

To: All Employers and Staff in the Education sector

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## Update on the New Public Service Sick Leave Scheme

### **1. Start Date for new Public Service Sick Leave Scheme**

The new Public Service Sick Leave Scheme will be introduced to the Education sector from 1st September 2014 and will apply to all public servants. If you are absent from work on sick leave from 1st September 2014 you may have access to paid sick leave, subject to the limits that are set out below. Detailed circulars will issue in the coming weeks in relation to this matter.

### **2. Main Provisions of the New Sick Leave Scheme**

#### **2.1 Paid Sick Leave**

The new scheme provides for:

- A maximum of 92 days sick leave on full pay in a year
- Followed by a maximum of 91 days sick leave on half pay
- Subject to a maximum of 183 days paid sick leave in a rolling four year period.

#### **2.2 Temporary Rehabilitation Remuneration (TRR)**

If you have exhausted 183 days paid sick leave in a rolling 4 year period and are absent on sick leave again, you may be granted Temporary Rehabilitation Remuneration for a further 548 days. Temporary Rehabilitation Remuneration used to be called "Pension Rate of Pay" and will be calculated in the same way. Temporary Rehabilitation Remuneration will only be available when there is a realistic prospect that you will be able to return to work following your illness.

#### **2.3 Critical Illness Provisions**

Additional support for staff who are critically ill has also been agreed. The criteria for assessing whether someone is eligible for extended sick leave as a result of critical illness or serious physical injury are set out in the Critical Illness Protocol (CIP).

If someone becomes critically ill or has a serious physical injury and is eligible for support under the CIP they may have access to:

- A maximum of 183 days on full pay in a year
- Followed by a maximum of 182 days on half pay
- Subject to a maximum of 365 days paid sick leave in a rolling four year period.

If you have exhausted 365 days extended paid sick leave under the CIP, you may be considered for a maximum of 12 months Temporary Rehabilitation Remuneration in the first instance. Management may then consider paying TRR for a further period of time not exceeding 730 days. This is subject to 6 monthly reviews and may only be granted where the occupational health physician has confirmed there is a reasonable prospect of a return to work.

## 2.4 Dual Look Back

To calculate the appropriate rate of pay for staff when absent as a result of illness or injury there will be a dual look back system as follows:

- Step 1: Determine whether the staff member has access to paid sick leave

The staff member sick leave is reviewed over the 4 year period from the current date of absence. If 6 months (183 days) paid sick leave have not been exhausted over that 4 year period, access may be granted to paid sick leave.

- Step 2: Determine whether full pay, half pay or TRR apply

If Step 1 indicates that the employee has access to paid sick leave, his/her sick leave record is then reviewed over the 1 year period from the current date of absence to determine the rate at which sick leave may be paid. If the initial 3 months (92 day) limit at full pay has not been exhausted, full pay may be awarded until the limit of 3 months (92 days). Thereafter, the amount paid will be calculated based on half pay or TRR, as appropriate.

Similar arrangements will be in place for the dual look back in the case of critical illness. The scenarios set out at Sample Critical Illness Cases illustrate how the dual look back arrangement will operate in practice.

## **2.5 Maternity Related Illness**

The Public Service Management (Sick Leave) Regulations 2014, SI 124 of 2014, set out the provisions which relate to the interaction of pregnancy related illness with sick leave limits. The regulations set out how the time on half pay due to pregnancy related illness is protected.

## **3. Transitional Arrangements**

If a person has started a period of sick leave before 1st September 2014 that continues after that date, the person will stay on his/her current sick leave arrangements. After he/she returns to work, his/her next sick leave absence will be dealt with under the terms of the new Public Service Sick Leave Scheme.

## **4. Treatment of Previous Periods of Sick Leave under the New Scheme**

Sick leave records will be reviewed over a rolling 4 year period. This means that if a person has been paid more than 183 days sick leave in a rolling 4 year period on the commencement date, he/she may not get paid the next time he/she is off sick or he/she may only be paid Temporary Rehabilitation Remuneration.

