

MANTSOPA LOCAL MUNICIPALITY



INCAPACITY POLICY

Mantsopa Local Municipality Incapacity Policy

<i>Next Review Date</i>	2011
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Approval of Policy

Please note that the implementation of the policy contained in this document is subject to approval and signing off by all relevant Heads and/or Committees, including but not limited to:

- Municipal Manager; and
- Municipal Council.

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1 Purpose

1.1 The purpose of this policy is to:

- 1.1.1 Outline the municipality's approach to the management of incapacity resulting from poor work performance in the form of incompetence or unsatisfactory performance, and/or ill health or injury;
- 1.1.2 Promote efficient and effective performance to avert and correct inadequate performance;
- 1.1.3 Ensure that a uniform and consistent approach is adopted in managing incapacity; and
- 1.1.4 Limit the potential for unfair discrimination in the management of incapacity.

2 Scope

- 2.1 This policy applies to all employees of the municipality, including fixed term, temporary and probationary employees.
- 2.2 This policy further differentiates between the management of poor work performance (including unsuitability and incompatibility of an employee), and ill-health or injury which renders an employee unable to continue performing his/her job.

3 Definitions

- 3.1 **“Guidance or counselling”** envisages a joint and interactive process through appropriate instruction, evaluation, training, guidance, or counselling and may continue throughout the improvement period.
- 3.2 **“Incapacity”** is the inability of an employee to meet the required standards of his/her position, either as a result of poor work performance and/or ill-health or injury.
- 3.3 **“Poor work performance”** is the inability of an employee to meet the required performance standard or output for the position in which he or she is employed - for example, less than expected output or quality of output, failure to meet set targets and non-conformance to reasonable or agreed standards.

- 3.4 **“Ill-health or injury”** in terms of this policy is any temporary or permanent physical or mental impairment, that prevents or limits an employee’s ability to perform his/her contractual duties.
- 3.5 **“Unsuitability”** is when an employee is unsuited to a job due to his/her disposition or character (rather than his/her performance).
- 3.6 **“Incompatibility”** applies to an employee who does not “fit in” to the work environment because of an inability to work effectively with his/her manager, fellow employees, clients or any other stakeholders.
- 3.7 **“LRA”** means the Labour Relations Act, 66 of 1995.
- 3.8 **“Reasonable period of time for improvement”** is dependent on the circumstances of each case, with due regard to the nature of the job, extent of the poor performance, status of the employee, length of service of the employee, past records, etc.
- 3.9 **“Reasonableness of a work standard”** is established by reference to workplace practices, the relative performances of other employees, express or implied warranties given by employees regarding their level of skill and experience, the implications of deficient performance for the business, or the position and status of the employee. Generally, the more senior, highly paid and specialised the employee, the higher the standard of work that can reasonably be expected without much monitoring.

4 Principles

- 4.1 The municipality is committed to the principle of fair labour practices, and seeks to create an organisation that reflects best practice employee relations.
- 4.2 Management of incapacity is a line management function. All managers are responsible for the management of incapacity on their places of work.
- 4.3 The municipality and the employee are jointly responsible for ensuring that they are aware of the job and performance standards required of them to do the job satisfactorily.
- 4.4 Incapacity counselling should not generally be invoked for isolated incidents.

- 4.5 The first priority is for the employee and the municipality to co-operate to rectify and improve performance.
- 4.6 Employees are entitled to respond to any issues/allegations arising from the application of this policy.
- 4.7 Neither the municipality nor the employee is entitled to legal representation during the course of the incapacity proceedings. Employees shall be entitled to be represented by a fellow employee or trade union representative.

5 Policy Provisions

5.1 Poor Work Performance

- 5.1.1 Poor work performance refers to an employee's failure to meet an agreed standard of performance that he/she was aware of, or could reasonably be expected to be aware of, and where the employee was given fair opportunity to meet the agreed performance standards.
- 5.1.2 All managers must take accountability for managing performance in general and poor performance in particular.
- 5.1.3 Employees will be assessed regularly, as required by the municipality's performance management system.
- 5.1.4 It is **management's responsibility** to ensure that appropriate counselling, instruction, training and guidance are provided to employees to enable them to meet the performance standards that have been set; and that employees are given a reasonable period of time to develop their skills and knowledge and perform in terms of the required performance standards.
- 5.1.5 It is the **employees' responsibility** to ensure all reasonable steps are taken to develop and acquire any skills or knowledge necessary for them to perform to the required standard, within the time period communicated to them by their line manager.

5.1.6 In applying this policy, management must assess the incapacity by considering the:

- a) extent to which the incapacity impacts on the work of the District municipality, the employee's components, colleagues, and the public;
- b) extent to which the employee fails to meet the required performance standards established by the employer;
- c) extent to which the employee lacks the necessary skills to perform in accordance with the employee's job description;
- d) nature of the employee's work and responsibilities; and
- e) circumstances of the employee.

