

**AGENDA of the
Portfolio Committee :Management Services
17 June 2015
(Also the agenda for the Mayoral Committee Meeting : 24 June 2015)**

**3.
REVISION OF INCAPACITY: ILL HEALTH / INJURY POLICY**

4/1/1/B

L Bucchianeri

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Corporate Head Office

24 April 2015

1. Executive Summary

The purpose of this report is to recommend to Council to approve the reviewed Incapacity: Ill Health/ Injury Policy.

2. Service Delivery and Budget Implementation Plan - IGNITE

Management Services; Department: Human Resources

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

- Basic Conditions of Employment Act, 1997 (Act 75 of 1997) [BCEA] and;
- Labour Relations Act, 1995 (Act 66 of 1995)
- Occupational Health and Safety Act, 1993 (Act 85 of 1993 including Regulations)
- Compensation for Occupational Injury and Diseases Act, 1993 (Act 130 of 1993)

6. Background/Discussion

Policies are introduced in the workplace to inform employees of rules of employment relationships and employee practices and also to maintain consistency within the workplace.

The concept of an employment systems review in the context of the Employment Equity Act is a comprehensive examination of an organisation's policies and practices to identify and permit the removal of systemic and

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attitudinal barriers to employment opportunities for persons in the designated groups.

It not only helps in identifying systemic barriers to the designated groups but also enables an organisation to institute or formalize non-discriminatory policies and practices.

The Incapacity: Ill Health/ Injury Policy was approved by Council on 26 November 2008 and reviewed by the Human Resources Technical Working Group in order to ensure that the said policy remains current, useful and aligned with applicable legislation and collective agreements.

The following notable amendments have been made to the policy:

Par (Item) re:	Amendments	
	Delete	Insert
Introduction	Replaced with Preamble	
Definitions		Previous policy only included Definition on Incapacity
Legal Framework		To indicate where the policy emanate from
Scope of Policy		Important to know on who the policy is applicable
Objectives		Change in its totality
General Principles		<p>Policy Content Heading inserted above the General Principle heading.</p> <p>Change the second to fourth bullet point to the following:</p> <ul style="list-style-type: none"> · This policy shall only be used in cases of poor performance or non-performance that are directly linked to ill health/injury. · The employer is committed in using this policy not as a punitive measure but to

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		<p>assist employees. As such, no employee should be subjected to any victimization or unfair discrimination as a result of their incapacity due to ill health/injury.</p> <ul style="list-style-type: none"> · Medical evidence shall be critical in guiding the employer on how to assist an employee in terms of this policy. · The employer recognizes the fact that implementation of this policy need to take place once the employee has use of more than 10 days sick leave. The impact of any intervention will be more effective if it is implemented as soon as ill health/injury starts having a negative impact upon the operations of the municipality.
Guidelines for Managing Incapacity		<p>Add heading Investigation. Change cycle to period. Also add: Each employee will be dealt with in terms of his sick leave cycle. The period will run from January to December.</p> <p>Add paragraph on Incapacity</p>
Permanent Incapacity		<p>The word could was changed to may. Changed rank of rate of pay to grade with financial loss.</p> <p>Change second bullet point to:</p> <ul style="list-style-type: none"> · In the process of the investigation, which will be dealt with in terms of formal procedure and due process,

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		<p>the employee will be allowed the opportunity to state a case in response and to be assisted by a fellow employee or Trade Union representative.</p> <p>New bullet point added:</p> <ul style="list-style-type: none"> · The employer's decision to terminate is not subjected to the Permanent Health Insurance benefit.
Procedure Implementation		<p>New paragraph added: In implementing this procedure cognisance must be taken of the various pension Fund Rules requirements. See attached Annexure A as an easy reference.</p>
Refusal to accept alternative suitable placement		<p>New paragraph added: In the case of permanent disablement and where no suitable alternative work is available or possible within current job or in municipality, the disability procedures will be invoked. If the employee refuses suitable alternative work offered, the employee's services should be terminated on the grounds of incapacity.</p>
Redeployment guidelines		<p>New paragraph added:</p> <ul style="list-style-type: none"> · In instances where an employee is redeployed to another department as a result of permanent incapacity, the employee's position will be vacated. · Where an employee does not

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		possess the formal appointment requirements for an available post, but possesses the necessary potential or skills required for the post, he/she will be accommodated by waiving the formal appointment requirements.
Implementation and monitoring		New paragraph added: This policy will be implemented and effective once policy reviewed approved by Council.
Communication		New paragraph added: This policy will be communicated to all Municipal employees using the full range of communication methods available to the municipality.
Policy Review		New paragraph added: This policy will be reviewed according to changes in the applicable legislation and as required.
Non –Compliance		New paragraph added: 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.
Dispute Resolution		New paragraph added: Any dispute arising from this policy will be dealt with in terms

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		of the South African Local Bargaining Council.
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7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

The policies were discussed and reviewed by the local Human Resources Technical Working Group. This item served before the Local Labour Forum on 14 April 2015 for cognisance and was supported by management and organised labour.

