POLICY

Termination on the Grounds of Incapacity
Due to Ill Health or Injury

<table>
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<tr>
<th>Scope (Staff):</th>
<th>All employees of North Metropolitan Health Service (NMHS)</th>
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<tr>
<td>Scope (Area):</td>
<td>All Areas of NMHS</td>
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Aim

The NMHS is committed to ensuring an employee who seeks to retire or whose employment is sought to be terminated by NMHS on the grounds of incapacity due to ill health or injury, is treated equitably and granted access to all entitlements.

Background

NMHS employees who are partially or fully incapacitated for work due to ill health or injury must undertake fitness for work assessments in line with the NMHS Fitness for Work – Employees Policy in the first instance.

This policy becomes applicable only once all suitable alternative options have been exhausted and an employee is seeking to retire or whose employment is sought to be terminated by NMHS on the grounds of incapacity due to ill health or injury.

Risk

Adherence to this policy will mitigate risk for the organisation and its accountable officers being exposed to the industrial, legislative and reputational impacts of not appropriately managing injured or ill employees and/or being discriminatory to these employees.

Principles

This policy applies to all NMHS employees including:

- Full-time, part-time and casual employees.
- Permanent and fixed term contract employees.

The objective of this policy is to assist NMHS to:

- assess requests for retirement on the grounds of incapacity due to ill health or injury; or
- implement termination of employment on the grounds of incapacity due to ill health, in a fair and consistent manner.

Employees are required to cooperate in the determination of their fitness for work and to attend medical assessments as directed by their manager when deemed necessary.
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Decisions relating to an employee’s termination on the grounds of incapacity due to ill health or injury must comply with the principles of natural justice and procedural fairness, the Public Sector Standard in Human Resource Management for Termination and the NMHS Fitness for Work – Employees Policy.

All termination processes and practices must reflect legislative and industrial requirements and the spirit and intent of the Department of Health Mandatory Policy – MP 0031/16 Code of Conduct.

Authority to approve employee initiated retirement and employer initiated termination on the grounds of incapacity due to ill health or injury is outlined in the NMHS Authorisation Schedule, with Human Resource (HR) and Industrial Relations (IR) advice required.

An employee who retires or is terminated on the grounds of incapacity due to ill health must be informed of their entitlements prior to the cessation of employment. Employee rights and entitlements are provided in the relevant legislation, industrial instruments and employment contracts.

**Superannuation**

An employee must be advised to obtain advice from their superannuation fund prior to an employee initiated retirement or employee initiated termination requests. Sufficient time should be allowed to obtain and consider advice.

The authority to determine a person’s eligibility for a superannuation disability benefit is vested with the superannuation fund and is made independently of the view of the NMHS.

**Redeployment / Voluntary Severance**

*The Public Sector Management (Redeployment and Redundancy) Regulations 2014. Part 1 – Preliminary, item 5 – Limits on application of regulations* restricts an employee who retires or is terminated on the grounds of incapacity due to ill health, whether under s39 of the PSMA 1994 or otherwise, from eligibility for redeployment or voluntary severance (redundancy). It does not prevent an employee who receives a voluntary severance from being entitled to a disability benefit.

**Employee Initiated Request**

If an employee has an illness or incapacity of a long term nature with little or no likelihood of recovery, he/she may seek retirement on the grounds of incapacity due to ill health or injury and should make a request via their manager.

An employee is to provide their manager with a detailed medical report from a registered medical practitioner that fully addresses their inability to continue in employment for the foreseeable future. This type of retirement will only be approved where an appropriate period of notice and evidence of the ill health or injury has been given.

If the manager is not satisfied with the evidence that the employee has valid incapacity due to ill health or injury reasons to retire, the manager may seek the advice of the NMHS Occupational Physician. The cost of obtaining such advice will be borne by the employee’s
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cost centre. Copies of all relevant reports relating to the employee’s condition should be provided to the NMHS Occupational Physician.