5.2 Ill Health Or Injury:

5.2.1 Ill-health or injury is a temporary or permanent physical or mental impairment, that prevents or limits an employee's ability to perform his/her contractual duties.

5.2.2 If the employer is of the view that an employee is not performing in accordance with the job that the employee has been employed to do as a result of poor health or injury the employer must investigate the extent of the incapacity or injury.

5.2.3 In the investigation the municipality will consider whether the nature of the employee's ill health or injury is of a temporary nature and the period of time that the employee is likely to be absent from work. In this investigation the District municipality must consider:

- a) The nature of the job;
- b) The likely period of absence;
- c) The seriousness of the illness or injury;
- d) The remuneration of the employee during the employees period of absence;
and
- e) The possibility of securing a temporary replacement for the ill or injured employee.

5.2.4 If the nature of the employee's ill health or injury is of a permanent nature the employer must investigate the possibility of:

- a) securing alternative employment for the employee;
- b) adapting the duties or work circumstances of the employee to accommodate the employee's disability; and
- c) offer boarding on the grounds of ill health or injury.

5.2.5 It is the **employee's responsibility** or their family representative, to bring the impairment to the attention of management, where reasonable. Further, the employee's is responsible for providing the relevant documentation and proof of the impairment, within reason.

5.2.6 It is **management's responsibility** to assess and conduct the investigation into the representation and/or information provided by the employee or his representative. Where necessary, the manager has the discretion to use an independent medical practitioner, appointed and paid for by the municipality, to identify and/or verify the injury or cause of the ill-health. Since the employee has the right to privacy, the doctor may not be required to provide a diagnosis unless the employee consents to it. However, the municipality may insist, whether it be from the employee's practitioner or the one nominated by the municipality, for a prognosis – i.e. the practitioner must report on the effects of the illness on the employee's duties and responsibilities, whether and how long the effects will last. This information on the effect of an employee's illness on his or her ability to work properly, must also include an assessment of whether there is a danger/threat (or lack thereof) to colleagues or members of the community (e.g. a contagious disease that is airborne). All information obtained will be treated with sensitivity and confidentially.

5.2.7 Management shall have the discretion to decide, based on the facts at hand, whether or not the employee will be required to continue with his/her contractual capacity or if an alternative position may be offered within the business.

5.2.8 Management will ensure that the enquiry into ill-health or injury is conducted in a fair and confidential manner and that the dignity of the employee will be upheld during all stages of the process.

6 Procedures

6.1 Poor Work Performance

6.1.1 There are 3 important and distinct phases in dealing with incapacity based on poor work performance.

- a) Establishing the fact of poor performance.
- b) Affording the employee an opportunity to remedy his defective performance.
- c) The consequences of the employee's ability to rectify the inadequate performance.

6.1.2 Establishing the fact of poor performance envisages determining:

- a) Whether a performance standard exists – sources of performance standards can be varied, including letters of appointment, induction manuals, emanate from direct instruction, custom, practice in the company, etc.
- b) Whether the standard has been met – the inquiry is not concerned at this stage with the reasonableness of the standard or the employee's awareness of that standard.
- c) Proof of poor performance – is a question of fact to be determined on a balance of probabilities. This can be difficult especially where the employee's tasks are not capable of precise measurement and evaluation, in which event, proof is best established by an assessment/ appraisal conducted by the employer.
- d) Awareness of the performance standard.
- e) If the employee is found to have failed to meet a performance standard:
 - i. He is not automatically held accountable for that failure.
 - ii. The employer must establish that the employee was aware of the performance.
 - iii. To avoid pleas of ignorance by the employee, the employer is required to show either that the employee was aware, or could reasonably have been aware of the standard.

6.1.3 Affording the employee an opportunity to remedy his defective performance envisages the employee being given a fair opportunity to meet the performance standard. An employee may not be dismissed due to his poor performance unless he has received “appropriate evaluation, instruction, training, guidance or counselling”. The employee must be given a reasonable period of time for improvement:

- a) This is linked to the employer’s duty to render assistance by way of instruction, training, etc, which may continue throughout the period of time afforded for improvement.
- b) During this time, the employer must continually monitor and evaluate the employee’s performance, recording improvements and highlighting areas of concern.
- c) What constitutes a “reasonable period time for improvement” will again depend on the circumstances, with due regard to the nature of the job, extent of the poor performance, status of the employee, length of service, past record, etc.

6.1.4 Once the “reasonable period” has expired, the employer must again assess, factually, whether the employee continues to perform unsatisfactorily. If so, the employer may proceed with an investigation.