10. Annexure

Annexure A: Incapacity: Ill Health / Injury Policy

RECOMMENDATION TO THE COUNCIL:

that the reviewed Incapacity: Ill Health / Injury Policy be **approved**.

RESPONSIBLE OFFICIAL :

L BUCCHIANERI

TARGET DATE FOR IMPLEMENTATION :

01 JULY 2015

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(028) 3138120

Corporate Head Office

24 April 2015

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 JUNE 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that the reviewed Incapacity: Ill Health / Injury Policy be **approved**.

RESPONSIBLE OFFICIAL :

L BUCCHIANERI

TARGET DATE FOR IMPLEMENTATION :

01 JULY 2015

Annexure A
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OVERSTRAND MUNICIPALITY
INCAPACITY: ILL HEALTH / INJURY POLICY

PREAMBLE

In order to address incapacity due to ill health and or injury in the workplace Overstrand Municipality has embarked on a process to address incapacity within the prescribed guidelines in terms of the Labour Relations Act 66 of 1995.

DEFINITIONS

Incapacity: refers to an individual's inability to perform according to the stipulated work standards of a particular job.

Temporary Incapacity / Disability: curable impairment of mental or physical faculties that may impede the affected person from functioning normally only so far as he or she is under treatment.

Permanent Incapacity / Disability: an injury which impairs the physical and/or mental ability of a person to perform his or her normal work or non-occupational activities supposedly for the remainder of his/her life.

Ill Health: a condition of inferior health in which some disease or impairment of function is present but usually not serious in terms of curtailing activity as an illness.

LEGAL FRAMEWORK

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

SCOPE OF POLICY

The policy is applicable to all permanent employees of Overstrand Municipality with the exclusion of the Municipal Manager and Managers directly accountable to the Municipal Manager.

OBJECTIVES

- To ensure the municipality's operational efficiency, while at the same time exploring every possible alternative measure to avoid termination of employment.
- To ensure that when a termination of reasons of incapacity due to ill health or injury occurs, it is affected for a fair reason and in accordance with a fair procedure and as a last resort.

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POLICY CONTENT

General Principles

- The employer is committed to treating employees who are incapacitated due to illness or injury in a fair and appropriate manner with regard to their particular circumstances.
- This policy shall only be used in cases of poor performance or non-performance that are directly linked to ill health/injury.
- The employer is committed in using this policy not as a punitive measure but to assist employees. As such, no employee should be subjected to any victimization or unfair discrimination as a result of their incapacity due to ill health/injury.
- Medical evidence shall be critical in guiding the employer on how to assist an employee in terms of this policy.
- The employer recognizes the fact that implementation of this policy need not take place once the employee has use of more than 10 days sick leave. The impact of any intervention will be more effective if it is implemented as soon as ill health/injury starts having a negative impact upon the operations of the municipality.

Guidelines for Managing Incapacity

Investigation

In order to detect possible incapacity at an early stage it is necessary to investigate an employee's ability to perform when the following sick leave milestone is exceeded.

- 10 days within a 12 months period
- 20 days within a 24 months period
- 30 days within a 36 months period

Incapacity

Incapacity on the grounds of ill health may be temporary or permanent. Certain types of disability may be temporary but recurrent nature. 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.

Temporary incapacity

- If an employee is temporarily unable to work, the employer should investigate the extent of the incapacity or 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 employer should investigate all the possible alternatives short of dismissal. The employee and his/her representative should be given an

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opportunity to state reasons as to why alternatives short of dismissal should be considered. Such an investigation to be in the form of a formal process, including a formal notice.

- 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.

Permanent Incapacity

- 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 may include an alternative position of a lower grade with financial loss. Only if no relevant jobs on a similar rate of pay are available the process of dismissal will follow.
- In the process of the investigation, which will be dealt with in terms of formal procedure and due process, the employee will be allowed the opportunity to state a case in response and to be assisted by a fellow employee or Trade 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 in terms of the Compensation for Occupational Injuries and Diseases Act (COIDA)).
- 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 will 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.
- The employer's decision to terminate is not subjected to the Permanent Health Insurance benefit.

PROCEDURE IMPLEMENTATION

In implementing this procedure cognisance must be taken of the various pension Fund Rules requirements. See attached addendum A as an easy reference.

REFUSAL TO ACCEPT ALTERNATIVE SUITABLE PLACEMENT

In the case of permanent disablement and where no suitable alternative work is available or possible, the medical boarding procedures will be invoked. If the employee

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refuses suitable alternative work offered, the employee's services should be terminated on the grounds of incapacity.

