



POLICY ON INCAPACITY MANAGEMENT

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RELATED DOCUMENTS

UJ Documents	Other
<ul style="list-style-type: none"> • Incapacity guidelines 	<ul style="list-style-type: none"> • Labour Relations Amendment Act (Act 66 of 1995)
Stakeholders affected by this document (units and divisions who should be familiar with it):	<ul style="list-style-type: none"> • Management Executive Committee • Executive Dean and Deputy/Vice Deans • Executive Directors and Directors • Heads of Departments/Schools • Human Resources practitioners • Unions
Website Address	INTRANET

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1. **SCOPE**

- 1.1 This incapacity policy and procedure applies to all employees employed at the University of Johannesburg.

2. **PURPOSE**

- 2.1 The purpose of this policy and procedure is to introduce general guidelines for managing an employee's incapacity owing to poor work performance or ill health. Deviations from these guidelines do not invalidate any proceedings or decisions, provided that an employee is at all times entitled to substantive and procedural fairness.

3. **DEFINITIONS**

- 3.1 **"Employee"** means:

- (a) Any person, excluding an independent contractor, who works for the University and who receives, or is entitled to receive, any remuneration; and
- (b) Any other person who in any manner assists in carrying on or conducting the business of the employer.

- 3.2 **"Employer"** means The University of Johannesburg.

- 3.3 **"Incapacity"** refers to an employee's temporary or permanent lack of ability to perform effectively due to ill health or injury, or poor work performance. A distinction is drawn between incapacity and disability. Guidelines in terms of and for the treatment of persons with disabilities are set out in the Code of Good Practice on the treatment of People with Disabilities¹. It is the employee's inability to perform due to ill health or injury; or incompetence due to a lack of skills, training or the ability to work with fellow employees. Incompatibility is also a form of incapacity as it relates to an employee's inability to relate to their employer or colleagues This document deals with poor performance related to conditions of employment, contract standards and performance agreements including incapacity related to illness or ill health

- 3.4 **"Management"** means the person who directly or indirectly directs (oversees and regulates) the activities of the employee and who is duly authorized by the University of Johannesburg to act as a manager or management representative

- 3.5 **"Remuneration"** means any payment in money or in kind, or both in money and

¹ GN 1064 in GG 23718 of 19 August 2002

in kind, made or owing to any person in return for that person working for the University and 'remunerate' has a corresponding meaning

- 3.6 **“Chairperson”** refers to the chairperson who is chairing the formal incapacity hearing is a person that is an appointed in terms of the disciplinary Policy of the University
- 3.7 **“Misconduct”** means improper or unacceptable behaviour by the employee which implies that an employee knows or should know the rule, and yet does not comply with the rule
- 3.8 **“Trade union representative”** means a member of a UJ recognized trade union who is elected to represent employees in a workplace within a particular recognized bargaining unit

4. OBJECTIVES

- 4.1 To promote efficient and effective delivery of service by employees, thereby positively contributing to the achievement of the University's strategic goals and objectives.
- 4.2 To assist the employer in applying corrective and rehabilitative action where required.
- 4.3 To assist in handling cases where employees are not performing to the standards of work required of them in terms of their employment contracts or performance agreements.
- 4.4 To identify reasons for non-performance and to provide a structured system to assist affected employees to improve performance to the required standards within a reasonable period of time.

5. PRINCIPLES

- 5.1 The employer is entitled to expect employees to meet and measure their obligations in terms of their employment contracts and annual performance agreements.
- 5.2 The principles of fairness must apply and as such, all employees must be dealt with fairly in the process of incapacity management related to poor performance and/or ill-health.
- 5.3 The process of determining incapacity contains various stages with the main aim of assisting the employee to achieve the desired performance levels and to

resolve areas of concern in a planned manner.

- 5.4 Whilst the process is corrective and not punitive, it is understood that when informal counselling or discussion with the employee has not achieved the desired outcome, termination of service may be appropriate if the matter is referred to a formal incapacity hearing and adequate reasons are presented to justify termination of service of the employee.
- 5.5 Confidentiality is important and meetings between management and employee must be treated as such.
- 5.6 During the different stages, the employee must be provided with sufficient information with regard to the reasons for the alleged incapacity that will allow the employee to respond. During the evaluation it is important to determine whether the employee's incapacity is due to ill health or due to the employee performing below the standard that is reasonably required from him/her.
- 5.7 Performance standards set must be specific, measurable, achievable, realistic and time bound. Line managers must review the performance standards against the Performance Management Policy and Process and take appropriate and remedial measures as soon as possible.
- 5.8 Poor work performance that arises from willful or negligent misconduct contrary to the Disciplinary Code of the University is a disciplinary issue related to misconduct, and not incapacity matter.

