

Guideline for a mandatory code of practice for the management of medical incapacity due to ill-health and injury: an update

Dipalesa Mokoboto: Medical Inspector, Department of Mineral Resources and Energy; MMPA president
e-mail: Dipalesa.Mokoboto@dmre.gov.za

INTRODUCTION

This guideline on the management of medical incapacity due to ill-health and injury was promulgated in the Government Gazette No. 39656, on 5 February 2016.¹ The Mining Occupational Health Advisory Committee (MOHAC) was tasked with developing the guideline after it became apparent that mines were not handling medical incapacity of employees in the same way. Although issues pertaining to incapacity are covered in the Labour Relations Act (LRA) and the Employment Equity Act (EEA), it was necessary to guide the mining industry on managing medical incapacity.

The medical incapacity process kicks in when the occupational medical practitioner (OMP) declares an employee unfit and recommends, amongst other actions, alternative placement or reasonable accommodation for the employee, taking into consideration the restrictions that may apply. The guideline is thus intended to assist OMPs, health and safety representatives, and human resource officials in managing employees with medical incapacity in the South African mining industry (SAMI).

The guideline does not deal with individual medical conditions, but rather aims to formalise the basic principles of management of employees with medical incapacity, to ensure fairness and consistency.

It was necessary to review the guideline when it became evident that it was not interpreted as intended, which caused unnecessary problems. The interface between the medical process by the OMP (which might lead to Section 20 medical appeals*) and the labour relations process by human resources (HR) officials (which may result in disputes being brought to the Commission for Conciliation, Mediation and Arbitration (CCMA)), was a source of major confusion.

The medical condition of an employee who is deemed unfit by an OMP should be interpreted in functional terms, and in relation to the specific job requirements and/or specific job requirements of the adjusted or alternative jobs considered during the incapacity management process. The outcome of the process must pose no additional risk to the health or safety of such an employee or of co-workers, where relevant.

The interpretation of this guideline should allow for the unique operational circumstances of all mining operations, e.g. small mines, open-cast mines, underground operations, beneficiation plants, condensation plants and smelters.

OBJECTIVES OF THE GUIDELINE

The main objective of this guideline is to assist the OMP and HR officials tasked with management of medical incapacity of employees in the mining industry.

Collateral objectives are to ensure:

- a) that employees with medical incapacity would be managed in a consistent and fair manner, especially if they cannot be accommodated in their normal, adjusted or alternative work;
- b) that employees with medical incapacity are fit to continue performing productively and safely in the normal, adjusted, or alternative work at the mine; and
- c) that the affected employee will be able to perform work without an unacceptable health or safety risk to that employee or any other person.

SCOPE OF THE GUIDELINE

The guideline covers basic requirements for the OMP and HR officials managing the medical incapacity process at the mine. It does not guide the management of individual medical conditions, but rather prescribes the general principles to be followed. The guideline should be read in conjunction with several documents and any other applicable statutory obligations related to disability management. These documents include but are not limited to: the Minimum Standards of Fitness to Perform Work on a Mine Guideline, the LRA, the EEA, the South African Disability Code, and the International Labour Organization (ILO) code for managing disability in the workplace.

RESPONSIBILITIES OF THE MEDICAL INCAPACITY MANAGEMENT COMMITTEE

The committee determines the following, after considering the OMP's recommendations:

- a) Permanent adjusted duty (continuation of normal services with job modification)
- b) Temporary adjusted duty
- c) Permanent transfer to another type of work (even at a lower grade)
- d) Termination of service, where an employee cannot be accommodated

Most committees consider termination of service as the only option, without any accommodation, and that is what results in disputes addressed below.

KEY ELEMENTS REVIEWED IN THE GUIDELINE

The elements below were a source of many problems, as some employees recommended a Section 20 medical appeal to employees if they disputed the decision made by the Medical Incapacity Management Committee. Employees would subsequently lodge a Section 20 medical appeal based on unfair labour practice, which was not in keeping with the requirements of Section 20 of the Mine Health and Safety Act (MHSA).

* Under the Mine Health and Safety Act (MHSA), any employee at a South African mine can lodge a Section 20 appeal with the Medical Inspector with reference to a decision that such an employee is unfit to perform any particular category of work at a mine.



Disputes concerning the process and/or decisions of the Medical Incapacity Management Committee

It is expected that the guideline will inform the code of practice (CoP) drafted by the mines, ensuring that the incapacity process followed is consistent and that fair labour practice is followed in each case of medical incapacity/disability. However, differences in opinion may exist between members of the committee, resulting in unfair labour practice.

If the employee feels that the decision of the committee constitutes unfair labour practice, the employee may follow labour relations processes that exist, through the CCMA or the Labour Court, in line with processes prescribed in the LRA, and should not lodge a dispute via a Section 20 medical appeal.

Appeal in terms of Section 20 of the MHSA

- In terms of Section 20 of the MHSA, an employee may lodge an appeal to the Medical Inspector if disputing the decision of the OMP that the employee is unfit.
- This implies that a Section 20 appeal should be lodged after an employee has been declared permanently unfit by the OMP and before an employee is referred for medical incapacity management.
- Section 20 of the MHSA does not apply when an employee is disputing the medical incapacity processes or decisions of the Medical Incapacity Management Committee.

- Section 20 of the MHSA prescribes that an appeal should be lodged within 30 days of the decision of the OMP, and not within 30 days of the decision of the Medical Incapacity Management Committee.

CONCLUSION

Employers and employee health and safety representatives should ensure that they implement the requirements of the guideline properly to avoid confusion. The interface between the medical and labour relations processes should be borne in mind and distinguished as required. The reviewed guideline for a mandatory CoP for the management of medical incapacity due to ill-health and injury with amendments has not yet been gazetted, but the process has commenced.

REFERENCE

1. South Africa. Dept. of Mineral Resources. Guideline for a mandatory code of practice for the management of medical incapacity due to ill-health and injury. Government Gazette No. 39656:149; 2016 Feb 5. Available from: https://www.gov.za/sites/default/files/gcis_document/201602/39656rg10556gon149.pdf (accessed 1 Aug 2021).