Where the NMHS Occupational Physician does not support the employee’s retirement on the grounds of ill health or injury, the manager must seek further advice from HR and IR. The manager may request the employee provide further medical evidence, at the employee’s cost.

**Employer Initiated Request**

The manager should contact HR and IR for advice and support when:

- An employee has been on extended personal leave.
- An employee’s paid leave entitlements have been exhausted.
- An employee’s sustained poor performance is directly attributed to the employee’s ill health.
- There is sufficient evidence to suggest that an employee’s sustained poor health poses a significant risk to their welfare or that of other employees and/or patients.

The employee must be advised of this concern and the intention by HR to consider this matter.

HR must seek advice from the NMHS Occupational Physician as to the employee’s ability to continue in current employment.

Where the NMHS Occupational Physician supports the employee’s termination on the grounds of incapacity due to ill health or injury and the approval for this has been obtained as per the NMHS Authorisation Schedule, the employee must be provided with clear written details of the proposed termination, including the grounds, the proposed termination date (with appropriate notice) and any actions required by the employee. The employee must be given an opportunity to respond.

NMHS may seek to terminate an employee who refuses to cease employment as a result of incapacity due to ill health or injury, via the relevant industrial instrument.

**Record Keeping**

Confidentiality must be afforded the highest priority. Only those directly involved should have access to records or information.

All decisions and reasons relating to retirement and termination requests should be recorded in writing. The employee should be kept informed of the decisions and provided with a copy of these decisions, together with a copy of all medical reports.

A copy of the employee’s request to retire or NMHS’ request to terminate employment and subsequent documentation should be forwarded electronically to Health Support Services for filing in the employee’s personal file.

Storage and retention of documentation is to be compliant with the [NMHS Record Keeping Plan 2015](#).
Dispute Resolution

An employee not satisfied with the management of their retirement on the grounds of incapacity due to ill health or injury request or decision by NMHS to terminate an employee on the grounds of incapacity due to ill health or injury may lodge a dispute pursuant to the process provided by the dispute settlement procedures of the relevant industrial instrument as well as the WA Health Employee Grievance Resolution Policy and the NMHS Guidelines for Resolving Employee Grievances.

Compliance and Evaluation

Each NMHS site or service Executive Director is to ensure compliance with this policy.

There are legislative obligations (Equal Opportunity Act 1984 Part IVA and Part X) in relation to this policy and non-compliance may result in penalties being applied.

Human Resources will review compliance with this policy through review of grievances and breach claims made against the Public Sector Commission’s Termination Standard.

Queries and Advice

For queries and advice, please contact your Human Resource Partner.
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Related internal policies, procedures and guidelines

| Department of Health Mandatory Policy – MP 0031/16 Code of Conduct |
| WA Health Employee Grievance Resolution Policy |
| WA Health Industrial Awards and Agreements |
| NMHS Authorisation Schedule |
| NMHS Record Keeping Plan 2015 |
| NMHS Employee Grievance Resolution Guidelines |
| NMHS Fitness for Work – Employees Policy |

References

- *Australian Human Rights Commission Act 1986 (Commonwealth)*
- *Disability Discrimination Act 1992 (Commonwealth)*
- *Public Sector Management Act 1994*
- *Public Sector Management (Breaches of Public Sector Standards) Regulations 2005*
- *Public Sector Management (Redeployment and Redundancy) Regulations 2014*
- *Equal Opportunity Act 1984*
- *Freedom of Information Act 1992*
- *State Records Act 2000*
- *Minimum Conditions of Employment Act 1993*
- *Occupational Safety and Health Act 1984*
- *Industrial Relations Act 1979*
- General Disposal Authority for Human Resource Management Records RD 2012004
- Public Sector Standards in Human Resource Management – Termination Standard
- Public Sector Standards in Human Resource Management - Grievance Resolution Standard
- Commissioner's Instruction No. 7 Code of Ethics
- Government Employees Superannuation Board (GESB) - Product Information Booklets
The health impact upon Aboriginal people has been considered, and where relevant incorporated and appropriately addressed in the development of this health initiative (ISD reference number: IS53P1018).