



Circular 14/2023

2<sup>nd</sup> October 2023

To: National Director of Human Resources, HSE  
CEOs and HR Managers of the NCSAs

**Management of Sick Leave in the Public Health Service (effective from 4<sup>th</sup> September 2023)**

Dear Sir/Madam

I am directed by the Minister for Health to say that the following will apply in relation to arrangements for sick leave **with effect from 4<sup>th</sup> September 2023**. This circular must be read in conjunction with the Public Service Management (Sick Leave) Regulations 2014 (SI 124/2014), the Public Service Management (Sick Leave) (Amendment) Regulations 2015 (SI 384/2015), and SI 407/2023 attached). This circular supersedes Department of Health Circular 5/2014, and should be read in conjunction with DOH Circular 4/2018 on the Critical Illness Protocol (**Appendix A**). Support files for managers are available to view online here : <https://www.gov.ie/en/publication/0cbbe-updated-public-service-management-sick-leave-regulations-si-124-of-2014/>

*Transitional arrangements*

Where an employee is on sickness absence on the date of commencement of the new sick leave Regulations (4<sup>th</sup> September 2023), the pre-existing sick leave provisions will continue to apply for the duration of that episode of sickness absence. When the employee returns to work any future sick leave absence will be dealt with under the terms of the new sick leave Regulations.

If it is the same absence, regardless of rate of payment for that absence, then the transitional arrangements continue to apply for the duration of the absence. For example, an employee who is on a continuous period of sick leave that commenced prior to 4 September will continue to be covered by the transitional arrangements if they move to half pay and Temporary Rehabilitation Remuneration (TRR) during this episode of sickness absence.

**Part 1: Purpose and Principles**

**1.1 Purpose**

The purpose of this Circular is to set out the arrangements for sick leave in the public health sector. The Public Service Management (Recruitment and Appointments) (Amendment) Act 2013 provides that the Minister for Public Expenditure and Reform can make regulations for a Public Service Sick Leave Scheme. These regulations are contained in SI 124 of 2014, SI 384 of 2015, and SI 407 of 2023, hereafter referred to as 'The Regulations'. The Regulations set out the terms for the granting of paid sick leave. The main provisions are set out below.

## 1.2 *Principles of the Policy*

The public health sector is committed to providing efficient and well-managed services to the public and is also committed to supporting the health and wellbeing of its staff. In order to achieve this, it is necessary to strike a satisfactory balance between the business needs of the employer and employees' healthcare needs during periods of illness.

All employees have a responsibility to their employer, to their colleagues and to themselves to safeguard their health in order to be available for duty and provide regular and effective service. The public health sector will support staff during times of illness through the provisions and resources set out in this circular.

## **Part 2: Sick leave and attendance policies**

### 2.1 Compliance with Policies

Payment of the sick leave remuneration outlined in this circular is dependent on full compliance with each employer's existing policies and procedures governing the granting of sick pay, e.g. the Managing Attendance Policy (2014) and Rehabilitation of Employees Back to Work After Illness or Injury Policy (2020) in the HSE. Such policies set out the roles and responsibilities of employees, line managers and other parties (e.g. Occupational Health) in the management of attendance and ill health as well as arrangements regarding reporting sick leave, medical certification, Occupational Health referrals and rehabilitation supports for employees (e.g. Employee Assistance Programme).

A copy of DPENDPR circular 12/2023 is attached for public health sector employers who already adhere themselves to civil service procedures in this regard.

## **Part 3: Provisions for Sick Leave Payments**

### 3.1 *Limits for Ordinary Paid Sick Leave<sup>1</sup>*

Subject to compliance with relevant policies referenced in section 2.1, employees may avail of a maximum of 183 days of paid sick leave in a rolling 4-year period, counting back from the day preceding the first day of their current absence.

**An employee's entitlement is established at the start of the absence period and is not recalculated throughout that period of absence.**

Where the employee has not exceeded this threshold, they may avail of the following, subject to the above overriding maximum:

- 92 days on full pay in a rolling 1-year period, counting back from the day preceding the first day of their current absence.
- Where the full-pay threshold has been exhausted, 91 days on half pay in a rolling 1-year period.

#### Self-Certified Sick Leave

Where medical certification is not provided, full time employees may avail of a maximum of 7 days' self-certified sick leave in a rolling twenty-four month period, counting back from the day preceding the first day of their absence. This will apply on a pro rata basis to part-time employees. Self-certified absences shall not be longer than 2 consecutive days in any instance.

### 3.2 *Calculating Access to Payment during Sick Leave (the 'Look-Back')*

For the purposes of determining access to payment during sick leave, all periods of full pay, half pay and TRR should be included in the look-back.

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<sup>1</sup> Extended sick leave limits apply under the Critical Illness Provisions, see Part 5.

Where there is a break in service of 6 months (convert to 183 calendar days) or greater **and** all 3 below criteria are satisfied, the look-back should be extended accordingly. The break(s) in service must:

- i. Be unpaid
- ii. Not reckon for pensions
- iii. Not accrue annual leave

It is important to note that if a break in service meets all these criteria, the entire period will be included in the extension, not just that portion that is 6 months (convert to 183 calendar days) or greater.

#### **Part 4: Temporary Rehabilitation Remuneration (TRR)**

##### **4.1 Purpose and Eligibility**

TRR is a payment to support the rehabilitation of employees who are absent on extended sick leave and who have exceeded the threshold of 183 days in a rolling 4-year period. Management have the discretion to approve or refuse TRR on a case-by-case basis.

