



# INCAPACITY/ILL-HEALTH INJURY POLICY

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Date **25/08/2020**

Approved: \_\_\_\_\_

Date

Reviewed:

Council Resolution **DC E.5**  
(DC No):

## Contents

|    |                                    |          |
|----|------------------------------------|----------|
| 1. | Introduction.....                  | <b>E</b> |
|    | <b>rror! Bookmark not defined.</b> |          |
| 2. | Legal Framework.....               | 3        |
| 3. | Purposeof this Policy.....         | 3        |
| 4. | Scope of this Policy.....          | 3        |
| 5. | Policy.....                        | 3 - 9    |
| 6. | Policy Review.....                 | 10       |
| 7. | Effective date and Approval.....   | 10       |

# 1. Introduction

This Procedure is a set of instructions having the force of a directive issued by the Municipal Manager in terms of sections 67 of the Local Government: Municipal Systems Act, No 32 of 2000.

## 2. Legal Framework

- Labour Relations Act, 66 of 1995, Schedule 8 (LRA)
- Employment Equity Act, 55 of 1998 (EEA) in relation to disability
- Occupational Health and Safety Act, 85 of 1993 (OH&SA) in relation to injuries on duty
- Local Government Municipal Finance Management Act 56 of 2003 (MFMA)
- Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA)

## 3. Purpose of this Policy

This specific procedure serves to create uniformity in the application of Section 67(1) (c), (h) and (k) of the Local Government: Municipal Systems Act, No 32 of 2000 and Schedule 8 Code of Good Practice, Labour Relations Act 66 of 1995.

## 4. Scope of this Policy

This policy must be observed by all employees of Garden Route District Municipality.

## 5. Policy

Section 67 (1) (b), (c), (h) and (k) of the MSA determines that:

- i. A Municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and adopt appropriate systems and procedures, consistent with any uniform standards prescribed in terms of section 72(1)(c) MSA, to ensure fair, efficient, effective and transparent personnel administration, including-
  - (a) The supervision and management of staff
  - (b) Disciplinary procedures
  - (c) Any other matter prescribed by regulation in terms of section 72

- ii. The Employer shall treat any employee who is incapacitated due to illness or injury in a consistent, fair and appropriate manner with regard to the employee's particular circumstances
- iii. No employee shall be subject to any form of victimization or unfair discrimination as a result of their incapacity and the Employer shall maintain high levels of confidentiality when managing incapacity.
- iv. The degree of the incapacity, as well as the permanency of the incapacity, shall be factors when assessing an employee's suitability for ongoing employment.
- v. The Employer shall ensure that termination arising from incapacity due to ill health or injury shall be in accordance with the LRA 66 of 1995, Schedule 8 Code of Good Practice. Sections 10 and 11 deals with incapacity ill-health and injury.
- vi. To ensure compliance with these requirements, the Procedure below must be adhered to.

5.1. **Defining Incapacity due to ill-Health or Injury:**

- a) Incapacity may be as a result of ill health (mental or physical) or injury.
- b) Injury can include both work related and non-work related injury which may be temporary or permanent.
- c) Certain types of incapacity may be temporal, but recurrent, arising out of chronic, but manageable illnesses or injury.
- d) Pregnancy is not a form of incapacity.
- e) The terms used in this section are defined below, noting that illnesses and injuries may appear to fall under one category, but over time may shift into another category, as medical diagnosis and prognosis is not always the same.

5.1.1 **Temporary** - refers to situations where an employee is off for a protracted period of time and where the prognosis is a full recovery with or without requiring some level of accommodation when returning to work.

5.1.2 **Permanent** - this refers to situation where the prognosis is that the employee cannot return to work and cannot perform their contractual duties. This will occur in situation of terminal illness, chronic illness or injury where the employee is unable to perform their contractual duties and where the Employer can make no reasonable accommodation.

5.1.3 **Accommodation**- this refers to situations where an employee is temporarily or permanently physical or mentally debilitated by the injury or incident and changes in the physical workplace may be required to allow them to return to

- 5.1.4 **Sporadic** - this refers to employees who take an excessive amount of intermittent (i.e. not one continuous period) sick leave for unrelated or related illnesses. This undermines the employee's ability to meet their contractual obligations.
- 5.1.5 **Recurrent** - this differs from sporadic in that the employee has a defined chronic illness that needs to be accommodated. An example would be an employee who is meeting their contractual obligations, but requires regular dialysis.

