



Circular Letter 0060/2014

**To: The Managerial Authorities of Recognised Primary, Secondary,
Community, and Comprehensive Schools
and
The Chief Executives of Education and Training Boards**

**Sick Leave Scheme for Special Needs Assistants
in
Recognised Primary and Post Primary Schools**

The Minister for Education and Skills directs you to implement the regulations and procedures regarding sick leave for special needs assistants employed in an approved post funded by monies provided by the Oireachtas.

The Public Service Management (Recruitment and Appointments) (Amendment) Act 2013, provided the Minister for Public Expenditure and Reform with the power to make regulations that set out the specific details of a Public Service Sick Leave Scheme. These regulations are contained in SI 124 of 2014 and set out the terms for the granting of sick leave.

The regulations and procedures are to be implemented by each employer with effect from 1 September 2014 and all special needs assistants must adhere to the terms of this circular.

This circular supersedes all previous circulars, memoranda, rules and regulations in relation to sick leave and leave arising as a result of an assault at work for special needs assistants in recognised primary and post-primary schools. Please ensure that copies of this circular are provided to all members of the Board of Management/Education and Training Boards and its contents are brought to the attention of all special needs assistants in your employment including those on leave of absence.

This Circular can be accessed on the Department's website under www.education.ie Home – Education Staff – Services – Breaks/Leave – Sick Leave.

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Teacher/SNA Terms and Conditions
18 July 2014

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18 July 2014

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Sick Leave Scheme for Registered Special Needs Assistants

Definitions

For the purposes of this scheme the following terms shall have the meanings assigned to them here unless the context indicates otherwise:

Critical Illness Provisions – means that a special needs assistant who becomes incapacitated as a result of a critical illness or serious physical injury may be granted extended paid sick leave in exceptional circumstances.

Dual Look Back – means where, for the calculation of pay, a special needs assistant's sick leave record is initially reviewed over a four year rolling period and then reviewed over a one year rolling period.

Employer – means an Education and Training Board (ETB) for vocational schools/community colleges and a Board of Management/Manager in the case of primary, voluntary secondary, community and comprehensive schools. The Education Training Board or Board of Management/Manager may delegate as appropriate responsibility for matters set out in this circular.

Leave Year - means the period 1st September to 31st August inclusive in each year.

Occupational Health Service (OHS) – means the providers of independent medical advice on occupational health.

On Line Claims System (OLCS) – means the system for recording of absences and input of claims for the payment of substitute special needs assistants currently operating in primary, voluntary secondary, community and comprehensive schools.

Ordinary Illness – means an illness which is not regarded as critical illness.

Recognised School - means a school which is recognised by the Minister for Education and Skills in accordance with Section 10 of the Education Act 1998.

School Year – as defined by the Minister for Education and Skills from time to time currently beginning on 1st September and ending on 31st August.

Temporary Rehabilitation Remuneration (TRR) – means the remuneration of pay a special needs assistant may be awarded if he or she has exhausted his/her access to paid sick leave.

The Department – means The Department of Education and Skills.

1. Introduction

- 1.1 An Occupational Health Strategy is in place as a supportive resource for special needs assistants. The aim of this strategy is to promote the health of special needs assistants in the workplace, with a focus primarily on prevention rather than cure. The Occupational Health Strategy comprises the Employee Assistance and Occupational Health Services for special needs assistants.

The Employee Assistance Service incorporates confidential counselling on issues such as health, relationships, bereavement, stress, conflict, critical incident and trauma. The Occupational Health Service incorporates pre-employment health assessments, sickness absence referrals, assessments of medical fitness for work and ill health retirement assessments.

Additional information on the Employee Assistance and Occupational Health Services may be found on [Occupational Health Strategy](#) page of the Department's Website.

