

INCAPACITY POLICY

Item B-HR (01-2008) MC 13/03/2008	INCAPACITY POLICY
--------------------------------------	-------------------

RESOLVED:

1. **That** the contents of the report regarding an Incapacity Policy **BE NOTED**.
2. **That** the Incapacity Policy, attached to the report as **Annexure “A”**, **BE APPROVED**.
3. **That** all similar previous policies **BE RESCINDED**.

ANNEXURE A

Incapacity Policy

Introduction The purpose of this policy is to provide a framework within which incapacity of employees due to ill health, including but not limited to, intermittent illness, physical incapacity, long term illness, alcohol and drug addiction, serious or contagious disease, work related accident or injury, mental illness, old age and continuous or intermittent absenteeism due to illness, can be handled effectively, efficiently and uniformly throughout the EMM.

Definition and Explanation The following are definitions and explanations of terms used in this document.

Term	Definition
“Accident”	Means an accident arising out of an unplanned or unexpected event and in the course of an employee’s employment and resulting in a personal injury, illness or the death of the employee
“Employee”	Means a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and b) any other person who in any manner assists in carrying on or conducting the business of an employer, and “employed” and “employment” have a corresponding meaning
“Medical Practitioner”	Means a person entitled to practice as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974) and including a registered Traditional Healers.
“Work related injury”	Means a personal injury sustained as a result of an accident at work

Term	Definition
"Ill health"	Means a physical or mental condition in which the employee is declared, partially or totally unfit to perform his/her duties, by a registered medical practitioner
"Incapacity"	Means a condition in which an employee, temporarily or permanently does not have the physical, mental or attitudinal ability to perform the duties of the post in which he / she was appointed
"Incapacity Committee"	Means a Committee consisting of members of the Human Resource Management & Development Department, Management from the applicable Department, the applicable Employee, a representative from an registered trade Union and a registered Medical Practitioner, convened to investigate a case of incapacity
"Incapacity due to old age"	Means a condition in which an employee becomes, increasingly incapable of permanently performing the duties in which he / she was appointed due to the effects of old age
"Pension Fund Regulations"	Means the regulations from the different pension funds applicable to termination of service due to incapacity
"Registration of an incapacity case"	Means a procedure according to which a case of incapacity is reported to the Provisioning and Maintenance Division and recorded in a central register
"Sick leave"	As described in the applicable Conditions of Service
"Additional paid sick leave"	As described in Item B-HR (07-2007) to the 2007-02-12 meeting of the Corporate Services Committee of the Ekurhuleni Metropolitan Municipality in respect of establishing an interim arrangement with regard to allocating additional sick leave to employees who have exhausted their current sick leave allocation, whereby the Incapacity Committee shall recommend, on an individual basis, that additional paid sick leave for an employee be approved by the City Manager. This definition will exclude Injury on Duty as covered by the COIDA

Legislation	<p>All applicable and related Acts and the Conditions of Services:</p> <p>Constitution of South Africa. Basic Conditions of Employment Act, 1997, Act No 75 of 1997; Collective Agreement on Conditions of Service dated 29 December 2003; Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993; Labour Relation's (Act No. 66 of 1995 as amended 2002); Occupational Health and Safety Act, 1993, Act No 85 of 1993; Pension Fund Act and Statutes;</p>
Categories	<p>The following categories of incapacity can apply:</p> <ul style="list-style-type: none">• Permanently totally incapacitated• Permanently partially incapacitated• Temporarily partially incapacitated• Temporarily totally incapacitated
Composition of the Incapacity Committee	<p>An Incapacity Committee, facilitated by the Provisioning and Maintenance Division, shall be established consisting of the following members:</p> <ul style="list-style-type: none">• Management / Supervisor from the relevant Department;• Employee;• Registered trade Union representative as delegated or confirmed by the Trade Union• HRM &D Divisions:<ul style="list-style-type: none">• Provisioning & Maintenance• Labour Relations• Employee Well-Being (Psychological Services, as well as - Occupational Health and Safety),• Registered Medical Practitioner (Occupational Health)• Other stakeholders if required• Relevant Trade Union will be invited to all such meetings
Functions of the Incapacity Committee	<p>Members of the Incapacity Committee have the following functions in considering all alternatives short of dismissal, including the extent to which the employee's work circumstances or duties might be adapted to accommodate him / her, the possibility of securing a temporary replacement for the employee, and the availability of suitable alternative work</p>

