



Department of
Education

Shaping the future

Retirement on the Grounds of Ill Health Guidelines

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Retirement on the Grounds of Ill Health Guidelines

Introduction

It is fundamental that every employee has the capacity to undertake the inherent requirements of their role.

It is appropriate for an employer (the Department) to consider retirement on the grounds of ill health (RGIH) where it is reasonably suspected an employee's ill health renders them incapable of performing the inherent requirement of their role in the reasonably foreseeable future and/or the employee may pose a risk to themselves or others due to their ill health, and management options to address this have not been successful or are not reasonable.

The Department will have regard to any applicable legislation and industrial instruments that govern specific occupational groups. For example, public service officers are to be treated in accordance with the provisions of section 39 of the *Public Sector Management Act 1994* (PSM Act).

These guidelines include relevant considerations and processes in relation to the RGIH of an affected employee.

Definitions

Employee	A person employed by the Department of Education
Employer	Department of Education (Department)
Medical Specialist	Medical specialist qualified to assess an employee's ill health and any impact on their ability to perform the inherent requirements of their role.
Treating Medical Practitioner	Medical practitioner involved in the treatment of an employee's ill health

Fitness for Work Assessment

The Department may seek an assessment from a medical specialist of the employee's medical capacity to perform the inherent requirement of their position if the Department forms a reasonable belief:

- that the employee's inability to perform the inherent requirements of their position is due to their ill health and/or
- there is evidence to suggest that the employee's actual or suspected ill health poses an unreasonable risk to the welfare of the employee and/or others.

When forming a reasonable belief, it is appropriate for the Department to rely on existing medical evidence and/ or evidence of poor performance, poor attendance, unsafe practices,

observations or complaints if the Department suspects that ill health is related to these issues.

A reasonable belief is capable of being formed whether or not the Department and employee might have worked together to address these matters through other management options.

Before deciding whether to direct the employee to attend an independent medical assessment from a medical specialist, the Department may, with the employee's consent, obtain information about the employee's fitness for work from their treating medical practitioner.

When seeking an assessment from the Department's Occupational Physician, the Department will take all reasonable steps to discuss with the employee the reasons for the referral and the information to be provided to the Occupational Physician and will provide the employee with a copy of the referral.

The employee may appeal the referral to the Occupational Physician for a fitness for work assessment within 3 working days of being given a copy of the referral document.

The Department may include the following information (and any other information it considers to be reasonable) in the referral to the Occupational Physician:

- A statement that the purpose of the assessment is to help the Department determine:
 - If the employee is medically capable of performing the inherent duties of their position (including whether they pose a risk to themselves or others)
 - If any reasonable adjustments are required to assist the employee to continue performing their duties without risk to themselves or others
 - The extent of any medical incapacity
 - The employee's prospects of recovery and the timing of any such recovery
 - Any treatment options available to the employee to help their recovery and/or help them perform the duties of their position
- A copy of any relevant factual information, such as:
 - The employee's role and duties
 - Any adjustments currently in place
 - Existing records of the employee's illness or injury, including copies of any reports from their treating medical specialist
 - Relevant employment history, which may include any action taken to address poor performance of their duties, workplace accommodations or adjustments that have been made to date, personal leave taken and relevant professional appraisal results.

The medical specialist's report and any other available information will inform the Department's view as to whether:

- The employee should be capable of performing the duties of their position or
- The employee is not capable of performing the duties of their position and requires further time for treatment or recovery or
- Further medical advice is required or recommended.
- The Department will consider further action or reasonable adjustments to assist the employee including:
 - Directing the employee to return to work or remain away from work subject to certain conditions

- Supporting a graduated return to work including at an alternative worksite if recommended by an Occupational physician or treating doctor
- Make reasonable adjustments to the workplace where practicable
- Consideration or further consideration of performance management or disciplinary options
- Other management action that is appropriate in the circumstances.

Any actions or adjustments need to be reasonable for the Department in terms of cost, time and impact on the worksite's business needs.

