

Fitness for Work Procedure

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 there may be times where a staff member is unable to fulfill the inherent requirements of their role.

Where a staff member is unable to perform all the duties within their role or unable to perform these duties safely or to the required standard, on either a temporary or permanent basis, NZK will aim to deal with the matter in a compassionate and collaborative manner. The purpose of this procedure is to ensure all staff members across the NZK network understand they are required to perform all duties within their position to an acceptable standard, and the process that will be followed (and the potential outcomes) if they are no longer able to do so.

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 a person that is no longer able to do their work. Case law also provides a broad framework for navigating this issue which has been considered when drafting this procedure.

Key Definitions

Inherent Role Requirements are the tasks that are essential to perform a job productively, to the required standard, and the ability to work safely alone or within a team.

Performance expectations are outlined in each Association's position descriptions, NZK policies, procedures and Values, as well as various pieces of federal and state legislation relevant to the workplace.

Medical incapacity is when an employee is no longer able to do their job either temporarily or permanently due to illness or injury. (Refer to the Medical Incapacity Procedure for further information)

Unfit for Work for the purpose of this procedure is defined as an inability to perform all elements of the role, or perform these elements to the required standard due to non-medical reasons. E.g. as part of the natural aging process, having a physical limitation that is not linked to a medical condition or aging process.

Pre Employment Screening is when you are asked about your ability to perform your duties before commencing work with NZK. Over time this ability to fulfill the demands of the role can change.

Rights and Obligations

The law does not require that NZK keep in employment a staff member that is unable to perform essential work duties. However, NZK will ensure that any decisions related to an inability to perform the duties of the position 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 ability to perform in their role, to enable NZK to make a decision that balance both the interests of the business and the staff member.

As you become aware of any change to your ability to perform the mental or physical duties of your role, you have an obligation to bring this to the attention of NZK so early interventions can be considered and implemented.

Inherent Role Requirements

Each position at NZK has a unique set of inherent role requirements. Some roles are more physically demanding than others, while others may be sedentary. Role requirements will be set out within a position description and may include:

- The educational elements needed to complete the role e.g. need to read or write, to be computer literate, to be able to keep up with changes in technology, ability to respond to complex written queries or generate learning plans
- The nature of the staff members involvement engaging with children e.g. active playing with children, or interaction with other adults
- The physical aspects of the role e.g. Need to bend, sit/stand for long periods of time, chase/run, pick up, lift or stretch.

Fit for Work Process

If NZK identify a staff member who is unable to perform part of their role, or perform their role to the required standard safely, NZK will take the steps below to ensure the principles of a fair process are followed.

- ✓ **Informally meet with the staff member** to understand the nature of what is causing their inability to fulfill all aspects of the role. In doing so the aim is to identify if this will be a short term or long term matter. The staff member will be encouraged to provide as much information as they feel comfortable and safe to do so.
- ✓ **Request any evidence relating to this limitation** if there are ongoing concerns regarding the staff member being able to fulfill their role requirements. NZK will work with the staff member to determine:
 - Which duties can and cannot be performed to the required standard
 - If this is a short term or long term limitation
 - If there is any risk to the safety of the staff member, other staff members, or children if the person remains in the workplace
 - If there are other solutions such as considering changes to work pattern that may support the staff member fulfill all role requirements
- ✓ **If the matter is found to be related to a medical illness or injury** NZK will follow the Medical Incapacity Procedure to resolve.
- ✓ **Propose alternatives** after considering all information NZK and the staff member may consider the following options:
 - A temporary or permanent move to another role within NZK to which the staff member has the skills to perform
 - Consider the working pattern to mutually agree to change the days or hours of work
 - Amending the role requirements so the staff member is able to perform the duties, taking into consideration the impacts to other staff and potential change to their workloads if this is undertaken
 - Determining that there are no other positions, and where the staff member isn't able to perform their duties and commence a Performance Improvement Plan. If this is the case NZK will follow the Performance Management Procedure to resolve

- ✓ **Seek feedback on the proposed alternatives** 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.

Dos and Don'ts

Do...

- ✓ Raise any concerns you have meeting your role duties with your manager as soon as possible.
- ✓ Ensure you act in good faith and remain cooperative, honest, and professional throughout the process, to provide the best chance of rectifying concerns about your ability to perform in your role
- ✓ Refer to our Grievance Procedure for the steps you should take should you feel any part of this process is not a fair process or being done in good faith.

Don't...

- x Keep concerns regarding your performance expectations to yourself, discuss them with your manager so you can be provided appropriate support.
- x Gossip with other staff members regarding this process; we understand the need to seek support from a trusted friend or colleague, but you should ensure any conversations remain in good faith.

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

Medical Incapacity Procedure

Grievance Procedure

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

Kindergarten Teachers Collective Agreement (KTCA)