## 5.2. **Incapacity due to ill-health or injury**

- 5.2.1. Line managers are required to consider each case individually. Interventions by line managers include simple investigation to confirm facts, discussion with employee where the employee needs to assist in providing the facts and formal incapacity proceedings.
- 5.2.2. An employee taking **35 days** or more ad hoc sick leave in a 12 months period; managers must check the detailed history of sick leave. This will determine whether more formal procedures are required.
- 5.2.3. An employee suffering from major illness or accident resulting in prolonged periods is also a trigger for application for temporary incapacity and related benefits linked to particular pension funds or Group Life Insurance.
- 5.2.4. An employee being out of work for prolonged periods (not necessarily continuous) in excess of **35 working days** within a 12 months period is a trigger similar to 5.2.2 above, but in this case the reason for the absence may require further interventions linked to related policies and procedures such as Employee Assistance Programme (for example in the case of major depressive disorder) .
- 5.2.5. Incapacity procedure should be triggered by the line manager through regular monitoring of employee leave records; however, Human Resources may also trigger such enquiry through corporative monitoring of records.
- 5.2.6. In instances where a possible incapacity problem has been identified, the line manager shall be required to follow the procedure outlined below. Failure to do so may result in disciplinary action being against the line manager and possible liability in terms of the MFMA in cases of fruitless and wasteful expenditure. Such fruitless and wasteful expenditure may arise in situations where late application is made to a fund and the Employer is required to incur additional costs in lieu of disability or other benefits.

### 5.3. **Procedure for managing Incapacity**

- 5.3.1. As a general rule, the situation of employees absence that exceeds 35 working days in a period of 12 months as a result of illness of injury should be investigated with the view to determining if such absence constitutes incapacity.
- 5.3.2. The first step in such investigation should be to consider the individual sick leave record and the reasons for absence as displayed in that record in order to decide if this may be a case of incapacity.
- 5.3.3. The line manager must hold initial consultations with the employee where reasons for absence and the period involved require further action. The purpose of this consultation shall be to determine the underlying cause of the absence and its impact on operational requirements. It shall also be to determine whether any formal applications are required to access pension or group life benefits.
- 5.3.4. The line managers needs to distinguish between:
- 5.3.5. Sporadic absenteeism i.e. patterns of excessive sporadic absence with or without an underlying chronic illness; sporadic absence will usually be manifested in an employee taking one or two sick leave without a certificate, on a regular basis with varied medical complaints. It may also include chronic underlying illness, with similar pattern of ad hoc short periods of sick leave.
- 5.3.6. Temporary incapacity arising from illness or injury which is not chronic in nature, but where pension funds of group life benefits needs to be applied for or where temporary or permanent accommodation may need to be made for the returning employee; this would include for example prolonged treatment for cancer, recovery from a vehicle accident.
- 5.3.7. Long term chronic illness or injury leading to periods of temporary incapacity; this would also require application for benefits. The sooner the process is triggered the better.
- 5.3.8. Long term chronic illness or injury leading to possible permanent incapacity; this would also require application for benefits. The sooner the process is triggered the better.
- 5.3.9. In cases where an employee has been off work for prolonged periods due to a specific illness, accident or operation, but where there is sufficient sick leave available and where on returning to work, such employee is fully fit and recovered, there is no need to trigger the formal incapacity process at all.

**5.4. Absence due to injury on duty or occupational diseases**

- 5.4.1. In cases of injury on duty or occupational disease, employees requiring time off shall be treated in terms of the provisions of the COIDA in conjunction with the Employer's policy on special leave. For this purpose the Municipal Manager shall approve a maximum of up to three months special leave, provided the necessary supporting information and documentation is submitted.
- 5.4.2. Line managers shall be responsible for ensuring that employees are assisted with all the required applications and reports relating to injuries or occupational illness. The Occupational Health and Safety and Human Resources Departments will assist with the formal application, but the primary responsibility for monitoring and supporting lies with the line department.
- 5.4.3. All supporting documentation shall be provided to the Employer's Occupational Health and Safety Practitioner who will be responsible for submitting the documentation to the Compensation Commissioner, as defined in the COIDA.
- 5.4.4. Human Resources shall assist employees to apply for any income replacement benefits they may be entitled to in terms of either their pension fund rules or UIF.
- 5.4.5. In instances where such incapacity is unreasonably long, the line manager may consider termination. Such consideration shall be dealt with in terms of clause 5.5 and 5.6 below.

**5.5. Temporary Chronic Absenteeism**

- 5.5.1. In the case of long term chronic illness or injury leading to periods of temporary incapacity a similar process shall be followed
- 5.5.2. In addition to the above, the line manager must obtain advice from support from the Employee Wellness section.