Employer Initiated RGIH

Where return to work options have been exhausted and the Occupational physician has indicated that the employee is unlikely to be able to undertake their substantive role for the foreseeable future, or the employee's current level of attendance or demonstrated ability to perform their substantive role is unlikely to change in the foreseeable future, the Department may commence a RGIH process.

The RGIH process will be commenced when the evidence-based view is that:

- The employee is unable to perform the inherent requirements of their role for the reasonably foreseeable future and
- There are no workplace adjustments that can be reasonably accommodated by the school/worksite that would enable the employee to perform the inherent requirements of their position.

Adjustments may not be able to be accommodated if they impose an unjustifiable hardship on the employer.

Before making a decision, the Department will advise the employee in writing that they are proposing to retire the employee on the grounds of ill health based on the medical and any other available information on which the decision to retire has been determined.

The employee will be given an opportunity to respond to the Department's proposed action. The employee's response may include any additional material they consider relevant, including medical information obtained at the employee's own cost.

After considering the employee's response, the Department may:

- Consider other management options
- Seek further medical evidence
- Allow the employee to return to work
- Make a decision to retire the employee on the grounds of ill health.

Public service officers must be called on to RGIH in accordance with section 39 of the PSM Act. A refusal of the employee to do so may be treated as a breach of discipline under section 80 of the PSM Act on the grounds of the employee disobeying or disregarding a lawful order and contravening the statutory requirement contained in section 39(2) of the PSM Act.

In the case of teachers, who are not public service officers, the Department may terminate the teacher's employment on the grounds of ill health under clause 33.38 of the *School Education Act Employees' (Teachers and Administrators) General Agreement 2021*.

Employee initiated RGIH

An employee may make an application to their line manager seeking RGIH. The application must be supported by medical evidence which details the employee's inability to perform the inherent requirements of their role for the foreseeable future.

The line manager forwards the request and medical evidence to the Employee Support Bureau (ESB) for consideration.

ESB will determine:

- If the medical evidence is sufficient to support the employee's application, in which case the employee's request to be RGIH will be approved.
- If the medical evidence provided to support the employee's application is not considered sufficient, the employee will be given the opportunity to provide further medical evidence.

The employee will be notified of the outcome of their application as soon as practicable after a determination has been made.

Further considerations

Superannuation and other financial advice

Employees are encouraged to seek advice from their superannuation fund, the Australian Taxation Office and other relevant financial advice.

Employees who retire or whose employment is terminated on the grounds of ill health may be eligible to receive their accrued annual leave, long service leave or any pro-rata long service leave entitlements.

Workers' compensation

In circumstances where the employee's condition includes a work-related injury that is subject to a claim for workers' compensation, RGIH may proceed if appropriate in the circumstances subject to any applicable legislation.

Discipline and substandard performance

The Department should give consideration as to how to proceed in relation to an existing substandard performance or disciplinary matter concerning an employee.

In determining whether to proceed with a substandard performance or disciplinary matter, regard should be given as to whether the substandard performance or disciplinary process can be fairly concluded without the employee's further participation.

Applicable legislation and instruments

- *Equal Opportunity Act 1984 (WA)*
- *Disability Discrimination Act 1992 (Cth)*
- *Work Health and Safety Act 2020 (WA)*
- *Public Sector Management Act 1994 (WA)*
- *Workers' Compensation and Injury Management Act 1981 (WA)*
- *Public Service Regulations 1988*
- *Public Sector Management (Redeployment and Redundancy) Regulations 2014*
- Discipline Standard
- Commissioner's Instruction 3: Discipline – General
- Commissioner's Instruction 7: Code of Ethics
- Department's Code of Conduct
- Department's Employee Performance Policy and Procedures
- Commissioner's Instruction 12: Redeployment and Redundancy
- *Public Service Award 1992*
- *Public Sector CSA Agreement 2022* or its replacement
- *School Education Act Employees' (Teachers and Administrators) General Agreement 2021*