The conditions to be met before TRR can be paid are:

- i. The employee concerned must have accrued two years' service;<sup>2</sup> **and**
- ii. There must be a reasonable prospect that the employee will return to work and deliver regular and effective service. Management should take on board the medical advice of occupational health when making such a determination.

##### **4.2 Rate and Conditions of Payment**

The rate of TRR is 37.5% of the employees' remuneration and is calculated on the basis of basic salary and pensionable allowances only.

A waiting period of 3 calendar days at nil pay shall apply to each instance of absence to which TRR applies before payment can be made. This 3-day wait restarts with each new absence and is not cumulative. Saturdays, Sundays, and other rest days as well as days on which the place of employment is closed are included in the 3-day wait, as are days on which the employee was due to attend work.

The 3-day wait does not apply in the following instances:

- Where the employee transitions from full pay or half pay to TRR during an ongoing absence, including while on extended sick pay under Critical Illness Protocol, or
- Where employees return to work following Critical Illness related sick leave and subsequently exhaust the extended sick pay limits under CIP during the "protective year". The protective year is effective from the employee's date of return following CIP and applies to non-critical illnesses/injuries which occur within 12 months of the date of return.

The limit for payment of TRR under ordinary sick leave is 547 days in a rolling 4-year period, counting back from the day preceding the first day of the employee's current absence<sup>3</sup>. Only periods of TRR should be included in the look-back when calculating an employee's access to TRR under the maximum limits (547 calendar days for ordinary illness; extensions may be granted under the Critical Illness Protocol (CIP) as appropriate (see section 5.3).

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<sup>2</sup> For those with more than one period of employment in the Public Service, the service requirement can be satisfied by aggregating these multiple employment periods, as long as there is no break in service of 26 weeks or more.

<sup>3</sup> Extended period of payment of TRR apply where the illness is approved under the Critical Illness provisions (see 6.3).

The methodology for calculating the “unsocial hours premium pay element”<sup>4</sup> of TRR payments for staff whose remuneration is not fixed is as follows:

- i. The roster that the employee was scheduled to work in the forthcoming period but for their absence provided the duration of the roster is at least 6 weeks and in place not later than the day prior to the commencement of the TRR payment.
- or**
- ii. A 6-week look back to determine average unsocial hours’ premium earnings over the 6-week reference period preceding the date of commencement of the period of sickness absence.

Option (i) is the default option which should apply unless the criteria are **not** satisfied.

#### 4.3. TRR Top Up Model

As recommended by the Labour Court in Labour Court Recommendation No. LCR21812, a “top up” model will operate for a transitional period of five years from the date of effect of the new sick leave arrangements. Such arrangements will benefit employees who would have been entitled to a higher payment for TRR under the ill-health retirement methodology of their pension scheme. The TRR ‘top-up’ will be the difference between the amount payable at the flat rate of 37.5% of basic salary plus pensionable allowances and the amount of the TRR payment under the relevant pension scheme rules.

Each organisation will be required to put in place an application process to facilitate employees who wish to be considered for a top-up payment during the 5-year transitional period.

### Part 5: Critical Illness Protocol

#### 5.1 Purpose and Eligibility

In order to support employees who may be incapacitated as a result of critical illness or serious physical injury, extended sick leave may be granted on an exceptional basis. The terms under which this extended sick leave may be granted are collectively known as the Critical Illness Protocol (CIP). **Appendix B** contains the full provisions relating to CIP.

#### 5.2 Conditions of Payment

Subject to compliance with section 2.1, employees who are approved for CIP may avail of a maximum of 365 days of paid sick leave in a rolling 4-year period, counting back from the day preceding the first day of their current absence. All periods of full pay, half pay and TRR should be included in this look-back.

**An employee’s entitlement is established at the start of the absence period and is not recalculated throughout that period of absence.**

Where the employee has not exceeded this threshold, they may avail of the following, subject to the above overriding maximum:

- 183 days on full pay in a rolling 1-year period, counting back from the day preceding the first day of their current absence.
- Where the full-pay threshold has been exhausted, 182 days on half pay in a rolling 1-year period.

#### 5.3 Extensions to TRR under CIP

Where an employee who is approved for CIP exhausts their access to full pay and half pay, they may be approved for an initial period of TRR not exceeding 365 days in a rolling four-year period. Subject to six monthly reviews and compliance with relevant policies and eligibility criteria (see section 5.1), TRR may be extended for a further period

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<sup>4</sup> ‘unsocial hours premium earnings’ is an umbrella term that refers to a variety of premium payments/allowances based on an employee’s rostered hours of work which vary depending on the roster worked in a specific period. It includes, but is not limited to, night duty (T1/4), time and one-sixth (T1/6), Saturday allowance, Sunday premium. Please note that only pensionable payment types should be included.

of two years (730 calendar days) (maximum of 1095 days). Only periods of TRR should be included in the look-back when calculating an employee's access to TRR under the maximum limits.

#### 5.4 *Criteria for Award of CIP*

The decision to award CIP is a management decision which should be informed by the particular circumstances of the case. In all cases the employee must be referred to occupational health who will provide a medical assessment to assist management in their decision-making.

The employee should ordinarily be under the current or recent clinical care of a medical consultant, either as an inpatient or outpatient. This excludes attendance primarily for report preparation or medico-legal purposes. Relevant medical reports must be furnished within an appropriate timeframe, and the treating medical consultant's specialism must be appropriate to the critical illness for which the claim is being made. Occupational health may accept a presumptive diagnosis from the treating doctor on a case-by-case basis.