- 1.2 A period of illness is defined as any period in which a special needs assistant is medically unfit to carry out his/her full duties irrespective of whether the employing school is open for normal business or not.
- 1.3 Sick leave may be granted to a special needs assistant who is unable to perform his/her duties
- because of illness, injury or
 - when absent for the purpose of obtaining health-related services (e.g. Doctor/Dentist) provided such appointments could not have been arranged outside of regular working hours or working days.
- 1.4 The granting of sick leave to a special needs assistant who is ill is intended to provide an adequate opportunity for that special needs assistant to recover from the illness and its effects so that s/he may make an early return to duty without a likelihood of a relapse into illness. Therefore it would be contrary to the express purpose of this scheme, to engage in any activity (e.g. travel abroad, gainful employment or self-employment) which in the opinion of the OHS could be regarded as impeding that special needs assistant's progress to recovery.
- 1.5 The approval of the employer must be sought prior to the special needs assistant travelling abroad while on sick leave. The employer must seek the advice of the OHS before deciding on the matter.
- 1.6 Sick leave periods are calculated retrospectively and include weekends, school closures and days on which a special needs assistant is not timetabled for attendance (e.g. jobsharers), occurring within the period of absence.

- 1.7 For the purposes of the special needs assistant paid sick leave scheme, qualifying service includes all aggregated SNA service in primary, voluntary secondary, community and comprehensive schools and with ETBI's where the service was funded from monies provided by the Oireachtas.
- 1.8 A special needs assistant's entitlement to the sick leave provisions outlined herein shall cease on the expiry of the contract and that contract not having been renewed.

2. Entitlement to Ordinary Illness Leave Provisions

- 2.1 A special needs assistant who is absent from duty because of personal illness or injury, may be granted paid sick leave of:
- A maximum of 3 months (92 days) on full pay in a year
 - Followed by a maximum of 3 months (91 days) on half pay
 - Subject to a maximum of 6 months (183 days) paid sick leave in a rolling four year period.

3. Entitlement to Critical Illness Leave Provisions

- 3.1 A special needs assistant who becomes incapacitated as a result of a critical illness or serious physical injury may be granted extended paid sick leave, in exceptional circumstances of:
- A maximum of 6 months (183 days) on full pay in a year
 - Followed by a maximum of 6 months (182 days) on half pay
 - Subject to a maximum of 12 months (365 days) paid sick leave in a rolling four year period.
- 3.2 The award of extended sick leave for critical illness or serious physical injury is a decision for the employer following receipt of medical advice from the OHS.
- 3.3 If a special needs assistant has an ordinary illness within a 12 month period of the start date of the granting of a critical illness, the critical illness provisions will apply.

- 3.4 Further information on the critical illness application, referral and appeal processes are available in the *Occupational Health Service Standard Operating Procedures* manual.

4. Temporary Rehabilitation Remuneration (TRR)

- 4.1 Where the relevant period of paid sick leave has been exhausted, a special needs assistant with a minimum of 5 years' service (in a pensionable position either in a wholetime or part-time capacity) at the end of the period of paid sick leave may be granted TRR subject to certain conditions. TRR will be calculated on
- pensionable pay, and
 - paid pensionable service accrued in the employment at the time paid sick leave was exhausted, together with the added years which would be awarded if ill health retirement were granted.

The amount of TRR paid should not be taken as an accurate reflection of what the member may receive at retirement as the circumstances may be different.

- 4.2 The period during which TRR is paid is not a period of pensionable service.
- 4.3 The granting of TRR will be conditional at all times on the OHS confirming that there is a reasonable prospect of recovery and return to work. The OHS will indicate at the 28 day referral stage whether there is a reasonable prospect of a special needs assistant's recovery and return to work. Where the OHS advise that in their opinion there is no prospect of recovery and return to work, the employer must notify the Department immediately and take such timely action as it deems appropriate including but not limited to termination of the contract of employment.
- 4.4 TRR will not exceed 18 months (548 days) in the case of ordinary illness.
- 4.5 In the case of a special needs assistant who has been granted extended sick pay under the critical illness provisions, he/she may have access to 12 months (365 days) TRR followed by a further period of TRR not exceeding 24 months (730 days). This further period of TRR is subject to six monthly reviews by the OHS.

