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# MANAGEMENT OF MEDICAL INCAPACITY PROCEDURE


## TNCL-OHS-SOP-0038



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## 1. INTRODUCTION

TNCL is dedicated to safeguarding the well-being of its employees by implementing a zero-harm policy. This policy aligns with TNCL's core values of safety, respect, honesty, and integrity, which form an integral part of the company culture. Therefore, it is crucial to ensure that the process is transparent and upholds the company's core values while prioritising the safety and health of the employees.

The workplace comprises different groups of employees, each with unique needs that the company must consider. For instance, there are pregnant and breastfeeding mothers, employees with disabilities, and shift employees. Therefore, the company must have an effective system in place for managing these employees.


As an employer, the company has legal and moral obligations to provide a safe and healthy work environment for all employees. This includes complying with the Occupational Health and Safety Act, Mine Health and Safety Act, and Employment and Labour Relations Act.

This guidance document provides a detailed approach to managing medical incapacity in the workplace.

## 2. DEFINITION AND ACRONYMS

Table 1: Acronyms and Definition

Terms	Definition
ELLA	Employment and Labour Relations Act
EMF	Electromagnetic Field
OHS	Occupational Health and Safety
OHSA	Occupational Health and Safety Authority
TNCL	Tembo Nickel Corporation Ltd
VDU	Video Display Unit

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### 3. RESPONSIBILITIES

#### 3.1 Site General Manager

- Ensure that the required funding is available for the implementation of this program.
- Hearing the appeals regarding the outcomes of the medical incapacity meeting

#### 3.2 Occupational Health and Safety Manager

- The Occupational Health and Safety Manager will be the overall foresee of the program.
- To support the TNCL Medical incapacity procedure technically and administratively.
- To serve as the Chairperson of the Functional Capacity Committee meeting.

#### 3.3 Occupational Health Lead


- To ensure the program is operational and sustainable.
- Conduct HIRA onsite.
- Develop and implement the TNCL Medical Incapacity Procedure
- Maintain a computer database that includes information about the employees who are on sick leave, including long-term sick leave.
- Be the intermediary between TNCL and the healthcare provider.
- Be available to respond to questions or concerns about the program from the employer.
- Be responsible for reviewing this program.
- Manage restrictions imposed on an employee as a result of medical incapacity.
- Annually update of this program.

#### 3.4 Human Resources Team

- Arrange the functional capacity committee meetings
- Maintain and update the sick leave database.
- Counselling the employees who are abusing sick leave.
- Alerting the employees on their sick leave status.

#### 3.5 Employees shall

- Follow the requirements of the medical incapacity procedure whenever applicable.
- Providing information to the onsite medical team as soon as reasonably practicable if they are granted sick leave in case they were treated outside the onsite clinic.

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## 4. PROCEDURE

### 4.1 Scope

This procedure shall apply to all TNCL employees employed on permanent and fixed-term contracts. Contractors are encouraged to adopt the TNCL medical incapacity procedure.

### 4.2 Purpose

This document aims to guide how to manage medical incapacity in the workplace. It includes information on managing sickness absences, procedures for terminating an employee on medical grounds, and guidance on managing pregnant and breastfeeding mothers and shift workers.


### 4.3 Chapter two-Legislative framework

Under the Employment and Labour Relations Act (CAP. 366 R.E.2019) , it is strictly prohibited to practice any form of unfair discrimination in the workplace. Employers are required to ensure equal employment opportunities for all and take necessary steps to eliminate any discriminatory employment policies or practices (as per Section 7 of the ELRA). The law covers all forms of discrimination and states that employees can only be distinguished based on the inherent requirements of their work (as mentioned in subsection 6 (b)), which is crucial in offering legal guidance on medical surveillance and fitness for work procedures.

According to the Act, employees are entitled to 126 days of sick leave, with 63 days of full pay and 63 days of half pay, as outlined in Section 32 (1-2). If an employee exhausts their sick leave, the employer may terminate their employment due to medical grounds. However, this termination must follow fair procedures as stated in Rule 19 of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

It is crucial to prioritise the well-being of pregnant and breastfeeding mothers in the workplace. The law addresses this issue in Sections 20(2), 33, 37(3b), and Rule 15 of The Employment and Labour Relations (General) Regulations, 2017.

Fitness for work is one of the important legal guidance provided by the Employment and Labour Relations Act, which instructs the employer to ensure that whoever works at night must be certified to be Fit, Section 20 (2d). Only an employee who is medically certified as unfit can do the night shift.

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Rule 13 (1) of The Occupational Health and Safety, General Administrative Regulations, 2015 states: An employer shall not permit a person who appears to be under the influence of intoxicating liquor or drugs to enter or remain at the workplace. Similarly, in The Mining (Safety, Occupational Health and Environment Protection) Regulations, 2010, Rule 22 provides that an intoxicated person is not eligible to enter the mine. Therefore, the management of alcohol and illicit drugs in the workplace is important.

Finally, section 101 of the Occupational Health and Safety Act, 2003 instructs any medical practitioner to report to the Chief inspectors within 14 days from the discovery of any suspected work-related condition. The Chief Inspector has the legal authority to determine the work-relatedness.

#### **4.4 Chapter Three- Functional Capacity Committee**

##### **4.4.1 Background**

Management of employees who are in long-term sickness or employees with a disability is challenging. It needs a multidisciplinary team from different sections/departments at the workplace, and it will also need technical expertise ranging from doctors, Industrial hygienists, physiotherapists, Occupational therapists, Occupational Physicians/OMP, legal, etc. Therefore, TNCL must have a Functional Capacity committee.


##### **4.4.2 Scope**

The Functional Capacity Committee will cover TNCL employees only. This will involve employees who are employed on permanent or fixed-term contracts. The casual labour employees will not be covered by this committee.

##### **4.4.3 Purpose**

###### **4.4.3.1 Objective**

The overall objective of this committee is to manage long-term sickness absenteeism at the workplace, manage the employees with Disability and finally advise the management on whether the formal reasonable accommodation or termination under medical incapacity will be appropriate.

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#### 4.4.3.2 Specific Objective


1. To guide the management of employees who are on long-term sick leave.
2. To guide the management of employees who have a disability at employment or who suffered a disability during employment.
3. To identify departments/ sections where the employee will be placed as part of the rehabilitation program.
4. To decide on a rehabilitation program that will be expensive, i.e., Formal Functional Capacity assessment, Cognitive behavioural therapy or any expensive intervention that the medical aid will not cover.
5. To decide on the medical treatment of the employee beyond the medical cover provided by the insurer.
6. To decide on the reasonable accommodation or termination of the employee under medical incapacity grounds.

