

MEDICAL/ HEALTH INCAPACITY PROCEDURE

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Appendix 3



INVESTOR IN PEOPLE



**Epping Forest
District Council**

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1. PURPOSE

- 1.1 The purpose of this procedure is to establish a process that will ensure the fair and consistent treatment of employees should issues arise in respect of the ability of the employee to undertake the duties of their role because of medical or health reasons

2. POLICY STATEMENT

- 2.1 This policy sets out the process for the support of employees who are unable to undertake their duties of their substantive role (full or in part) because of medical or health incapacity.
- 2.2 This policy also sets out the process to be followed should there be a need to dismiss an employee because of their medical/health incapacity.
- 2.3 In all cases of medical/health incapacity advice from Human Resources (HR) must be sought at the earliest opportunity. Also the advice of occupational health will be sought as appropriate.

3. INITIAL ACTIONS

- 3.1 Once a manager has identified that there is an issue with an employee's capability due to health reasons, they will
- Meet the employee to discuss their concerns,
 - Discuss the case with HR at the earliest opportunity,
 - Seek advice from Occupational Health, if appropriate,
 - Determine whether the incapacity is long or short term,
 - Keep file notes of any meetings, agreed actions, conversations etc and forward them to HR for the case file.

4. MEDICAL REFERRAL

- 4.1 If redeployment is being considered a referral to occupational health will be undertaken which will ask about the employee's current state of health and its effect on their present or future capability in their current role.
- 4.2 Managers seeking the advice of the Occupational Health Service (OHS) must outline the details of the particular case using the Council's Referral Form. OHS will ask employees to sign a consent form giving their permission so that they can approach their doctor and/or specialist.
- 4.3 In seeking such permission managers should inform their employee why an approach is required; managers should explain that the Council must have all the relevant and current information to make a fair and reasonable assessment of their capability for their current role and/or any potential redeployment opportunities. If the Council does not have this information it could be detrimental to the employee as their employment may ultimately be terminated if no suitable alternative employment can be found.



- 4.4 Employees are not required to complete the medical consent form. However where an employee refuses to give written permission to approach their doctor it may be necessary to take a decision without the benefit of their medical opinion. In such cases HR must be consulted before further action is taken.
- 4.5 All medical information will be treated confidentially, will remain with the Occupational Health Service (OHS) during and after the application of the procedure and will form the basis on which advice to the Council is formulated.
- 4.6 Managers should be persistent in seeking clear and helpful responses from the OHS. Managers and HR should ensure that all questions are answered so a clear and full understanding of the employee's situation is known. This could be by letter setting out the questions that remain un-answered or require clarification or by meeting with the OHS Doctor. Such meetings or conversations will be fully noted and placed on the case file in HR.
- 4.7 Managers can request a case conference with the OHS Doctor which can be arranged via HR.

5. DISABILITY DISCRIMINATION AND REASONABLE ADJUSTMENTS

- 5.1 Under the Equality Act 2010 a person has a disability if they have a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities. An impairment is regarded as long term if it has lasted at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected.
- 5.2 The adverse effect must be on the person's ability to carry out normal day to day activities rather than the duties of his or her job. In general, day to day activities are the activities carried out by most people on a daily or frequent and fairly regular basis, such as getting dressed, doing light housework, reading or using public transport.
- 5.3 It should also be noted that, when considering whether or not a person is disabled, the condition should be regarded as it would be without the effects of medication or treatment. Put in simple terms, if an employee has a hearing impairment, the condition should be regarded as it would be if the employee were not wearing a hearing aid. A mental impairment should be regarded as it would be without the effects of any medication treating it. In most circumstances an assessment will be carried out by the Council's OH provider to establish if an employee has a disability.
- 5.4 Once a person satisfies the definition of disabled, the Council is under a duty to make reasonable adjustments. Where a provision, criterion or practice, or a physical feature or premises, puts a disabled person at a substantial disadvantage, the Council must take reasonable steps to avoid the disadvantage. The Council is also required to take reasonable steps to provide any auxiliary aid that would avoid the disabled employee being put at a substantial disadvantage.
- 5.5 For further information please see the Guide to Making Reasonable Adjustments contained within the HR and Manager Toolkit.

6. REDEPLOYMENT

6.1 Where reasonable adjustments to an employee's existing role have been considered or tried and have not been successful, redeployment will be considered for the employee. This may be because of an employee's medical circumstances or health or for reason of a loss of an essential requirement for undertaking their role such as the withdrawal of a driving licence, or the inability to drive because of a medical impairment or disability.

