Mental or Physical Incapacity of Employees

Policy Number: E11 (QH-POL-170)
Publication date: January 2014

Purpose: To outline the process to address mental or physical incapacity in employees.

Application: This policy applies to all Queensland Health employees, including employees working in and for the:
- Department of Health
- non-prescribed Hospital and Health Services
- prescribed Hospital and Health Services.

Delegation: The ‘delegate’ is as listed in the Department of Health Human Resource (HR) Delegations Manual and the Hospital and Health Services Human Resource (HR) Delegations Manual – HRM Functions of the Director-General, as amended from time to time.

Legislative or other authority:
- Anti-Discrimination Act 1991
- Industrial Relations Act 1999
- Public Service Act 2008
- Public Service Regulation 2008
- Workers’ Compensation and Rehabilitation Act 2003

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SCHEDULE ONE Process
1 Mental or physical incapacity

Chapter 5, Part 7 of the Public Service Act 2008 provides for a process where there is a reasonable suspicion an employee’s absence or unsatisfactory performance is caused by a mental or physical illness or disability. Public Service Regulation 2008 extends the mental or physical incapacity provisions of the Public Service Act 2008 to health service employees.

The process under Part 7 of the Public Service Act 2008 can only be commenced in circumstances where, under section 174, the delegate is reasonably satisfied that:

- an employee is absent from duty or is not performing their duties satisfactorily; and
- the employee’s absence or unsatisfactory performance is caused by mental or physical illness or disability.

There must be sufficient information available to the delegate to support their reasonable suspicion.

Schedule one outlines the recommended process.

2 Communication

Queensland Health is to communicate openly and regularly with employees throughout the process and information should be shared in a respectful, timely and appropriate manner.

3 Use of workers’ compensation documents

Section 572A of the Workers Compensation and Rehabilitation Act 2003 states a person must not, for a purpose relating to an employee’s employment:

- obtain or attempt to obtain a workers’ compensation document about the employee
- use or attempt to use a workers’ compensation document about the employee.

Therefore, a document obtained for the purpose of a workers’ compensation claim cannot be provided to an examining doctor or be relied upon to make decisions about an employee’s employment (including a decision to retire, transfer or redeploy an employee), regardless of whether the employee consents to the use of the report.

4 Requirement for documentation

Throughout the process the delegate is required to ensure there is sufficient documentation to demonstrate that appropriate consideration has been given to the decisions made, including but not limited to, decisions about:

- transfer or redeployment
- retirement
- reasonable adjustment.

If a delegate considers transfer or redeployment is not reasonably practicable, there must be sufficient documentation to support why this was not reasonably practicable.
5  **Natural justice must be afforded**

The principles of natural justice must be applied when determining whether an employee should be retired.

Natural justice has two rules:

- **Rule against bias**: decision-makers are to be objective, free of bias, and have no personal interest in the matter being decided.
- **Hearing rule**: an individual is to be informed of the decision to be made and have the opportunity to present their case prior to the decision being made.

6  **Key principles**

The following key principles apply in all mental or physical incapacity processes:

- relevant legislation and/or applicable policy must be complied with
- reasonable adjustment must be considered
- employees are to be kept informed throughout the process
- decisions must be supported by evidence which has taken into account all relevant material
- decisions should be made in a timely manner
- the process should be managed in consideration of the impact on an employee’s health and well-being
- the process is to be confidential.

**History:**

<table>
<thead>
<tr>
<th>Date</th>
<th>Changes</th>
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<tbody>
<tr>
<td>January 2014</td>
<td>Policy redrafted and formatted as part of the HR Policy Simplification project.</td>
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<tr>
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<td>Policy amended to:</td>
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<td>o change title from ‘Medical Examination of Employees’ to ‘Mental or Physical Incapacity of Employees’ to better reflect the scope of the policy</td>
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<td></td>
<td>o provide more comprehensive information outlining the process to address mental or physical incapacity of employees.</td>
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<tr>
<td>April 2009</td>
<td>Amended to include section 7.2 to include referral by an occupational health and safety practitioner in accordance with OHSMS 3-3#21 Managing Ill Health Work Practice Directive.</td>
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<tr>
<td>August 2008</td>
<td>Amended section 8.1 to reflect all Queensland Health employees may be retired, not only those employees from the public service.</td>
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<tr>
<td>August 2008</td>
<td>Extracted from the Separation of Employment HR Policy as the outcome of a medical examination may or may not be separation of employment.</td>
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<td>Previous</td>
<td>Separation of Employment HR Policy H1 Part C (April 2008)</td>
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Mental or Physical Incapacity of Employees – Schedule One

Process

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Queensland Health HR policy.

Local guidelines/procedures may be developed to facilitate implementation of this policy. Any local guidelines/procedures must be consistent with this policy and schedule and ensure employee entitlements continue to be met.

