



Rhodes University
III-Health Incapacity Policy

POLICY PARTICULARS	
DATE OF APPROVAL Staffing Committee	September 2007; 25 November 2014
DATE OF APPROVAL BY Council	13 March 2008; 7 May 2015
COMMENCEMENT DATE	1 July 2008; 1 January 2015
REVISION HISTORY	First approved 2008, 1st review in 2014
REVIEW DATE	At least every 5 years, next in 2019
POLICY LEVEL	University staff
RESPONSIBILITY	Institutional level : Human Resources Director → Vice Chancellor
IMPLEMENTATION AND MONITORING	Director (Human Resources) → Vice-Chancellor's Office
REVIEW AND REVISION	Human Resources Division / Union Structures
REPORTING STRUCTURE	University Community : Supervision reporting level → Human Resources Division → Vice-Chancellor's Office → Council

Proposed Changes:
Delete paragraphs:

12: Notwithstanding the fact that some life-threatening conditions are the result of an individual's own behaviour, these individuals should be treated on a similar basis to any other employee suffering from a life-threatening condition. Employees who are HIV positive, or in AIDS or emphysema, conversion, for instance, cannot be subjected to discrimination or victimisation.

13: This policy makes it unacceptable to refuse to work with an HIV positive person unless that person acts in a threatening manner, and, makes such discrimination subject to disciplinary action.

and replaced with new paragraph 12,

Other minor editorial changes
Removal of elements related to HIV and AIDS as the relevant policy covers these aspects.



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PREAMBLE: Policy Declaration

1. Current health realities facing the University requires the existence of this policy and a planned strategy to cope with the health issues facing staff. The policy seeks to emphasise the University Mission which undertakes to embrace basic human rights and rejects unfair discrimination.
2. The policy advocates a humanitarian perspective on the part of the employer, that staff are treated with dignity and where a culture where employees trust that they will not be punished for declaring any adverse health condition or disability status, is fostered. These concerns require a clear and distinct policy and guideline structure which allows the institution, supervisory staff and employees to deal with chronic, debilitating or life-threatening illnesses appropriately.
3. Allied to this are the health considerations related to the job function of staff within the workplace. The various workplaces ranging from kitchen and garden to workshop and sophisticated laboratories present potential for occupational hazards, disease and adverse health effects. The proposed Health and Safety Policy of the University will cover these issues. This policy does not deal with these issues.
4. The University concerns itself with the wellbeing of all staff and recognises that all recurring, ***progressive***¹ and life-threatening diseases or impairments present challenges that require appropriate action.
5. The University and the unions will develop programmes to assess the impact of HIV and AIDS on the workplace. The Policy on HIV and AIDS addresses these issues more directly and these are not covered in this Policy.
6. The policy should respond to, and balance, the needs of employer and employee alike. It is important for the University community to acknowledge that living with a life-threatening disease relies on positive support structures, and that, continued employment has beneficial effects during remission and recovery periods or may create positive life-prolonging effects.
7. This policy must be read in conjunction with the published *Institutional HIV and AIDS Policy* and the *Staff Disability Policy* and in due course, the Health and Safety Policy In addition a number of legal instruments affect policy perspectives, for instance : *Occupational Health and Safety Act 85 (1993)*, *Labour Relations Act 65 (1996)* and the *Employment Equity Act 55 (1998)*.

¹ Words in bold italics within the text are listed in the definitions



Policy Objectives

8. This policy strives to meet the University's responsibilities and roles with regard to the employer-employee relationship in the context of
- "correctable", manageable or treatable conditions
 - short-term chronic or recurring conditions
 - progressive / long-term impairment / life-threatening disease

8.1 "correctable", manageable or treatable conditions

These are conditions which can be corrected through rehabilitation, managed through medically controlled programmes of treatment, for instance: alcohol or illegal substance abuse, hypertension, diabetes, epilepsy, stress and depression.

8.2 short-term chronic or recurring conditions

These are conditions which are recognised symptomatically resulting in short term debilitation, impairment, or loss of optimum health status which is **substantially limiting** including a constant underlying condition even if its effects on a person fluctuate, for instance: hepatitis A, glandular fever and tuberculosis.

8.3 progressive / long-term impairment / life-threatening

These are conditions which may be managed or controlled through medical treatment or which are recognised as terminal in effect, or have lasted or are likely to persist for at least 12 months, for instance: HIV and AIDS (and related opportunistic diseases), cancer, hepatitis B, amputation and organ transplant.

8.4 exclusions

While some "everyday" illnesses are related to longer term health status, this policy does not include illness categories such as immediately contagious and everyday acute illnesses (for instance, influenza, colds, gastro-enteritis, measles etc.).