To support management's decision, occupational health should confirm whether the employee is medically unfit to return to their current duties, or (where practicable) to modified duties in the same pay grade. The nature of their medical condition should have at least one of the following characteristics:

- i. Acute life-threatening physical illness
- ii. Chronic progressive illness, with well-established potential to reduce life expectancy
- iii. Major physical trauma ordinarily requiring corrective acute operative surgical treatment
- iv. In-patient or day-hospital care of ten consecutive days or greater<sup>5</sup>

Where an employee does not meet these criteria, management may still decide to award CIP in exceptional circumstances. In exercising this discretion, management should consider the occupational health report along with any relevant personal or HR information from the employee concerned. They must demonstrate the reasons for the decision to award taking into account:

- The circumstances in the particular case;
- The illness, injury or condition of the employee

Health Sector employers were required to develop their own guidelines to assist the management discretion decision under CIP. The Health Sector Management Discretion Guidelines are attached for information ([Appendix C](#)), however each health sector employer should refer to their own guidelines.

#### 5.5 *Appeals*

##### Appeal of the Medical Decision

The advice of the Occupational Health Physician may be appealed by the employee to either a single appeal Occupational Health Physician or a panel of Occupational Health 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.

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

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

##### Appeal of the Management Decision

The mechanism for appeal of the management decision will be decided by each employer 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.

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<sup>5</sup> In the case of pregnancy-related or assisted-pregnancy-related illness, the requirement for hospitalisation of ten consecutive days will be reduced to two or more consecutive days of inpatient hospital/clinic care.

Should there be a delay in the employer referring an employee to Occupational Health, or a delay in being seen by Occupational Health, there will be no financial loss to the employee if they are later awarded 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.

#### 5.6 *Protective Year*

Where an employee returns to work following an absence on CIP, they may avail of remaining CIP leave for subsequent non-critical illnesses that occur within one year of their resumption of duty. This is subject to the maximum thresholds under CIP.

### **Part 6: Miscellaneous Provisions**

#### 6.1 *General Provisions*

A reference in this circular to a day of sick leave may include a Saturday or Sunday, or other rest days, or a day on which the place of employment is closed, where relevant. Rest periods/weekends will be counted for sickness absence purposes only when the absence spans the rest period/weekend (i.e. the employee must be absent on sick leave both before and after the rest period/weekend).

Unpaid sick leave and TRR absences are non-pensionable service and will not reckon towards pensions.

#### 6.2 *Exceeding Sick Leave Limits*

Where the amount of sick pay granted to an employee exceeds the limits, they should be notified that their pay will be reduced accordingly. If an overpayment arises as a result of sick leave, the overpayment will be recouped in accordance with existing employer procedures e.g. HSE National Financial Regulations.

#### 6.3 *Sick Leave and Annual Leave*

It is not permitted to take annual leave in place of sick leave. However, an employee may be given access to sick leave if they fall ill whilst on annual leave. Appropriate medical certification must be provided. Self-certified sick leave may not be granted during a period of annual leave. An employee may not opt to be paid for this annual leave rather than have it restored.

If an employee wishes to suspend a period of annual leave to take certified sick leave the usual rules apply, and they should notify their manager as soon as possible.

#### 6.4 *Sick Leave and Other Leave Types*

An employee may not have access to two different types of leave at the same time. Where an employee is availing of statutory leave, other than as per 6.3 above, in general they will have no access to sick leave. However depending on the nature of the statutory leave it may be possible to postpone or suspend the statutory leave (e.g. parental leave). Where an employee is availing of special leave (e.g. career break) there is no access to sick leave.

#### 6.5 *Sick Leave and part-time employees in the Work-Sharing Scheme or equivalent*

The sick leave provisions for an employee participating in the employer's work-sharing scheme or equivalent (e.g. Flexible Working Agreement for HSE and Section 38 organisations) will be adjusted pro rata to their agreed attendance pattern and are subject to the normal provisions governing the granting of sick leave.

#### 6.6 *Sick pay and Department of Social Protection Illness/Injury Benefit payments*

Sick pay at full pay, half pay, and during TRR at the flat rate of 37.5% is **inclusive** of any Illness Benefit (IB) or Occupational Injury Benefit that may be payable to an employee by the Department of Social Protection. Where an employee is eligible for such payments, they **must** apply to the Department of Social Protection with the appropriate documentation, and they **must** continue the custom and practice that exists in the employing organisation, be that;

- mandating any Illness Benefit/Occupational Injury Benefit payments to the employing organisation, or
- advise the employing organisation of the rate of Illness Benefit/Occupational Injury Benefit they are in receipt of.

Failure to do so may result in an under or overpayment.

### 6.7 Absences from Work Resulting in a Personal Injury Claim

Where an employee is absent on sick leave due to an illness or injury which results in a personal injury claim against a third party, payment of sick pay is conditional upon the staff member:

- including in their personal injury claim the amount of any sick pay paid or payable in respect of the absence, and
- reimbursing to the organisation the amount of the sick pay paid or payable in the event of a successful claim.

### 6.8 Sick Leave and the Organisation of Working Time Act 1997

In accordance with Section 21 of the *Organisation of Working Time Act 1997*, an employee who is absent from work on sick leave immediately before and including a public holiday is entitled to benefit from that public holiday subject to the following time frames:

- Employees who are absent due to an occupational injury for a period greater than 52 consecutive weeks are only entitled to benefit for each public holiday arising in the first 52 consecutive weeks.
- Employees who are absent due to illness or injury (other than an occupational injury) for a period greater than 26 consecutive weeks are only entitled to benefit for each public holiday arising in the first 26 consecutive weeks.