Identification Phase	
Member	Function
Management / Supervisor	<p>To investigate the extent of the employee's incapacity and prognosis, keeping the following in mind:</p> <ul style="list-style-type: none"> • the nature of the job; • the period of absence; • the possibility of securing temporary replacement. <p>To provide the committee with all relevant information concerning the employee i.e. sick leave record, observed behaviour, redeployment possibilities, reasons for application, as well as relevant standards against which performance can be measured.</p>
Exploratory Phase	
Member	Function
Employee	The employee must be allowed an opportunity to state a case in response and may be assisted by a registered trade Union representative or fellow employee.
Registered trade Union representative	A registered trade Union representative or fellow employee shall assist the employee, unless he / she chooses otherwise.
Provisioning & Maintenance Division (Chairperson & Secretary)	<p>To provide the Incapacity Committee with information with regard to vacancies and possibility of securing temporary replacement, advise with regard to relevant policies and handle the administrative processes, including registration of the incapacity case.</p> <p>Gather all financial information and the implications thereof, if the employee is a member of any of the Council's approved Pension / Provident funds.</p>
Labour Relations Division	<p>To act as a labour advisor to the Incapacity Committee.</p> <p>See to it that where no alternatives are found to exist, the employee must be afforded a fair incapacity hearing before dismissal, in accordance with all the relevant legislation.</p>
Employee Well-Being Division	To advise the Incapacity Committee. To conduct counselling sessions with the employee and / or conduct an occupational health investigation. In cases where the incapacity is related to e.g. alcoholism or drug abuse, to arrange and refer the employee for rehabilitation.
Registered Medical Practitioner (Occupational Health)	To answer pertinent questions concerning the employee's medical and physical state, prognosis, transfer ability to a possible new job, etc. All medical Practitioners is not obliged to release any information where such information will not be to the committee's assistance in determining if the employee's work or personal situation can be improved.

Procedure of Assessment Referral comes from the following Source:

- Employee
- Supervisor
- Disciplinary Action
- Absenteeism control (Employees Well-Being);

and are dealt with as follows:

Stage	Description	Responsible Division
1	Initial assessment of the information regarding the employee's incapacity.	Provisioning & Maintenance, Employee Well-Being, Labour Relations Divisions and Management/Supervisor of the applicable Department.
2	Refer the case to the Provisioning & Maintenance Division, with all relevant information, for recording in the central register.	Management / Supervisor of the applicable Department.
3	Convene a meeting of the Incapacity Committee to deal with the cases received.	Provisioning & Maintenance.
4	Inform the Finance Department of all cases recorded in the central register.	Provisioning & Maintenance.

Stage	Description	Responsible Division
5	<p>Determine one of the following options on the basis of it's suitability to the nature of the incapacity:</p> <ul style="list-style-type: none"> • Maintain <i>status quo</i> of current position, if the employee's duties may be satisfactorily adapted. • Consider alternative accommodation. • Request medical boarding. • Refer for counselling, • Any other Alternative short of dismissal. • Request Investigation for an incapacity hearing. 	<p>Incapacity Committee.</p> <p>Management / Supervisor of the applicable Department to implement.</p> <p>Incapacity Committee, in consultation with <u>both</u> registered trade Unions.</p> <p>Provisioning & Maintenance to implement.</p> <p>Management / Supervisor of the applicable Department and Employee Well-Being to implement.</p> <p>Incapacity Committee.</p> <p>Provisioning & Maintenance and Labour Relations.</p>
6	Implement the negotiated option.	Applicable Division.
7	Secure temporary replacement if necessary.	Provisioning & Maintenance
8	Monitor the progress.	Applicable Division.
9	Refer to Pension Fund Adjudicator if necessary.	Provisioning & Maintenance.

Sick leave & Salary	Cases of incapacity registered by the Incapacity Committee will, from date of registration, be entitled to apply for “Additional paid sick leave” until the issue is concluded, provided that normal sick leave has been exhausted.
Medical Costs	<p>Medical costs shall be covered as follows:</p> <p>Medical Boarding</p> <ul style="list-style-type: none">• If the employee is a member of any of the Council’s approved Pension/Provident Funds, the Council is liable for the payment of all medical expenses.• If the employee is not a member of any of the Council’s approved Pension/Provident Funds, the Council shall consider the payment of medical expenses through the Employee Well-Being Division. <p>Medical Assessment</p> <ul style="list-style-type: none">• If the Council arranges a medical assessment for an employee, the payment of such medical expenses shall be paid through the Employee Well-Being Division.• If the employee does not honour the appointment, the employee will be responsible for any costs incurred, unless the Director: Employee Well-Being in consultation with his/her registered trade Union representative or fellow employee; found that the reasons for not honouring the appointment were warranted.• No medical costs incurred on the own initiative of the employee will be paid for by the Council.
Rescind	This Policy rescinds all previous policies of a similar nature.
Recourse on Implementation	Dispute arising from the implementation of this policy shall be dealt with in terms of the Dispute Resolution Procedure of the Council.
