

PROCEDURE REGARDING REFUSAL TO RETURN TO PLACE OF WORK

PROCEDURE IN TERMS OF PARAGRAPH 2(i) OF THE CONSOLIDATED DIRECTIONS ON OCCUPATIONAL HEALTH AND SAFETY MEASURES IN CERTAIN WORKPLACES

- An Employee's refusal to report to the workplace

In terms of the Consolidated Directions on Occupational Health and Safety Measures in Certain Workplaces¹ an employee may refuse to perform any work if circumstances arise that pose an imminent and serious threat of exposure to COVID19. An employer is required to provide for a procedure for the resolution of any issues arising from the refusal to work. In accordance with these directions, the steps outlined below are proposed.

This procedure applies for the duration of the declaration of the national state of disaster to deal with the COVID-19- pandemic unless its applicability is extended by the ICBC.

Step 1

The employee must notify his/her line management of the refusal and provide reasons for the refusal. The attached template must be completed by the employee and emailed to the employee's direct line manager.

After line management receives the notification, they must engage with the employee and attempt to resolve the issue. A resolution is reached where both the employee and line management agree on the steps that will be implemented.

Step 2

If this conversation between the employee and the line management does not result in an agreement, line management must refer the matter to the HR practitioner for the environment as soon as possible.

The HR practitioner must convene as expeditiously as possible, a meeting with the Campus Health Services Occupational Health Specialist and the COVID-19 compliance officer of the environment. The three persons must deliberate on the matter.

The deliberations of this group must take into account all relevant factors, including but not limited to:

- The employee's reasons for refusal to return to the workplace;
- an assessment of whether the work activities give rise to actual health risks;
- the possibility of making changes to the work practices;
- whether the employee is a vulnerable employee who presents with any co-morbidity or is older than 60 years of age;
- the extent of the health and safety protocols in place in the employee's work environment to mitigate the risks of exposure to Covid-19;
- the special arrangements in place for vulnerable employees; and
- whether the operations require the employee to return to work or if it is possible for the work to be performed remotely.

¹ Government Gazette 43751 GN 1031 of 1 October 2020

https://www.gov.za/sites/default/files/gcis_document/202010/43751rg11181gon1031.pdf

Step 3

The decision of the deliberations must be conveyed to the employee and line management within three (3) days of the matter having been referred. The HR practitioner will be responsible for conveying the decision.

The deliberative group should consult with line management and may consult with the employee, either individually or collectively, for the purposes of finding a resolution.

Where the matter cannot be resolved, the University is obliged to notify an inspector of the Department of Labour of the issue within 24 hours and to advise the employee and all other parties involved in resolving the issue that an inspector has been notified. If the University does not make the notification, the employee may do so.

The HR practitioner must duly inform the Director: Employee Relations of the unsuccessful attempt to resolve the matter via email, providing all relevant information.

An inspector may then, in terms of section 30 of the OHS Act, issue a prohibition notice if, *inter alia*, the inspector is of the opinion that any act threatens or is likely to threaten the health and safety of any person.

The maintenance of the status quo pending the finalisation of the matter

No employee can be adversely impacted due to their refusal to report for work or pending the finalisation of this procedure. This includes the deduction of leave, reduction in salary or the institution of disciplinary action.

Reasons for Employee's refusal to return to the workplace

Section A: TO BE COMPLETED BY EMPLOYEE

Employee name and surname	
Staff number (UT number)	
Environment	
Line manager	
Reasons for refusal to return to work (Please continue on a separate page if the space is inadequate)	

Signature:	Date:
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Section B: TO BE COMPLETED BY LINE MANAGEMENT

Name and Surname	
Reasons why line management needs the employee to return	
Workplace plan and walkthrough risk assessment – mitigating factors in place in the environment to limit the spread of the virus.	
Can the work be performed remotely?	
Decision: Can you accommodate the employee in any way?	

Signature:	Date:
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Section C: Deliberative Group

Names & Surnames	
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Decision:	Date:
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