


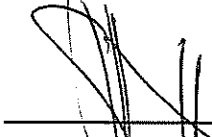
# INCAPACITY DUE TO OPERATIONAL REQUIREMENTS POLICY



APPROVED BY:

  
MRS N. NOMANDELA  
MUNICIPAL MANAGER

APPROVED BY:

  
CLLR MD. NGQONDWANA  
MAYOR

DATE: .....

DATE: .....

## **1. PREAMBLE**

The Municipality has embarked on a process to address incapacity due to Operational requirements within the prescribed guidelines in terms of the Labour Relations Act.

This policy relates to changes in structure, technology, size, staffing and policy (amongst others) which have the effect that the employment situation of the employees is, or may be, detrimentally affected thereby and which may result in dismissal.

The Council shall adhere to the stipulations of Section 189 of the Labour Relations Act of 1995, Main Collective Agreement or any pertinent legislation or Agreement as may apply from time to time.

## **2. DEFINITIONS**

- **Incapacity** refers to an individual's inability to perform according to the stipulated work standards of a particular job.
- All terminology not defined under clause 2 of this policy shall bear the same meaning as in the applicable legislation.

## **3. LEGAL FRAMEWORK**

- Labour Relations Act (Act 66 of 1995)
- Basic conditions of employment
- Main Collective Agreement

## **4. SCOPE AND APPLICATION**

The policy shall apply to all employees of **Nyandeni Local Municipality**.

## **5. OBJECTIVES OF POLICY**

The purpose of this policy is to ensure the Employer's operational efficiency while at the same time exploring every possible alternative action to avoid termination of employment, it is intended to ensure that when a termination for reasons of incapacity due to operational requirements takes place it is effected for a fair reason and in accordance with a fair procedure and as a last resort.

## **6. POLICY CONTENT**

### **6.1 Reasons for Termination on Operational Requirements**

The employer must be able to prove that operational circumstances exist, thus making termination unavoidable the employer must also show that no other **reasonable measures can be taken to solve the operational problem. There are numerous factors that could lead to termination on operational requirements.**

- **Technological advancement, which could make labour less necessary at the workplace.**
- **Financial mismanagement which may result in company closures or losses and the need to cut your labour.**
- **Reduction in customer orders resulting in the reduction of work.**
- **Labour laws that are so restrictive**
- **Industrial actions that can weaken the company financially.**
- **Lacks productive, poor management or demotivated employees will reduce the company's productivity.**
- **Mergers and takeovers leading to retrenchment of surplus employees due to the merging of duplicate jobs.**

#### **6.1.1 Substantive Issues**

- The employer must prove that the proffered reason is one base on the operational requirements of the organization; the employer will have to prove that the reasons for dismissal fall within the statutory definition of operational requirements.
- The employer must prove that the operational reasons actually existed and that the dismissal is not a cover up for another reasons.
- The Labour Relations Act distinguishes between the small employer and a big employer, a small employer is one that employs 50 or fewer and a big employer employs 50 or more employees.
- The dismissal is operationally justifiable on rational grounds; rational grounds are founded upon reason or logic.
- There were proper consideration of alternative, the employer and employees must attempt to agree during consultation on measures or ways to avoid dismissal.
- The employer and employee representatives must attempt to reach consensus about the method to be used to select employees for dismissal.

#### **Procedural Aspect**

##### **Consultation Process**

- The consultation process between the employer and employee representative is the heart of procedural fairness in the case of dismissal for operational requirements .Sec189 of the LRA provides as follows:
- When the Council contemplates dismissing one or more employees for reasons based on the municipality's operational requirements ,the municipality must consult -
  - The union
  - If there is no collective agreement that requires consultation :
    - ❖ A workplace forum, if the employees likely to be affected by the proposed dismissal are employed in workplace in respect of which there is a workplace forum.
    - ❖ The consulting parties must attempt to reach consensus on
      - Appropriate measures to:
        - Avoid dismissals
        - Minimize the number of dismissals
        - Change timing of the dismissals; and
        - Mitigate the adverse effects of the dismissals
      - The method of selecting staff members to be dismissed;
      - Severance pay for dismissed staff members

The municipality must disclose in writing to the other consulting party all relevant information, including but not limited to:

- a) The reasons for the proposed dismissals
- b) The alternatives that the Council considered before proposing the dismissals and the reasons for rejecting each of those alternatives;
- c) The number of staff members likely to be affected and the job categories in which they are employed.
- d) The proposed method for selecting which staff members to dismiss
- e) The period during which the dismissal are likely to take effect
- f) The severance pay proposed
- g) Any assistance that the Council proposes to offer to the staff members likely to be dismissed; and
- h) The possibility of the future re-employment of the staff members who are dismissed.

### **Consultation Topics**

#### **➤ Measures to avoid dismissal**

The consulting parties must try and reach consensus on retrenchment alternatives.

#### **➤ Measures to minimize the number of dismissal**

Once the consulting parties have reached consensus that dismissal are the only solution to the challenges faced by employer ,they must try to on measures to keep the number of employees who will lose their jobs as low as possible

#### **➤ Measures to change the timing of the dismissals**

While the employer may prefer that the dismissals to take place as soon as possible, the union may prefer the dismissals to be spread of time or take place at a later stage.

➤ **Measures to mitigate the adverse effect of the dismissal**

The employer may assist the employee in finding alternative work by giving the employee time off, without loss of pay to search for alternative work and go to for interviews. The employee may also be provided with a reference in addition to the certificate of service that must be furnished in terms of sec 24 of BCEA.

➤ **Selection Process**

The consulting parties must also agree on the criteria that will be used to select which employee will be dismissed.

➤ **Severance Pay**

An employee dismissed for operational requirements is entitled to severance pay in terms of sec 41 of the BCEA, does not prevent the consulting parties to agree on severance pay.

An employee who is dismissed as a result of the employer's operational requirements will be entitled to a severance package of three weeks remuneration for each completed year of service, capped to the equivalent of nine months' pay, thereafter one week's pay for every completed year of service.

## **RETRENCHMENT**

In the circumstances where the municipality find it necessary to dispense with the services of employees for whom there is no further operational requirements. In these circumstances the service of the employees concerned will be terminated in accordance with a compulsory severance scheme negotiated with the recognized employee organization.

Such schemes will be drawn up in accordance with the following principles:

- Selection criteria will be objective, consistent with the principles of employment equity and focused firmly on operational requirements.
- Where possible preference in selection should be given to those who wish to volunteer over those who wish to remain.
- The financial compensation package will provide fair compensation for the loss of employment, taking into consideration the employee's age, length of service and future employment prospects.
- Adequate notice of severance will be given to employees.

## **IMPLEMENTATION AND MONITORING**

This policy will be implemented and effective once **recommended by the Local Labour Forum and** approved by Council.

## **COMMUNICATION**

This policy will be communicated to all Municipal employees using the full range of communication methods available to the municipality.

## **POLICY REVIEW**

This policy will be reviewed annually and revised as necessary.

## **BUDGET AND RESOURCES**

The financial and resource implication/s related to the implementation of this policy should be qualified and quantified.

## **ROLES AND RESPONSIBILITIES**

The Municipal Manager or his/her delegate assignee accepts overall responsibility for the implementation and monitoring of the policy.

## **DISPUTE RESOLUTION**

Any dispute arising from this policy due to ambiguous wording or phrasing must be referred to the Labour Court for adjudication.