#### 4.4.4 Members of the Functional Capacity Committee

1. Occupational Health and Safety Manager
2. Occupational Health Lead
3. Safety Lead
4. Legal team
5. Site Human Resource team
6. Departmental Managers
7. Worker's Forum Representative
8. Chairperson of the Health and Safety Committee
9. Any other member as advised by the Occupational Health and Safety Manager.

#### 4.4.5 Frequency of the meeting

1. The committee will be meeting once each quarter or at shorter intervals and on an emergency basis as per operational requirements.
2. The meeting will be face-to-face; the online meeting will only be conducted when a face-to-face meeting is not practicable or on an emergency basis. This is because of the sensitivity of the information that will be discussed.

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#### 4.4.6 Cases that should be submitted to the committee.

1. All employees who have been on sick leave for more than one hundred and twenty-six (126) days and/or those with the Bradford factor score of more than nine hundred within the one employment cycle.
2. All employees who have exhausted their inpatient medical cover such that the company need to pay out of pocket.
3. All employees who require a formal Functional Capacity Evaluation assessment.
4. All employees who suffered Disability during employment or are disabled at employment.

**NB:** Employees with habitual/abuse of sick leave will not be discussed in the meeting. It will be the duty of the Departmental manager to manage the sick leave of his/her employees.

#### 4.4.7 How the committee will make decisions

1. The committee will listen to the medical information regarding the employee's illness. The Occupational Health team will present this.
2. The committee will approve further assessment under the company cost if further assessment is needed before a decision can be made.
3. Once the medical details are sufficient, the manager of the department where the employee belongs will also present the operational side of the employee's condition, how the employee's sickness affects the operation, etc.
4. The employee will be given a chance to explain his medical condition and how the medical condition affects his/her work or how his/her work affects his/her medical condition.
5. The worker representatives and the representative from the SHE committee will also be listened to before the decision can be made.
6. The decision will be made objectively by assessing all of the presented evidence and opinions.
7. The outcome of the Functional Capacity Committee Meeting shall be given in writing.

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#### 4.4.8 Appeal

1. Should the employee not be satisfied with the decision of the committee, the employee can appeal through the TNCL site General manager within seven days., after being issued with the outcome of the Functional Capacity Committee Meeting in writing.

The TNCL site General manager will go through the committee proceeding and the outcome, and within seven days, should decide on the matter. Suppose the employee is not satisfied with the decision of the general manager again. In that case, he/she can appeal to the Chief Human Resources Officer within seven days after receiving the outcome from the site General Manager. The Chief Human Resources Officer will review the case and decide within seven days of receiving the appeal.

#### 4.4.9 Confidentiality

All medical information is confidential between the attending medical practitioner and the patient. For the third party to access that information, the employee must sign the informed consent form to allow his/her medical information to be disclosed for discussion in the Functional Capacity Committee Meeting.

The employee has the right of refusal to disclose the medical information, and therefore, his or her case will not be discussed in the committee meeting; therefore, all of the benefits that the employee might benefit from will be lost.

All members of this committee must sign a confidentiality of information form, which will prevent them from discussing or sharing the medical information of the employee outside the committee.


#### 4.4.10 Limitation of the Functional Capacity Committee

The committee will not be involved in making decisions regarding the work-relatedness of the disease. Legally, that decision will be conducted by OSHA.

### 4.5 Chapter Four- Management of sick leave

#### 4.5.1 Background

"Sick leave is an absence from work permitted because of illness or is the number of days per year for which an employer agrees to pay employees who are sick". (Webster's New Collegiate Dictionary, 1981).

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Depending on the legislation of the country, the number of days in which the employer agrees to pay employees for sick leave varies from one country to another. In the United Kingdom, employees can take sick leave for a maximum of hundred and eighty-three days in a four-year cycle. Ninety-two days will be on full pay, and ninety-one days will be on half pay. (1)

In the United States of America, there is no federal legal requirement for the employer to provide paid sick leave to an employee. The Family and Medicine Act requires the company to provide unpaid sick leave for employees. However, this is subject to variation from one state to another.


In the South African context, each employee is entitled to paid sick leave equal to the number of days he or she would normally work in a period of six weeks for every employment cycle of three years.

In the Tanzania context, each employee will be eligible to receive hundred twenty-six days of sick leave (126) per cycle of three years, of which sixty-three days (63) will be full pay and sixty-three (63) days will be half pay (ELRA). Employees with an employment contract of fewer than six months will not be eligible for paid sick leave. The employee will not be entitled to paid sick leave if he/she doesn't produce a valid medical certificate or when the employee is entitled to paid sick leave under any law, fund or collective agreement (ELRA).

It is important to note that if employees suffer occupational Injury or diseases, they are entitled to payment under the Workers' Compensation Act, CAP 263, in Sections 8 and 9. Therefore, these employees will not be entitled to paid sick leave under the Employment and Labour Relations Act.

The causes of sickness absenteeism are well documented in the scientific literature; these may range from organisational factors to host factors. Among a host of factors contributing to sick leave in a workplace, work-related factors may play an important role, as found in a study conducted in Norway. Heavy manual activities, stressful working conditions and low job autonomy contributed to sick leave.

The organisational factors that are associated with sick leave include autonomy in making decisions, feeling proud of the job and opportunities for education and training.

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A particular problem seen in employees requiring sick leave is a pattern of recurrence: an employee with a history of sick leave is more likely to require further sick leave for the same condition. In the UK, 25% of cases had recurrent sick leave, and over 50% of them were due to the same medical condition as the previous episode.

For the employer, sick leave has a direct impact on employee productivity and would, therefore, negatively impact the economy. According to the UK Office of National Statistics, the direct cost of employee sickness in 2013 was 11 billion and 600 million pounds. In Ireland alone, the direct cost of sickness absence in 2010 was one and a half billion pounds.

Occupational Care South Africa estimated the direct cost due to sick leave in South Africa to range between 12 and 16 billion rand per year. Although the methodology used for this estimation was not mentioned, their conclusions are consistent with other data published in Europe.

In addition to the direct cost of payment for employees who are not at work, there is also an indirect cost related to not achieving annual targets and objectives as a result of decreasing productivity. Within the context of the larger financial system, there might be an increase in payments for medical aid and temporary disablement.


Lastly, the longer the period of sickness absenteeism, the less likely the employee will resume duties. After being off work for six months, only one in five returns to work (NICE 2009). After two years, the employee is more likely to retire than return to work (NICE 2009).

