



## EMPLOYMENT POLICY MANUAL

<b>Subject:</b> Attendance Management Policy	<b>Approval Date:</b> June 17, 2013	<b>By-Law No.</b> 1785-13
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### 3.17 ATTENDANCE MANAGEMENT POLICY

Every employee of the Municipality has an obligation to perform with regularity the functions for which they were hired. It is the policy of the Municipality to manage employee absenteeism in a fair and consistent manner with the following objectives:

1. To maximize customer service and manpower efficiency in a safe and reasonable manner.
2. To assist employees in minimizing absences from work by making every reasonable effort to provide accommodation, assistance and rehabilitation.

The Municipality is committed to:

- Promoting a healthy workplace, and
- Providing guidance and training to management staff who are responsible for dealing with attendance issues.

#### 1. APPLICATION

This policy applies to all employees except for probationary employees

#### 2. APPLICABLE LEGISLATION

Both the Human Rights Code and Workplace Safety & Insurance Act have applicability to attendance management. Both statutes address the inter-related issues of absenteeism, disability and accommodation. The Human Rights Code defines "disability" as follows:

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device.
- (b) a condition of mental impairment or developmental disability.
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language.



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(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997; ("handicap").

However, not all absences due to illness or sickness fall within the definition of disability. For example, it is generally held that "illness" in the context of the Code does not apply to illnesses of a temporary nature, such as colds or the flu. The Workplace Safety and Insurance Act (WSIA) provides a definition of re-employment obligations that apply to injured workers.

"Disability" covers a broad range and degree of conditions, some visible and others not. A disability may have been present from birth, caused by an accident, or developed over time. It includes physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions.

### 3. DEFINITIONS

#### Section A: Culpable or Blameworthy Absenteeism:

Absence from work due to factors within the employee's control. Culpable absenteeism includes failure to notify, absences without leave, absences that may relate to multiple illness issues and abuse of leave. Culpable or blameworthy absenteeism problems may be grounds for discipline, up to and including termination.

#### Section B: Innocent or Non-Culpable Absenteeism:

Absence from work due to illness, or non-occupational injury, including absences that may be a result of a disability other than a compensable illness or injury. These absences are subject to Attendance Review under Management of Innocent Absenteeism (refer to Section B below).

#### Section C: Approved Absences:

Absence from work to which an employee is entitled by law or (in accordance with the terms of the Collective Agreement or) which may be granted subject to management approval. Such approved absences include absences in accordance with the Workplace Safety & Insurance Act/WSIB, vacation, bereavement leave, jury/witness duty, pregnancy/parental leave, Ontario Employment Standards Act - Emergency Leave, legal strike, lay-off and such other absences as management may determine.



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### 4. SECTION A: CULPABLE OR BLAMEWORTHY ABSENTEEISM

- 4.1 The Municipality will determine the average number of occasions of absence based on the department or work group. These will be the initial standards used for attendance review. An operational or departmental average may be used where differences among work groups are insignificant.

In determining the average for the purpose of the attendance management policy, the following absences should be included:

- Ill with pay
- Ill without pay
- Accident no credit (ex. WSIB denials)
- Ill, employee leaves workplace due to illness

The average absenteeism should be defined in terms of the number of days or shifts for the department for the current year or previous year.

Employees', whose attendance pattern shows that their total absences were greater than the standard for the department, will have their attendance reviewed

### 4.2 Procedure

It is the responsibility of all departments and managers to ensure the consistent application of the Attendance Management Policy. In conducting the Attendance Review, the manager should first determine whether the absences are defined as "Culpable or Blameworthy" or "Innocent or Non-Culpable", or "Approved" and the applicability of disciplinary and non-disciplinary measures.

When an employee fails to comply with reporting or timekeeping rules, his/her manager will meet with the employee to determine the reasons. When the manager determines there was a satisfactory reason for the failure to comply, the behaviour is deemed non-culpable.

When the manager determines that the reasons are unsatisfactory, the behaviour is deemed culpable, the manager will deal with the situation as a disciplinary matter.



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#### 4.3 Management of Absenteeism

The immediate supervisor is responsible for attendance management. Through the maintenance of accurate records and regular monitoring the supervisor corrects absenteeism issues at an early stage. Supervisor responsibilities include:

- Regular communication with employee
- Maintenance of records
- Assistance in return to work

#### 4.4 Informal Meeting

If at any point during a three (3) month period an employee is absent due to illness on a number of occasions which is greater than the departmental average, an informal interview will be conducted by the supervisor. The purpose of the meeting is to:

- Identify concerns with attendance
- Explain the impact of absences on the work operation
- Identify expectations for improvement
- Identify resources for assistance

NOTE: For cases requiring special accommodation due to an injury or a disability, supervisors should consult with the appropriate senior manager for advice and recommendations.

