**Medical Capability Policy**

**Introduction**

This policy outlines the best practice process to follow when an employee is incapable of carrying out their job role due to a long-term illness, serious injury or a disability.

In this policy capability refers to an employee’s ability to perform their job role, or to do so to the required standard and with little or no prospect of being able to return to their role in the foreseeable future.

The Company’s absence management procedures must be adhered to prior to commencing the capability policy. It is advisable that continuous Welfare Meetings have been held throughout the absence and that the Company has received guidance from an Occupational Health Practitioner.

**Consider Alternative Options**

If an employee is unable to continue in their current role due to medical reasons, the Company will consider reasonable adjustments to facilitate a return to work. The Company will consider making a change to the tasks or structure of the job or changes to the workplace to allow the employee to return to work when ready to do so. If no reasonable adjustments can be made, the Company will communicate the reasons why this cannot be facilitated to the employee.

If the Company is not in a position to offer reasonable adjustments, the Company will then make reasonable efforts to find suitable alternative employment within the Company. If this is a viable option, the employee’s terms and conditions may change in line with the change to their role and the employee will be provided with any essential training.

**Capability Dismissal**

This process may be considered if the employee is not capable of returning to work to conduct their current duties and there are no suitable reasonable adjustments or alternative roles available within the Company.

Prior to considering dismissal, the Company will:

* consider any adaptations that can be made to their current role or make reasonable efforts to find suitable alternative employment within the Company in line with the legal requirement set out under the Employment Equality Acts.
* organise Occupational Health Practitioner referrals to seek medical opinion before any decisions are made (It would be recommended that no less than three Occupational Health Practitioner Reports are received stating all which state not fit to work before dismissal is considered).
* discuss this process with the employee.

**Capability Meeting**

A formal invitation letter will be sent to the employee inviting them to attend a Formal Capability meeting. The letter will notify the employee that dismissal based on capability is a possible outcome of this meeting.

**Representation**

The company recognise the employees’ right to be represented and may be accompanied by **a colleague, Trade Union representative or member of the Citizens Information Bureau**.

**Delete as Required.**

**Requests for representation cannot be overridden by company policy and a failure to allow external representation could result in an Unfair Dismissal complaint on the grounds of a breach of the Principles of Natural Justice)**

**Official Records**

The Chairperson of this meeting will assign a member of the team to record the meeting in written format. A copy of these minutes will be issued to the employee once they have been typed up. If the employee disputes any aspect of the minutes they must do so within 24 hours of receipt and the Chairperson will review the submission. If it is not agreed, the employee’s submission will be noted at the foot of the final document.

This will be the official record of the meeting and audio recordings are not permitted.

**Purpose of the Capability Meeting**

The purpose of the meeting is to establish the factual position on the employee’s capability to work.

The below are the key points that will be covered at the meeting (please note this list is not exhaustive):

* discuss the reasons for the employee’s absence and ask for the employees view on a likely return date.
* review the process so far in terms of support offered by the Company to allow the employee to continue in the role.
* offer the employee the opportunity to raise any concerns with the process.
* discuss the possibility/lack of availability of alternative roles.
* consider any options the employee may put forward as alternative to dismissal.
* if any new information comes to light in this meeting, this will be considered.

Where a decision to dismiss is reached, the Company will confirm this to the employee in writing. Employees have the right to appeal against any dismissal decision. Further details on the right to appeal are set out in the Company’s disciplinary procedure.

**Notes for Business Owners:**

* Your employment contract should include a right to refer the employee to an occupational health specialist of your choice.
* Failing to comply with fair procedures exposes you to a costly claim for unfair dismissal under the Unfair Dismissals Acts 1977-2021.
* It is vital that the company mange this on a Case-by-Case bases using the medical reports and facts as a guide.

***NB*** *If the employees illness is considered a disability under*[*employment equality legislation*](http://www.ihrec.ie/publications/list/ihrec-employment-equality-rights-explained/)*, their rights under that particular legislation need to be taken into consideration as there may be a significant risk of an equality claim.*