

INCAPACITY POLICY

TT-FOA-07

Standard Operating Policy – Finance,
Operations & Administration

Effective Date 24 August 2021

1. DOCUMENT CONTROL

1.1. Document Information

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Author Signature: *kgulu* Date: 15/09/2021

Author signature confirms the contents of this document.

1.2. Approvals

The signatures below confirm that the reviewers agree with the content of the document and that this document is approved for implementation within Tshiamiso Trust.

Name	Position	Signature	Date
Dr May Hermanus	Chairman of the Board		
Kgomotso Molebatsi	Chairperson: HR, Remuneration and Governance Committee		
Daniel Kotton	Chief Executive Officer	<i>Daniel Kotton</i>	05/10/2021

This document is effective from the date of the last approval signature.

1.3. Change Record

Date	Effective Date	Author	Version	Change Reference

1.4. Document Location

The fully executed document is held by: The Trust
When printed this document is uncontrolled.

2. POLICY SCOPE

2.1. Purpose of the Policy

The purpose of the Incapacity Policy is:

- To assist employees to overcome poor performance and to perform to the standard expected of them.
- To promote efficient and effective performance by employees.
- To enable the Trust to deal with circumstances where employees become unexpectedly incapacitated due to injury or illness.
- To regulate the employee process in circumstances where employees become incapacitated due to change in operational requirements.

2.2. Objectives of the Policy

The objectives of this policy are:

- To assist Management in the circumstances where a need arises to correct poor work performance of an employee;
- To encourage the employment of corrective measures to assist an employee to overcome poor work performance and not to punish the employee;
- To encourage the use of supportive tools in dealing with deteriorating ill-health where an employee becomes incapacitated to perform normal functions; and
- To also ensure means to, as far as reasonably possible, retain the skills of an employee who becomes incapacitated by ill-health or injury.

3. POLICY GOVERNANCE

3.1. Policy Review

The Policy will be reviewed in the year 2024 taking into account any changes in legislation and the Trust's operational requirements.

3.2. Ownership of Policy

Ownership of the Policy will be vested in the Human Resources scope of accountability.

3.3. Approval of Policy

The Policy and any amendments from time to time must be approved by the Chief Executive Officer and the Board.

3.4. Legal Context

This Policy is informed by the:

- The Constitution of the Republic of South Africa, 1996
- The Employment Equity Act, 1998, as amended
- The Labour Relations Act, 1995, as amended
- The Basic Conditions of Employment Act, 1997, as amended
- The Skills Development Act, 1998
- Occupational Health and Safety Act, 1997

3.5. Related Group Policies

The Policy is supported by and should be read in conjunction with the following policies:

- Disciplinary Policy
- Retrenchment Policy
- Performance Management Policy
- Employment Equity Policy
- Training and Development Policy
- Disability Policy

4. POLICY STATEMENT

The Trust's Incapacity policy aims to ensure that effective management of employee poor performance due to incapacity or ill-health, and to ensure a fair and transparent process is followed in accordance with the Labour legislative requirements.

5. INCAPACITY POLICY

5.1. Procedures to deal with poor performance

The Trust will follow a structured process in managing poor performance as follows:

- If the Manager determines that the employee's performance is below standard, the Manager should advise the employee of any aspects in which s/he considers the employee to be failing to meet the required performance standards. This should be done in line with provisions of the Performance Management Policy.
- The Trust will only dismiss an employee for unsatisfactory performance after the following has been done:
 - The Manager has satisfied himself/herself that there is a standard/ policy/procedure against which the employee must perform, and that the employee was aware or should have been conscious of the standard/ policy/procedure and that the employee failed to meet or deliver according to the standard/ policy/procedure
 - The employee has been given appropriate evaluation, instruction, training, guidance, or counselling; and
 - After a reasonable period for improvement, the employee continues to perform unsatisfactorily.

5.2. Procedure for dealing with ill-health and disability

The Trust will follow a structure processes with managing incapacity due to ill-health or disability as follows:

- It is important to recognise the contribution an employee has made and makes within the Trust, by giving due consideration towards retaining an employee provided the Trust can still benefit from the employment relationship.
- A doctor's report indicating how the illness or disability will affect the employee's normal job function must be obtained by the employee and submitted to the Manager.
- The Manager in consultation with HR and the employee should seek means to alter the employee's functions as per doctor's recommendations or find suitable alternative employment within the Trust if there are vacant positions and without grossly impacting adversely on service delivery or other employees.

- Should the functions be altered such that the employee's responsibilities are significantly less than what they were, and are of a lower level to where the employee has been operating, a drop in salary should be considered. This should be done in cases where the incapacity will be more than three months or indefinite. The same applies for alternative employment if available positions are of lower level to that of the employee. The employee should consent to this as it changes the employment contract.
- If the incapacity (ill-health or disability) deteriorates such that the employee cannot perform the altered functions, the Manager should consider the following before termination of employment on account of incapacity:
 - 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, injured, or disabled employee;
 - In the process of the investigation the employee should be allowed the opportunity to state a case in response and to be assisted by a fellow employee; and
 - Particular consideration will be given to employees who are injured at work or who are incapacitated by work-related illness.

5.3. Incapacity Leave procedure

Temporary Incapacity

An employee whose normal sick leave credits in a cycle have been exhausted and who, according to a registered medical practitioner, requires to be absent from work due to disability, which is not permanent, may be granted an additional 30 working days sick leave on full pay provided that:

- The employee's direct manager is informed of the employee's illness; and
- A relevant registered medical or dental practitioner has duly certified such a condition in advance as a temporary disability except where conditions do not allow it.

An employee must submit his/her application in writing for temporary incapacity leave within five (5) working days accompanied by medical evidence related to his/her medical condition and any additional written motivation supporting the application.

In the event an employee is unable to apply in writing due to serious illness or injury, the family must notify the Human Resource Department of the employee's illness and submit the medical certificate(s) confirming the employee's temporary incapacity or the need for a time of convalescence.

The Chief Executive Officer may, on the basis of medical evidence submitted, approve the granting of temporary incapacity leave with full pay or reject the application. The employee shall be notified of the decision in writing.

The Trust may during 30 working days investigate the extent of incapacity to perform normal official duties, the degree of incapacity and the cause thereof, in accordance with item 10(1) of Schedule 8 of the Labour Relations Act.

In the event the application for additional sick leave is declined, and additional sick leave is exhausted, an application for a disability claim must be lodged in terms of the rules of the Compensation Fund (COIDA).

Permanent Incapacity

Employees whose degree of disability has been certified as permanent shall, with the approval of the Chief Executive Officer, be granted a maximum of 30 working days paid sick leave or such additional number of days required by the employer to finalise the process to:

- Ascertain the feasibility of alternative employment; or
- Adapting duties or work circumstances to accommodate the incapacity.

The Trust shall within 30 days verify the viability of alternative employment or adapting duties or work circumstances to accommodate the incapacity.

If both the Trust and the employee are convinced that the employee will never be able to perform any duties at his/her level, the employee shall proceed with an application for ill-health benefits.

Occupational injury and diseases

Occupational injury and diseases shall be granted to an employee who suffers occupational injury or contracts an occupational disease as a result of work or a work-related injury as a consequence of an accident involving a third party. The leave will only be granted provided that the employee brings a claim for compensation against the third party and undertakes to use compensation in terms of Compensation for Occupational Injuries and Diseases Act no 130 (1) of 1993 (COIDA)

HR shall take reasonable steps to assist the employee to claim compensation in terms of COIDA.