5. Entitlement to Unpaid Sick Leave

- 5.1 A special needs assistant who, on having exhausted the maximum period of paid sick leave (and does not qualify for TRR) is still medically unfit to resume duty and wishes to retain his/her position in the school/scheme must notify the employer of his/her intention to avail of a period of unpaid sick leave within which he/she may resume duties if certified as fit to do so. This period of

unpaid sick leave shall not normally exceed the TRR limits set out in paragraph 4.

- 5.2 A special needs assistant must exhaust his/her period of paid sick leave before he/she can apply for unpaid sick leave. The granting of a period of unpaid sick leave is subject to continued submission on a regular basis (max 3 months) of acceptable medical certification to the employer.
- 5.3 Prior to the expiration of unpaid sick leave, employers must seek the advice of the OHS on the special needs assistant's prospect of recovery and return to work. Where a return to duty is not deemed viable, the employer shall take such timely action as it deems appropriate including but not limited to termination of the contract of employment.

6. Dual Look Back

- 6.1 To calculate a special needs assistant's appropriate rate of pay when absent as a result of illness or injury there will be a dual look back system as follows:

Ordinary Illness

- Step 1 : Determine whether the special needs assistant has access to paid sick leave

The special needs assistant's sick leave is reviewed over the 4 year period from the current date of absence. If 6 months (183 days) paid sick leave has 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 applies

If Step 1 indicates that the special needs assistant 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.

Critical Illness

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

If Step 1 indicates that the special needs assistant 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 6 months (183 day) limit at full pay has not been exhausted, full pay may be awarded until the limit of 6 months (183 days). Thereafter, the amount paid will be calculated based on half pay or TRR, as appropriate.

- 6.2 The scenarios set out at Appendix A illustrate how the dual look back arrangement will operate.

7. Transitional Arrangements

- 7.1. Where a special needs assistant has commenced a period of sick leave prior to 1 September 2014 and sick leave continues on and after that date, he/she will continue to avail of the pre SI 124 of 2014 sick leave arrangements for that absence i.e. a maximum of paid sick leave for up to 91 days in any period of 12 months service. Following a resumption of duties, any subsequent sick leave absence will be dealt with under the terms of the sick leave scheme as outlined in this circular.

8. Treatment of previous periods of sick leave under the new Scheme

- 8.1. Sick leave records will be reviewed over a rolling 4 year period. That means that where a special needs assistant has a sick absence on or after 1 September 2014 and has been paid more than 183 days sick leave in a rolling 4 year period, that special needs assistant may find, him/herself moving immediately to half pay or TRR, as appropriate.

9. Self Certified Sick Leave

- 9.1 The maximum number of self certified sick leave days allowable in any period of 2 consecutive years of special needs assistant service counting backwards from the latest self certified sick leave absence is 7. Any self certified sick leave absence in excess of the maximum 7 days provided for under this paragraph will be unpaid and may be dealt with under the agreed disciplinary procedures.
- 9.2 Payment for self certified sick leave may be modified or withdrawn, following due process, in cases where absences are unduly frequent or the maximum number of days is regularly approached or taken year after year.
- 9.3 A special needs assistant shall not avail of a period of self certified sick leave immediately after certified sick leave.

10. Certified Sick Leave

- 10.1. Where a special needs assistant is absent on continuous sick leave of more than 2 days, a medical certificate is required to be provided to the employer. If a sick absence extends from Friday to Monday inclusive, then a medical certificate must be provided. Should a special needs assistant fail to provide a medical certificate to the employer in respect of an absence on sick leave in accordance with the scheme, the employer should contact the special needs assistant to advise that if s/he fails to submit the required medical certification, the employer, following due process, shall record the leave as a period of unapproved sick leave and payment to the special needs assistant will be withdrawn pending a return to duty or compliance with the scheme and may be dealt with under the agreed disciplinary procedures.
- 10.2. To be acceptable, a medical certificate must
- be signed by a duly qualified medical practitioner registered with the Irish/UK Medical Council/Dental Council of Ireland. In exceptional circumstances medical certificates may be accepted from overseas medical practitioners, such as where a special needs assistant becomes ill abroad or is receiving a recognised medical treatment unavailable in Ireland. The advice of the OHS must be sought in such circumstances.
 - normally cover a period of or no more than one week. However, certification for periods of up to one month may be permitted at the discretion of the employer.
 - state fitness to work or otherwise

