



RHODES UNIVERSITY
Grahamstown • 6140 • South Africa

Repayment of Monies Owned as a Result of Remuneration Errors

Protocol

Responsible Committee/Unit/Division/Faculty	HR division
Responsible Chairperson/Director/Manager	Director of HR
Date	February 2013
Review Cycle (e.g. every 2/5/7 years etc)	n/a
Last Reviewed	n/a





PROTOCOL FOR REPAYMENT OF MONIES OWED AS A RESULT OF REMUNERATION ERRORS

1. Background

While every effort is made to ensure clarification in remuneration letters and correct implementation of remuneration from such letters, from time to time, errors do occur in communication and/or implementation. The University has both a legal and ethical responsibility to repay any monies to the individual as a result of such errors of communication and implementation. Similarly, the staff member may be legally obliged to repay overpayments.

For the purposes of this document, remuneration errors refers to any errors made in the communication and/or implementation of remuneration for a particular individual or group of individuals. Such errors may include but are not limited to:

- (i) Incorrect calculation of allowances;
- (ii) Failure to implement an annual adjustment;
- (iii) Failure to specify a non-pensionable allowance as a scarcity allowance or failure to enter a non-pensionable allowance in the correct line on the payroll such that it is not used in calculations of current remuneration;
- (iv) Transposing of a remuneration number in a letter related to remuneration;
- (v) Continued payment by the employer of an amount when such payment should have been stopped; and
- (vi) Implementation on the payroll system such that what is in the remuneration letter is not the same as what is entered in the payroll and therefore not the same as what appears on the individual's payslip.

Where staff are absent from work, this is classified as unpaid leave. Such unpaid leave does not constitute repayment of monies owed to the employer. In the case of unpaid leave, the employee is simply not paid for the days when s/he was absent and the adjustment of his/her remuneration for the month is made, in full, in the next soonest payroll run.

2. Principles

The following principles govern the repayment of monies owed as a result of remuneration errors:

- (i) Rhodes University as an employer makes every effort to ensure that errors are not made. The Human Resources Division and Salaries Section of the Finance Division take all reasonable measures to ensure that errors do not take place. This includes training of staff, provision of frameworks for the determination of remuneration, drawing of reports to check data accuracy, the correct use of the human resource information system and monthly meetings between the two sections and the Data Management Unit to detect problems and put in place measures to address these. It must however be born in mind that both sections deal with thousands of data entries per month and a small error rate is to be expected;
- (ii) The legal requirements of the Basic Conditions of Employment (BCEA, Act no 75 of 1998) shall be adhered to including that:
 - An employer may require an employee to repay overpayments previously made by the employer resulting from an error in calculating the employee's remuneration (section 34(5)(c));
 - An employer may not make any deduction from an employee's remuneration unless the employee agrees, in writing, to the deduction in respect of a debt specified in the agreement (section 34(1)(a));
 - Where staff members have to repay remuneration overpayments, this shall not exceed one quarter of the employee's remuneration in money (section 34(2)(d));

- (iii) Rhodes University as an employer tries to foster an employment partnership with each and every staff member. Such a partnership needs to be characterised by both parties behaving with integrity, in a fair and consistent manner, by the honouring of commitments and by working together to find viable solutions in the interest of a long-term employment relationship;
- (iv) In line with this employment partnership the University upon discovering an underpayment to staff, the University shall regard this as an urgent matter and will seek to address this as soon as possible. Further, where a staff member believes that s/he has been underpaid, the University shall endeavour to conduct an investigation into this matter as soon as possible and with no undue delay;
- (v) It is acknowledged that remuneration matters are complicated and it may be difficult for staff to assess under or overpayments. The HR Generalists for the various areas are available to explain to staff exactly what information is contained in the payslip;
- (vi) Staff members are encouraged to
 - Check their monthly payslip and check that any remuneration letters have been correctly implemented; and
 - Raise any doubts with the employer with undue delay as regards a possible overpayment or incorrect implementation of a remuneration entitlement.
- (vii) It is expected that where the staff member knows that there has been an overpayment or suspects that this may be the case, that:
 - This is reported with undue delay to the HR Generalist for his/her work area; and
 - That the money is not spent until there is clarity as regards the situation;

In the case of underpayments to current staff:

- (viii) Where an underpayment to the staff member has taken place and this was known to the staff member, the Prescription Act period of three years will apply such that the repayment will not go back further than three years;
- (ix) Where an underpayment to the staff member took place and this could not reasonably be known to the staff member, the reconciliation will go back to the start of the error. Where such an error takes place to a large collective such that back payment becomes problematic for the University, negotiation should take place with these staff as to an appropriate settlement.

In the case of overpayments to current staff:

- (x) There is an appreciation that an overpayment and therefore the need to repay monies has a negative financial and psychological impact on the staff member concerned. As such errors should be reported as soon as possible to the employee concerned. The person who has committed the error is encouraged to write in person to the staff member concerned and apologise for the error. This communication would include that the matter is being attended to by the HR Division;
- (xi) Corrections and repayments either by the employer or staff member are important in the interests of internal equity where there is a certain rate for a job and certain principles drive remuneration decisions for collectives and individuals;
- (xii) Where the University has clear evidence of over-payment, it has the right to stop payment with immediate effect without the staff member's involvement and consent. However, the staff member will be advised of this as soon as possible;

