



# A practical approach to the mandatory COP for medical incapacity

The mandatory Code of Practice (COP) for the management of medical incapacity due to ill-health and injury became effective on 31 May 2016. It was issued to assist occupational medical practitioners (OMPs), safety, health and environment (SHE) officers, and human resources (HR) consultants to manage employees with medical incapacity in the mining industry. This COP, if implemented and complied with, will ensure that employees suffering from medical incapacity return to their normal, adjusted or alternative work, wherever possible, by making early return-to-work recommendations. It also ensures that a fair and consistent approach is applied, where employees cannot be accommodated in the workplace after medical incapacity.

It is highly recommended that a medical incapacity management committee (MIMC) is formed at each mine clinic site, to ensure fair and consistent handling of medical incapacity cases. The Committees should allow the employee, or a representative, to present the case, and should then discuss the findings and recommendations with the employee and/or representative. It is important that the findings are conveyed to the employee in writing, and that the minutes and attendance registers of the meeting are documented.

The MIMC should consist of a multi-disciplinary team that will be trained on the site-specific medical incapacity processes, and may include the following people:

- A chairperson who should be a senior human resources official
  - A medical incapacity coordinator who takes care of administration tasks, including sending meeting invitations, and ensuring that medical reports, consent and other necessary documents are available prior to the Committee meetings
  - An OMP who will draft a report detailing the medical incapacity and provide recommendations based on the fitness of the individual
  - A safety or occupational hygiene professional, where appropriate
  - The employee concerned
  - The direct supervisor or line manager of the employee
  - Any other employee representative, specialist, social worker or occupational therapist permanently or temporarily co-opted by the chairperson to assist the MIMC in fulfilling its function
- Entry into the medical incapacity process is triggered by:
- High frequency or long duration sick leave absenteeism as identified by the HR department/consultant
  - Abnormal findings during medical surveillance by the occupational health team
  - Medical specialist reports, indicating medical incapacity
  - Line managers reporting poor work performance or attendance
  - Self-reporting by an employee

The HR consultant should then schedule a meeting with the employee to determine the cause of absenteeism or poor work performance, after which they would classify the employee into one of the following categories:

- Employee with a medical condition
- Employee with social problems
- Employee with incapacity not due to a medical condition

All employees suffering from medical conditions should be assessed by an OMP who would refer the employee for medical incapacity management, should the employee be found unfit to continue in his or her occupation.

A medical or health risk assessment must be conducted to establish:

- The potential for returning the employee to their own, adjusted or alternative work (work capacity evaluation)
- The potential health and safety risks of allowing the employee to continue with their own, adjusted or alternative work
- The potential to make structured early return-to-work recommendations, which might include ongoing rehabilitation, physical or psychological treatment, and vocational rehabilitation
- Early return-to-work recommendations to prevent the employee developing a disability mindset
- If and when an employee with medical incapacity will qualify as a person with a disability, so that the employer can introduce the necessary interventions as required under the Employment Equity Act No. 55 of 1998.

Once the work capacity evaluation is completed, a decision can be made by the MIMC to return the employee to their own occupation, or to adjusted or alternative work.

Reasonable accommodation applies to applicants or employees with disabilities who are suitably qualified for the job. The obligation to accommodate an employee reasonably might also arise when an applicant or employee voluntarily discloses a disability-related accommodation need, or when such a need is evident to the employer. Employers must try to accommodate employees as far as is reasonably practicable when work, or the work environment, changes or when the impairment that affects the employee's ability to perform the essential function varies. This may include adapting existing facilities for accessibility, re-organising workstations, restructuring the job so that non-essential functions are re-assigned, adjusting work time and leave, retraining, and/or providing specialised supervision.

If the employee is not satisfied with the medical panel process or decision, he or she has the right to lodge an appeal, as per Section 20 of the Mine Health and Safety Act No. 29 of 1995, to the Medical Inspector, and should be informed of this right during the process.

Medical incapacity varies and, as such, the merits of each case should be considered before applying a 'one size fits all' approach.

*Report by:*

*Dr Nothando Moyo-Mubayiwa*

*MMPA President, 2018*

*e-mail: nothando.moyo-mubayiwa@angloamerican.com*