#### 4.5 Formal Meeting 1 / Letter 1

If during the next three (3) month period or less the employee is absent due to illness on a number of occasions which is greater than the departmental average for that period, the first formal meeting is held and documented in a letter to the employee. The purpose of the meeting is to:

- Identify concerns with attendance
- Explain the impact of absences on the work operation
- Identify expectations for satisfactory improvement
- Provide an opportunity to discuss reasons for absenteeism
- Identify resources for assistance (suggested referral to Employee Assistance Program or their Health Practitioner)
- Identify specific course of action



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### 4.6 Formal Meeting 2 / Letter 2

If during the next three (3) month period or less the employee is absent due to illness on a number of occasions which is greater than the departmental average for that period, the second formal meeting is held and documented in a second letter to the employee. The purpose of the meeting is to:

- Identify attendance is unacceptable
- Opportunity to discuss reasons for absenteeism
- Identify resources for assistance (suggested referral to Employee Assistance Program or their Health Practitioner)
- Identify expectations for satisfactory improvement
- Identify specific course of action and possible consequences: attendance is on record and could lead to more formal discipline, transfer, demotion, denial of promotion.

### 4.7 Formal Meeting 3 / Letter 3

If during the next three (3) month period or less the employee is absent due to illness on a number of occasions which is greater than the departmental average for that period, a third formal meeting is held and documented in a third letter to the employee. The purpose of the meeting is to:

- Identify unacceptable attendance is on record
- Opportunity to discuss reasons for absenteeism
- May include a formal referral to Employee Assistance Program or their Health Practitioner
- Identify expectations for satisfactory improvement
- Identify specific course of action and possible consequences: attendance is on record and could lead to transfer, demotion, denial of promotion

Identify other options which may be pursued if there is no satisfactory improvement and advise continued unacceptable attendance may lead to termination of employment.

### 4.8 Formal Meeting 4 / Letter 4

If during the next (3) month period or less the employee is absent due to illness on a number of occasions which is greater than the departmental average for that period, the fourth formal meeting will be held.

Prior to meeting with the employee the manager must consult with human resources and/or senior management and/or external Legal counsel to review



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the case and options. Termination may result if attendance has not reached an acceptable level.

### 4.9 Improved Attendance

If there is an improvement in attendance followed by a return to poor attendance, the formal process is reintroduced at the stage which it was left at. If there is a sustained improvement in attendance for a period of two (2) years which meets company standards, the review process is closed and the employee is given a letter recognizing that they have met the standard. After the two (2) year period, if attendance falls below the standard, the review begins with the informal meeting.

## 5. SECTION B: ADDRESSING INNOCENT/NON-CULPABLE ABSENTEEISM

- 5.1 The Municipality has the right to expect that employees will regularly attend at work, however, sometimes employees must be absent for reasons beyond their control (e.g. because of illness or bona fide disability). This form of absenteeism is defined as "non-culpable".
- 5.2 The process of addressing innocent absenteeism is supportive and non-disciplinary in nature. The intent is to understand the absences, discuss the impact the absences are having on the business or work group and other staff, to provide support and indicate support services available to the employee to allow the employee to address issues so they will attend work regularly in the future. Innocent absenteeism is approached on the basis of identifying and understanding the medical needs of the employee and any restrictions as identified by the employee's health care practitioner. This includes modifying the work where possible to ensure the employee is able to come to work on a regular basis.
- 5.3 As stated previously, discipline is not appropriate when dealing with this kind of absence. However, employees may be terminated if an employee has so many "non-culpable" or "innocent" absences that the Municipality cannot reasonably accommodate the employee without experiencing undue hardship.
- 5.4 The Municipality shall consistently meet their duty to accommodate disabled employees when it deals with non-culpable absences. An attendance management program for an employee whose absences are either partly or totally caused by a disability shall include consideration of how the employee's disability could be accommodated, rather than applying inflexible attendance standards based merely on the employee's absence statistics. Disabled employees shall receive an individualized assessment of their innocent



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absenteeism, and their termination will only be justified where the Municipality cannot accommodate the employee within the workplace without incurring undue hardship.

5.5 While the employee must be made aware of their attendance issue, it must remain clear to the employee that the company is working to help the employee improve his/her attendance and that no form of discipline is being imposed. As a benchmark, the reported national average for days lost due to illness or injury is 9 days per year.

5.6 Attendance Record: There are three important statistics relative to the attendance record. In each case, the absence is medically justified.