Employers should refer to the methods of benefit set out in Section 21 of the Act.

### 6.9 Pregnancy-Related Provisions

Part 6 of S.I. 124 of 2014 (as amended by S.I. 384 of 2015) provides for situations in which an individual who has exhausted the sick pay limits suffers from a pregnancy-related illness. Special protections therefore apply to employees who experience illness due to pregnancy.

#### Pregnancy-related illness: additional entitlement to be paid sick leave at the half rate.

Regulation 19 of the Public Service Management (Sick Leave) Regulations 2014 is intended to deal with a situation where an individual is absent because of a certified pregnancy-related illness and has exhausted the limits for sick leave on half pay. In such a case, Regulation 19 provides that the employee will have access to an extended period of sick pay at the half rate for the duration of the pregnancy-related illness. Where an employee is absent due to certified pregnancy related illness and is within the ordinary sick leave thresholds, payment will be made under ordinary sick leave arrangements.

The Regulation also provides that the extended period of sick pay at the half rate will not be used in calculating how much sick leave the employee has taken i.e. it will not be reckoned in calculating the employee's sick leave record.

#### Treatment of sick leave following pregnancy related illness

Regulation 20 of the Public Service Management (Sick Leave) Regulations 2014 sets out how paid sick leave should be treated for absences following pregnancy-related sick leave. The Regulation provides that an employee who has exhausted their access to paid sick leave due to pregnancy-related sick leave in the previous 4 years may have access to additional non-pregnancy-related sick leave at the half rate of pay. The number of additional days allowed:

- Will be the equivalent number of days taken on pregnancy-related sick leave in the 4 years;
- Must not exceed normal sick leave limits (i.e. 183 days/365 for CIP) for non-pregnancy-related sick leave (when counted with other non-pregnancy-related sick leave in the previous 4 years).

A Guidance Document on the treatment of sick leave following pregnancy-related sick leave is attached at **(Appendix D)**.

#### 6.10 Sick leave and Probation/Training (Regulation 22)

The sick leave provisions for permanent and fixed-term employees on a period of probation<sup>6</sup> or training<sup>7</sup> (e.g. 4<sup>th</sup> year nursing Interns undertaking their 36 week rostered placement) will be adjusted pro rata for the period of their probation or training and are subject to the normal provisions governing the granting of sick leave. For example, an employee who is serving a 12-month probationary period is entitled to 23 days at full pay and 23 days at half pay.

This provision applies for a maximum of 12-months only, to all employees (permanent or fixed-term) who are on a period of probation or training on or after 4 September 2023.

##### *NCHD grades*

In respect of NCHD Interns who are on existing contracts, the enhanced pro-rata limits set out in Section 5 of DoH Circular 5/2014 will continue to apply for the duration of their Internship. All other NCHD grades (Senior House Officer, Registrar, Senior Registrar, Specialist Registrar) will have access to the full sick leave limits with effect from 4 September 2023. With effect from 1 July 2024, NCHD's newly signing their NCHD contract will be subject to the standard pro-rata access in their Intern year, but will enjoy full access to the provisions of the Public Service Sick Leave Scheme thereafter.

Upon satisfactory completion of any probationary/training period, an employee (permanent or fixed-term) will have access to the full sick leave limits.

#### 6.11 Other existing occupational Schemes in the Health Service

The revised sick leave scheme does not affect the following occupational sick pay provisions in the health service:

- Serious Physical Assault Scheme
- Injury at work allowance.
- Sick pay provisions governing MRSA
- Payment to staff affected by blood borne diseases

### **Part 7: General Queries and Circulation**

#### 7.1 General Queries

Requests for clarification from individual employees should be directed to the employees own HR Manager where they are employed. Requests for clarification from HR Managers in the NCSAs and from the HSE National Employee Relations should be raised directly with National HR Unit@health.gov.ie

#### 7.2 Circulation

Please bring this circular to the attention of hr managers, payroll and staff of your organisation. The HSE is also requested to bring this circular to the attention of relevant Section 38 employers.

Yours sincerely



Michael O'Leary, Principal Officer  
National HR Unit (PPSU and IRU)

Encl.

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<sup>6</sup> It is not intended that pro-rata access to sick leave be reapplied during a period of probation on promotion with the same employer where the individual has already successfully completed their new-entrant probation with their employer.

<sup>7</sup> In general, 'training' would typically refer to individuals on Trainee/Student/Intern type contracts and not to general staff undertaking a casual period of upskilling. Access to the provisions of the Public Service Sick Leave Scheme is to be applied on a pro-rata basis to employees on these Trainee/Student/Intern type contracts for a maximum period of 12-months only.

# Appendix A

Circular 4/2018

6th April 2018

To: Rosarii Mannion, National Director of Human Resources, HSE  
CEOs and HR Managers of the NCSAs

## Public Service Sick Leave Scheme Changes to the Critical Illness Protocol (CIP) provisions from 31 March 2018

Dear Sir/Madam

I am directed by the Minister for Health to refer to the Public Service Sick Leave Scheme. A review of the operation of the sick leave scheme is being conducted by the Department of Public Expenditure and Reform in consultation with the Public Service Unions. This consultation has been facilitated by the Workplace Relations Commission and has resulted in agreement in relation to certain changes to the Critical Illness Protocol. These changes, as outlined below, are to take effect from 31 March 2018.

