

EMPLOYMENT INSTRUCTION NUMBER 5

MEDICAL INCAPACITY

1. SCOPE AND PURPOSE

This Employment Instruction identifies the steps to be followed when a Chief Executive Officer is of the opinion that an employee may be medically incapacitated. Situations where employees may be temporarily or permanently incapacitated due to medical reasons require care, skill, sensitivity and confidentiality.

This Employment Instruction also deals with medical examinations during an inability or discipline investigation.

2. LEGISLATIVE BASIS

Section 48 of the *Public Sector Employment and Management Act* (the Act).

3. OTHER SOURCES OF INFORMATION

- Employment Instruction Number 3 - Natural Justice;
- Northern Territory *Superannuation Act*; and
- Commonwealth *Superannuation Act*.

4. MEDICAL EXAMINATION

An employee may be directed to undergo a medical examination:

- by the Chief Executive Officer, under section 48 of the Act (medical incapacity) if the Chief Executive Officer considers the employee to be unable to perform his or her duties efficiently or satisfactorily because of a physical or mental condition;
- by an investigating person under sections 45(2) of the Act (inability provisions) or 51(2) of the Act (discipline provisions), where the investigating person considers that a medical or other examination is relevant to the investigation; or
- by the Chief Executive Officer under the provisions of Public Sector Employment and Management By-law 7 (11), where the direction could be prompted by an employee's continuous or frequent absence on sick leave, where there is a reasonable expectation of a prolonged absence on sick leave or for other reasons specified in that By-law.

The employee should be advised that failure to attend a medical examination as directed (by the Chief Executive Officer or the investigating person) could result in disciplinary action being taken.

The medical examination is undertaken by an approved medical practitioner or other person approved by the Commissioner. A list of approved medical practitioners can be obtained from the Office of the Commissioner for Public Employment.

No medical report should be relied upon in any matter affecting the interests of an employee without first allowing the employee to have a copy and to provide comments, submissions or further evidence. Section 8 of this Employment Instruction provides details of employee access to medical reports.

5. INFORMATION REQUIRED FOR MEDICAL EXAMINATION

The employee's supervisor is required to provide a copy of the employee's Job Description and a statement of the employee's current work performance for submission to the examining medical practitioner. The statement should include details relevant to the case eg. details of any significant changes in behaviour believed to be affecting the employee's performance.

The statement should be discussed with the employee, who should be given the opportunity to provide comments in writing.

The Job Description and the above statement should accompany the other attachments required to be submitted with the Northern Territory Government Medical Examination Report Form (form number NT12).

6. MEDICAL PRACTITIONER REPORT / RECOMMENDATION

The examining medical practitioner is asked, by the agency via the Northern Territory Government Medical Examination Form (NT12), to make a recommendation about the employee's fitness for continued employment, or to identify any medical limitations which need to be considered by the Chief Executive Officer.

Part B, section 6 of the NT12 specifies the options available and requires the examining medical practitioner to recommend whether the employee is fit for duty or to recommend alternative courses of action for consideration by the Chief Executive Officer.

The examining medical practitioner's report will be forwarded to the Northern Territory Government Medical Adviser in Territory Health Services for assessment and recommendation prior to return to the agency.

Where a recommendation is made that an employee is permanently and totally incapacitated, the Chief Executive Officer must consider the provisions of any superannuation legislation applying to the employee before retirement on grounds of invalidity may proceed.

Amended:19 August 1999

7. DISAGREEMENT ON MEDICAL OPINION

Where an employee does not agree with the recommendations arising from the medical assessment and the recommendation conflicts with a medical opinion provided by the employee's general practitioner or treating specialist, the conflict of medical opinion should be referred to the Northern Territory Medical Adviser for consultation and resolution with the Chief Health Officer.

An employee may be directed to attend further medical examinations if considered appropriate.

8. EMPLOYEE ACCESS TO MEDICAL REPORT

The medical reports obtained as a consequence of referring an employee for a medical examination are the property of the authors and the agency to whom they are directed and accordingly should not be released to any third party without consent. Where an employee requests access to details of the report, steps should be taken to obtain the consent of the authors and the agency to whom the reports in question are directed, for the release of the reports to the employee's general medical practitioner.

9. COST OF MEDICAL EXAMINATION

The cost of medical examinations will be borne by the agency referring the employee.

Amended: 4 May 1999

10. EMPLOYEES RECEIVING WORKERS COMPENSATION BENEFITS

Employees receiving workers compensation benefits should continue to have their medical status reviewed under the workers compensation provisions by the determining authority. Any medical examinations for such employees are to be arranged through the determining authority with the cost of the medical examination being borne by the employing agency, in line with other workers compensation costs.

Where it is considered unlikely that the employee will be able to resume employment (after all reasonable rehabilitation has occurred) the employee should be referred for a medical examination by an approved medical practitioner under section 48 of the Act. All relevant workers compensation reports (including all medical reports held by the determining authority) together with a recommendation from the determining authority should accompany the medical examination report.

Where the assessment of the medical report is that the employee is totally and permanently incapacitated, the Chief Executive Officer should consider retiring the employee on invalidity grounds. Otherwise, the medical report should be referred to the workers' compensation determining authority.

11. REVIEW MECHANISM

Employees concerned about any administrative action taken under section 48 of the Act may request the Commissioner to review the matter under section 59 of the Act (see Employment Instruction Number 8 - Management of Grievances for further details). A request for review under section 59 of the Act does not cover a request for review of a disputed or conflicting medical assessment. This is addressed in section 7 of this Employment Instruction.

D J HAWKES
COMMISSIONER FOR PUBLIC EMPLOYMENT

7 October 1998