REDEPLOYMENT GUIDELINES

- In instances where an employee is redeployed to another department as a result of permanent incapacity, the employee's position will be vacated.
- Where an employee does not possess the formal appointment requirements for an available post, but possesses the necessary potential or skills required for the post, he/she will be accommodated by waiving the formal appointment requirements.

IMPLEMENTATION AND MONITORING

This policy will be implemented and effective once policy reviewed approved by Council.

COMMUNICATION

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

POLICY REVIEW

This policy will be reviewed according to changes in the applicable legislation and as required.

NON-COMPLIANCE

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.

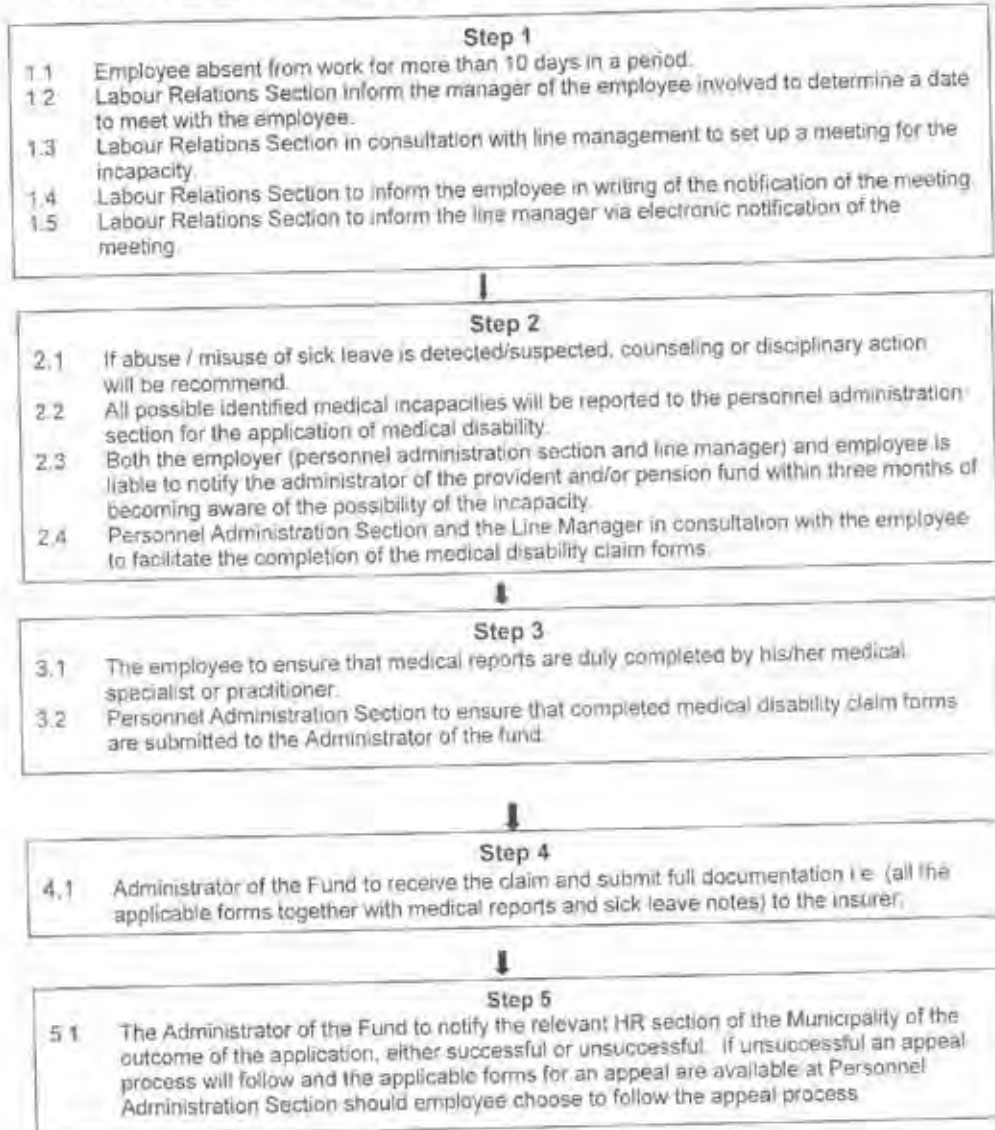
DISPUTE RESOLUTION

Any dispute arising from this policy will be dealt with in terms of the South African Local Bargaining Council.

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DISABILITY CLAIM: FLOW DIAGRAM

ADENDUM A



Policy Section	Human Resources
Current Update	24 June 2015
Previous Review	NA
Approval of Council	26 November 2008