6. PROCEDURE - INCAPACITY DUE TO POOR WORK PERFORMANCE

6.1 STAGE 1 - Formal incapacity meeting

(Note: This stage does not disqualify the employer's right to have informal discussions and or correspondence with the employee in order for the employee to meet the required standard prior to commencing with the stage one procedure)

- 6.1.1 If an employee in terms of his/her key performance outputs measured against his/her job profile and/or performance contracting does not meet the required performance as reasonably expected, or where the employee has been achieving the set standards in the past but his/her line manager notices a relaxation in the performance of the employee, the manager, after consultation with the relevant Executive Dean or Executive Director, should arrange a formal incapacity meeting with the employee as soon as possible.
- 6.1.2 If required, the employee may elect to be represented by a labour union representative, or a fellow employee.

- 6.1.3 The purpose of the meeting is to identify the areas of non- performance and an attempt must be made to identify the reasons for the poor performance.
- 6.1.4 If the employee is found to be performing below the standard that can reasonably be required from the employee, the line manager must counsel the employee regarding the nature of the poor performance.
- 6.1.5 If deemed necessary, assistance that is reasonable in the circumstances must be arranged. This assistance normally involves, but is not limited to, mentoring, coaching and further training. A reasonable time period to provide the assistance, which is determined by circumstances such as the requirements of the position, nature, grade and level of the job.
- 6.1.6 The counselling as provided for in 6.1.4 above must be reduced to writing by the relevant manager and the obligation to perform should commence only after the assistance as set out in 6.1.5 above has been made available to the employee. The manager and employee must attempt to agree to a time period within which the performance will be monitored. If no agreement is achieved, the employer must determine a period that is reasonable because the onus will be on the employer to illustrate that it was a reasonable time period considering the circumstances.
- 6.1.7 The manager must monitor the employee's performance obligations over the period and must also commit to assist the employee to achieve the required performance standards. It is recommended that regular evaluation and counselling sessions are held with the employee during this period. During these sessions, the following must be discussed:
- (a) the reason(s) for the session must be explained in detail;
 - (b) the manager must give the employee feedback on progress or lack of progress;
 - (c) the employee must be given an opportunity to respond; and
 - (d) the sessions should be minuted and contents of the discussions confirmed to the employee in writing.
- 6.1.8 If the employee achieves the standard of performance over the agreed period, the process is considered to be finalized.
- 6.1.9 If the employee fails to meet the standard of performance during the period of monitoring, the process is elevated to stage 2 (formal incapacity hearing).
- 6.1.10 Should the performance of the employee suffer a decline within two (2) months of the expiry of the agreed period of monitoring, the process will be escalated to

stage 2.

6.1.11 In the case of senior employees, less strict requirements and shorter evaluation periods may be set where appropriate.

6.2 **STAGE 2- Formal incapacity inquiry**

6.2.1 The employee must be given at least five (5) working days' written notice of a formal incapacity hearing. The notice must inform the employee that the purpose of the incapacity hearing is to consider whether the employee is failing to meet a required performance standard and that if the employee is found not to meet the required performance standard, the employment relationship may be terminated.

6.2.2 The employee must be informed of the right to be represented by a fellow employee or labour union representative should the employee wish so.

6.2.3 In determining whether termination of service for poor work performance is appropriate, the chairperson must consider the following:

(a) whether the employee failed to meet the required performance standard; and

(b) if the employee did not meet the required performance standard whether or not:

(i) the employee was aware, or could be reasonably expected to have been aware, of the required performance standard,

(ii) the employee was given a fair opportunity to meet the required performance standard, and

(iii) dismissal was an appropriate sanction for not meeting the required performance standard.

6.2.3 In considering termination of services, the chairperson must consider:

(a) the extent of the poor work performance;

(b) the chance(s) of improvement;

(c) the seniority and experience of the employee; and/or

(d) other alternatives short of dismissal, where appropriate and practical.

6.2.4 The outcome is communicated in writing to the parties present at the meeting.

7 PROCEDURE - INCAPACITY DUE TO ILL HEALTH/ILLNESS

(Note 1: This stage does not disqualify the employer's right to have informal discussions and or correspondence with the employee in order for the employee to meet the required standard prior to commencing with stage one procedure)

(Note 2: When there is agreement, after consultation with the relevant persons / parties, that medical boarding on the ground of ill-health or injury should be pursued, Stage One and Stage Two below need not be followed.)