6.2 The Redeployment Process

6.2.1 The Council cannot create posts to enable redeployment to take place.

6.2.2 The likely success of this approach will depend on the:

- Skills, capability, experience and qualifications of the employee
- Current vacancies
- The ability to make reasonable adjustments to current vacancies

6.2.3 Where redeployment is potentially an option, HR will meet with the employee and their current line manager to determine;

- the skills, competencies, qualifications, and experience of the employee,
- the working patterns which can be considered in relation to their personal circumstances,
- the employee's view about suitable alternative employment.

6.2.4 The appropriateness of the discussion will depend on the circumstances of each case.

6.2.5 At this meeting HR should:

- Advise the employee of the Council's pay protection arrangements
- Advise the employee that if suitable alternative employment cannot be found, that termination on the grounds of medical/health incapacity may be necessary.

6.3 Identification Of Suitable Roles

6.3.1 Roles will be considered for the employee taking into account their relevant skills, competencies, qualifications and experience matched against the person specification for the role. Where appropriate, consideration will be given to the provision of training and support for the employee to address any gaps in skills, competence and experience. Reasonable adjustments will be considered when identifying a suitable role. Where possible, the opportunity for the employee to gain qualifications needed for the role will also be considered.

6.3.2 HR will identify potential suitable roles and arrange for the employee to meet with the recruiting manager. The recruiting manager will explain the duties of the role to the employee and discuss with the employee their relevant skills



and experience for the role. HR will attend this meeting and the employee may be accompanied by a representative of their choice.

- 6.3.3 Following the meeting the recruiting manager will make a judgement taking into account the advice of HR about the suitability of the role for the employee. This judgement will consider the additional support/training /reasonable adjustments which may be needed for the employee to satisfactorily undertake this role.
- 6.3.4 The recruiting managers will record their decision using the proforma contained within the Toolkit. In the event that the employee is unsuccessful the manager should be very clear as to why they are not suitable for the role. They will verbally inform the employee which will be confirmed in writing within working 5 days of the meeting.
- 6.3.5 Posts identified as potentially suitable will not be released for advertising until the assessment process is complete with the agreement of HR.
- 6.3.5 HR would usually actively consider suitable roles for no more than 3 months. For the avoidance of doubt this 3 month period will not start over again at the end of any four week trial but concurrently.

6.4 **Trial Period**

- 6.4.1 Should the role be considered a potentially suitable alternative, the employee will be offered the opportunity to have a trial period in the role for an initial period of 4 weeks. The arrangements for the trial period will be confirmed in writing to the employee by HR.
- 6.4.2 During the trial period the recruiting manager will:
 - Identify a buddy where appropriate to guide the employee through the duties of the role.
 - Provide induction to the role.
 - Consider immediate training/coaching needs and arrange to meet these needs as early as possible.
 - Consider reasonable adjustments and undertake these as early as possible in the trial period
- 6.4.3 The assessment during the trial period will determine if the role is a suitable alternative role for the employee or if it could be suitable following making further reasonable adjustments or training/support.
- 6.4.4 At the end of the trial period the recruiting manager, employee, their representative and HR will meet. This meeting will:
 - Consider whether the employee has met the required standard of the role.
 - Where the employee has not met the required standard for the role but potentially could do with further support and training or other reasonable adjustment.

- Where the employee cannot meet the required standard for the role even with further support and training.
- Where an assessment would be facilitated by an extension to the trial period.
- If further occupational health advice should be sought.

6.5 Conclusion Of The Trial Period

6.5.1 Following the conclusion of the trial period, the employee will either be notified that:

The trial period has been successful and of the arrangements for on-going training and support. The employee will be provided with a contract of employment for the role setting out applicable pay protection arrangements which will apply.

Or

That the trial period has not been successful and there are other suitable alternative vacancies which may be suitable for the employee. In which case the process from point 6 above will apply

Or

That there are no other suitable alternative vacancies for the employee and a hearing will be set up to consider the employee's continuing employment with the Council. The employee should be informed that they could be dismissed from the Council. The employee will return to their substantive role in their substantive Directorate pending the hearing, carrying out duties commensurate with their capabilities.

7. FORMAL PROCESS

7.1 General Principles

7.1.1 At all stages of the formal Medical/Health Incapacity Procedure employees shall have a right to the following:

- to be accompanied at any meetings by a representative of their choice
- written advance notice of any hearing, including details of the date, time, location of the hearing and who are the Presenting and Hearing Officers. They will be provided with copies of witness statements or other documentation to be submitted as evidence by management at the hearing, be given an adequate opportunity to reply to the allegations, including the right to call witnesses and produce documents as appropriate
- copies of the Council's Medical/Health Incapacity Procedure and Employee Guidance.

