agency without notice. The same procedure applies to a staff member who has reached the cumulative total of years of unpaid leave provided for in Article 5(1) or who can no longer claim the exemptions set out in Article 5(4) and who does not apply to return to work.

Article 20 – Secondment

A staff member on unpaid leave who is seconded in the interests of the service shall return to work in his Agency. The staff member's rights to advancement in step and eligibility for reclassification shall recommence from the date on which secondment takes effect.

At the end of the secondment period, the staff member shall either:

- apply to return to work in accordance with Article 18 above;
- apply for a new period of unpaid leave, provided that the conditions for granting it are met;
- terminate his contract of employment under conditions referred to in Article 47 of the CEOS.

Title III Specific provisions for other temporary staff

Article 21 – Duration

1. In accordance with Article 17 of the CEOS, the duration of unpaid leave requested by a staff member shall not exceed one quarter of the length of time already worked by the servant or three months if the servant's seniority is less than four years or twelve months in other cases; such leave may not exceed twelve months over the whole of his career⁵. The period of unpaid leave may not exceed the duration of the employment contract still to run.
2. Paragraphs 2 and 3 of Article 15 shall apply by analogy.
3. If the staff member requests unpaid leave to serve a term in public office, that leave shall be restricted to the duration of the term of office and shall not exceed the duration of the employment contract still to run.

⁴ Applicable to temporary staff by virtue of Article 11 of the CEOS.

⁵ Without prejudice to Article 15(1).

Article 22 – Extension

Extension of unpaid leave must be applied for by the staff member two months before expiry of the current period and may be granted by the AACC, provided that the conditions set out in Article 21 are met.

Article 23 – Return to work

1. At the end of unpaid leave, the staff member shall return to work in the post occupied before departure⁶, subject to the examination by the AACC whether the staff member has a personal interest, in particular a family or a financial interest, or represents any other interests of third parties which would impair his independence in the course of his duties in the specific post, such as to lead to an actual or potential conflict of interest.
2. In order for the Agency to assess the existence of such a conflict of interest, the staff member shall, prior to returning to work, inform the AACC, using a specific form, of any personal interest, in particular a family or a financial interest, or representation of any other interests of third parties such as described above, in order to allow the AACC to take any appropriate measure as provided for in Article 11a(2) of the Staff Regulations.⁷

Article 24 – Termination of contract

Where a staff member does not take up his duties again at the end of unpaid leave, his absence shall be regarded as unjustified and the AACC shall terminate the contract pursuant to Article 47 of the CEOS.

Article 25 – Secondment of temporary staff referred to in Article 2(f) of the CEOS

A staff member on unpaid leave who is seconded in the interests of the service shall return to work in his Agency. The staff member's rights to advancement in step and eligibility for reclassification shall recommence from the date on which secondment takes effect.

At the end of the secondment period, the staff member shall either:

- apply to return to work in accordance with Article 23 above;
- apply for a new period of unpaid leave, provided that the conditions for granting it are met;
- terminate his contract of employment under conditions referred to in Article 47 of the CEOS.

⁶ In case of the Agency reorganisation, the staff member shall be reintegrated on the post which has been moved.

⁷ See footnote 2.

Title IV Specific provisions for contract staff

Article 26 – Contract staff

Title III shall apply *mutatis mutandis* to all contract staff, except Article 25.

Chapter III Final Provisions

Article 27

1. The Decision of EMSA's Administrative Board of 24/11/2006 concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff is hereby repealed.
2. The Commission's Decision C(2013) 9054 of 16 December 2013 does not apply by analogy at EMSA.
3. This Decision takes effect on the date following that of its adoption.

Done at Lisbon by written procedure on 17 September 2015,

Frans Van Rompuy

Chairman of the Administrative Board

