

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.

*Approved by Council
24 June 2015*

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

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

refuses suitable alternative work offered, the employee's services should be terminated on the grounds of incapacity. **I 1 / 004**

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.

Step 1

1.1 Employee absent from work for more than 10 days in a period.
 1.2 Labour Relations Section inform the manager of the employee involved to determine a date to meet with the employee.
 1.3 Labour Relations Section in consultation with line management to set up a meeting for the incapacity.
 1.4 Labour Relations Section to inform the employee in writing of the notification of the meeting.
 1.5 Labour Relations Section to inform the line manager via electronic notification of the meeting.



Step 2

2.1 If abuse / misuse of sick leave is detected/suspected, counseling or disciplinary action will be recommend.
 2.2 All possible identified medical incapacities will be reported to the personnel administration section for the application of medical disability.
 2.3 Both the employer (personnel administration section and line manager) and employee is liable to notify the administrator of the provident and/or pension fund within three months of becoming aware of the possibility of the incapacity.
 2.4 Personnel Administration Section and the Line Manager in consultation with the employee to facilitate the completion of the medical disability claim forms.



Step 3

3.1 The employee to ensure that medical reports are duly completed by his/her medical specialist or practitioner.
 3.2 Personnel Administration Section to ensure that completed medical disability claim forms are submitted to the Administrator of the fund.



Step 4

4.1 Administrator of the Fund to receive the claim and submit full documentation i.e. (all the applicable forms together with medical reports and sick leave notes) to the insurer.



Step 5

5.1 The Administrator of the Fund to notify the relevant HR section of the Municipality of the outcome of the application, either successful or unsuccessful. If unsuccessful an appeal process will follow and the applicable forms for an appeal are available at Personnel Administration Section should employee choose to follow the appeal process.

Policy Section	Human Resources
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