7.1 STAGE 1 - Formal incapacity meeting

- 7.1.1 If an employee in terms of his/her key performance outputs measured against his/her job profile and/or performance contracting does not meet the required performance as reasonably expected, or where the employee has been achieving the set standards in the past but his/her line manager notices a relaxation in the performance of the employee due to ill health and frequent absences from the workplace, the manager must investigate the extent of the incapacity/injury, taking into consideration the employee's sick leave record and applicable medical reports with due regard to the frequency and duration of sick leave absences. The manager should arrange a formal meeting with the employee as soon as possible.
- 7.1.2 If required, the employee may elect to be represented by a labour union representative, or a fellow employee.
- 7.1.3 At the incapacity meeting the employee must be given an opportunity to provide an explanation for the incapacity related to ill-health/illness which affects his/her performance and be heard on all the issues that the manager investigated. Relevant medical and other information must be considered, and management must record the events that have resulted in incapacity in a sequential manner.
- 7.1.4 The manager must ascertain whether the incapacity for ill-health or injury is temporary or permanent in nature and the period of time the employee is likely to be absent from work.
- 7.1.5 If the incapacity is temporary in nature the manager should investigate the extent of the incapacity or injury. If the employee is likely to be absent for a period that

is unreasonably long in the circumstances the manager must consider:

- (a) the nature of the job;
- (b) the likely period of absence;
- (c) the seriousness of the illness or injury;
- (d) the effect of the employee's absence on other employees;
- (e) adapting the employee's duties or work circumstances; and
- (f) the possibility of securing a temporary replacement.

7.1.6 The employee or employee representative may make suggestions or proposals in respect of the considerations in 7.1.5, taking into account the operational needs of the University.

7.1.7 If the employee's temporary disability due to ill-health or injury cannot be accommodated at this stage of the process or if it is of a permanent nature, then stage 2 will commence.

7.2 STAGE 2 - Formal incapacity hearing

7.2.1 The employee must be given five (5) working days written notification of the formal incapacity hearing. Any request for extension must be sanctioned by the employment relations representative in the Human Resources Division in consultation with the appropriate line manager.

7.2.2 The employee must be informed of the right to be represented by a fellow employee or labour union representative should the employee so wish.

7.2.3 A termination of employment would be fair if:

- (a) the employee has been counselled and their medical conditions and related problems have been discussed with the employee;
- (b) the employee's medical condition has made it impossible for the employee to perform normal duty;
- (c) the prognosis on recovery is poor;
- (d) the employee had a fair opportunity to contest the employer's outcome or conclusions on the employee's ability to perform; and
- (e) the employees working conditions cannot be adapted or alternative employment within the workplace is not available.

7.2.4 The services of an employee who is on probation may be terminated prior to the

expiry of the probationary period.

8 **ADDITIONAL GUIDELINES**

8.1 Table: Description of Guideline Process Steps, Responsibilities and Roles – Incapacity due to Poor Work Performance

Process Steps	Activity	Responsibility and role
STAGE 1 - Formal incapacity meeting		
1	If an employee in terms of his/her key performance outputs measured against his/her job profile and/or performance contracting does not meet the required performance as reasonably expected, or where an employee has been achieving the set standards in the past, but management notices a relaxation in the performance of the employee, the manager should arrange a formal incapacity meeting with the employee as soon as possible.	Direct manager to arrange meeting and assisted by Human Resources Business Partner (HRBP).
2	The manager, when inviting the employee to a meeting must inform the employee that he/she may choose to be represented by a fellow employee or union representative.	Direct manager to arrange meeting and inform employee of his/her rights to be represented if required.
3	An attempt must be made to identify the reasons for the poor performance.	Direct manager and employee.
4	If the employee is found to be performing below the standard of performance that can reasonably be required from the employee, the manager must counsel the employee regarding the nature of the poor performance.	Direct manager to inform employee.
5	If deemed necessary, assistance must be arranged. This assistance may be in the form of mentoring, coaching and further training. A reasonable time period must be agreed upon this assistance.	

Process Steps	Activity	Responsibility and role
6	The discussion and obligation to perform during the reasonable period as agreed <i>must be reflected in writing</i> and this obligation to performance should commence only after the conditions as set out above have been met. An employee's refusal to acknowledge an obligation to perform as discussed in the informal counselling meeting may be construed unfavorably against the employee in considering a termination of service.	Direct manager to send e-mail to employee which is a description of what was agreed at the meeting.
7	The manager must monitor the employee's performance over the agreed period and must also oblige to reasonably assist the employee to achieve the required performance standards. It may be necessary to hold regular feedback sessions with the employee or further incapacity counselling.	Direct manager.
8	If the employee achieves the standard of performance over the agreed period, the process is concluded.	Direct manager to inform employee.
9	If the employee fails to meet the standard of performance, the process is elevated to stage 2.	Direct manager to follow stage two process steps assisted by HRBP.
10	Should the performance of the employee suffer a relapse within two (2) months after the first agreed period, the process will be escalated to stage 2.	Direct manager to follow stage two process steps
STAGE 2- Formal incapacity inquiry		
1	The employee must be given at least five (5) working day's written notice of an incapacity hearing. The notice must inform the employee that the purpose of the incapacity hearing is to consider whether the employee is failing to meet a required performance standard and that if the employee is found not to be meeting the required performance standard, the employment relationship may be terminated.	Direct manager to consult with the employment relations representative for assistance and record keeping.
2	The employee must be informed of the right to be represented by a fellow employee or trade union representative should the employee wish so.	