#### 4.5.2 Management of sick leave

##### 4.5.2.1 Reporting of sick leave by an employee

###### 4.5.2.1.1 Sick leave was granted at the Mine site clinic.

- a) The employee who will be attended by the mine site clinic will be granted sick leave through the TNCL sick leave form.
- b) The sick leave will document the date his/her sick leave commences and the date on which the sick leave will end.
- c) The employee will be given his/her copy, and the original copy will be sent to the onsite Human Resources Department.
- d) The sick leave will show how many days of sick leave the employee has consumed in the current sick leave cycle and how many days are left.

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- e) The clinic will have a system which it will capture each employee's sick leave and share it with the Human Resources team.

*4.5.2.1.2 Sick leave is granted at health facilities other than the Mine site clinic.*

- a) The employee should collect a sick certificate from the Medical Practitioner.
- b) The sick certificate must indicate the start and the end date.
- c) The certificate must show the name of the hospital, as well as the address and phone number.
- d) The certificate must indicate the date the employee attended.
- e) The medical practitioner must write his/her name, speciality, registration number, and signature.
- f) The employee must submit the sick leave to the clinic for validation and internal approval.
- g) Then, the process number "3 to 5" above of sick leave at the mine site clinic will apply.

**NB:**

- a) It is the responsibility of the employee to comply; otherwise, the employer will not be liable to pay the employee for the days that he/she was off.
- b) The employee must inform the clinic via any form of communication regarding his/her sickness.


*4.5.2.2 Sick leave monitoring and reporting*

*4.5.2.2.1 Percentage of working time lost:*

One of the ways of expressing sickness absence, which is commonly used in industry, is as "percentage working time lost". It is calculated as the ratio of scheduled hours lost (attributed to sickness) to total scheduled, or "paid for", hours.

*4.5.2.2.2 Bradford Factor*

The Bradford Factor is also referred to as the Bradford Formula, the Bradford Score and the Bradford Index. The Bradford Factor is a simple formula that allows companies to apply relative weighting to unplanned employee absences (sickness, doctor appointments, emergency childcare, etc.). The Bradford Factor supports the principle that repeated absences have a greater operational impact than long-term sickness. (A-weighting is an event's impact on the overall running of the normal business. If you give something a larger weighting score, it has a bigger impact).

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The Bradford factor is calculated using the Bradford Formula:

$$B = S^2 \times D$$

**S** is the total number of separate absences by an individual

**D** is the total number of days of absence of that individual (Cumulative days)

**B** is the Bradford Factor score

### **Bradford Factor Scales**

The heat map attached provides a visual overview of Bradford Factor scores and weightings. It is important to remember that the Bradford Factor index is only a guide. Employers' staff absence policies should be carefully documented and communicated to staff. Employers have a responsibility to ensure that staff understand the Bradford Factor calculator and how it is applied.


The Bradford Factor Heat map below uses three scales:

**Concern (BF 45):** Sufficient days for a manager to show concern and should take some actions, including counselling the employee.

**Concern (BF 100):** Sufficient days for a manager to start formal investigations and appropriate interventions should be taken.

**Concern (BF 900):** Sufficient days for a manager to refer the case to the Functional Capacity Committee.

Link to the online BF calculator: <https://www.bradfordfactorcalculator.com/>

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### How to calculate the BF, step by step:

A member of staff has three periods of sickness absence in a designated period of a year. The first absence is four days, the second absence is one day, and the third absence is two days. See below how the Bradford Score rises from one to the next.

1 absence x 1 absence x 4 days = 4

2 absences x 2 absences x 5 days = 20

3 absences x 3 absences x 7 = 63

You can see that although only three days are accrued between the first period of absence and the last period of absence, the Bradford score has increased significantly (**over 15 times the original score**).


## **4.6 Chapter Five- Management of night work and shift workers**

### 4.6.1 Background

Shift work is a work activity scheduled outside standard daytime hours, where there may be a handover of duty from one individual or workgroup to another or a pattern of work where one employee replaces another on the same job within a 24 hours. Examples of shift work might be:

- a) Work during the afternoon, night, or weekend, typically with periods of the work schedule outside standard daytime hours.
- b) Extended work periods of 12 hours or more are often associated with compressing the working week.
- c) Rotating hours of work.
- d) Split shifts, where work periods are divided into two distinct parts with several hours break in between.
- e) Overtime.
- f) Standby/on-call duties.

The Employment and Labour Relations Act, Section 20, defines the night shift as the time after twenty hours to the time before six hours in the morning. Therefore, all employees who work during this time must be certified fit. The night shift is associated with the following challenges:

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- a) Tiredness,
- b) Poor performance
- c) Accidents

Shift work may result in the following health conditions:

- a) Disruption of the internal body clock.
- b) Fatigue\*\*\*
- c) Sleeping difficulties
- d) Disturbed appetite and digestion.
- e) Reliance on sedatives and/or stimulants.
- f) Social and domestic problems

**\*\*Fatigue**


Fatigue is the decline in mental and/or physical performance that results from prolonged exertion, lack of quality sleep or disruption of the internal body clock.<sup>21</sup> The degree to which a worker is prone to fatigue is also related to workload. For example, work that requires constant attention is machine-paced, complex or monotonous, which will increase the risk of fatigue.<sup>19</sup>

A poor balance between the demands of work and the time provided for rest and recovery, resulting, for example, from poorly designed shift-work schedules and long working hours, is likely to result in chronic fatigue.

Levels of fatigue are also affected by personal factors such as home life or individual characteristics. You will need to be aware of these factors when you carry out your risk assessment.

Research reveals that when we are sleep-deprived and/or fatigued, performance is affected, and errors are more likely. This particularly applies to tasks that require:

- a) Vigilance and monitoring.
- b) Decision making.
- c) Awareness.
- d) Fast reaction time.
- e) Tracking ability.
- f) Memory.

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**Health effects details:**

As well as chronic fatigue, there is some evidence associating long-term exposure to shift work and the following ill health effects:

- a) Gastrointestinal problems such as indigestion, abdominal pain, constipation, chronic gastritis and peptic ulcers.
- b) Cardiovascular problems such as hypertension and coronary heart disease; increased susceptibility to minor illnesses such as colds, flu and gastroenteritis
- c) Reproductive problems in female shift workers have also been reported. While the association for reproductive effects is less strong, it would be wise to consider shift work, especially night shifts, as a potential risk to reproduction. Research into a possible link between shift work and breast cancer has been inconclusive.