7.1.2 Action under this formal stage of the procedure should not be taken without advice from HR.



- 7.1.3 Formal action shall not be taken against a shop steward or trade union representative without the prior involvement of an accredited officer of the relevant union and with the advice of HR.
- 7.1.4 HR shall be responsible for ensuring that an officer of sufficient seniority hears the matter, who has had no significant prior involvement in the case. (Hearing Officer).
- 7.1.5 All information concerning Medical/Health Incapacity cases will be treated as strictly confidential as practicably possible.
- 7.1.6 A representative of HR shall be present at all Medical/Health Incapacity meetings and hearings. If this is not possible then a representative from Legal Services or an external advisor can be present.

7.2 Where there is no reasonable alternative, the Council may dismiss an employee for a reason related to their capability for performing the work they were employed to do.

7.3 The Council will consider termination of employment as a last resort.

8. THE MEDICAL/HEALTH INCAPACITY HEARING

8.1 The Hearing Officer will be identified in conjunction with HR.

8.2 A representative of HR will be available to advise the Hearing Officer. If a member of HR is not available or unable to fulfil this role, then a representative from Legal Services or an external advisor may be substituted.

8.3 The objectives of this meeting are to:

- Understand the health problems of the employee and the exact reasons why they cannot perform their duties satisfactorily
- Determine the continuing employment of the employee taking into account their medical/health condition
- Review the reasonable adjustments which have been offered to the employee to enable them to continue working for the Council
- Review the suitable alternative employment opportunities which have been made available to the employee and determine if there are other options available
- Allow the employee to respond to the case put forward by the presenting officer

9. PROCESS PRIOR TO THE MEDICAL/HEALTH INCAPACITY HEARING

9.1 HR will send the employee details of the date, time, location of the hearing and who are the Presenting and Hearing Officers. They will be advised of their right to be accompanied by a representative of their choice. Copies of the Medical/Health Incapacity Policy will be sent.

9.2 Along with the notification letter the employee shall receive copies of the documents to be presented by management at the meeting, including the names of any witnesses.



- 9.3 At the same time copies of all documentation will be sent to the Hearing Officer, their HR Adviser and the Presenting Officer.
- 9.4 The letter will give the employee at least 10 working days' notice of the meeting (excluding the day of the hearing).
- 9.5 The employee must submit all their documentary evidence to HR at least 5 working days before the meeting, including the names of any witnesses.

10. PROCESS AT THE MEDICAL/HEALTH INCAPACITY HEARING

- 10.1 A representative of HR shall be present at all Medical/Health Incapacity Hearings to advise the Hearing Officer on points of fact, evidence, procedure and law. An appropriate officer will produce a formal written record of the meeting. Employees will not be entitled to amend the notes but will have the opportunity to comment on them.
- 10.2 The Hearing Officer will explain the process at the meeting and ensure that the following applies;
 - 10.2.1 Those statements and documents provided by both parties within the timescales should be considered at the Hearing. Only in exceptional circumstances will materials not previously circulated be admitted only with the agreement of both parties or by order of the Hearing Officer.
 - 10.2.2 The presenting officer will present their case. They will call witnesses and/or present their case documents as appropriate.
 - 10.2.3 The employee and/or their representative will be given the opportunity to respond to these statements and to call witnesses and/or present their case documents as appropriate.
 - 10.2.4 Both the Presenting Officer and the employee and/or their representative shall be able to put questions to witnesses and ask points of clarification.
 - 10.2.5 The Hearing Officer or their adviser may put questions to the Presenting Officer, the employee and the witnesses.
 - 10.2.6 Witnesses shall not be present in the room while other witnesses give evidence.
 - 10.2.7 On completion of the formal evidence and questioning the manager and employee and/or their representative will be invited to make a final statement. The final statements must only summarise arguments and evidence previously submitted. No new evidence may be considered at this stage.
 - 10.2.8 Both parties shall withdraw from the hearing while the matter is considered by the Hearing Officer and their adviser.
 - 10.2.9 If an early decision is reached, both parties may be asked to return to the hearing to receive the decision verbally, which will subsequently be confirmed in writing. In some circumstances the decision could be verbally notified to the parties the next day. Where this is not possible, the decision will only be



communicated in writing. In any event, confirmation will be sent to the employee within 5 days on the completion of the hearing.

10.3 All issues relating to:

- the process at the hearing (if not covered by this procedure) or
- evidence to be received at the hearing

shall be at the discretion of the Hearing Officer, after taking into account the representations of the parties and after receiving guidance from the HR adviser as necessary.