Process Steps	Activity	Responsibility and role
3	The chairperson of the incapacity hearing will be an independent senior official appointed by the University.	
4	<p>In determining whether termination of service for poor work performance is appropriate, the chairperson must consider:</p> <ol style="list-style-type: none"> 1. Whether the employee failed to meet the required performance standard; and 2. If the employee did not meet the required performance standard whether or not: <ol style="list-style-type: none"> (a) The employee was aware, or could be reasonably be expected to have been aware, of the required performance standard, and (b) The employee was given a fair opportunity to meet the required performance standard. 3. The chairperson must consider termination as a last resort. He/ she must also give consideration to other reasonable alternatives, if reasonable and practical, such redeployment, demotion with reduced status and remuneration. 	
5	Should the services of the employee be terminated, he/ she must be informed of rights in terms of the next process.	ER representative

8.2 Table: Description of Guideline Process Steps, Responsibilities and Roles
– Incapacity due to Ill Health

Process steps	Activity	Responsibility and role
STAGE 1 - Formal incapacity meeting		
1	If an employee in terms of his/her key performance outputs measured against his/her job profile and/ or performance contracting does not meet the required performance as reasonably expected, or where employees have been achieving the set standards in the past but management notices a relaxation in the performance of the employee due to ill health, the manager must investigate the extent of the incapacity/injury taking into consideration the employee's sick leave record and applicable medical reports with due regard to the frequency and duration of sick leave absences. The manager should arrange an informal discussion with the employee as soon as possible.	Direct manager to investigate sick leave record and arrange meeting assisted by HRBP.
2	The manager, when inviting the employee to a meeting must inform the employee that he/she may choose to be represented by a fellow employee or union representative.	Direct manager to arrange meeting and inform employee of his/her rights to be represented if required.
3	At the formal incapacity meeting the employee must be given an opportunity to give an explanation for the poor work performance and be heard on all the issues that the manager investigated. Relevant medical and other information will be considered.	Direct manager and employee.
4	The manager must ascertain whether the incapacity for ill health or injury is temporary or permanent in nature and the period of the time the employee is likely to be absent from work. If the incapacity is temporary in nature, the manager must consider: a) the nature of the job; b) the likely period of absence; c) the seriousness of the illness or injury; and d) the possibility of securing a temporary replacement.	Direct manager.

Process steps	Activity	Responsibility and role
5	The employee or employee representative may make suggestions or proposals in respect of the considerations in Step 2, taking into account the operational needs of the University.	The employee or employee representative.
6	The manager must monitor the employee's performance over the agreed period and must commit to assist the employee during the action plan period. If the employee's temporary disability due to ill health or injury cannot be accommodated at this stage of the process or if it is of a permanent nature, then stage 2 will be applied.	Direct manager to send e-mail to employee which is a description of what was agreed at the meeting.
STAGE 2 - Formal incapacity hearing		
1	The employee must be given five (5) working days written notification of the formal incapacity meeting. Any request for extension must be sanctioned by the employment relations representative in consultation with the appropriate line manager.	Direct manager to consult with the employment relations representative for assistance and recordkeeping.
2	The chairperson of the incapacity hearing will be an independent senior official of the University.	Employment relations representative to coordinate.
3	The employee must be informed of the right to be represented by a fellow employee or trade union representative should the employee wish so.	Must be contained in notice to the employee.

Process steps	Activity	Responsibility and role
4	<p>The termination of the employee's services must be seen as a last resort. If the nature of the employee's ill health or injury is of a permanent nature the chairperson must consider the possibility of:</p> <ul style="list-style-type: none"> a) adapting the duties or work circumstances of the employee to accommodate the employee's disability; b) securing alternative employment for the employee on the same grade; c) a demotion with a concomitant reduction in status and remuneration; and d) ensuring that the possibility of medical boarding on the grounds of ill health or injury has been fully and fairly considered. 	Direct manager to present what has transpired since first informal process to date.
5	If any of the considerations in step 6 is not possible then the employee's services may be terminated on grounds of incapacity.	
6	The outcome is communicated to the parties present at the meeting and reduced in writing. Should the services of the employee be terminated, he/ she must be informed of rights in terms of the next process.	ER representative.

Approved by MEC on 14 August 2012

Amendments approved by MEC on 23 August 2016

Aligned to ELG Organogram dated 02 December 2019