



POLICY ON INCAPACITY MANAGEMENT

Policy Owner	Chief Operating Officer
Division/Unit/Department	Human Capital Management
Date of Initial Approval	14 August 2012
Approved by	MEC
Approval Dates of Revisions/Amendments	23 August 2016 23 August 2023
Next Review Date	2028
Platform to be published on	INTRANET

Disclaimer: Copyright of UJ Governance Documentation reserved to the University of Johannesburg (UJ). All rights not expressly granted are reserved. Users may download, view, and print the content of these document(s) for private and commercial purposes only. UJ must be referenced in any extraction of these policy document(s).

Contents

1. SCOPE	3
2. PURPOSE	3
3. DEFINITIONS	3
4. OBJECTIVES.....	4
5. PRINCIPLES.....	4
6. PROCEDURE - INCAPACITY DUE TO POOR WORK PERFORMANCE.....	5
6.1 STAGE 1 - Formal incapacity meeting.....	5
6.2 STAGE 2- Formal incapacity inquiry	6
7. PROCEDURE - INCAPACITY DUE TO ILLHEALTH/ILLNESS	7
7.1 STAGE 1 - Formal incapacity meeting.....	7
7.2 STAGE 2 - Formal incapacity hearing.....	9
8. ADDITIONAL GUIDELINES	9
8.1 Table: Description of Guideline Process Steps, Responsibilities and Roles – Incapacity due to Poor Work Performance	9
8.2 Table: Description of Guideline Process Steps, Responsibilities and Roles – Incapacity due to Ill Health	11

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.
- (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 authorised by the University of Johannesburg to act as a manager or management representative

3.5 "**Medical Boarding**" means the temporary or permanent inability of an employee to work according to the requirements of their job as a result of ill health or injury, and alternative work is not feasible.

3.6 "**Reasonable Accommodation**" means any modification or changes to the way a job is normally performed that makes it possible for a suitably qualified person with a disability to perform on par with everyone else

3.7 "**Remuneration**" means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for the University and 'remunerate' has a corresponding meaning

3.8 "**Chairperson**" refers to the chairperson who is chairing the formal incapacity

¹ GN 1064 in GG 23718 of 19 August 2002

hearing is a person who is appointed in terms of the disciplinary Policy of the University

3.9 **"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

3.10 **"Trade union representative"** means a member of a UJ-recognised trade union who is elected to represent employees in a workplace within a particular recognised 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.

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 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 employees 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 an 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 their key performance outputs measured against their 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 their 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.
- (d) The sessions should be minuted, and the 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 finalised.

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

6.2.4 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.

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 their key performance outputs measured against their 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 their 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 their 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 the 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 The incapacity will be triggered either by the employee disclosing his/her disability and providing proof of such from a medical practitioner or by a report by the University's Occupational Therapist, which report will be deemed as a final and binding report.
- 7.1.8 Any disability report as provided for by the employee to the Occupational Therapist may be referred to the relevant Specialist, the costs of which will be tendered by the University, for a second opinion; however, the decision lies with the University's Occupational Therapist.
- 7.1.9 Based on the decision by the University's Occupational Therapist as described in 7.1.8, the University will investigate steps to reasonably accommodate the employee, and in the event that reasonable accommodation cannot be found, then the stage 2 process will be invoked.
- 7.1.10 It will be incumbent on the Line manager to provide a detailed report endorsed by the relevant ELG member to the Occupational Therapist as to what measures or interventions were put in place to reasonably accommodate the employee so as to enable the latter an opportunity to have the final say to the fact that the employee can indeed not be accommodated.
- 7.1.11 The process of medical boarding shall immediately be invoked after a decision has been made that the employee cannot be reasonably accommodated.
- 7.1.12 Failure by the employee to provide an Employee Statement, Consent Form, or Confidential Medical Report from the treating Specialist for the processing of the claim within 30 days may lead to the commencement of formal incapacity processes referred to herein as stage 2
- 7.1.13 In the event that the employee gives full cooperation in providing the required documents as described in 7.1.12, the claim will be processed accordingly.
- 7.1.14 Once the employee is boarded, the employee will be required to undergo periodic medical assessment as determined by the conditions of insurance.
- 7.1.15 In the event the employee remains incapacitated for longer than 24 months, then the stage 2 process will be invoked.
- 7.1.16 When an employee is declared fit for work during temporary incapacity, before resumption of work, the Occupational Therapist will recommend a reintegration plan, which would have been created collaboratively with the employee, line manager, HCM and subject to approval by the relevant ELG member.
- 7.1.17 The reintegration process followed will be as follows:
- (a) When a plan as described in 7.1.16 has been put in place and upon receiving a medical report from the employee's treating doctor stating that the employee is fit for duty, an appointment is to be set up with Occupational Services to confirm and make recommendations where applicable.
 - (b) The use of productivity reports and productivity questionnaires to assess weekly progress. This will allow the environment to make reasonable

accommodations or close gaps where applicable.

