

## SIYATHEMBA LOCAL MUNICIPALITY

### INCAPACITY POLICY AND PROCEDURE

#### **1. INTRODUCTION**

- 1.1 Incapacity for the purpose of this procedure refers to:
  - 1.1.1 Poor work performance
  - 1.1.2 Ill health or injury
- 1.2. The Municipality's incapacity procedure forms part of the conditions of employment of each employee.
- 1.3. In applying this procedure the Municipality is committed to the principles of substantive and procedural fairness.
- 1.4. Possible cases of incapacity should be addressed by line management as soon as reasonably practicable.

#### **2. INCAPACITY : POOR WORK PERFORMANCE**

##### 2.1. Procedure

- 2.1.1 A newly appointed employee will be placed on probation for a period that is reasonable given the circumstances of the job, not exceeding six months. The period should be determined by the nature of the job, and the time it takes to determine the employee's suitability for continued employment. When appropriate the Municipality should give an employee whatever evaluation, instruction, training, guidance or counselling which is necessary and reasonable to enable the employee to render satisfactory service. Dismissal during the probationary period should be preceded by an opportunity for the employee to state a case in response and to be assisted by a trade union representative (an elected shop steward according to a collective agreement) or fellow employee.
- 2.1.2 After probation, an employee should not be dismissed for unsatisfactory performance unless the Municipality has –
  - given the employee appropriate evaluation, instruction, training, guidance or counselling; and after a reasonable period of time for improvement, the employee continues to perform unsatisfactorily
- 2.1.3 The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the Municipality should consider other ways, short of dismissal, to remedy the matter.
- 2.1.4 In the process, the employee should have the right to be heard and to be assisted by a trade union representative (an elected shop steward according to a collective agreement) or a fellow employee.

## 2.2. Guidelines in cases of dismissal for poor work performance

Any person determining whether a dismissal for poor work performance is unfair should consider:

- 2.2.1 Whether or not the employee failed to meet the agreed upon performance standards; and
- 2.2.2 If the employee did not meet the required performance standards whether or not –
  - the employee was aware, or could reasonably be expected to have been aware, of the required performance standards
  - the employee was given a fair opportunity to meet the required performance standards;
  - and dismissal was an appropriate sanction for not meeting the required performance standards

### **NOTE:**

**Any dismissal must be approved according to the Municipality's delegations of power**

## **3. INCAPACITY: ILL HEALTH OR INJURY**

### 3.1. Procedure

3.1.1 Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the Municipality should investigate the extent of the incapacity or the injury, which may include consultation with medical practitioners. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the Municipality should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the:

- nature of the job
- period of absence
- seriousness of the illness or injury
- possibility of securing a temporary replacement for the ill or injured employee

In cases of permanent incapacity, the Municipality should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.

3.1.2 In the process of the investigation referred to in sub paragraph 3.1.1 the employee should be allowed the opportunity to state a case in response and to be assisted by a trade union representative (an elected shop steward according to a collective agreement) or fellow employee.

3.1.3 The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for the Municipality to consider.

3.1.4 Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The

courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

3.2. Guidelines in cases of dismissal arising from ill health or injury.

Any person determining whether a dismissal arising from ill health or injury is unfair should consider –

3.2.1 Whether or not the employee is capable of performing the work; and

3.2.2 If the employee is not capable –

- the extent to which the employee is able to perform the work;
- the extent to which the employee’s work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee’s duties might be adapted; and
- the availability of any suitable alternative work

**NOTE:**

**Any dismissal must be approved according to the Municipality’s delegations of power.**

**4. THE AGREEMENT**

This is the full agreement between the Parties and no additions will be of any effect unless reduced to writing and signed by both Parties or imposed by the express provisions of the Labour Relations Act (No. 66 of 1995).

**WITNESSES**

1. ....  
2. ....

**WITNESSES**

1.....  
2.....

## **Annexure A**

1. Did the employee receive appropriate evaluation, instruction, training, guidance, or counselling?
2. Did the employee receive a reasonable time period for improvement?
3. If yes, did the employee continue to perform unsatisfactorily?
4. Did the employer conduct an investigation to establish the reasons for the unsatisfactory performance?
5. Did the employer consider other ways, short of dismissal, to remedy the matter?
6. If yes, what ways?
7. Was the right to be heard given by the employer to the employee?
8. Was the right to be heard exercised by the employee?
9. Was the employee assisted by a trade union representative (if applicable) or fellow employee?
10. Did the employee fail to meet the agreed upon performance standards or not?
11. If the employee did not meet the required performance standards, whether or not:
  - The employee was aware, or could reasonably be expected to have been aware, of the required performance standards?
  - The employee was given a fair opportunity to meet the required performance standards?
  - Dismissal was an appropriate sanction for not meeting the required performance standards?

## **Annexure B**

1. Is the employee's ill health/injury temporary or permanent?
  - 1.1. If temporary, did the employer investigate the extent of the incapacity (i.e. consultation with medical practitioners?).
  - 1.2. If the time period of absence is unreasonable long, did the employer investigate all possible alternatives short of dismissal?
  - 1.3. If permanent, did the employer consider alternative employment or adapting the duties/work circumstances of the employee to accommodate the incapacity?
2. Did the employer allow the employee an opportunity to state a case in response?
3. Was the right to state a case exercised by the employee? Yes
4. Was the employee assisted by a trade union representative (If applicable) or fellow employee?
5. Did the employer consider the relevancy of the degree and cause of the incapacity against the fairness of the dismissal?
6. Did the employer, in cases of, i.e. alcoholism or drug abuse, consider counselling and rehabilitation?
7. Did the employer, in cases of injury at work/work-related illness, explore all possible avenues to try and accommodate the incapacitated employee?
8. Is the employee capable of performing the work or not?
9. If the employee is not capable:
  - 9.1. What is the extent to which he/she is able to perform the work?
  - 9.2. What is the extent to which his/her work circumstances might be adapted to accommodate disability?
  - 9.3. What is the extent to which his/her duties might be adapted?
  - 9.4. Is there any suitable alternative work available at the employer?