- 9 The purpose of the policy is to:

- inform staff of their rights, responsibilities and benefits;
- ensure fair and valid assessment of the effect of working conditions on employees in order to prevent health deterioration in employees;
- ensure fair and valid assessment of the compensation claims of an employee;
- clarify the University's responsibilities with regard to managing and assisting employees who fall within one of the three broad categories of health conditions outlined (S0, S8.2, S8.3) or have suffered negative health effects due to adverse occupational workplace conditions; and, *inter alia*, to
 - identify staff falling into any of the three health categories;
 - outline the process of recognising and managing the impact of these conditions on the employer-employee relationship particularly where such a condition is resulting in the person being unable to do their job;
 - allow **reasonable accommodation** in order to enable individuals to work productively for as long as possible, including considering all alternatives to dismissal on grounds of incapacity due to ill-health;
 - provide protection for, and ensure fair and consistent treatment of, employees with disabilities and / or life-threatening diseases;
 - support managers with guidelines for consistent management of performance and attendance taking into consideration the health conditions of individuals;

- **Principles and Procedures**



- *Reporting of identified concerns by supervisors or a staff member*

10 Normal reporting of identified Ill-Health Incapacity concerns is via the supervisor or manager to the relevant staff member in the Human Resources Division.

11 In cases where an individual indicates that confidentiality is required or is requested, reporting shall be directly to the relevant staff member in the Human Resources Division.

- *Consistent treatment*

12. No staff member will be discriminated against nor victimised, on the basis that the individual has a life threatening and potentially contagious condition.

13. No person may refuse to work with or alongside employee staff member who has a life-threatening condition, unless legitimate and objective grounds exist to justify such refusal including that the condition poses a substantive health threat to others.

14. Any unjustified unfair discrimination against a staff member with a life threatening disease will be met with the appropriate disciplinary action. Any staff member who is being harassed or unfair discriminated against on the basis of their health has recourse through the Policy for the Eradication of Unfair Discrimination and Harassment.

- *Confidentiality*

19. “Qualified” confidentiality will be applied in dealing with health issues as outlined in SO and below

19. 1 In the case of **notifiable diseases** the nature of confidentiality will be managed in conjunction with the provisions of the prevailing legislation and instructions of the Department of Health.

19.2 Except for notifiable diseases, no confidentiality may be broken, or transferred, without the express written permission of the **affected** individual. Where this permission is given, the matter must be dealt with in a sensitive and respectful manner in order to protect the **affected staff member’s** integrity.

19.3 Notwithstanding this, the University recognises that it cannot control confidentiality outside of the immediate workplace nor in the context of social relationships between individuals. In this context the following is provided for:

20. Where an individual points out a negative change in their own personal health status to a supervisor or university authority and verbally requests the matter be kept confidential, full confidentiality must be maintained without exception. This information will not be reduced into writing. Anyone to whom this information has been given and who repeats it to another person may be held liable for breach of confidentiality.

21. Where an individual calls attention to a negative change in their own personal health status to a supervisor or university authority, a letter noting that they voluntarily and openly declare this should be provided in order to protect third parties against allegations of a breach of confidentiality. Until such letter is provided full confidentiality shall be maintained.

22. Where a colleague, supervisor or university authority suspects that the health status of an individual has changed to the extent of deterioration of performance, these suspicions may not be made public nor discussed outside of the context of that workplace.

- *Voluntary declaration of a life-threatening disease*



23. Staff must feel confident that their choice to declare their health status is a positive step towards the management of their condition.
24. A staff member is not obliged to declare his or her health status.
25. A staff member questioned directly about a health specific condition (S0, S8.2, S8.3) is not obliged to volunteer information. However, in order to protect the interests of other staff, and the interests of the employer in the workplace an individual may be directly approached in the limited range of immediately contagious and everyday acute illnesses e.g., influenza, colds, gastro-enteritis, measles etc.
26. When medical evidence supports the voluntary declarations of an individual, and notwithstanding the obligation to treat all staff fairly and equally as to conditions of service, the University may, with Council's approval, provide special sick-leave as per the policies and practices of the institution

MANAGEMENT of Ill-health issues

- *Attendance and performance*

27. Performance and attendance should not be unduly disrupted and the University is entitled to bring these matters to the attention of any individual employee.
28. This policy advocates that
- 28.1 staff must be made aware that sharing available information about their condition is important;
- 28.2 reasonable and adequate steps shall be taken to counsel staff on poor performance and attendance which may affect job security;
- 28.3 staff have the right to be informed as soon as possible that they are not meeting the performance and/ or attendance standards;
- 28.4 staff are ultimately responsible for managing their own condition but the employer will endeavour to support them in order to achieve this goal;
- 28.5 the responsibility to manage productivity and staff morale in the workplace lies with supervisors and their actions towards life-threatening conditions will impact these considerations;
- 28.6 supervisors and managers must demonstrate that reasonable steps have been taken to comply with Schedule 8 of the Code of Good Practice in the Labour Relations Act No 66 of 1995 before action towards a dismissal due to ill-health incapacity is pursued;
- 28.7 a balance must be sought between reasonable accommodation of the person with a health condition and associated costs, and the use of replacement staffing against absent staff.
29. Supervisors and managers are obliged to reassure employees that full confidentiality will be maintained with regard to information arising from ill-health incapacity investigations.
30. Counselling of employees with life-threatening diseases, and their co-workers who are not ill, is a positive step towards maintaining morale and productivity. Supervisors and managers are encouraged to inform their staff of the advantages of coming forward, in confidence or openly, and seeking support.