Shift work may also exacerbate existing health problems such as diabetes, asthma, epilepsy and psychiatric illness. Moreover, the effectiveness and potential toxicity of some drugs may vary depending on the time they are taken, as the dose-response patterns of many drugs follow a circadian pattern.

Shift workers, particularly those who work at night, may be at risk of ill health because shift work can disrupt our body clock (by interfering with the production of hormones by the body), disturb sleep and cause fatigue.


Individual and social factors may also contribute to the risk of ill health effects. Consequently, not everyone will experience or have the same pattern or degree of health problems. An individual's attitude, behaviour, lifestyle, age, sex, and family history, plus the conditions they work in, will all play a part.

**4.6.2 General management of shift work**

Management of the shift work is important as some of the employees may have an absolute or relative contraindication to work during the night. The following is a practical approach that will be used.

**1. Fitness for Work**

- a) During the pre-employment medical examination, periodic and pre-placement medical examinations, all shift employees will be assessed for their fitness to work the night shift.
- b) The following medical conditions might exclude the employee from working on the night shift:


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- I. Uncontrolled Diabetes
- II. Epilepsy/Seizure disorder
- III. Obstructive sleep apnoea
- IV. Two months before the expected date of delivery, no pregnant women will be allowed to work the night shift.
- V. Within two months after the date of delivery, no breastfeeding mother will be allowed to work the night shift.
- VI. Any employee with a medical certificate from the specialist indicating that they are unfit to work the night shift.

No employee will work during the night before being certified FIT to work the night shift.

#### 4.6.3 Workplace management

- a) Site baseline risk assessment to quantify the risks and advise on the control measures.
- b) All safety-critical tasks should be conducted during the day as far as reasonably practicable.
- c) Avoid working for more than one shift continuously.
- d) Allow a period of a minimum of twelve hours during the shift and twenty-four hours during the shift change.
- e) Emergency medical services should be available twenty-four hours a day.
- f) There should be a fatigue break of thirty minutes from 03:00 to 03:30 hours.
- g) Hot drinks and snacks should be provided during the fatigue break.
- h) There must be a mess facility where dinner will be provided, 1800 hours to 1930 hours.
- i) There should be enough security, and the employer should provide transport into and off the project area.
- j) The employees' accommodation should be located in a quiet place, and there must be curtains that will mimic the night environment; this will facilitate sleeping.
- k) All night-work employees must be trained on the health effects of night work and the coping strategies; this will be done after the promulgation of this policy and then will be done annually.
- l) No employee will be allowed to work a straight night shift roster.
- m) Supervisors should listen to and address the employees' concerns respectfully and professionally.
- n) For the employee who is doing safety-critical tasks, avoiding a roster that will lead to fatigue and partial adaption, i.e., a 7/7/7 and 3/3/3 roster, is recommended. However, social, economic and employee preferences should be taken into consideration.

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## 4.7 Chapter Six- Management of Pregnant and Breastfeeding Mothers

### 4.7.1 Background

Pregnant women and breastfeeding mothers pose a special challenge in the workplace. The hazardous exposure at the workplace affects not only the pregnant mother but also the foetus. Therefore, a sound scientific approach must be in place.


### 4.7.2 Aspects of Pregnancy that may affect work

1. Employers and employees should be aware of the following common aspects of pregnancy that may affect work:
2. As a result of morning sickness, employees may be unable to perform early shift work. Exposure to nauseating smells may also aggravate morning sickness.
3. Backache and varicose veins may result from work involving prolonged standing or sitting. Backache may also result from work involving manual handling.
4. More frequent visits to the toilet will require reasonable access to toilet facilities, and consideration of the employee's position if leaving the work she performs unattended poses difficulties.
5. The employee's increasing size and discomfort may require changes in protective clothing, changes to work in confined spaces and changes to her work where manual handling is involved. Her increasing size may also impair dexterity, agility, coordination, speed of movement and reach.
6. The employee's balance may be affected, making work on slippery or wet surfaces difficult.
7. Tiredness associated with pregnancy may affect the employee's ability to work overtime and perform evening work. The employer may have to consider granting rest periods.

### 4.7.3 Specific management

#### 4.7.3.1 Notification of Pregnancy

All women who are pregnant are advised to notify the Employer (s) in writing; this will help the employer to take reasonable measures to protect the employee. There is a range of hazards that will put the pregnant woman and/or the foetus at risk.

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#### 4.7.3.2 Management of Specific Hazards

Table 2: Physical Hazard and Ergonomic Hazards

HAZARD	WHAT IS THE RISK	HOW TO AVOID THE RISK
<b>Vibration and mechanical shocks</b>	Long-term exposure to vibrations may increase the risk of miscarriage and stillbirth. Exposure to shocks or whole-body vibrations in the later stages of pregnancy can result in premature labour.	It is advised that pregnant workers and those who have recently given birth avoid work that is likely to involve uncomfortable, whole-body vibrations, especially at low frequencies or where the abdomen is exposed to shocks or jolts.
<b>Extreme heat</b>	The exposure of pregnant and breastfeeding employees to extreme heat may lead to dizziness and faintness, particularly in the case of women performing standing work. Lactation may be impaired by heat dehydration.	Employers should limit the exposure of pregnant and breastfeeding workers to extreme heat. Arrangements for access to rest facilities and refreshments should be made in conditions of extreme heat.
<b>Extreme cold</b>	Working in extremely cold conditions, such as cold storage rooms, has been associated with problems in pregnancy.	Employees must be supplied with thermal protective clothing, and their exposure to cold must also be controlled.
<b>Noise</b>	Prolonged noise exposure can elevate the blood pressure of pregnant women and lead to tiredness.	Employers should ensure compliance with OHS regulations.
<b>Ionising Radiation</b>	Significant exposure to ionising radiation is known to be harmful to the foetus. Working with radioactive liquids or dust can result in the exposure of the foetus (through ingestion or via contamination of the mother's skin) or a breastfed baby to ionising radiation.	Work procedures should be designed to keep exposure of pregnant women as low as reasonably practicable and below the statutory dose limit for a pregnant woman.  Pregnant women or breastfeeding mothers should not work where there is a risk of radioactive contamination.  Employers of registered radiation workers, including radiographers, must comply with the country's regulations.
<b>Non-ionising (electromagnetic) radiation</b>	It has not been established that the levels of non-ionising electromagnetic radiation likely to be generated by video display units (VDUs) or other office equipment constitute a risk to human reproductive health.	Women who are pregnant or who are planning children and are worried about working with VDUs should discuss their concerns with an occupational health practitioner.