**Re: Revision of the Critical Illness Protocol for use with the new Public Service Sick Leave Scheme following Labour Court Recommendation 20667.**

1. The purpose of this update is to inform all public bodies of the changes to the Critical Illness Protocol (CIP), circulated in December 2013. The CIP was revised following Labour Court Recommendation 20667 and is attached.

**Labour Court Recommendation:**

2. The Court was asked to give a binding recommendation on how the CIP was to be applied in three instances:
  - a. Pregnancy related illness, including assisted pregnancy related illness;
  - b. Disability related illness; and
  - c. Mental Illness.

The CIP has now been changed to take account of the binding recommendations of the Labour Court as follows:

- (i) Pregnancy related illness that requires a stay of two or more consecutive days of in-patient in hospital/clinical care may qualify for extended sick pay under the CIP.
- (ii) When using the provision in the CIP for management to apply discretion in granting extended sick pay – where an individual does not meet the strict medical criteria – management should consider a number of factors including if it has not been possible to make an accommodation to facilitate the return to work of a person with a disability-related illness or condition.
- (iii) In respect of mental illness, the Court was of the view that the CIP addressed supports for mental illness and did not need to be amended.

**Clarification of the time limits for access to Temporary Rehabilitation Remuneration (TRR) under the CIP**

3. Where a staff member has been granted extended sick pay under the CIP and they have exhausted TRR of 365 days, management may continue to pay TRR for a further period not exceeding two years. This can only be granted in cases where the occupational health specialist has confirmed that there is a reasonable prospect of return to work and is subject to six monthly reviews.
4. Please bring the revised CIP to the attention of all staff in your organisation.

# CRITICAL ILLNESS PROTOCOL

## **1. INTRODUCTION**

1.1 It is recognised that public service bodies, as employers, need to continue to provide support for their employees who may be incapacitated as a result of critical illness or serious physical injury. Therefore when an individual becomes incapacitated as a result of critical illness or serious physical injury, and has supporting medical evidence for an extended period of sick leave, the individual may, on an exceptional basis, be granted paid sick leave extended as follows:

- A maximum of 183 days on full pay in the previous rolling one-year period
- Followed by a maximum of 182 days on half pay in the previous rolling one-year period
- Subject to a maximum of 365 days paid sick leave in the previous rolling four-year period.

1.2 The granting of exceptional extended paid sick leave is a decision of management having considered the occupational medical advice.

1.3 These arrangements will exclude individuals whose illness relates to an occupational injury/illness and who have access to an occupational injury/illness scheme.

## **2. CRITERIA FOR AWARD OF EXTENDED PAID SICK LEAVE**

2.1 In determining whether an individual may be granted access to exceptional extended paid sick leave the following criteria apply:

- 2.1.1 The employee should ordinarily be under the current or recent clinical care of a consultant either as an inpatient or outpatient. This excludes employees attending primarily for report preparation or medico legal purposes.

- 2.1.2 The case must be referred by the employer to its Occupational Health Service for medical advice.
- 2.1.3 The responsibility lies with the employee to furnish any treating doctor's medical reports requested within an appropriate time-frame to avail of the exceptional extended paid sick leave. A treating consultant's specialism must be appropriate to the critical illness for which the employee is making a claim.
- 2.1.4 The Occupational Physician, from the employer's Occupational Health Service, will advise whether, in their opinion, the following criteria are met:
- i. The employee is medically unfit to return to his or her current duties or (where practicable) modified duties in the same pay grade
  - ii. The nature of this medical condition has **at least one** of the following characteristics:
    - (a) Acute life threatening physical illness
    - (b) Chronic progressive illness, with well-established potential to reduce life expectancy<sup>1</sup>
    - (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment
    - (d) In-patient hospital care of two consecutive weeks or greater<sup>2</sup>.
- 2.1.5 The Occupational Physician will consider the information provided by the treating doctor, and may confer with them with consent if they feel this would be helpful. It is not an absolute requirement that a definitive final diagnosis has been made. The Occupational Physician may accept a presumptive diagnosis on a case by case basis.