- (c) If the employee is still not coping with the workload after they have been successfully phased back into the workplace, ER will be consulted on the appropriate steps to take, or stage 2 can be invoked.

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 an extension must be sanctioned by the employee relations representative in the Human Capital Management 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 duties.
- (c) The prognosis for 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.
- (e) The employee's 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 their key performance outputs measured against their 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 Capital Management Business Partner (HCMBP).
2	The manager, when inviting the employee to a meeting, must inform the employee that they may choose to be represented by a fellow employee or	Direct manager to arrange a meeting and inform the employee of

Process Steps	Activity	Responsibility and role
	union representative.	their 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 the 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 for this assistance.	
6	The discussion and obligation to perform during the reasonable period as agreed <i>must be reflected in writing</i> , and this obligation to perform should only commence 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 unfavourably against the employee in considering a termination of service.	Direct manager to send e-mail to the 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 in achieving 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 the 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 HCMBP.
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 2 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	Direct manager to consult with the employee relations representative for

Process Steps	Activity	Responsibility and role
	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.	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.	
3	The chairperson of the incapacity hearing will be an independent senior official appointed by the University.	
4	In determining whether termination of service for poor work performance is appropriate, the chairperson must consider: <ol style="list-style-type: none"> 1. Whether the employee failed to meet the required performance standard. 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 expected to have been aware, of the required performance standard. (b) The employee was given a fair opportunity to meet the required performance standard. 3. The chairperson must consider termination as a last resort. They must also give consideration to other reasonable alternatives, if reasonable and practical, such as redeployment, demotion with reduced status and remuneration. 	
5	Should the services of the employee be terminated, they must be informed of their 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 their 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	Direct manager to investigate sick leave records and arrange a meeting assisted by HCMBP.

Process steps	Activity	Responsibility and role
	<p>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.</p>	
2	<p>The manager, when inviting the employee to a meeting, must inform the employee that they may choose to be represented by a fellow employee or union representative.</p>	<p>Direct manager to arrange a meeting and inform the employee of their rights to be represented if required.</p>
3	<p>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.</p>	<p>Direct manager and employee.</p>
4	<p>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. If the incapacity is temporary in nature, the manager must consider:</p> <ul style="list-style-type: none"> 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. 	<p>Direct manager.</p>
5	<p>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.</p>	<p>The employee or employee representative.</p>
6	<p>The incapacity will be triggered either by the employee disclosing their disability and providing proof of such from a medical practitioner or by a report by the University's Occupational Therapist, which report will be deemed as a final and binding report;</p> <p>Any disability report as provided for by the employee to the Occupational Therapist may be referred to the</p>	<p>Direct Line Manager, Employee and Occupational Therapist</p>

Process steps	Activity	Responsibility and role
	<p>relevant Specialist, the costs of which will be tendered by the University, for a second opinion; however, the decision lies with the University's Occupational Therapist.</p> <p>Based on the decision by the University's Occupational Therapist, the University will investigate steps to reasonably accommodate the employee, and in the event that reasonable accommodation cannot be found, then the stage 2 process will be invoked.</p> <p>It will be incumbent on the Line manager to provide a detailed report endorsed by the relevant ELG member to the Occupational Therapist as to what measures or interventions were put in place to reasonably accommodate the employee so as to enable the latter an opportunity to have the final say to the fact that the employee can indeed not be accommodated.</p>	
7	<p>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.</p>	<p>Direct manager to send e-mail to the employee which is a description of what was agreed at the meeting.</p>
8	<p>Reintegration Process:</p> <p>The reintegration process followed will be as follows:</p> <p>When a reintegration plan has been put in place and upon receiving a medical report from the employee's treating doctor stating that the employee is fit for duty, an appointment is to be set up with Occupational Services to confirm and make recommendations where applicable.</p> <p>The use of productivity reports and productivity questionnaires to assess weekly progress. This will allow the environment to make reasonable accommodations or close gaps where applicable.</p> <p>If the employee is still not coping with the workload after they have been successfully phased back into the workplace, ER will be consulted on the appropriate steps to take, or stage 2 can be invoked.</p>	<p>Line Manager and HCMBP</p>

Process steps	Activity	Responsibility and role
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 an 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.	Employee relations representative to coordinate.
3	The employee must be informed of the right to be represented by a fellow employee, a trade union representative or a legal representative where the University is legally represented should the employee wish so.	Must be contained in a notice to the employee.
4	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: <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. 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 the first informal process to date.
5	If any of the considerations in step 6 are not possible, then the employee's services may be terminated on grounds of incapacity.	ER
6	The outcome is communicated to the parties present at the meeting and reduced in writing. Should the services of the employee be terminated, they must be informed of their 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

Aligned to Organisational Design Project approved by Council on 22 September 2021

Amendments approved by MEC on 23 August 2023