



## INCAPACITY POLICY

<b>Policy:</b>	<b>Effective Date: 11 October 2007</b>
<b>Approved: 11 October 2007</b>	<b>Review Date: 11 October 2010</b>

Notwithstanding the review date herein, this policy shall remain effective until such time approved otherwise by Council and may be reviewed on an earlier date if necessary.

### 1. SCOPE

- 1.1 This policy applies to all the employees of the FDDM.
- 1.2 This Policy should, where applicable, be read with the Collective Agreement on Conditions of Service, Individual contracts of employment, the Labour Relations Act 66 of 1995, the Local Government: Municipal Systems Act and the FDDM's Performance Management System.

### 2. PREAMBLE

Termination of employment for poor work performance is a serious matter which requires careful evaluation. The FDDM endeavours to use the guiding principles set out herein in an attempt to best evaluate an individual's performance prior to dismissal or taking any disciplinary

action. It is the responsibility of the FDDM to decide when it is necessary to apply the guidelines.

### **3. OBJECTIVES**

- 3.1 To serve as an effective guideline in the management of employees who are performing below the expected standards;
- 3.2 To ensure compliance with the requirements of labour legislation when managing poor work performance;
- 3.3 To assist employees to overcome poor performance and to perform to the standard expected of them;
- 3.4 To promote efficient and effective performance by employees;
- 3.5 To enable the FDDM to function efficiently and effectively; and
- 3.6 To assist the FDDM when in appropriate circumstances corrective action needs to be applied.

### **4. PROCEDURE**

- 4.1 If the FDDM is of the view that an employee is not performing in accordance with the job that the employee has been employed to do, it will:
  - 4.1.1 Inform the employee in writing of the perceived poor work performance; and
  - 4.1.2 After informing the employee as per paragraph 3.1.1 above, meet with the employee, and if the employee so chooses

with the employees trade union representative and/or a fellow employee

- 4.2 In the meeting referred to in paragraph 3.1.2, FDDM will:
  - 4.2.1 Explain the requirements, grade, skills competency requirements and nature of the job; and
  - 4.2.2 Evaluate the employee's performance in relation to the requirements of the job; and
  - 4.2.3 Indicate to the employee the reasons for the perceived poor performance; and
  - 4.2.4 Hear the employee or the employee's representative on:
    - 4.2.4.1 Whether the employee has performed in accordance with the requirements of the job; and
    - 4.2.4.2 If the employee does not agree that he has not performed in accordance with the requirements of the job, he must provide reasons to justify such poor performance.
- 4.3 After the employee has had the opportunity to be heard, FDDM will, if necessary:
  - 4.3.1 Develop and initiate a formal programme of counseling and instruction to enable the employee to reach the required standard of performance; and

4.3.2 Establish ways to address any factor that may affect the employee's performance that lies beyond the control of the employee.

4.4 The programme referred to in paragraph 3.3.1 will include:

4.4.1 Assessing with the relevant employee the time frame in which it would reasonably take for such employee to overcome the poor work performance;

4.4.2 Based on the assessment above, a realistic time frame shall be established within which the FDDM will expect the employee to have met the required performance standard; and

4.4.3 Identification and provision of adequate training and/or counseling sessions if necessary in order for the employee to reach the required standard of performance.

4.5 If the poor performance is not remedied within the time frames established by the programme, the FDDM shall provide the employee with a written outcome of the procedure and meet again with the employee to explain the outcome as well as the measures that the FDDM intends pursuing to address the problem.

4.6 A record of all counseling sessions / meetings shall be kept by the Deputy Director: Corporate Services.

4.7 After consulting with the employee, the FDDM shall consider whether:

- 4.7.1 To continue to give the employee guidance, instruction and counseling and establish a further appropriate period for the employee to meet the required standard of performance; or
- 4.7.2 To mentor the employee; or
- 4.7.3 To institute disciplinary procedures; or
- 4.7.4 To dismiss the employee in appropriate circumstances

## **B. INCAPACITY (ILL-HEALTH / INJURY) POLICY**

### **1. SCOPE**

1.1 The Policy should where applicable be read with a Collective Agreement and conditions of service, Individual contracts of employment and the Labour Relations Act 66 of 1995 and the FDDM's Performance Management System.