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<sup>1</sup> In circumstances where there is no medical intervention.

<sup>2</sup> In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of two consecutive weeks will be reduced to two or more consecutive days of in-patient hospital / clinic care.

### **3 DECISION TO AWARD**

3.1 The decision on whether to award extended paid sick leave is a management decision having consulted with the relevant line manager. Whilst management must primarily consider the Occupational Medical advice, management should consider all the circumstances of the case.

3.2 Thus, although an employee may not meet the medical criteria outlined above, management may still make a decision to award in exceptional circumstances.

3.3 In exercising this discretion management must demonstrate the reasons why they are awarding an extended period of paid sick leave although the individual does not meet the requirements set out at 2.1.4(ii) above. In this regard management should in particular consider the following:-

- the individual's sick leave record;
- the potential impact of an early return on the workplace efficiency and effectiveness;
- it has not been possible to make an accommodation to facilitate the return to work of a person with a disability-related illness or condition.<sup>3</sup>

Management should also confer with the Occupational Physician in such cases.

### **4 APPEAL OF THE MEDICAL DECISION**

4.1 The advice of the Occupational Physician may be appealed to either a single appeal Specialist Occupational Physician or a panel of Specialist Occupational Physicians. This can be decided on a sector by sector basis as to which is the most appropriate approach. This appeal will ordinarily be a file only review.

4.2 In the case of an appeal to a single Specialist Occupational Physician, an individual may arrange to meet with the Specialist Occupational Physician on the basis of an appropriate cost sharing arrangement to be determined within each sector.

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<sup>3</sup> Management are required in the case of an employee with a disability-related illness take all reasonable steps in terms of making an accommodation to facilitate the employee's return to work consistent with, for example, specialist occupational health advice and service requirements.

4.3 The final decision on any appeal lies with the employer, having considered the medical advice.

## **5 APPEAL OF THE MANAGEMENT DECISION**

5.1 The mechanism for appeal of the management decision will be decided on a sector by sector basis with access given to those appeal mechanisms which are already in place in each sector. For example, the management decision may be appealed using the Grievance Procedure in the Civil Service.

5.2 Should there be a delay<sup>4</sup> in the employer referring an employee to the Occupational Health Service of the organisation, or a delay<sup>5</sup> in being seen by this Occupational Health Service, there will be no financial loss to the employee if they are later awarded the exceptional extended paid sick leave. Where, in these circumstances, an employee moves on to half pay and it is later found that access to exceptional extended paid sick leave should have been granted, pay will be restored appropriately.

## **6 RETURN TO WORK**

6.1 There will be no financial loss to an employee in circumstances where the employee has fully engaged with the process around the management of sick leave and their own consultant has certified fitness to return to work, but the employee has not been able to return to work because there is a delay in the employer referring the employee to the Occupational Health Service of the organisation, or a delay in being seen by this Occupational Health Service. Pay will be restored appropriately.

## **7 TEMPORARY REHABILITATION PAY**

7.1 In advance of the termination of the payment of Temporary Rehabilitation Pay (TRP), following payment of paid sick leave and TRP for a period not exceeding two years, local management shall secure expert specialist occupational health advice on whether there is

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<sup>4</sup> Where the delay is of a duration in excess of the period of time currently allowed for a referral to an Occupational Physician.

<sup>5</sup> Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.

any reasonable prospect of the employee returning to work within a foreseeable timeframe. Where a reasonable prospect of return to work is confirmed by the Occupational Health Specialist the payment of TRP may be continued subject to review at six-monthly intervals for a further period not exceeding two years.

## **8      *REVIEW OF THE OPERATION OF THE PROTOCOL***

8.1 There will be a review of the operation of this protocol following 1 full year after its introduction.

## **DEFINITIONS**

### **Current or recent Clinical Care**

This means that the employee has received medical investigations and treatment ordinarily under the direct care / supervision of a hospital consultant. They may be either a hospital inpatient or outpatient. It excludes referrals that in the opinion of the Occupational Physician are primarily for report preparation purposes/medico-legal purposes.