- Number of days absent: Does the employee's number of sick days off exceed the unit peer group average. If the employee's number of days absent is merely above the average it is important to look at the entire record to see if this is an anomaly.
- Number of incidents: Does the employee have frequent occurrences of absenteeism as compared to the unit peer group average? A high number of separate incidents of absence is disruptive to a unit, often requiring adjustments of schedules and work requirements that has a detrimental impact on other staff.
- Pattern of absences: This may also be relevant, is the individual off commonly on Mondays or Fridays. A history of intermittent and frequent absences for different reasons may cause more operational difficulties for a unit as short term, intermittent absences are infrequently back-filled.
- It is the role of the supervisor/manager to work with employees on concerns related to attendance. It is the role of the supervisor/manager to bring to the attention of the employee whose attendance is of concern, the standards expected and to offer help and support. The following provides a framework to address issues of innocent absenteeism with employees.

5.7 Phase 1: The Initial Interview between the Supervisor/Manager and the Employee

It is important to remember that this meeting is counseling in nature and is not intended to be disciplinary. The leader/manager is bringing to the attention of the employee the concern of the level of absenteeism and is working with the employee to identify ways to improve his/her attendance.



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Depending on the circumstance, this phase may take 2-3 counseling sessions with the employee. The Human Resources Manager or a senior staff member can assist in determining the structure of the process for an individual including how frequently the lost time issue should be addressed.

The review of the attendance record can occur anywhere from a bi-weekly basis to every three months, depending on the facts of the case. The intention is to provide time to allow the employee to demonstrate a change in the record/behaviour. Appropriate time frames to review the matter should be discussed with the Human Resources Manager or a senior Staff member.

### 5.8 Phase 2 : Interview followed by a Letter

Within a predetermined and reasonable length of time of the initial interview, Phase 1, the supervisor/manager will arrange for a meeting with the employee and follow up with a letter outlining what was discussed.

### 5.9 Phase 3 : Second interview followed by a Letter

Within a pre-determined and reasonable length of time of the Phase 2 interview, the supervisor/manager will arrange a meeting with the employee and follow up with a letter outlining what was discussed. In this letter, the possible implications relative to the question of continued employment are referred to.

### 5.10 Phase 4 : Third Interview followed by a letter

Within a pre-determined and reasonable time of the Phase 3 interview, the supervisor/manager will arrange a meeting with the employee. At this point, in review of the actions that have occurred to date (e.g., patterns, causes of absenteeism) and previously agreed upon solutions, the supervisor/manager must explicitly state that continued employment is at risk. It is critical that this is reviewed with The Human Resources Manager and/or a member of Senior Staff prior to proceeding with this phase.

### 5.11 Phase 5 : Next/Final Steps

Should improvement not be achieved and sustained at the conclusion of this process, further action should be taken in consultation with the Human Resources Manager and/or a Senior Staff member and/or external Legal counsel. The prognosis for future attendance is essential for this phase - what is the likelihood of regular attendance at work in the future.





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The role(s) of the Human Resources Manager and/or a senior staff member and/or external Legal Counsel is determining with the supervisor/manager when employment may be terminated as a result of "frustration of the contract of employment". Once an employee accepts employment this is a type of contract, and for whatever reason it later becomes **impossible** for the individual to perform their obligations to the satisfaction of their employer, then we must consider frustration.

The Municipality shall ensure the following conditions are met prior to any dismissal of an employee for non-culpable absences:

- There must be a "culminating absence", meaning a new, recent absence, to trigger a review of the employee's attendance record;
- The employee must have a past record of excessive absenteeism;
- The employee must be incapable of satisfactory attendance in the future;
- The Municipality shall provide notification to the employee that continued absences would put them at risk of being terminated; and,
- The Municipality shall take into account that the absenteeism might be corrected if the employee is able to make a change in his/her behaviour or lifestyle, in which case a progressive response might be justified, rather than dismissal.

### 5.12 Improved Attendance

- If there is an improvement in attendance followed by a return to poor attendance, the formal process is reintroduced. If there is a sustained improvement in attendance for a period of two (2) years which meets company standards, the review process is closed and the employee is given a letter recognizing that they have met the standard. After the two (2) year period, if attendance falls below the standard, the review begins with the informal meeting.

### 5.12 Human Rights Considerations

It is equally as important to ensure obligations under any policy, or collective agreement are fulfilled as to ensure that any conduct towards the employee is not in violation of the Human Rights Code. If accommodations can be made to meet the restrictions, permanent or temporary, then these must be put into place. Accommodation does not mean creating a new job for the individual and



The Corporation of the Municipality of Red Lake

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filling their position with another individual but it does mean that there may be required adjustments depending on the nature of the illness/injury.

Ultimately, after significant effort in modifying work, etc. has been made yet it has been identified that the employee will not likely to be able to attend work on a regular basis in the future, a termination for frustration of contract may be upheld. This outcome is only after a significant degree of effort by all involved is demonstrated and several criteria are met.