- (xiii) Where a debt has occurred over time and the staff member could not have reasonably known that there was an error, consideration will be given to how to minimise the impact of such repayment on the individual's net pay. The University will be allowed to use its discretion in this regard. Where the debt has occurred over a consideration period of time, only the last 18 months will be taken into account on the basis that HR's own reconciliations should have picked up this error in at least two previous occasions given that during a 18 month period, at least two salary implementation processes are likely to have occurred.
- (xiv) In dealing with staff where overpayments have been made and the staff were aware of such overpayments and did not come forward to report this, the University is under no obligation to arrive at a repayment schedule that is suitable to the individual concerned;
- (xv) Where a staff member agrees that there has been an overpayment and also agrees to the quantum of the overpayment, an acknowledgement of debt will be signed. Under this circumstance, the University will seek to negotiate a repayment schedule that takes into account the circumstances of the staff member;
- (xvi) Where a staff member agrees that there has been an overpayment but there is no agreement on the amount or disagrees that monies are owed, the University shall issue a summons against the employee whereupon a Judge or a Magistrate will determine what amount is owing to the employer;
- (xvii) Since certain leave has a remuneration value, the following will apply where a staff member owes the University money:
- The selling of leave to address overpayments is at the discretion of the employer;
 - In the case of support staff: statutory annual leave (i.e. compulsory 15 days of leave as per the BCEA) cannot be used for this purpose;
 - In the case of support staff: annual leave or long-leave can be used, using the most recently earned leave first as this has the greatest remunerative value;
 - In the case of academic staff, academic leave of up to 3 months (earned at 1 month per 6 months) can be used on the proviso that the person does not resign in the next 18 months failing which the money has to be repaid on a pro-rata basis. The value of this is calculated at the rate of the person's salary;
 - In terms of SARS regulations, the use of leave will need to go through the payroll as if the individual was selling this leave. Accordingly, depending on the individual's total income, tax will usually be paid on such selling of leave.
- (xviii) Other options available to staff in offsetting overpayments, are:
- Use of all or part of the service bonus in advance of it being due;
 - Utilisation of the value of future increases;
 - Advance on a long-service award due within the year;
 - Repayment of monies.
- In all these instances, there are tax implications;
- (xix) Monies owed will not include the accrual of interest except where the University has to resort to a summons to have funds returned in which case the interest rate will apply from the date of the letter of demand;

For new staff:

- (xx) Should an error be made in a first contract and where the error in favour of the staff member is not evident, and an individual has made a decision to accept employment at Rhodes University (and usually, terminate an employment relationship with another employer), this contract must be honoured. However, the employer will seek to achieve internal equity over time;

- (xxi) Should an error be made in the first contract and where the error is obvious e.g. R1,600, 000 per annum is offered and the remuneration for the post in the selection process was stated at R160 000 per annum, this will be corrected immediately. The University reserves the right to determine what is “obvious” in terms of the error;

For fixed term contracts:

- (xxii) Should an error be made in a fixed term contract and provided that this does not represent a clear error and gross internal inequity, the contract must be honoured but future contracts must not perpetuate the error;
- (xxiii) Should an error be made when there is no longer a contract with the staff member concerned e.g. payment after cessation of a contract, monies must be repaid by the individual concerned. No future employment of the individual will take place until such monies are repaid.

3. Determining the value of what is owed by the staff member and repayment period and arrangements

- (i) The Credit Act provisions do not apply provided that as an employer Rhodes University is:
- Not making money (e.g. charging interest or a fee) from the repayment by a staff member; and
 - Negotiating the repayment schedule with the staff member and that a document is signed to this effect.
- (ii) Where the overpayment has only taken place within the current tax year, the following applies:
- The net amount after tax paid to the staff member represents the overpayment;
 - Where possible, the full amount owed should be recovered within the same tax year;
 - The IRP5 needs to show the correct amount of salary and tax; and
 - Rhodes University deducts the overpayment of employees’ tax from the new payment to SARS.
- (iii) Where the overpayment has only taken place within previous tax years (and not the current tax year), the following applies:
- The gross amount shall constitute the overpayment;
 - The staff member shall have to claim the repayment as a deduction from SARS in terms of section 11 point nA;
 - However, where the staff member does not usually submit a tax return AND provided that there is agreement on overpayment and the quantum thereof and where the tax on the overpayment is not substantive, the HR Division may use its discretion to use the net amount of the overpayment as the debt owed to the institution.
- (iv) Where the overpayment has occurred over past tax years as well as the current tax years, above 3(ii) and 3(iii) applies;

4. Process

- (i) Where an error is detected (whether by HR or Salaries), this should be brought to the attention of the Senior Generalist immediately who should notify the Director and Deputy Director of Human Resources;
- (ii) Where necessary, an instruction should be given to the Generalist II for the cessation of a particular remunerative element that constitutes the overpayment. A decision should be taken as to whether the individual will be informed of the error prior to (iii) to (v) below taking place. This is largely due to timing of the payroll and/or how soon (iii) to (v) can take place;

- (iii) The relevant HR Generalist is required to calculate the amount owed and the HR Financial Specialist shall do the final approval on this calculation. This should be given priority;
- (iv) The information should be passed onto the Senior Generalists who should make a recommendation to the Deputy Director as regards the repayment of monies. Where necessary, the Deputy Director shall discuss this with the Director;
- (v) A discussion should then ensue with the staff member concerned. The staff member will be provided with a copy of this protocol. This will usually be done with the relevant Senior Generalist and Generalist II. The Deputy Director would get involved as and when required;
- (vi) In the case of underpayment, this will usually be implemented with the next payroll;
- (vii) Where there is agreement of the overpayment and the quantum thereof, this should be put in writing in the form of an acknowledgement of debt. There should also be in agreement, in writing, of the repayment schedule;
- (viii) Where there is agreement on overpayment but no agreement on the quantum owed or where there is no agreement on overpayment, the staff member should be advised that the University will now proceed with the legal process of getting a summons issued. The implications of this should be explained to the staff member. This should be put in writing to the staff member and given to the staff member with a witness present, who shall sign that this document has been given to the staff member.

Written: HR Division
Last updated: February 2013