### 1. Critical Illness Protocol

- 1.1 The CIP medical criteria have been amended and are included in the Critical Illness Protocol.
- 1.2 Applications for CIP submitted prior to 31 March 2018 are to be considered based on the medical criteria in place at that time.

### 2. Introduction of Management Discretion Guidelines

- 2.1 Management Discretion Guidelines have been introduced.
- 2.2 These guidelines are introduced to provide assistance and guidance to employers through the CIP decision making process.
- 2.3 These guidelines may be customised, as appropriate, for each Public Service Sector.

### 3. Change to the CIP Protective Year

- 3.1 The 'protective year' was applied so that someone who had returned to work following CIP could avail of remaining CIP leave for subsequent non-critical illnesses / injuries which occurred within one year of the **first date of absence**, due to the critical illness / injury for which CIP was granted.
- 3.2 This protective year period is being extended to begin **on the date of return** as this will enhance the support to those returning from a serious illness who may suffer from a routine illness in the following year.

### 4. General

The contents of this Circular supersedes all previous instructions, regulations and relevant circular provisions in relation to the operation of CIP and the protective year.

### 5. Queries

All employee queries should be directed to the employer. Requests for clarification from payroll and hr managers should be directed to [National\\_hr\\_unit@health.gov.ie](mailto:National_hr_unit@health.gov.ie)

### 6. Circulation

The contents of this circular should be brought to the attention of all HR managers, payroll staff and all employees of the HSE, Section 38 agencies and NCSAs.

Yours sincerely  
Sorcha Murray  
National HR Unit

## Appendix B

### 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
    - (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment
    - (d) In-patient or day hospital care of ten consecutive days or greater<sup>8</sup>.

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<sup>8</sup> In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of ten consecutive days will be reduced to two or more consecutive days of in-patient hospital / clinic care.

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.

### **3 DECISION TO AWARD**

3.1 The decision on whether to award extended paid sick leave is a management decision. 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 establish the following:-

- That there are exceptional circumstances; and
- That those exceptional circumstances relate to the illness, injury or condition of the person; and
- That those exceptional circumstances warrant the granting of the extended paid sick leave.

3.4 When determining if there are exceptional circumstances which would warrant the award of CIP granted on the basis of managerial discretion, the Manager should consider the following three sources of information to inform the decision making process to award CIP.

- The Occupational Physicians Report
- Relevant Information from the Individual
- Relevant HR Information

### **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.

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>9</sup> in the employer referring an employee to the Occupational Health Service of the organisation, or a delay<sup>10</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 REMUNERATION**

7.1 In advance of the termination of the payment of Temporary Rehabilitation Remuneration (TRR), following payment of paid sick leave and TRR for a period not exceeding two years, local management shall secure expert specialist occupational health advice on whether there is 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 TRR may be continued subject to review at six-monthly intervals for a further period not exceeding two years.

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<sup>9</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>10</sup> Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.

## **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 Health Physician**

This is a medical doctor registered with the Irish Medical Council who has a postgraduate qualification in Occupational Medicine / Occupational Health.

### **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.

# Public Service Sick Leave Scheme

V0.12 - 2017

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## *Critical Illness Protocol – Managerial Discretion Guidelines*

In these guidelines the abbreviation “CIP” is used to describe extended paid sick leave that may be granted under this Critical Illness Protocol. The Critical Illness Protocol was introduced which provides the basis for access to 6 months on full pay and 6 months on half pay (subject to an overall limit of 1 year in a 4-year rolling period) in the event that a staff member is diagnosed with a critical illness or serious physical injury.

### *Part 1: Purpose and aim of these guidelines*

**To assist decision makers (managers) who are making a decision in respect of granting CIP on the basis of managerial discretion for “exceptional circumstances”.**

The decision on whether any exceptional circumstances warrant extended paid sick leave is a matter to be determined by the manager after consideration of all the relevant circumstances. The guidelines are to assist managers in making a fair and reasonable decision. These relevant considerations are set out in these guidelines (see b, CIP on the basis of managerial discretion below)

#### **1.1 Background and context**

The granting of extended paid sick leave is governed by:

1. The Public Service Management (Sick Leave) Regulations 2014<sup>11</sup> (the “Regulations”),
  2. Appropriate circulars and analogous documents as issued by sectoral management across the public service.
- Circular 12<sup>12</sup> of 2015 sets out the ‘Arrangements for paid sick leave’ for the civil service and the Critical Illness Protocol (Appendix 3 of the Circular) set out the procedures for providing CIP arising from paragraph 3.10 of the Circular, ‘Decision to Award’.

#### **1.2 Circumstances for the granting of extended sick leave under the CIP**

Extended paid sick leave for a critical physical or psychiatric illness serious injury or serious medical condition may be granted in two circumstances:

##### **a) CIP on the basis of medical certification**

CIP on the basis of medical certification is granted by the manager in cases where the occupational physician has certified that the individual is suffering from a critical illness, serious injury or serious medical condition. While the decision to grant is still the decision of the manager, this decision is based upon the occupational physician's opinion based on a number of medical criteria (See Appendix 1).

##### **b). CIP on the basis of managerial discretion**

The grounds for granting CIP on the basis of medical certification are quite narrow and there will be cases which involve quite serious illnesses, injuries or conditions, which may deserve CIP, but do not fall within the narrow criteria.