11. OUTCOME OF THE MEDICAL/HEALTH INCAPACITY HEARING

11.1 The Hearing Officer will decide on one of the following actions;

- terminate the employee's contract of employment on the grounds of medical/health capability with contractual notice;
- terminate the employee's contract of employment on the grounds of medical/health incapacity with contractual notice; but also to offer further redeployment opportunities during the notice period,
- resume the trial period in a role. However the Hearing Officer should not extend the trial period beyond the termination date
- Dismiss the case and request that (other) reasonable adjustments are investigated further

11.2 A letter will be sent to the employee confirming one of the above actions.

11.3 Where it is decided to terminate the employee's employment this will be a formal notice letter specifying the right of appeal and the last day of service with the Council.

12. NON-ATTENDANCE OF EMPLOYEE

12.1 Where the employee indicates that they will not be able to attend the meeting it may be necessary to conduct the meeting in the employee's absence.

12.2 Where the employee's absence is due to ill health a medical certificate must be submitted. The medical certificate should specifically state that the employee is unable to attend the meeting and the reasons why. A certificate indicating a general inability to attend work will not be acceptable. If this is not provided, the meeting may proceed in the employee's absence, at the discretion of the Hearing Officer.

12.3 One postponement and rearrangement of the meeting will be permitted at the Hearing Officer's discretion. At the request of the employee, a representative of their choice may represent the employee in their absence.

13. APPEALS

13.1 Any employee who is dissatisfied with the outcome of a Medical/Health Incapacity Hearing may lodge an appeal with the Assistant Director (HR). This must be done within 5 working days of the employee receiving written confirmation of the decision.

The appeal must be in writing and should clearly state the basis on which it is made, i.e.

- on the outcome - too severe given the circumstances of the case, and/or;
- the evidence - did not support the conclusion of the Hearing Officer, and/or;

- the procedure – a failure to follow procedure had a material effect on the decision.

and stating that they will be submitting a full written statement within the next 5 working days.

13.2 Appeals Short of Dismissal

13.2.1 Appeals short of dismissal will be heard by an officer with sufficient seniority, whose decision will be final. In most cases, the person hearing the appeal will be senior to the person who has taken the decision at the original hearing and has had no prior involvement in the case.

13.2.2 The employee has the right to be accompanied by a representative of their choice.

13.2.3 Further guidance can be found in the 'Appeals Procedure – Short of Dismissal' document.

13.3 Appeals Against Dismissal

13.3.1 Appeals against dismissal will be heard by the Staff Appeals Panel, whose decision will be final. Further guidance can be found in the 'Staff Appeals Panel Hearing Procedure'.

13.3.2 A representative of HR will be present at all appeals (see 8.2). The employee has the right to be accompanied by a representative of their choice.

13.3.3 Employees with less than 6 months continuous service have no right of appeal to the Staff Appeal Panel. Appeals for dismissal under this Procedure will be subject to the guidance set out in the Council's 'Appeals Procedure Short of Dismissal' document.

14. RESPONSIBILITIES

14.1 All employees are required to adhere to the provisions of this procedure.

14.2 Line managers are expected to:-

- Identify problems and obtain appropriate advice and guidance at the earliest opportunity
- Be aware of their responsibility to make reasonable adjustments for an employee with a disability



- Discuss with HR if the employee has a medical/health issue which is impacting on their performance
- Provide help and support to the employee
- Keep adequate written records of informal action, their decisions, actions taken and other relevant information gathered.
- Deal with issues confidentially, consistently and promptly and should not unreasonably delay meetings or decisions
- Consistently address issues ensuring that issues of race, colour, ethnic origin, nationality, political or religious beliefs, disability, gender, sexual orientation, gender reassignment, pregnancy/maternity, age or marital status do not affect any decisions made.
- Seek HR advice at all stages of the procedure in advance of any steps being taken
- Discuss with HR if they are considering action under this policy against a recognised Trade Union representative
- Advise HR immediately should an employee lose a qualification which is essential for them to undertake their role.

14.3 Employees are expected to:-

- Contribute and comply with arrangements made to assist in improving their performance in accordance with this policy
- Advise their line manager or HR of any medical/health issue which may be impacting on their work performance
- Advise their line manager and HR of any loss of qualification which is essential for them to undertake their duties.

14.4 Human Resources will:-

- Assist with medical referrals and liaise with Occupational Health
- Arrange and administer any formal hearings
- Manage the Redeployment process
- Advise managers on all aspects of this policy and procedure including attendance at meetings as required and hearings and appeal hearings.
- Ensure the maintenance and review of the policy and procedure.

14.5 Hearing Officer will:-

- Explain the process at the Hearing in accordance with the procedure



- Consider all the evidence presented to the Hearing
- Decide on an appropriate action
- Provide a letter to the employee confirming the outcome of the hearing within the timescale

15. FURTHER GUIDANCE

Further guidance on the operation, interpretation and application of this procedure is available from Human Resources.

A Manager and HR Toolkit relating to this Policy is available on the intranet at xxxxx.