		<p>The following practical measures can be adopted to limit exposure to electromagnetic fields in offices (EMFs):</p> <ul style="list-style-type: none"> <li>Workers should sit at arm's length from the computer (70cm) and about 120 cm on the backs and sides of co-workers' monitors.</li> <li>Workers should have regular breaks from VDU work, as this reduces exposure time.</li> <li>Radiation-reducing glare screens (or shields) can reduce the electrical component of the EMFs. However, shields that distort the image on the monitor should not be used.</li> </ul>
<b>Work in compressed air and diving</b>	<p>People who work in compressed air are at risk of developing bends. It is not clear whether pregnant women are more at risk of getting the bends, but potentially, the foetus could be seriously harmed by gas bubbles.</p>	<p>Pregnant workers should not work in compressed air because of potential harm to the foetus from gas bubbles. For those who have recently given birth, there is a small increase in the risk of the bends. The Diving Regulations, 1991, under OHS, must be complied with.</p>
<b>Physical and mental strain</b>	<p>Excessive physical or mental pressure may cause stress and give rise to anxiety and raised blood pressure during pregnancy.</p>	<p>Employers should ensure that hours of work and the volume and pacing of work are not excessive and that, where practical, employees have some measure of control over how their work is organised. Seating should be available where appropriate. Longer or more frequent rest breaks will help to avoid or reduce fatigue.</p>
<b>Physically strenuous work</b>	<p>Employees whose work is physically strenuous should be considered to be at increased risk of Injury when pregnant or after the birth of a child.</p>	<p>Heavy physical exertion, including the lifting or handling of heavy loads, should be avoided from early pregnancy onwards.</p>
<b>Prolonged sitting and standing</b>	<p>Sitting or standing for long periods during pregnancy can have serious health consequences. Standing for long, unbroken periods can result in complications during pregnancy, such as deep vein thrombosis, varicose veins, premature labour and even miscarriage.</p>	<p>Workstations should be adjustable to allow for necessary changes in posture.</p> <p>Pregnant employees who sit for long periods should be provided with a proper chair with lumbar support rest to prevent lower back pain. A footrest could alleviate</p>

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		<p>pain and discomfort in the case of both sitting and standing workers.</p> <p>Pregnant employees who work in a stationary position should be given frequent rest breaks. Mobility during breaks should be encouraged to help prevent swelling of the ankles and improve blood circulation.</p> <p>Where work organisation permits task rotation, this should be done to allow the worker to do tasks that involve standing, sitting and moving.</p>
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Table 3: Chemical Hazards

HAZARD	WHAT IS THE RISK	HOW TO AVOID THE RISK
<b>Anaesthetic gasses</b>	Exposure to anaesthetic gases during pregnancy can lead to miscarriage.	Exposure to high concentrations of anaesthetic gases should be avoided during pregnancy.
<b>Carbon monoxide</b>	Risks arise when engines or appliances using petrol, diesel and liquefied petroleum gas are operated in enclosed areas. Carbon monoxide can result in the foetus being starved of oxygen.	Occupational exposure to carbon monoxide should be avoided during pregnancy and breastfeeding.
<b>Antimitotic (Cytotoxic) drugs</b>	Exposure to antimitotic drugs, which are used for treating cancer, damages genetic information in human sperm and egg cells. Some of these drugs can cause cancer. Absorption is by inhalation or through the skin.	Workers involved in the preparation and administration of antimitotic drugs should be afforded maximum protection. Direct skin contact can be avoided by wearing suitable gloves and gowns. Pregnant employees potentially exposed to cancer drugs should be offered the option of transfer to other duties.
<b>Ethylene oxide</b>	Ethylene oxide is used mainly in sterilising procedures in hospitals. Exposure may occur when sterilised goods are transferred to the aerator after the cycle is complete and when changing the gas tanks.	Health risks can be minimised by reducing worker exposure during transfer when the steriliser door is opened. Pregnant employees exposed to ethylene oxide above the acceptable level should be transferred to other duties.
<b>Lead</b>	Exposure of pregnant and breastfeeding employees to lead affects the nervous system of young	Contact with Lead should be avoided during pregnancy and breastfeeding. The Lead Regulations issued under OHS Act must be complied with. These

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	children and is detrimental to child development.	Regulations specify levels at which employees must be withdrawn from exposure to Lead.
<b>Mercury and mercury derivatives</b>	Organic and inorganic mercury compounds can have adverse effects on the mother and foetus.	Women of childbearing age should not be exposed to mercury compounds.
<b>Polychlorinated Biphenyls (PCBs)</b>	PCBs can cause deformities in the child. Maternal exposure before conception can also affect foetal development as PCBs can be passed on to the foetus through the mother's blood.	No pregnant women should be exposed to PCBs at work.
<b>Organic solvents</b>	Exposure to organic solvents, including aliphatic hydrocarbons, toluene and tetrachloroethylene, can lead to miscarriage and have a detrimental effect on the foetus.	Pregnant women should be protected from exposure to these organic solvents.
<b>Pesticides and herbicides</b>	Exposure to certain pesticides and herbicides is associated with an increased risk of miscarriage and can adversely affect the development of the child.	Exposure to pesticides and herbicides should be avoided or minimised.
<b>Alcohol</b>	Foetal alcohol syndrome can lead to physical and mental abnormalities in children. Workers in the beverage, catering and associated industries, including wine farming, are particularly at risk.	Where appropriate, employees should be informed of and counselled about the hazards associated with foetal alcohol syndrome.
<b>Tobacco smoke</b>	Tobacco smoke contains carbon monoxide and carcinogenic and other harmful substances. Smoking and the inhalation of environmental smoke affect foetal blood supply and can lead to retarded growth and development and more early childhood diseases. Smoking carries an increased risk of cancer and cardiovascular disease.	Care should be taken to ensure that women employees can work without being exposed to tobacco smoke.