In such cases, managers are allowed to exercise discretion and grant CIP after an analysis of the information provided and the circumstances of the case. This is generally intended to cover "nearly there" cases i.e. a case that involves what would generally be considered a significant illness, injury or condition but does not qualify under the strict criteria. For example, a serious operation, with an extended recovery time, but which does not involve a stay in hospital of the length required. It is intended that the granting of CIP on the basis on managerial discretion will only be warranted in serious and/or exceptional cases. A public servant has ordinary paid sick leave available (at full and half pay) and the granting of CIP should be awarded where exceptional circumstances warrant it.

This decision is the manager’s decision, but the manager can seek guidance from the occupational physician on medical issues, within the boundaries of medical confidentiality. .

<sup>11</sup> <http://www.irishstatutebook.ie/eli/2014/si/124/made/en/pdf>

<sup>12</sup> <http://circulars.gov.ie/pdf/circular/per/2015/12.pdf>

### 1.3 Appeal of the CIP managerial decision

The managerial decision to award or refuse CIP based on discretion can be appealed and the manager should inform the public servant about their rights in this regard. If the decision is being appealed the Grievance Procedures for the relevant sector must be followed.

The appeal process should be both procedurally and substantively robust and this point should be clearly communicated with the relevant parties.

### 1.4 Reasonable Accommodation

In order to qualify for CIP, a public servant must be medically unfit to return to his or her current duties or (where practicable) modified duties in the same pay grade. This emphasises that appropriate efforts should be made to accommodate public servants at an early stage of the absence.

As noted in paragraph 4.4 of Circular 12 of 2015, in accordance with the Employment Equality Act<sup>13</sup>, public servants who have a disability are entitled to have reasonable accommodation made to facilitate their return to work. Any appropriate enabling options should be fully explored, for example:

- Making adjustments to premises and/or working space where reasonably practicable;
- Allocating minor or subsidiary duties to another public servant;
- Altering working hours/reduction in hours;
- Changing the location of the work where reasonably practicable;
- Providing a period of rehabilitation;
- Offering additional or extended training for the post;
- Acquiring relevant equipment or modifying existing equipment

This list is not exhaustive.

### 1.5 Decision Maker

The decision maker is referred to as the 'manager' 'throughout these Guidelines. The role of decision maker is to be determined on a sectoral basis. The appropriate decision maker should also be identified and these guidelines should be customised with this information prior to circulation and use.

### 1.6 What must the manager establish?

The "Regulations" provide that in order to grant CIP on the basis of "exceptional circumstances" the following must be established:

- That there are "exceptional circumstances"; and
- That those exceptional circumstances relate to the illness, injury or condition of the public servant; and
- That those exceptional circumstances warrant the granting of the extended paid sick leave.

#### *Part 2: What should the manager consider*

The manager should consider the normal meaning of the word "exceptional", meaning "unusual" or "not typical". Is this a normal and typical illness, injury or condition or is it an unusual and/or not typical illness, injury or condition although not necessarily rare.

### 2.1 Three sources of Information

**When determining if there are "exceptional circumstances" which would warrant the award CIP granted on the basis of managerial discretion** the Manager should consider the following three sources of information to inform the decision making process to award CIP.

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<sup>13</sup> [http://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/EN\\_ACT\\_1998\\_0021.PDF](http://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/EN_ACT_1998_0021.PDF) (current legal definition of reasonable accommodation page 29)



## The Occupational Physicians Report

When making a decision the manager should consider the report provided by the occupational physician from the employer's occupational health service.

The occupational physician advises whether the medical criteria for CIP are met in any given case. The occupational physician's opinion can also be sought on whether there are any medical considerations that should be considered when the manager is considering granting CIP as a result of managerial discretion.

If the illness, injury or condition does not have any of the characteristics required for CIP awarded on the basis of medical certification, then the manager should consider if there is any other information that would amount to exceptional circumstances related to an illness, injury or condition of the public servant.

The occupational physician should provide additional medical information they are aware of and consider relevant, within the boundaries of medical confidentiality. Examples include:

- a) Standard recovery times for the condition where these exist having regard to the nature of the work (e.g. elective surgical procedures);
- b) Presence of additional medical conditions where relevant;
- c) Presence of medical complications;
- d) Any other information they consider relevant to assisting management in making a decision to award extended sick pay under management discretion" e.g. a hospital inpatient stay is close to the 10 day threshold.

It may be helpful in selected cases for the manager to liaise with the occupational physician, within the boundaries of medical confidentiality.

## Relevant Information from the Individual

The manager should consider whether further information may be required in relation to the individual and may wish to contact the public servant to make sure that they are aware of all of the circumstances that may amount to “exceptional circumstances”.

The manager should consider:

- e) whether the medical criteria set out in Box 1 are close to being met, or whether there are any other factors related to the illness, injury or condition that should be viewed as "exceptional";
- f) the severity of the illness, injury or condition.

The manager should not consider the financial position of the public servant concerned or the person’s performance at work.

## Consider relevant Human Resources information and professional judgement

The manager should consider any relevant HR information or other sources of professional judgement. Examples include:

- g) the length of any absence to date related to this illness, injury or condition, it should be noted that this information cannot be used to treat an application any less favourably
- h) the willingness of the individual to engage with the workplace & workplace rehabilitation measures
- i) the approach taken by the manager in other cases and the need for consistency of approach; and
- j) whether a grant or refusal would be reasonable taking into account any information provided that could be viewed as exceptional circumstances.