1.2 This Policy applies to all FDDM employees.

### **2. OBJECTIVES**

2.1 To provide for procedures to be followed to assist Employees who are ill or injured to perform duties.

2.2 To provide for guidelines in terminating employment of Employees as a result of ill-health or injuries.

### **3. PRINCIPLES**

3.1 The procedure as set out herein is a Management Instrument to be invoked by the FDDM, not the Employee;

3.2 The procedure, which is a guideline, is only to be used in cases of poor performance or non-performance that are directly linked to ill health or injury.

3.3 The procedure is not to be used in cases where there is apparent abuse of sick leave (this constitutes misconduct).

- 3.4 In cases of alcohol or drug abuse, the procedure as set out herein can only be used if the alcohol or drug abuse can be linked to ill-health i.e. where a pattern of constant intoxication or drug dependency is clear. In cases where such pattern is not evident, the case must be dealt with in terms of the Disciplinary Code.
- 3.5 Evidence by a medical practitioner is critical in deciding whether to deal with an Employee in terms of this procedure.
- 3.6 The typical cases in which this procedure shall be used are as follows, but not limited to:
  - 3.6.1 The Employee exhausted his/her sick leave for the specific sick leave cycle for the same or related ailment;
  - 3.6.2 Disability leave (in terms of the new leave provisions) has been repeatedly granted to the Employee for the same or related ailment;
  - 3.6.3 There is an awareness or reasonable suspicion that the Employee is suffering from a chronic illness, that adversely affects the Employee's performance;
  - 3.6.4 The Employee has been involved in a serious accident, that has caused severe injuries or ill-health, that will permanently adversely affect the Employee's normal performance;
  - 3.6.5 There is an awareness or a reasonable suspicion that the Employee is suffering from alcohol or drug dependency; and
  - 3.6.6 The Employee's work performance is suffering as a result of his illness/injury.

#### 4. PROCEDURE TO BE FOLLOWED

- 4.1 The following steps are to be followed if an Employee is found not to be performing or to be performing sub-standard as a result of poor health or injury:

##### STEPS:

##### Step 1 - Investigation

The Line Manager with the assistance of Human Resources will:

- Conduct an investigation to determine the extent of the Employee's poor health or injury.
- Obtain relevant medical evidence on the Employee's condition (e.g. from his medical practitioner or an independent medical practitioner) the cost of an independent medical evaluation is to be borne by the FDDM.
- Allow the Employee or his trade union representative to state the Employee's case and to give inputs on all issues being investigated or considered (**see Annexure "A" for example**)
- Determine whether the nature of the ill health or injury is temporary or permanent.



- For purposes of the investigation, the following must be considered:
  - nature of the job;
  - likely period of absence;
  - seriousness of illness or injury;
  - remuneration of employee during period of absence; and
  - possibility of securing temporary replacement.

Step 2- Compile a report and:

- Provide the Employee with a written report on the investigation (**see Annexure “B” for example**)
- Set out results of investigation in report.

Step 3- Take the following action:

- If the outcome of the investigation points to temporary\_incapacity, decide on how to cover for the expected period of absence of the Employee (e.g. temporary appointment, secondment of another officer, assigning work to another Employee, etc). The granting of further disability leave also needs to be considered at this point.

