

## Medical Incapacity

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### Purpose and Scope

New Zealand Kindergartens (NZK) aim to provide a workplace where all staff members are able to fulfil their duties in a safe and productive manner. However, on occasion the nature of the work we do means that a staff member may not be able to continue in their position due to illness or injury.

We acknowledge that if this was to occur it can be an incredibly difficult time for the individual and workplace, and therefore we aim to deal with medical incapacity in a compassionate and collaborative manner. The purpose of this procedure is to ensure all staff members across the NZK network understand what constitutes medical incapacity, the process that will be followed, and the potential outcomes.

This procedure applies to General Managers/Chief Executives (GMs/CEs) and staff members (whether permanent, fixed, casual or relieving) employed by the NZK network.

### Legislation

The *Employment Relations Act 2000* requires employers to act in a fair and reasonable manner when considering the outcomes associated with medical incapacity. Case law also provides a broad framework for navigating this issue which has been considered when drafting this procedure.

### Key Definitions

**Medical incapacity** is when an employee is no longer able to do their job due to illness or injury. This may mean:

- they will never be able to return to work,
- it is uncertain whether they will return to work on in what capacity, or
- their absence will be too long for the business to reasonably support.

### Rights and Obligations

The law does not require that NZK keep in employment a staff member that is unable to fulfil their role due to illness or injury, or not able to do their work. However, NZK will ensure that any decisions related to medical incapacity are done so in good faith, and only after consideration is provided to all relevant factors and the principles of a fair process are followed.

Staff members involved in this process are encouraged to work alongside NZK to in a proactive and collaborative manner and provide as much information regarding their injury and illness as possible, to enable NZK to make a decision that balance both the interests of the business and the staff member.

### Medical Incapacity Factors

If a staff member has been absent from work for a prolonged period, the Medical Incapacity Process outlined below may commence. During this process, the following factors will be considered by NZK before any decision is made:

- How long the employment was likely to last in the absence of sickness or injury,
- The nature of the staff members employment,
- The extent to which our business is affected by the staff members absence,
- The employer's ability to appoint a temporary replacement, and the cost of doing so,
- The nature and extent of the staff members incapacity, and the likelihood of recovery,
- Medical information if the staff member has willingly provided it,
- Whether reasonable adjustments could be made to the staff members work,
- Whether an alternative position might be offered, to enable the staff member to continue in employment, and
- Whether the employee has used up all of their sick leave and other holiday and leave entitlements.

### Medical Incapacity Process

If NZK identifies a staff member who is unable to perform part of their role, or their entire role due to illness or injury for a prolonged period of time NZK will take the steps below to ensure the principles of a fair process are followed. Due to the nature and size of our business, we may commence this process if the staff member has been absent from their role for a minimum of 6 weeks due to illness or injury and has exhausted their paid sick leave entitlements.

- ✓ **Informally meet with the staff member** to understand the nature of the illness or injury, and what the business can do to support them during this time. The staff member will be encouraged to provide as much information as they feel comfortable and safe to do so.
- ✓ **Request a medical assessment** if there are ongoing concerns regarding the staff member being able to do their role. NZK will explain the purpose of the medical assessment and seek to understand if the staff member has a particular medical practitioner or specialist that can provide this information.

Staff members have the right to refuse to provide access to medical information; if this occurs NZK will make a decision with the information available to them.

- ✓ **Review and seek feedback on the medical assessment** from the staff member. At this stage NZK will have made no decisions in relation to the staff members' future employment and will provide them an opportunity to respond and provide any additional information to NZK for consideration.
- ✓ **Propose an outcome** after considering all information obtained from the medical practitioner or specialist, the staff member and the medical incapacity factors outlined above. Potential outcomes are outlined below.
- ✓ **Seek feedback on the proposed decision** from the staff member. NZK will allow the staff member a reasonable opportunity to provide feedback and consider that feedback prior to any final decision being made.
- ✓ **Confirm the final outcome** with the staff member including an explanation of why this decision was made both verbally (if the opportunity exists) and in writing.

### Potential Outcomes

Depending on the information obtained through the Medical Incapacity Process outlined above, one of the following outcomes may be reached:

- A direction to return to work in the current capacity,
- Reduced or staggered hours of work in the same role,

- Alternative duties on a temporary or permanent basis,
- An extended period of unpaid leave,
- Medical retirement (where NZK and the staff member mutually agree to end employment), or
- Termination of employment due to medical incapacity.

If termination of employment was the outcome NZK, will consider providing additional support to the staff member which may include paying out their notice period (which is not a requirement when on unpaid leave), and/or supporting the staff member to access counselling or outplacement services.

### Word of Warning

This procedure does not form part of an employee's contract of employment. However, it is important that you understand that a breach of this procedure may result in disciplinary action including but not limited to, termination of your employment. If you want to make a complaint or raise a concern regarding a breach of this procedure, please speak with your GM/CE. You can refer to our Grievance Procedure for guidance on how grievances are handled at NZK.

### Procedure Reviews

This procedure may be amended from time to time at the discretion of NZK. Please ensure you regularly review all company procedures, so the content is front of mind in all you do.

### Related Procedures, Agreements and Frameworks

Grievance Procedure

[The Statement of National Education and Learning Priorities \(NELP\)](#)

Kindergarten Teachers Collective Agreement (KTCA)