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Table 4: Biological hazards


HAZARD	HOW TO AVOID RISK
<b>Cytomegalovirus</b>	Employees should be required to maintain high standards of personal hygiene, wash their hands after each patient contact and use gloves when handling potentially contaminated wastes to minimise the risk of infection.
<b>Hepatitis</b>	General precautions must be taken for all forms of hepatitis. Vaccination is the most effective means available for preventing hepatitis B. Workers must take particular care to avoid mucous membranes and skin coming into contact with potentially contaminated blood or other secretions.
<b>HIV</b>	Universal precaution is important for workers potentially exposed to HIV. Healthcare workers should take precautions to prevent needless stick injuries and exercise care when handling the blood, tissues or mucosal areas of all patients.
<b>Rubella (German measles)</b>	The Rubella vaccine is the most effective means of preventing the disease, and susceptible employees should be immunised. Pregnancy should be avoided for three months after vaccination.
<b>Varicella (chicken pox)</b>	It is advisable to identify employees who have not previously had chicken pox. Pregnant employees who are known not to be immune to chicken pox and who are exposed to an active case should report to a physician.
<b>Toxoplasmosis gondii</b>	Control measures against toxoplasmosis gondii for women of reproductive age include high standards of personal and environmental hygiene, the sanitary disposal of cat faeces and avoiding contamination by cat faeces of soil to be tilled for agriculture.

#### 4.7.3.3 Maternity leave

Pregnant women are entitled to maternity leave as per the Employment and Labour Relations Act, Section 33. An employee will be entitled to at least eight four days (84) of paid maternity leave for a singleton pregnancy and a hundred (100) of paid maternity leave for multiple gestation pregnancy.

The following rules will be applied before, during and after the birth of the child:

- a) The employee should notify the employer of the intention to take maternity leave at least three months before the expected date of delivery.
- b) The employee may commence pregnancy at any time from four weeks before the expected date of delivery.
- c) No employee will work within six weeks after the birth of the child.

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- d) For a period of not less than six consecutive months after maternity leave, be allowed to leave the office for a maximum of two hours of his convenience during working hours for breastfeeding the child.
- e) No employer will permit pregnant women or breastfeeding women to perform work that may be hazardous to the mother and /or to the child.
- f) No employer will terminate an employee for pregnancy-related issues.


#### 4.7.3.4 Sick leave

- a) The location of the TNCL project area is remote and has limited access to the specialised hospital. Therefore, TNCL management has decided to take an extra step in ensuring the health and safety of the pregnant woman and the child will be ensured.
- b) All pregnant women, the Gestation age by date of thirty-four weeks (34), will be kept on sick leave until they are term or when they are delivered, whichever comes first. Then, the employee will be kept on maternity leave.
- c) Should the employee have exhausted the sick leave during this special leave or before, the employer will still grant the paid sick leave as a good practice.

### 4.8 Chapter Seven- Management of HIV at the Workplace

Managing HIV in the workplace is a legal requirement as per the Mine Health and Safety Act. For further HIV management at work, refer to the TNCL-OHS-POL-0003. The following will be priority areas/principles in managing HIV at the workplace:

- a) Respect for human rights, fundamental freedoms and equality
- b) HIV and AIDS is a workplace issue
  - I. Assess the impact of HIV and AIDS in the workplace
  - II. Developing HIV and AIDS Workplace Programmes
  - III. Education, training and information
- c) Reduce HIV-related stigma and unfair discrimination and promote equality of opportunity and fair treatment.
  - I. Counselling and Informed Consent
  - II. HIV testing
  - III. Confidentiality and Disclosure
  - IV. Employee Benefits
  - V. Grievance Procedures
  - VI. Termination of Employment and Reasonable Accommodation

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- d) Gender Equality
- e) The right to access and continue employment.
- f) Prevention
- g) Treatment, Care and Support
- h) Social Dialogue/Consultations
- i) Occupational Health and Safety
- j) Testing, confidentiality, and disclosure

#### 4.9 Chapter Eight- Management of Alcohol and Drug Abuse at the Workplace

Management of alcohol and drug use at the workplace is the legislative requirement per the Occupational Health and Safety and Mine Health and Safety Act. For further information, see TNCL-OHS-POL-0002.

#### 4.10 Chapter Nine- Management of Disability

##### 4.10.1 Background

Protection of people with disabilities is not only the duty of care of the employer but also a legal requirement as per the Employment and Labour Relations Act, Section 7 (4) and Section 37 (2). An employee will be considered disabled if he/she meets the following criteria:


- a) Having a physical or mental impairment.
- b) Which is long-term or recurring, and
- c) Which substantially limits their prospects of entry into or advancement in employment.

##### 4.10.2 Impairment

- a) An impairment may either be physical or mental or a combination of both.
- b) "Physical" impairment means a partial or total loss of a bodily function or part of the body. It includes sensory impairments such as being deaf, hearing impaired, or visually impaired.
- c) "Mental" impairment means a clinically recognised condition or illness that affects a person's thought processes, judgment or emotions.

##### 4.10.3 Long-term or recurring


- a) "Long-term" means the impairment has lasted or is likely to persist for at least twelve months.
- b) "Recurring impairment" is likely to happen again and to be substantially limiting (see below). It includes a constant chronic condition, even if its effects on a person fluctuate.

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- c) "Progressive conditions" are those that are likely to develop change or recur. People living with progressive conditions or illnesses are considered people with disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions that have no overt symptoms or that do not substantially limit a person are not disabilities.

#### 4.10.4 Substantially limiting

- a) An impairment is substantially limiting if, in its nature, duration or effects, it substantially limits the person's ability to perform the essential functions of the job for which they are being considered.
- b) Some impairments are so easily controlled, corrected or lessened that they have no limiting effects. For example, a person who wears spectacles or contact lenses does not have a disability unless, even with spectacles or contact lenses, the person's vision is substantially impaired.
- c) An assessment to determine whether the effects of an impairment are substantially limiting must consider if medical treatment or other devices would control or correct the impairment so that its adverse effects are prevented or removed.
- d) For reasons of public policy, certain conditions or impairments may not be considered disabilities. These include but are not limited to the following—
- I. sexual behaviour disorders that are against public policy;
  - II. self-imposed body adornments such as tattoos and body piercing;
  - III. compulsive gambling, the tendency to steal or light fires;
  - IV. disorders that affect a person's mental or physical state if they are caused by current use of illegal drugs or alcohol unless the affected person is participating in a recognised programme of treatment;
  - V. normal deviations in height, weight, and strength, as well as conventional physical and mental characteristics and common personality traits.
  - VI. An assessment may be done by a suitably qualified person if there is uncertainty as to whether an impairment may be substantially limiting.