The manager may wish to seek the view of the public servant’s line manager in respect of the matters outlined in the occupational physician’s report. If the manager does so, the manager should take a note of the line manager’s opinion, which should be sent to the line manager and copied to the public servant. The public servant should be given the opportunity to provide observations about the line manager’s opinion, and any such observations should be considered by the manager before he or she makes a decision.

### 2.2 Inform the public servant of the decision

The manager should communicate his or her decision to the public servant in writing, briefly summarising the matters that he or she has considered. These reasons should demonstrate that the manager has considered all relevant considerations and has not been influenced by irrelevant considerations. If the manager’s decision is to refuse the public servant’s application, the manager should inform the public servant about the right to appeal, and should explain when and how the public servant may make an appeal.

More detailed information on the appeals process can be found at points 1.2 and 1.3 of these Guidelines.

## *Part 3: Key Issues for Consideration*

### 3.1 Conflict of interest

The manager should ensure that he or she does not have any conflict of interest when considering the matter. They should consider whether the public servant is a close friend or relative or, alternatively, whether the public servant has raised a grievance or some other form of complaint against them. The manager should consider whether it is appropriate in all the circumstances for the manager to make the determination (although in some cases the manager may be required to make the determination because the manager is the only person who has authority to do so).

### 3.2 Record keeping

The manager should ensure that all records relating to the application for CIP are maintained in a confidential and secure manner.

## Appendix D

### GUIDANCE DOCUMENT ON TREATMENT OF SICK LEAVE FOLLOWING PREGNANCY-RELATED SICK LEAVE

#### 1. Introduction

The purpose of this Guidance Document is to assist HR practitioners and managers in the Public Health Sector to apply the provisions in relation to the treatment of sick leave following pregnancy-related sick leave (PRSL) under the Public Service Sick Leave Regulations.

Please refer to the examples provided at Appendix 1 when reading this document which will assist in the practical application of these arrangements.

#### 2. Treatment of PRSL

The Sick Leave Regulations currently provide that where a public servant takes PRSL and exhausts their access to paid sick leave, they will have access to sick leave at the half rate of pay for the duration of their pregnancy-related illness (Regulation 19). It should be noted that there are no changes being made to this provision.

##### 2.1 Application

In practical terms, this means that:

- where a public servant takes PRSL under the Public Service Sick Leave Scheme; and
- the public servant exhausts their access to paid sick leave (i.e. 183 days over 4 years/365 days over 4 years) either before or during their PRSL,
- they will have access to extended PRSL at the half rate of pay for the duration of their pregnancy-related illness.

This extended PRSL at the half rate of pay will **not** count towards sick leave limits.

See example 1.

#### 3. Treatment of Non-PRSL

A public servant who has exhausted their access to paid sick leave due to PRSL in the previous 4 years may have access to additional non PRSL at the half rate of pay. The number of additional days allowed:

- will be the equivalent number of days taken on PRSL in the 4 years;
- must not exceed normal sick leave limits (e.g. 183 days) for non PRSL (when counted with other non PRSL in the previous 4 years).

This arrangement applies to both PRSL in the previous 4 years paid at the full and half rate of pay.

##### 3.1 Application

In practical terms, where a public servant takes non-PRSL following PRSL under the Public Service Sick Leave Scheme, the following process will apply:

- Where a public servant has exhausted their access to paid sick leave (i.e. 183 days for ordinary illness/365 days for critical illness), their 4-year sick leave record should be examined to determine whether there is any PRSL that occurred. If there has been any such PRSL, the public servant may have access to additional sick leave at half pay. The access to additional sick leave will be equivalent number of days taken on PRSL in the 4 years as long as it does not exceed normal limits for non-PRSL.

For example, a public servant's 4-year sick leave record indicates that they have taken 200 days of sick leave and that 50 of these were for PRSL. As the public servant has exhausted their access to paid sick leave, they will have access to additional sick leave at half pay. As they have already taken 150 days of non-PRSL, they will have access to a maximum of 33 days of additional sick leave at half pay because this will bring their up to their non-PRSL limit (i.e. 150 + 33 = 183 day non-PRSL limit).

- If the public servant has already been credited with a certain number of additional non-PRSL days at half pay due to this ongoing arrangement, these days count towards the normal limits.

For example, using the case above if the public servant had already been credited with 13 days of additional sick leave at half pay, they would have taken 163 days of non-PRSL (i.e. 150 + 13) and had access to a maximum of 20 days of additional sick leave at half pay as this would have brought their up to their non-PRSL limit (i.e. 163 + 20 = 183 day non-PRSL limit).

See examples 2-9 below.

## EXAMPLES

Treatment of PRSL		
	Record	Calculation
1.	<b>4-year sick leave record:</b>	<b>Access (4-year record)</b>
	Non-PRSL: 80	- Sick Leave Total (120 – 40*) 80
	<u>PRSL Extension (Regulation 19): 40*</u>	- Potential Access (i.e. 183 limit – 80) 103
	Total: 120	
	<b>1-year sick leave record:</b>	<b>Rate (1-year record):</b>
	Non-PRSL: 80 at full pay	- Non PRSL Total: 80 full pay
	Total: 80 at full pay	- Remaining Full Pay (i.e. 92 max – 80 Non-PRSL): 12 full pay
		- Remaining Half Pay (i.e. 103 Access - 12 Full Pay): 91 half pay
		<b>Potential Access: 12 days at full pay and 91 days at half pay</b>

