



INCAPACITY: DUE TO ILL HEALTH / INJURY POLICY

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Why Have a Policy?

Incapacity on the grounds of ill health may be temporary or permanent. Certain types of disability may be temporary but recurrent, such as illnesses related to AIDS and HIV. In the instance of ill health, the employer or the manager acting on behalf of the employer would need to assess the capability of the employee and to determine whether the inability to perform is caused by ill-health. Alternatives to the termination of employment should be sought. For example: whether the employee could be accommodated in a different position performing different duties in the organization.

THE POLICY

1. PREAMBLE

The Municipality has embarked on a process to address incapacity due to ill health/injury at the work place within the prescribed guidelines in terms of the Labour Relations Act.

2. DEFINITIONS

- **Incapacity** refers to an individual's inability to perform according to the stipulated work standards of a particular job.
- All terminology not defined under clause 2 of this policy shall bear the same meaning as in the applicable legislation.

3. LEGAL FRAMEWORK

- Act on Basic Employment Conditions (Act 75 of 1997)
- Act on Labour Relations (Act 66 of 1995)
- Occupational Health and Safety Act (Act 85 of 1993 + Regulations)
- Compensation for Occupational Injury and Diseases (Act 85 of 1993)

4. SCOPE AND APPLICATION

The policy shall apply to all employees of the employer.

5. OBJECTIVES OF POLICY

The purpose of this policy is to ensure the Employer's operational efficiency while at the same time exploring every possible alternative action to avoid termination of employment, it is intended to ensure that when a termination for reasons of incapacity due to ill-health or injury takes place it is effected for a fair reason and in accordance with a fair procedure and as a last resort.

6. POLICY CONTENT

6.1 General Principles

- The Employer is committed to treating any employee who is incapacitated due to illness or injury in a fair and appropriate manner with regard to their particular circumstances.
- As such, no employee should be subjected to any form of victimization or unfair discrimination as a result of their disablement.
- The degree of incapacity, as well as the permanency of the incapacity, will be considered when assessing the person's suitability for ongoing employment
- The cause of the incapacity may also be relevant. In the case of incapacity due to substance abuse, such as alcoholism or drug abuse, counseling and rehabilitation may be appropriate steps to be considered.

6.2 Guidelines for Managing Incapacity

6.2.1 Temporary incapacity

- If an employee is temporarily unable to work, the employer should investigate the extent of the incapacity of the injury

- Such an investigation should include appropriate medical and occupational diagnosis or prognosis

- If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employees should investigate all the possible alternatives short of dismissal. The employee and his/her representative should be given an opportunity to state reasons as to why alternatives short of dismissal should be considered.

- When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee.

- If the employee's medical report indicates that his/her condition has improved and the employee is capable of performing his/her duties, failure to do so will lead to disciplinary action being taken.

6.2.2 *Permanent incapacity*

- In cases of permanent incapacity the employee can, in consultation with the doctor, determine the possibility to guarantee conditions of the employer to accommodate his/her disability.
In cases of permanent incapacity, the Employer will ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability. This could include an alternative job of a lower rank.
- In the process of the investigation the employee will be allowed the opportunity to state a case in response and to be assisted by a fellow employee or Union representative.
- Particular consideration will be given to employees who are injured at work or who are incapacitated by work related illness. {In these cases the employer will assist the employee to claim Compensation for Occupational Injuries and Diseases (COID)}
- Termination of employment should only be considered if the employee's disability cannot be reasonably accommodated by adapting his or her duties or work circumstances, and an alternative position is not available.
- Should the employee be unable to continue working, the Employer will assist the employee to apply for a Permanent Health Insurance (PHI) benefit. Should the PHI claim not be approved by the insurers, the Employer does not hold any liability for compensation. Such application should be made as soon as it becomes apparent that the

employee would be unable to continue performing his or her normal duties.

The application should be made in respect of the relevant fund or scheme applicable to the employee.

7. IMPLEMENTATION AND MONITORING

This policy will be implemented and effective once recommended by the Local Labour Forum and approved by Council.

8. COMMUNICATION

This policy will be communicated to all Municipal employees using the full range of communication methods available to the municipality.

9. POLICY REVIEW

This policy will be reviewed as required.

10. BUDGET AND RESOURCES

The financial and resource implication/s related to the implementation of this policy should be qualified and quantified.

11. ROLES AND RESPONSIBILITIES

The Municipal Manager or his/her delegate assignee accepts overall responsibility for the implementation and monitoring of the policy.

12. PENALTIES

Non-compliance to any of the stipulations contained in this policy will be regarded as misconduct, which will be dealt with in terms of the Disciplinary Code.

13. DISPUTE RESOLUTION

Any dispute arising from this policy due to ambiguous wording or phrasing must be referred to the Local Labour Forum for adjudication. Resolutions from the Local Labour Forum must be incorporated into the policy.