



# Employee Incapacity Policy

## TABLE OF CONTENTS

- 1 INTRODUCTION.....2
- 2 PURPOSE .....2
- 3 SCOPE OF APPLICATION .....2
- 4 DEFINITIONS .....2
- 5 EMPLOYEE INCAPACITY POLICY GUIDELINES.....2
- 6 ROLES AND RESPONSIBILITIES .....4
- 7 MONITORING, EVALUATION AND REPORTING .....5



## 1 Introduction

The Municipality acknowledges its responsibility towards its managers and employees in the provision of a fair and objective process for dealing with poor work performance due to the incapacity of the employee. The Municipality is also committed to creating an efficient workforce in which employees who prove to be unable to provide the required performance levels in the organisation can be terminated following a fair process that is in line with the requirements of the Basic Conditions of Employment Act and the Labour Relations Act. It aims to create a process for dealing with incapacity that will in no way be discriminatory or unfair.

## 2 Purpose

This policy is aimed at ensuring that all staff are fully productive in the positions they are appointed in. It is aimed at dealing with situations where a worker appears to be incapable of delivering the required output of the position he is employed to fill. Therefore this policy defines the process required in dealing with staff and lays out the roles that managers and Human Resources are required to play in appropriately dealing with suspected incapacity.

In addition, this policy *assumes that all the processes required by the Performance Management System and the Employee Assistance Programme have, where reasonable, been followed.*

## 3 Scope of Application

This policy is applicable to all the Employees of Emakhazeni Municipality regardless of the nature of their work contracts.

## 4 Definitions

***The following definitions are relevant to this policy:***

**INCAPACITY** means the lack of power, fitness or necessary abilities to perform tasks required in the performing of the job to which he/she has been appointed.

**PERFORMANCE RELATED PROBLEM** means the job incumbent's failure to produce the required output, or standard of output, as per the requirements of the job.

## 5 Employee Incapacity Policy Guidelines

### 5.1 Policy Provisions

5.1.1. The purpose of the policy is to assist the Municipal Manager of the Emakhazeni Local Municipality to effectively determine the incapacity of an employee and, where necessary, terminate the employee through a process that is fair and complies with the processes laid out in the Labour Relations Act.

5.1.2. This policy is only to be applied once the provisions of the Performance Management Policy and the Employee Assistance Policy have been exhausted.



## **5.2 Procedure to determine incapacity**

5.2.1 If it is clear to the manager/supervisor that an employee's performance is not adequate despite previous interventions, a process of termination may be embarked upon. However, it is the responsibility of the manager to ensure that the following procedures have been fully complied with, and if they have not, to embark on a process of complying with them:

5.2.2 The supervisor must have given written notice of a performance related problem.

5.2.3 After serving the written notice of a performance related problem, must meet/have met with the employee, together with a representative of his/her choice or alone if the employee chooses.

5.2.4 In the meeting described in 5.2.3 the supervisor must have:

- Explained the requirements, grade, skills and nature of the job.
- Indicate the employee's lack of performance in relation to the requirements of the job.
- Indicate reasons for performance in relation to the requirements of the job.
- Hear the employee/employee's representative on the employee's view of:
  - Whether he/she has performed in accordance with the job specifications;
  - If the employee agrees he/she has not performed in accordance with the requirements of the job, give the reasons for this.
- After hearing the employee's standpoint the supervisor must have:
  - Developed and initiated a formal programme of counselling and instruction to enable the employee to reach the required standard of performance, including:
    - Assessing with the employee the realistic timeframe that it could reasonably be expected for an employee to overcome the poor work performance,
    - Determine the expected date by which the employee must have reached the required performance standards;
    - Especially, establishing ways to address any factors that affect the employee's ability to perform that lie beyond the control of the employee.
- Record the proceedings and give a copy to the employee.

5.2.5 If the poor performance of the employee is not remedied within the time frames established by the programme referred to in 5.2.4, the supervisor must

- give the employee a written report on the outcome of the procedure; AND
- consult again with him/her to explain the outcome of the procedure, and on measures to address any problems indicated in the report; AND
- explain the implications that this inability to perform has for the Council.

5.2.6 Thereafter the supervisor must consider whether:

- There is any likelihood of improvement and therefore to continue to give the employee the appropriate guidance, instruction and counselling and to establish a further, appropriate period for the employee to meet the required standard of performance; or
- To place the employee in a more appropriate job, or
- To dismiss the employee.



- 5.2.7 Before exercising the option of dismissal or placement in an alternative job, the Supervisor must give the employee a full hearing. At this hearing the procedure will review all that has gone before and will give the employee a fair hearing to establish his/her reasons for failure to meet the required standards.
- 5.2.8 The chairperson must then decide what the sanction will be. A decision for dismissal must only be given after full consideration has been given to the employee's views and the fairness of the opportunities afforded him to improve. Only if all realistic paths to assist the employee to improve have been exhausted, should a dismissal verdict be given.
- 5.2.9 If through due process incapacity has been established, and the employer has an alternative position to offer the employee that entails lower pay, the employee must be consulted and the options explained. He/she then has the option to accept the new position with lower benefits, or face dismissal.
- 5.2.10 In the event of either dismissal or demotion, the employee must be given the option of appeal to a specified higher level, stipulating that his/her written appeal should reach the person within a week after the outcome of the hearing. The appeal would then follow the procedures outlined in the Grievance, Disciplinary and Dispute Resolution Policy of the Municipality.

### **5.3 Dispute Resolution**

If the employee does not use his/her right of appeal within the Municipality, he/she may lodge a dispute with the CCMA.

## **6 Roles and Responsibilities**

### **6.1 The Municipality**

- ❑ The Human Resources Department of the Municipality must, if approached, ensure that the role-players mentioned in 5 above are briefed and that they receive basic training to fulfil their responsibilities and/or exercise their rights.

### **6.2 The Role of the Human Resource Function:**

- ❑ To provide basic training to either party in the fulfilling of their responsibilities and/or the exercising of their rights.
- ❑ To attend the hearings as an observer and monitor of fair procedure.

### **6.3 The role of the manager/supervisor**

- ❑ To attend any courses which may be offered at any time on the management of performance and the handling of disciplinary cases.



- ❑ In the event of a performance-related issue reaching the possible dismissal stage, to approach the Human Resources Department for further briefing/training in the fulfilling of his/her responsibilities.
- ❑ To follow the procedures as outlined, at all times bearing in mind the fairness of the situation.

#### **6.4 The employee**

- ❑ To make every effort to improve his/her standard of work to meet the requirements of the job.

### **7 Monitoring, Evaluation and Reporting**

Human Resources will monitor and evaluate the implementation of the Incapacity Policy and will report deficiencies in the practice thereof to the Municipal Council.