### **Hospital Consultant**

This is a medical doctor who is on the relevant specialist register, and holds a HSE / Voluntary Hospital / NHS hospital consultant appointment or has admission rights to a recognised private hospital.

### **Occupational Physician**

This is a medical doctor registered with the Irish Medical Council who has a postgraduate qualification in Occupational Medicine / Occupational Health, or who is on a specialist training scheme in Occupational Medicine.

### **Specialist Occupational Physician**

This is a medical doctor registered with the Irish Medical Council in the specialist division of Occupational Medicine.

### **Limitation of Life Expectancy**

This refers to the condition and not the individual person. It must be well established in the peer reviewed medical literature that the medical condition results in a reduction of life expectancy.

## **Sample Critical Illness Cases**

### **Case 1:**

Mary works as a healthcare professional. She has a recent diagnosis of invasive breast cancer, detected at routine breast cancer screening. She was admitted to hospital for 2 weeks and had a partial mastectomy, and is now half way through a six month course of outpatient chemotherapy.

The Occupational Physician considers Mary is unfit for work due to chemotherapy side effects, and has an acute life threatening physical illness.

She meets medical criteria 2.1.4(i), 2.1.4(ii) (a) for a critical illness. Management decide to award critical illness pay.

### **Case 2:**

John works in a clerical role. He has a longstanding diagnosis of paranoid schizophrenia, and is under the longstanding care of the mental health services. He has been well for an extended period of time, but has suffered a recurrence due to bereavement. He is acutely unwell and has been attending the psychiatric day hospital under the care of a consultant psychiatrist.

The Occupational Physician considers John unfit for work due to his mental state. He has a well-documented chronic progressive condition that has the potential to significantly limit life expectancy.

He meets medical criteria 2.1.4(i), 2.1.4(ii) (b) for a critical illness. Management decide to award critical illness pay.

### **Case 3**

Paul works in a manual occupation. He has been involved in a serious Road Traffic Accident. He has sustained several rib fractures, a fractured pelvis and femur (long bone of the leg). Both the pelvic fracture and the femoral fracture have required internal fixation (surgical stabilisation). He has been an inpatient on the orthopaedic ward for over four weeks.

The Occupational Physician considers Paul unfit for work due to significant physical injuries. He has had both major physical trauma and hospital inpatient care in excess of 2 consecutive weeks.

He meets medical criteria 2.1.4 (i), 2.1.4 (ii)(c) and (d) for a critical illness. Management decides to award critical illness pay.

#### **Case 4:**

Clare works at sedentary office employment. She has a longstanding diagnosis of Chronic Fatigue Syndrome and is now absent from work.

Her GP feels that she is unfit for work but the Occupational Physician considers her fit for work with work accommodations. She does not have an acute life threatening physical illness, this condition is not considered to significantly affect life expectancy, and she has not required hospitalisation

She does not meet the medical criteria for a critical illness. Management decide not to award critical illness pay.

#### **Case 5**

Brigid works as a lecturer for the last 10 years. Her long-time partner has died suddenly. Brigid has had almost no sick leave during her employment, and management report that her colleagues are seriously concerned for her wellbeing. Her GP has referred her to a local HSE consultant, diagnosed new onset depression, commenced her on anti-depressants, and referred her for counselling. Her GP considers her unfit for work and the Occupational Physician concurs fully with this. She meets medical criteria 2.1.4(1) but does not meet any of the medical criteria in 2.1.4(ii)a-d for a critical illness. The HR manager considered the facts of the case.

- Brigid had until that point had an exemplary attendance record, Brigid was responsible for a team of 5 staff and had responsibility for delivery of key outputs within demanding time frames.
- The occupational physician considered at this time that she may not be able to cope with the demands of such a busy role and it may compound issues

- The HR manager decided that if Brigid returned to work it could have a negative impact on workplace performance and could potentially slow down her full return to fitness to work.

On the basis of the above Critical Illness Pay was granted by the HR manager.