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#### 4.10.5 Reasonable accommodation for people with disabilities

- a) Employers should reasonably accommodate the needs of people with disabilities. The accommodation aims to reduce the impact of the impairment of the person's capacity to fulfil the essential functions of a job.
- b) Employers should adopt the most cost-effective means that are consistent with effectively removing the barriers to performing the job and enjoying equal access to the benefits and opportunities of employment.
- c) Reasonable accommodation requirement applies to applicants and employees with disabilities who are suitably qualified for the job and may be required—
  - I. During the recruitment and selection processes;
  - II. In the working environment;
  - III. In the way, work is usually done, evaluated and rewarded, and
  - IV. in the benefits and privileges of employment.
- d) The obligation to make reasonable accommodation may arise when an applicant or employee voluntarily discloses a Disability-related accommodation need or when such a need is reasonably self-evident to the employer.
- e) Employers must also accommodate employees when work or the work environment changes or impairment varies, which affects the employee's ability to perform the essential functions of the job.
- f) The employer should consult the employee and, where reasonable and practical, technical experts to establish appropriate mechanisms to accommodate the employee.
- g) The particular accommodation will depend on the individual, the degree and nature of impairment and its effect on the person, as well as on the job and the working environment.
- h) Reasonable accommodation may be temporary or permanent, depending on the nature and extent of the Disability.

##### 4.10.5.1 Reasonable accommodation including but not limited to

- a) adapting existing facilities to make them accessible;
- b) adapting existing equipment or acquiring new equipment, including computer hardware and software;
- c) re-organising workstations;
- d) changing training and assessment materials and systems;

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- e) restructuring jobs so that non-essential functions are re-assigned;
- f) adjusting working time and leave, and
- g) providing specialised supervision, training and support in the workplace.

Important issues that must be taken into consideration:

- a) An employer may evaluate work performance against the same standards as other employees, but the nature of the Disability may require an employer to adapt the way performance is measured.
- b) The employer need not accommodate a qualified applicant or an employee with a disability if this would impose an unjustifiable hardship on the employer's business.
- c) "Unjustifiable hardship" is an action that requires significant or considerable difficulty or expense. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business.

An accommodation that imposes an unjustifiable hardship for one employer at a specific time may not be so for another or for the same employer at a different time.

#### 4.11 Chapter Ten- Termination under medical ground

##### 4.11.1 Background


The Employment and Labour Relations Act, Section 37 (2), specifies the conditions that must be met for the termination of an employee to be classified as fair. These are:

- a) That the reason for the termination is valid;
- b) That reason is fair:
  - I. Related to the employee's conduct, capacity or compatibility; OR
  - II. based on the operational requirements of the employer.
- c) that the employment was terminated by a fair procedure.

It shall not be a fair reason to terminate the employment of an employee for the following reasons (section 37 (3)) :

- a) Related to pregnancy.
- b) Related to Disability, AND
- c) That constitutes discrimination under the Act.

Further, part (V), III of The Employment and Labour Relations (Code of Good Practice) Rules, 2007, health and Injury provides under Rule 19 fairness of the reasons:

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The Code states that any Employer who wishes to terminate an employee on the grounds of ill health or Injury shall take into account the following factors to determine the fairness of the reasons in the circumstances:-

- a) The cause of the incapacity
- b) The degree of the incapacity
- c) The temporary or permanent nature of the incapacity
- d) The ability to accommodate the incapacity
- e) The existence of any compensation or pension

Where an employee is injured at work or is incapacitated by work-related illness ( the cause), an employer shall go to greater lengths to accommodate the employee ( the ability to accommodate).

The employer shall be guided by the opinion of the company occupational physician in determining the cause and degree of any incapacity and whether it is temporary or permanent in nature.

Where an employee is temporarily unable to work, the employer shall investigate the extent of the incapacity or the Injury.


Where the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer shall investigate possible ways to accommodate the employee or consider all possible alternatives short of termination.

Possible alternatives short of termination shall include: -

- a) Temporary replacement
- b) Light-duty
- c) Alternative work
- d) Early retirement
- e) Pension or
- f) Is any other acceptable alternative

The factors that may be relevant in the Investigation include

- a) The nature of the job
- b) The period of absence
- c) The seriousness of the illness or injury, and
- d) The possibility of securing a temporary replacement or adopting the job

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Where the employee is permanently incapacitated, the employer shall ascertain the possibility of securing alternative employment for the employee or adapting the duties or work circumstances of the employee to accommodate the employee's Disability.

Where the employee is incapacitated to a limited degree, the employer shall consider:-


- a) Removing those duties the employee cannot perform and, if possible, adding less onerous tasks or
- b) Adapting the work environment to accommodate the Disability.

Therefore, termination of an employee under medical grounds should be for valid reasons, looking at the inherent requirement of the job and objectively proving that the capacity of the employee to conduct the work has been impaired due to medical reasons.

4.11.2 TNCL shall consider all the avenues provided by the laws

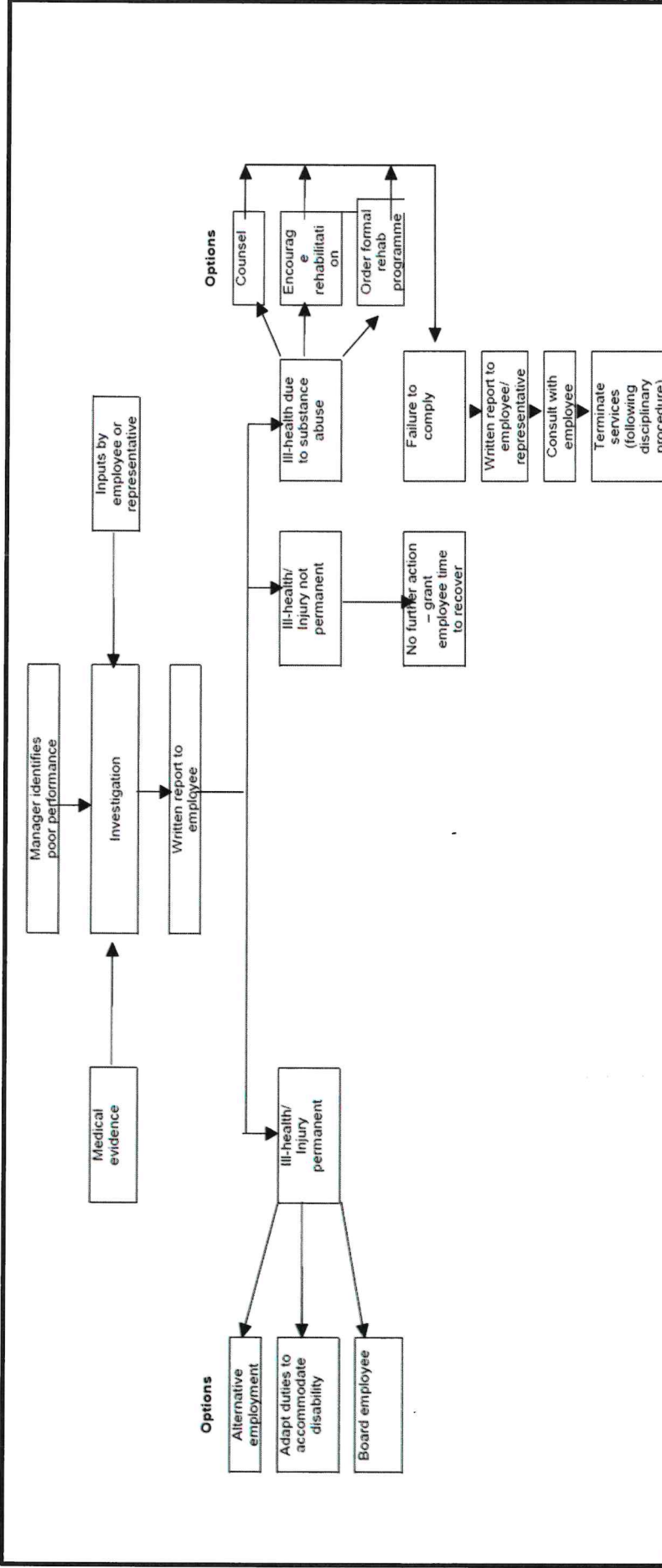
When terminating the employee on medical grounds, the following procedures will also be followed.