6.1.5 The requirements normally applied with regard to evaluating the performance, warning the employee of the possible termination of his services if he fails to improve and affording him a reasonable opportunity to improve, may be dispensed with in the following circumstances:

- a) Where a manager or senior employee whose knowledge and experience qualify him to judge for himself whether his is meeting the standards set by the municipality.
- b) Where the degree of professional skill required is so high and the potential consequences of the smallest departure from that high standard are so serious that even an isolated instance of failure to meet the standard may justify dismissal.

6.2 Appropriateness of dismissal:

6.2.1 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.

6.2.2 The investigation:

- a) Must establish the reasons for the employee's unsatisfactory performance, including the reasonableness or legitimacy of the performance standard.
- b) If the performance standard is not objectively reasonably capable of achievement, that is the end of the inquiry.
- c) Although the employer's prerogative to set the performance standards required is recognised, the standards set must clearly not be unreasonable with regard to the particular industry or work situation.
- d) The employee is entitled to state his case and be assisted by a fellow employee during the investigation process.

6.2.3 The ordinary requirements for a fair hearing will apply (but may be relaxed in the case of managerial employees).

6.2.4 The right to be heard does not necessarily have to be a formal hearing. In the context of a dismissal, an opportunity to be heard entails, where it is not a formal enquiry, notice that dismissal or disciplinary action is being contemplated against the employee and affording the employee concerned an opportunity to make representations which are then considered in a bona fide manner.

6.2.5 If the performance standard is reasonable and the employee has still not met the standard despite appropriate training, counselling etc, the focus shifts to the consequences of the employee's incapacity.

6.3 Consequences of the employee's incapacity:

6.3.1 The focus is on whether dismissal is an appropriate sanction for not meeting the required performance standard. The municipality must consider:

- a) The degree and extent of the employee's inability to perform.
- b) Possible prejudice to the safety of others.
- c) Possible effects on the morale of others.
- d) The likelihood of future improvement.
- e) The seniority of the employee.
- f) The position occupied, length of service and past record.
- g) The availability of other work which may suit the employee's capabilities.

6.3.2 The municipality should show that the possibility of alternative employment was considered.

6.3.3 The municipality is not obliged to create employment for an incompetent employee but where an alternative position is available, it should be offered.

6.3.4 Manager's Checklist

- a) **Identify** whether the employee is failing to meet the required performance standard.
- b) **Assistance** must be given to the employee in the form of regular monitoring, guidance, etc in order to improve performance, and give the employee a fair opportunity to improve.
- c) Hold a **fair** hearing if performance fails to improve.
- d) If **dismissal** is contemplated, consider the following –
 - (i) Did the employee fail to meet a performance standard?
 - (ii) Was the employee aware or should s/he have been aware of the required performance standard?
 - (iii) Was the employee given a fair opportunity to meet the required standard?
 - (iv) Is dismissal the appropriate sanction?

6.4 Incompatibility

- 6.4.1 The same procedure for work performance will generally apply to incompatibility as well, adapted according to the context. Employees counselled for incompatibility may be good performers – accordingly, the above procedures regarding the improvement of performance will be adapted to give the employee an opportunity to rectify his/her inappropriate behaviour rather than actual work performance.

6.5 Ill health/Injury

- 6.5.1 The same procedures above will generally also apply to poor work performance that is due to ill health or injury, adapted according to the context.
- 6.5.2 The employee's manager must establish whether the ill health or injury is of a permanent or temporary nature. Medical reports should be obtained where necessary.
- 6.5.3 In investigating the extent of the employee's incapacity, the manager must allow the employee to state a case in response and to be assisted by a fellow employee or union representative.
- 6.5.4 Consideration should be given to the nature of the job, the length of the incapacity, the seriousness of the incapacity and the possibility of using temporary staff in the interim.
- 6.5.5 If the incapacity is of a permanent nature, the manager should attempt to adapt the duties or work circumstances to accommodate the employee's disability.
- 6.5.6 If the employee's medical report indicates that his/her condition has improved and the employee is or will be capable of performing his/her duties within a reasonable period, the employee should be permitted to continue or return to work as the case may be.
- 6.5.7 If the incapacitation will be permanent or is of temporary but lengthy period (beyond the sick leave entitlement and/or unpaid sick leave period where granted), and if no alternatives are available, the employee's services may be terminated.

6.5.8 The manager should, where reasonably possible, find ways of seeking alternative means of accommodating the employee (e.g. lightening his/her duties, transferring him/her to another post) before considering termination of employment, which must be done via a fair hearing.

6.5.9 An employee should not unreasonably refuse alternative work or reasonable relocation where it is offered as an alternative to termination of employment.

7 Delegations

7.1 This policy is to be applied in accordance with the municipality's policy and procedures on delegated powers.

7.2 The delegations refer to those between the Municipal Council and the Municipal Manager, and between the Municipal Manager and other responsible Officials.

7.3 All delegations are to be recorded in writing.

8 Annexures