- If ill-health or injury proves to be a permanent nature, consider the following:
  - secure alternative employment for the Employee;
  - adapt the Employee's work circumstances to his disability;
  - offer boarding on grounds of ill health or injury (subject to the retirement funds agreeing to medically board the Employee).
- If the ill health proves to be the result of alcohol or drug abuse, consider any of the following actions:
  - Counselling;
  - encourage the Employee to attend rehabilitation;
  - establish formal rehabilitation programme, which Employee is required to follow;
  - involve disciplinary procedures.
- In cases where the Employee fails to follow the formal programme or attend rehabilitation or address the problem of alcohol or drug abuse he (or his representative) must again be given a written report and be consulted (see Annexure "C" for example). Should termination of the Employee's services as a result of his non-co-operation be considered, the normal disciplinary process needs to be followed.

- Dismissal arising from ill health or injury:
  - FDDM may terminate Employment of the Employee if after following the steps above, the Employee is unable to perform and no further assistance and alternatives could be established.

## 5. AUTHORITY

Formulation Policy	:	Director Corporate Services
Authorisation Policy	:	Council
Ownership & Maintenance Manager	:	Deputy Director: Corporate Services

**C. INCAPACITY FORMS**

**NAME OF EMPLOYEE:** \_\_\_\_\_

**PERSONAL DETAILS OF THE EMPLOYEE:**

\_\_\_\_\_  
\_\_\_\_\_

**TITLE:** \_\_\_\_\_

**INVESTIGATION INTO INCAPACITY DUE TO ILL-HEALTH / INJURY:  
YOURSELF**

As a result of the fact that you have been granted \_\_\_\_\_ days sick/disability leave over the past \_\_\_\_\_ months, an investigation into your incapacity has been launched in terms of the Incapacity Policy in respect of ill health / injury.

The issues being investigated are the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It would be appreciated if you could state your case as far as this matter is concerned and provide me with inputs on the issued mentioned above by \_\_\_\_\_ (date). Your trade union/representative or a co-employee is welcome to act on your behalf in this matter.

\_\_\_\_\_  
**SIGNATURE OF MANAGER**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE OF EMPLOYEE**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE OF WITNESS (IF APPLICABLE)**

**DATE:** \_\_\_\_\_

**NAME OF EMPLOYEE:** \_\_\_\_\_

**PERSONAL DETAILS OF THE EMPLOYEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TITLE:** \_\_\_\_\_

**REPORT OF INVESTIGATION INTO INCAPACITY DUE TO ILL-HEALTH / INJURY:**

**YOURSELF:**

In my letter dated \_\_\_\_\_, you were invited to submit inputs to me on the investigation into your incapacity due to ill health / injury.

The investigation has now been concluded. Attached, please find a report on the matter containing the results of the investigation.

A decision regarding your case will be taken soon, after which you will be informed of the outcome.

\_\_\_\_\_  
**SIGNATURE OF MANAGER**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE OF EMPLOYEE**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE OF WITNESS (IF APPLICABLE)**

**DATE:** \_\_\_\_\_

**NAME OF EMPLOYEE:** \_\_\_\_\_

**PERSONAL DETAILS OF THE EMPLOYEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TITLE:** \_\_\_\_\_

**REHABILITATION IN TERMS OF INCAPACITY CODE AND PROCEDURES:  
ILL-HEALTH / INJURY.**

In our meeting of \_\_\_\_\_, you were counseled to address your alcohol/drug abuse problem// we agreed that you would attend rehabilitation to assist you in addressing your alcohol/drug abuse problem // you were informed of a requested to follow the formal rehabilitation programme that had been established to assist you in addressing your alcohol/drug abuse problem.

You have, however, failed to address the problem // attend rehabilitation // follow the formal programme. Attached, please find a report on the matter.

In order to discuss the matter, you are required to attend a meeting in room \_\_\_\_\_ // my office on \_\_\_\_\_ at \_\_\_\_\_

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**SIGNATURE OF MANAGER**

**DATE:** \_\_\_\_\_

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**SIGNATURE OF EMPLOYEE**

**DATE:** \_\_\_\_\_

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**SIGNATURE OF WITNESS (IF APPLICABLE)**

**DATE:** \_\_\_\_\_