Investigation of occurrences of ill-health

31. A consistent process must be applied to the investigation of the performance and attendance of all staff in order to ensure fair and consistent treatment in differing circumstances. However, where these investigations appear to relate to the health status of an individual, greater sensitivity and confidentiality is expected.



32. Ill-health, as fitted to any of the categories noted in paragraph 8 above, carries a number of technical difficulties for supervisors. Proactive treatment of absentee and poor performance cases suggests, in the first instance, that these cases are investigated because the cause may lie in a “correctable”, manageable or treatable condition.

33. The individual enjoys the right to fair treatment and due consideration of their case.

Reasonable accommodation for persistent ill-health conditions

34. When an individual’s attendance and work performance are affected due to ill-health, or, the disease, impairment or disability becomes substantially limiting, not yet indicating that ill-health retirement be considered, the following principles will apply.

- Normal sick leave allocations apply as according to, at least, the Support Staff Leave Policy in the case of support staff and the Basic Conditions of Employment Act in the academic staff; Sick leave entitlement including special sick leave will be subject to the University’s Support Staff Leave Policy for support staff and the Basic Conditions of Employment Act for academic staff;
- Staff may be referred for assessment by an appropriate professional appointed by the University;
- The specifics of the examination will be determined by the appointed professional and the diagnosis will be confidential and shared with the relevant staff in HR and the staff member concerned;
- The appointed professional will be asked to give an opinion as to the employee’s ability to meet the current job requirements and any reasonable accommodation that could be made in order to allow the individual to meet the job requirements;
- An individual, who is no longer able to meet the job requirements or the requirements for any other suitable alternative post, may be placed on ill-health medical boarding and the benefits associated with this boarding.

Ill-health retirement

35. Ill-health medical boarding is subject to the Rules of the Pension and Provident Funds and reinsurers of these benefits. The University undertakes to regularly review the provisions of the reinsurance in order to provide the best opportunities for sustaining life quality and quality of living conditions for ill-health retirees.

36. Where ill-health medical boarding is identified by a supervisor as a possible route to be followed, this will be communicated to the Human Resources Division which will facilitate the process of assessment and investigation.

37. Where due to ill-health, the viability of continued employment of an individual is being investigated and where an incapacity dismissals is a possible outcome, a the process shall be subject to the conditions of relevant legislation and codes of practice governing occupational health and operational requirements of the employer.

Reasonable accommodation for people with disabilities²

38. The University will make all reasonable modifications, in accordance with its Staff Disability Policy, for the needs of employees with impairments or disabilities, in order to reduce the impact of the impairment on the employee’s capacity to fulfil the essentials of the job functions. Modifications must be taken into consideration to accommodate new job applicants and employees and to meet the University’s obligation under the Employment Equity Act, 55 of 1998.

39. The University is entitled to use objective criteria to assess the effect of accommodations and whether this would cause unjustifiable cost to itself.

40. The assessment of an employee’s position must follow the Code of Good Practice on Disability in the Workplace and Code of Good Practice on Occupational Requirements.

Preventing occurrence of, and education about, ill-health

41. A commitment is made to offer

² Refer : Code of Good Practice on Disability in the Workplace



- advice on the rights of afflicted employees and their colleagues;
- education to employees and management on life-threatening diseases;
- referral to medical and other counselling resources, whether internal or external to the University;
- advice to afflicted employees regarding appropriate and acceptable resources to assist them in managing their illness;
- where viable, health related resources and to inform the staff thereof;

42. Training must be provided to supervisors and university authorities enabling them to: handle voluntary disclosures by employees; and, provide support for handling confidentiality issues.

43. RELATED POLICIES

- HIV/AIDS POLICY
- SUPPORT STAFF LEAVE POLICY
- STAFF DISABILITY POLICY



- **DEFINITIONS**

affected employee an employee who is affected in any way eg if they have a partner or family member who is affected by a life-threatening disease.

notifiable diseases those illnesses which due to the social implications of their contagious or, life-threatening, nature, are by legislation required to be notified to the State District Surgeon by any person with knowledge about infected persons.

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

reasonable accommodation means any modification or adjustment to a job or to the workplace that is reasonably practicable and will enable a person living with a life-threatening disease, or an impairment, to have access to or participate or advance in employment.

substantially limiting an impairment is substantially limiting if, in the absence of **reasonable accommodation** by the employer, a person would be either totally unable to do a job or would be significantly limited in doing the job.

surveillance³ testing / screening this is anonymous, unlinked testing done in order to determine the incidence and prevalence of disease within a particular community or group to provide information to control, prevent and manage the disease and associated risk.

³ Surveillance of disease :The ongoing systematic collection and analysis of data about an infectious disease that can lead to action being taken to control or prevent the disease