1 Process

Where an employee discloses a medical condition or there is a reasonable suspicion the employee has a mental or physical illness or disability that may be affecting their attendance or ability to perform their duties satisfactorily, the following actions should occur:

- informal and timely discussions between the employer and employee which may resolve concerns about the employee’s attendance or performance; and/or
- consultation with the employee’s treating doctor (with the employee’s signed authorisation) which may provide information to enable the effective management of the employee’s attendance or performance.

In these situations, formal intervention under part 7 of the *Public Service Act 2008* may not be required.

Where consideration is being given to a medical examination under the *Public Service Act 2008*, the local human resources unit must be consulted prior to taking any action.

Throughout the process, open and regular communication should be maintained with the employee and information should be shared in a respectful, timely and appropriate manner. Employee Assistance should be offered.

1.1 Determine grounds for direction exist

When a delegate has considered the information and is reasonably satisfied the employee is absent or is not performing their duties satisfactorily, and this is caused by mental or physical illness or disability, they can commence a process under Part 7 of the *Public Service Act 2008*.

1.2 Appoint a doctor to examine the employee

A specialist in the area relevant to the employee’s suspected mental or physical illness or disability should be appointed to conduct the medical examination.

In situations where it is unclear the type of doctor an employee should be referred to, consideration should be given to sending the employee to a generalist specialist. This may include a general physician or occupational physician.

A letter must be provided to the examining doctor:

- appointing them under the *Public Service Act 2008*
- identifying the provisions of the *Public Service Act 2008* under which the appointment is being made
• including sufficient background information about the employee’s absence or how the employee is not performing their duties satisfactorily and information about their illness or injury (which may include a role description and/or detailed statement of duties)
• advising that the information they provide could be used to determine whether the employee should be:
  - transferred or redeployed; or
  - retired
• including a request for response to the questions required under section 177 of the Public Service Act 2008.

1.3 Issue a ‘direction to attend’ letter

If a delegate requires an employee to submit to a medical examination under the Public Service Act 2008, the employee is to be provided with a letter:

• directing them to attend and participate in an appointment under section 175 of the Public Service Act 2008
• advising the details of the appointment
• advising the grounds on which the direction is made under the Public Service Act 2008 (i.e. why the delegate is reasonably satisfied the employee is absent or is not performing their duties satisfactorily, and why they think this is caused by a mental or physical illness or disability)
• outlining the type of information sought from the specialist
• outlining the action taken on receipt of the medical report.

The employee is to be given reasonable notice of the appointment (at least five working days is recommended).

1.4 Attendance at appointment

The medical appointment should be paid for by the Hospital and Health Service/Department of Health Division/Agency and employees should be provided with reasonable travel assistance to attend the appointment. This may include taxi vouchers or air fares.

1.5 On receipt of the medical report

On receipt of the medical report, the delegate must provide a copy of the report to the employee, or to the employee’s treating doctor (depending on the advice of the examining doctor) as soon as reasonably practicable.

If the report is being provided to the employee’s treating doctor, the employee must be advised that the report has been provided, and requested to make an appointment with their doctor to have the report explained to them.

No further action should be taken to progress a decision about the employee’s ongoing employment until this has occurred, however an employee must not cause an unnecessary or unreasonable delay.

The delegate should consider the information contained in the report and determine the appropriate course of action to take. This may include, but is not limited to:

• management of issues by way of normal performance management processes
• continued return to work attempts
• consideration of reasonable adjustment (refer to HR Policy G3), including options in the employee’s substantive position
• consideration of transfer or redeployment
• consideration of retirement.

The employee should be advised of the delegate’s decision, and the reasons for the decision, in writing.

1.6 Consideration of transfer or redeployment

If the medical advice indicates the employee is unable to perform the duties of their substantive position, but could perform other work, consideration must be given to whether it is reasonably practicable to transfer or redeploy the employee.

Transfer or redeployment options should be based on:

• information provided by the specialist
• advice from the employee about alternative roles/locations/levels they would consider
• available vacancies.

Employees should be involved in this process and regularly informed of the options being considered.

If a delegate determines transfer or redeployment is not reasonably practicable, documentation must support any decision, including why those options are not suitable.

1.7 Consideration of retirement

Where a delegate determines it is not reasonably practicable to transfer or redeploy an employee, under section 178 of the Public Service Act 2008, a delegate may determine to retire the employee.

Before a decision is made to retire an employee, the delegate is to write to the employee (show cause) affording them an opportunity to show cause why they should not be retired pursuant to the Public Service Act 2008. This includes an opportunity to provide medical advice or other information.

The employee should be provided with a reasonable period to provide their response, usually fourteen days.

1.8 Decision on retirement

Upon reviewing all material, including any response to the proposed retirement, the delegate should make a decision about whether the employee should be retired.

The employee must be advised of the delegate’s decision, and the reasons for the decision, in writing.

1.9 Notice of retirement to employee

If the employee is to be retired, the prescribed period of notice in the relevant industrial instrument is to be provided to the employee or payment in lieu of notice.

1.10 Notification to registering authorities

If a registered health professional is retired due to a mental or physical illness or disability, the appropriate registering authority is to be notified immediately.