



HUMAN RESOURCE POLICY INCAPACITY

Policy No: NLMHRET002	Effective Date: 01 April 2008
Approved:	Review Date: 01 April 2009

Notwithstanding the review date herein, this policy shall remain effective until such time approved otherwise by Council and may be reviewed on an earlier date if necessary, subject to Labour Law Dispensation or operational requirements.

1. SCOPE

Applies to all permanent employees, including those on probation, in the employ of Ngwathe Local Municipality.

2. PREAMBLE

The Code of Good Practice for Dismissals for Incapacity as annexed to the Labour Relations Act forms the framework for this policy and its implementation.

3. POLICY

It is Ngwathe's responsibility to ensure that all cases of incapacity, whether for work performance or incapacity arising as a result of ill health / injury are handled in a fair and equitable manner, taking into account the interests of all parties. Ngwathe commits itself to upholding the principles contained within the Code of Good Practice in applying this policy.

4. STAKEHOLDER ANALYSIS

Role	Responsibility
Municipal Manager / Director Corporate Services (subject to its delegations if any)	
Council	
Line Manager	
Human Resources	
Labour Representatives	

5. PROCEDURE

Probation:

A newly hired employee may be placed on probation for a period that is reasonable given the circumstances of the job. 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, an employer should give an employee whatever evaluation, instruction, training, guidance or counselling the employee requires 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 shop steward or fellow employee.

After probation

An employee should not be dismissed for unsatisfactory performance unless the employer 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.

The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.

In the process, the employee should have the right to be heard and to be assisted by a shop steward or a fellow employee.

Any person determining whether a dismissal for poor work performance is unfair should consider whether or not the employee failed to meet a performance standard;

If the employee did not meet a required performance standard it must be determined whether or not -

- the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
- the employee was given a fair opportunity to meet the required performance standard; and
- dismissal was an appropriate sanction for not meeting the required performance standard.

INCAPACITY: ILL HEALTH OR INJURY

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 employer should investigate the extent of the incapacity or the injury. 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. 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. In cases of permanent incapacity, the employer should ascertain the possibility of accommodating the employee's disability.

In the process of the investigation referred to above, the employee should be allowed the opportunity to state a case in response and to be assisted by a shop steward or fellow employee.

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 an employer to consider, and in this instance the Policy on Substance and Alcohol abuse should be referred to.

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.

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 -

- whether or not the employee is capable of performing the work
- 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.

6. AUTHORITY

Formulation Policy	:	Municipal Manager
Authorisation Policy	:	Council
Ownership and Maintenance Manager	:	Director Corporate Services