Treatment of Non-PRSL			
	Record	Calculation	
2.	<b>4-year sick leave record:</b>	<b>Access (4-year record):</b>	
	Non-PRSL: 0 full pay	- Sick Leave Total: 183	
	Non-PRSL: 0 half pay	- PRSL Total: 183	
	Post-Scheme PRSL: 92 full pay	- Non-PRSL Total (i.e. 183 Total - 183 PRSL): 0	
	<u>Post-Scheme PRSL: 91 half pay</u>		
	Total: 183 (equals limit)	<b>Potential Access: 183 days at half pay</b>	
	<b>1-year sick leave record:</b> Not relevant as additional leave only paid at half rate		
	3.	<b>4-year sick leave record:</b>	<b>Access (4-year record):</b>
		Non-PRSL: 80 full pay	- Sick Leave Total: 190
		Non-PRSL: 0 half pay	- PRSL Total: 110
Post-Scheme PRSL: 52 full pay		- Non-PRSL Total (i.e. 190 Total - 110 PRSL): 80	
<u>Post-Scheme PRSL: 58 half pay</u>		- Potential Access (i.e. 183 limit - 80 Non-PRSL): 103 half pay	
Total: 190 (exceeds limit)			
<b>1-year sick leave record:</b> Not relevant as additional leave only paid at half rate		<b>Potential Access: 103 days at half pay</b>	
4.		<b>4-year sick leave record:</b>	<b>Access (4-year record):</b>
		Non-PRSL: 0 full pay	- Sick Leave Total: 183

	Non-PRSL: 0 half pay Post-Scheme PRSL: 92 full pay Post-Scheme PRSL: 91 half pay <u>Post-Scheme PRSL Extension (Req 19): 30 half pay*</u> Total: 183 (equals limit)  <b>1-year sick leave record:</b> Not relevant as additional leave only paid at half rate	- PRSL Total: 183 - Non-PRSL Total: 0 - Potential Access (183 days before reaching normal limit) 183 half pay  <b>Potential Access: 183 days at half pay</b>
5.	<b>4-year sick leave record:</b> Non-PRSL: 110 full pay Non-PRSL: 0 half pay Post-Scheme PRSL: 73 full pay Post-Scheme PRSL: 0 half pay <u>Post-Scheme PRSL Extension (Req 19): 30 half pay*</u> Total: 183 (equals limit)  <b>1-year sick leave record:</b> Not relevant as additional leave only paid at half rate	<b>Access (4-year record):</b> - Sick Leave Total: 183 - PRSL Total: 73 - Non-PRSL Total (i.e. 183 Total – 73 PRSL): 110 - Potential Access (i.e. 183 Limit - 110 Non-PRSL):: 73  <b>Potential Access: 73 days at half pay</b>
6.	<b>4-year sick leave record:</b> Non-PRSL: 110 full pay Non-PRSL: 0 half pay Post-Scheme PRSL: 150 full pay <u>Post-Scheme PRSL: 0 half pay</u> Total: 260 (exceeds limit)  <b>1-year sick leave record:</b> Not relevant as additional leave only paid at half rate	<b>Access (4-year record):</b> - Sick Leave Total: 260 - PRSL Total: 150 - Non-PRSL Total (i.e. 260 Total – 150 PRSL): 110 - Potential Access (i.e. 183 Limit - 110 Non-PRSL): 73  <b>Potential Access: 73 days at half pay</b>
7.	<b>4-year sick leave record:</b> Non-PRSL: 183 full pay Non-PRSL: 67 half pay Post-Scheme PRSL: 80 full pay Post-Scheme PRSL: 0 half pay Total: 330 (exceeds limit)  <b>1-year sick leave record:</b> Not relevant as additional leave only paid at half rate	<b>Access (4-year record):</b> - Sick Leave Total: 330 - PRSL Total: 80 - Non-PRSL Total (i.e. 330 Total – 80 PRSL): 250 - Potential Access (250 exceeds 183 limit): 0  <b>Potential Access: 0 days</b>
8.	<b>4-year sick leave record:</b> Non-PRSL: 0 full pay	<b>Access (4-year record):</b> - Sick Leave Total: 213

	<p>Non-PRSL: 0 half pay  Post-Scheme PRSL: 92 full pay  Post-Scheme PRSL: 91 half pay  <u>Non-PRSL Extension (Reg 20)</u> 30 half pay  Total: 213 (exceeds limit)</p> <p><b>1-year sick leave record:</b> Not relevant as additional leave only paid at half rate</p>	<p>- PRSL Total: 183  - Non-PRSL Total (i.e. 213 Total – 183 PRSL): 30  - Potential Access (i.e. 183 Limit - 30 Non-PRSL): 153</p> <p><b>Potential Access: 153 days at half pay</b></p>
9.	<p><b>4-year sick leave record:</b></p> <p>Non-PRSL: 31 full pay  Non-PRSL: 149 half pay  Post-Scheme PRSL: 152 full pay  <u>Post-Scheme PRSL:</u> 58 half pay  Total: 390</p> <p><b>1-year sick leave record:</b> Not relevant as additional leave only paid at half rate</p>	<p><b>Access (4-year record):</b></p> <p>- Sick Leave Total: 390  - PRSL Total: 210  - Non-PRSL Total (i.e. 390 Total - 210 PRSL): 180  - Potential Access (i.e. 365 CIP Limit - 180 Non-PRSL): 185 half pay</p> <p><b>Potential Access: 185 days at half pay</b></p>