**5.6. Permanent Incapacity**

- 5.6.1. At the initial or subsequent consultation in terms of clause 5.3 above, the line manager must explore whether the incapacity is likely to be permanent in nature.
- 5.6.2. The incapacity process must be triggered when the employee is off on sick leave exceeding 35 days within a 12 month period with related illness and is likely to expend all their sick leave. Managers are required to use their discretion but ensure that the process is initiated timeously to avoid the

prescription of ill health benefits linked to either Group Life Insurance or Retirements Funds.

- 5.6.3. This initial determination of permanent incapacity shall be based on the submission of a specialist medical report, and requires the concurrence of the Employer's appointed Doctors for a second opinion through the Occupational Health and Safety Practitioner's office.
- 5.6.4. Upon receipt thereof, consideration shall be given to whether the employee can perform their function with adaptation or whether an alternative function within the municipality can be performed.
- 5.6.5. Such alternative placement or adaptation shall be reasonable and affordable.
- 5.6.6. Where it is clear from the medical diagnosis and prognosis that the employee is permanently incapacitated and cannot be placed in any manner, Human Resources shall apply for disability benefits under Group life and to the relevant retirement fund or UIF.
- 5.6.7. Line management is responsible for notifying Human Resources within 5 calendar days of receiving the medical reports of employees in all cases of possible incapacity. This is to ensure that the employee complies with the relevant pension fund rules in order to receive their qualifying benefits timeously.
- 5.6.8. Termination of services shall follow communication from the relevant retirement fund, provided that such communication is not unreasonably delayed. Employees who are not a member of a fund are dealt with in terms of clause 5.10 below.

5.7. **Alternative Placement or Termination of service due to Incapacity: ill-Health or Injury**

- 5.7.1. In order to consider the option of alternative placement or termination of services, an incapacity Hearing must be convened by the line manager and the Labour Relations office.
- 5.7.2. Such a hearing shall be chaired by an employee of the municipality duly appointed by the Municipal Manager.
- 5.7.3. The Chairperson shall make submission to the hearing regarding options of accommodation or alternative placement, which must be supported by medical evidence, failing which, the line manager shall provide evidence ( as per items listed under 5.8.5 below or any other relevant information) to support the termination of services.
- 5.7.4. The employee or his/her representative shall be given an opportunity to make representations on alternative placement in order to avoid



termination of services.

5.7.5. Before a decision to dismiss an employee on grounds of ill-health or injury, the Chairperson shall consider the following:

- a) the employee is no longer capable of performing the work;
- b) the extent to which the employee is able to perform the work;
- c) the extent to which the employee's work circumstance might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee's duties might be adapted;
- d) The availability of any suitable alternative work;
- e) Termination of service.

5.7.6. Where accommodation is to be considered, the Employment Equity Section may be called upon for assistance and/ or advice.

**5.8. Where Alternative Placement is considered:**

5.8.1. The employee's Department must make every effort to identify and secure suitable alternative work;

5.8.2. Failing this, the Employer's Recruitment and Selection Department must be requested by that Department to identify a suitable alternative which the employee is competent to perform should any be available.

5.8.3. Should Recruitment and Selection identify an appropriate placement outside the Department, and should such a position be a funded vacancy, the employee shall be alternatively placed into that position;

5.8.4. Such placement shall be at the same or lower level. In the latter instance, the employee shall be required to drop their current level of remuneration to within the relevant scale of the new position. Such placement shall be confirmed in a revised approved job description.

5.8.5. Such appointment shall be facilitated by the Labour Relation Office in consultation with the relevant Head of Department and the affected employee. Should the employee refuse such offer, the chairperson shall reconvene the hearing in order to consider termination of services.

5.8.6. The chairperson shall recommend to the Municipal Manager to terminate services but as a last resort. This shall arise out of the failure to find a reasonable alternative or the failure of the employee to accept a reasonable alternative.

5.8.7. Management of incapacity to staff who are not members of the SALGBC approved retirement Fund. The Employer is not required to await any outcome from the retirement fund. However, such employees shall be assisted by Human Resources with

respect to applications to the Unemployment Insurance Fund.

## 6. Policy Review

This policy will be reviewed annually as necessary.

## 7. Effective date & Approval

On the minutes of the Council meeting that took place on 25 August 2020 (E.2) this Policy was approved.

**This document was signed on the \_\_\_\_\_ of \_\_\_\_\_ 20\_\_.**

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**Municipal Manager**

\_\_\_\_\_  
**Union Representative (SAMWU)**

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**Union Representative (IMATU)**