- a) Termination of the employee under medical grounds should be done after the failure of all reasonable measures to accommodate the employee.
- b) The decision to terminate the employee under medical grounds will come from the Functional Capacity Committee ONLY.
- c) The procedure is a management instrument to be invoked by the employer, not the employee.
- d) The principle of protecting employment as much as possible should be adhered to; in other words, it is not a tool that an employee can use if he/she does not want to work any longer.
- e) The procedure is only to be used in cases of poor performance or non-performance that are directly linked to ill health or Injury.
- f) Not to be used in cases where there is apparent abuse of sick leave (this constitutes misconduct).
- g) Only to be used in cases of alcohol or drug abuse where it can be linked to ill health (i.e. where a pattern of constant intoxication or drug dependency is clear) – otherwise to be dealt with in terms of the disciplinary procedure.
- h) Evidence by a medical practitioner is critical in deciding how to deal with an employee in terms of this procedure.
- i) It is not a tool to punish an employee but to assist him/her.

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1. The following is the process flow to be followed:

Figure 1: The process flow of ill health incapacity management



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### A. Investigation

- a) Investigate to determine the extent of the employee's poor health or Injury.
- b) Obtain relevant medical evidence on the employee's condition (e.g. from his/her medical practitioner or an independent medical practitioner). This must include the Maximum Medical Improvement Report (MMI)
- c) Allow the employee or his/her trade union representative to state the employee's case and to give inputs on all issues being investigated or considered
- d) Determine if the employee's condition is work-related
  - I. All suspected work-related cases must be submitted to OSHA to establish the work readiness
  - II. All cases that we don't suspect to be work-related must be submitted to OSHA for periodic medical examination.
- e) Determine whether the nature of the ill health or Injury is temporary or permanent
- f) For purposes of the Investigation, the following must be considered:
  - I. Nature of the job,
  - II. Likely period of absence, the seriousness of illness or Injury
  - III. Remuneration of employees during periods of absence
  - IV. Possibility of securing a temporary replacement.
- g) Objective Formal Function Capacity Evaluation Must be conducted when reasonably practicable; otherwise, a specialist physiotherapist report will be used.


### B. Report

Provide the employee with a written report on the results of the medical evaluation after taking into consideration the following:

- I. Medical reports
- II. Job description
- III. Workplace risk assessment AND
- IV. The FCE or Specialist physiotherapist report

### C. Actions

The written Report (full analysis report) stated above in (2) will be presented in the Functional Capacity Committee meeting, which will assess a multidisciplinary team after taking into consideration all of the necessary inputs, including the social and economic status of the employee and they might come with the following conclusion:

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- a) Temporary impairment- The employee will be given much time to recover, and the employer might hire the temporary employee for the duration that the employee will be allowed to recover; this will not be more than a hundred and twenty-six days on top of the statutory sick leave.
- b) Permanent impairment:
- c) The employee will be reasonably accommodated when it is reasonably practicable.
- d) The employee will be terminated under medical grounds when reasonable accommodation is not practicable.

The process will be the same for both work-related and non-work-related cases. All of the exit medical examinations will be conducted by OSHA.

## 5. SYSTEM EVALUATION

This procedure shall be reviewed at least two years by members of the OHS department and presented to the Standard Committee for approval or when organisational changes take place or are required as part of internal and external audits. The TNCL Document Controller will monitor compliance with the document control system on an ongoing basis.

## 6. DISTRIBUTION

List physical locations which require a controlled copy of this document.


Copy	Controlled Document Folder Location
Master	Controlled Documents Central Filing System

## 7. CONTRAVENTION

Any breach of this procedure shall be regarded as refusal/failure to carry out a lawful instruction and will be dealt with as per the disciplinary procedure.

## 8. DOCUMENT CHANGE PROCESS

The process of document change starts when the document custodian identifies there is a need to make changes within the document. The document custodian/ owner shall complete the document change request form, sign it off and submit it to the Document Controller.

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The Document controller shall issue the controlled word copy of the document to the respective document custodian/owner so that changes may be made. The document custodian/owner shall resubmit the updated document to the document controller so that the document can be controlled and updated within the filing system and ready for use by the end users.

### 8.1 Reason for Change


A	As a result of incidents	F	Change in training requirements
B	As a result of the audit findings	G	Results of risk assessments
C	New / changes in governance documents	H	Change due to spelling or grammatical error
D	Changes in legislation	I	New document format
E	Changes in technology	J	To integrate special instruction into the document control system

### 8.2 History of Change

Date of Change	Revision No	Revised Item (paragraph Number reference if required)	Reason Code	Name of Reviewer
26.06.2024	01	The whole document	D & C	Dr Weinand

## 9. RECORD CONTROL

Document Title:	Document ID:	Responsible for Maintenance:	Responsible for Filling:	Location of Storage:	Retention Period:	Method of Disposal:
Management Medical Incapacity Procedure	TNCL-OHS-SOP-0038	Document Controller	Document Controller	OHS Department	Hard Copy two Years	Hard copy shared file electronic

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**10. DECLARATION**

I at this moment declare that I have taken part in the discussion of this procedure, and I understand its contents and do commit that I shall ensure compliance hereto:

	Name and Surname	Company Number	Designation / Role	Signature	Date Signed
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