- 10.3 While it is not obligatory to state the nature of the illness on a medical certificate, a failure to include this information may lead to difficulties if seeking to have the absence discounted e.g. discounting of a school closure.
- 10.4 Employers must safeguard the confidentiality of all information relating to the sick leave records of individual special needs assistants and this applies in particular to medical certificates.

11. Notification and Recording of Sick Leave

- 11.1 Any special needs assistant who is absent due to illness must notify, or make suitable arrangements to notify, the employer as early as possible on the first day of the absence. The special needs assistant should, where possible, indicate the likely duration of the absence.
- 11.2 The school shall notify all sick leave absences to the Department (via the OLCS) / ETB regardless of whether or not a substitute special needs assistant was employed. It is imperative that all sick leave absences are notified to the Department/ETB in a timely manner as failure to do so may result in overpayment of salary to a special needs assistant and/or the withdrawal of substitute cover for schools.
- 11.3 Employers are required to have procedures in place to monitor and analyse patterns of sick leave.
- 11.4 A detailed statement of all sick leave absences should be supplied by the employer to each special needs assistant on request and at least one report should be provided annually. This information is available on the OLCS/relevant ETB system.

12. Sick Leave Related Overpayments

- 12.1. Where an overpayment of salary arises, for example, as a result of the late keying of sick leave absences, any overpayment will be recovered in full directly following notification to the OLCS/ETB from a special needs assistant's future salary payment.

13. Referral of Special Needs Assistants to the OHS

- 13.1 The employer has a duty under Section 8 of the Safety, Health and Welfare at Work Act 2005 to “ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees”. The OHS is in place to assist the employer in carrying out this duty. The employer must therefore refer the special needs assistant to the OHS, for the purpose of an independent assessment, where reasonable concerns exist as to the capacity of the special needs assistant to undertake his/her duties in a manner that is safe for both the special needs assistant and students. The OHS Provider, as contracted by the Department, is the sole recognised provider of independent medical advice for

special needs assistants and employers. It is a requirement of the sick leave scheme that all participants and beneficiaries of that scheme abide by the medical assessment of the OHS.

- 13.2 The employer in making a referral should follow the OHS Standard Operating Procedures Manual.
- 13.3 The criteria for the referral of special needs assistants to the OHS are as follows:
- Non-discretionary: any special needs assistant on sick leave who has 4 weeks (28 days) continuous or cumulative sick leave absence **in a 12 month rolling period** of special needs assistant service.
 - Discretionary: Special needs assistants about whom the employer has reasonable concerns relating to their medical fitness for work.
- 13.4 The special needs assistant is required to cooperate and engage with the OHS. While many assessments will not require attendance, it is a matter for the OHS to decide in what circumstances a special needs assistant may be required to attend for medical assessment and/or arrange for the transmission to the OHS (by the special needs assistant 's attending doctor) of a comprehensive doctor-to-doctor report.

14. Resumption of Duty

- 14.1 It is expected that a special needs assistant would be medically fit to resume full duties after a period of sick leave so that a resumption of duty would not induce a relapse into illness.
- 14.2 A special needs assistant intending to resume duty prior to the date specified on her/his medical certificate, must provide a medical certificate of fitness from his/her attending doctor before the date of resumption. In the absence of such a certificate, the full period as recorded on the medical certificate(s) will be counted as sick leave. Certificates of fitness furnished at a later date will not be accepted as evidence of fitness for duty.
- 14.3 Prior to resumption of duties, a special needs assistant who is absent on paid sick leave for 4 or more continuous weeks, or absent for any period of TRR/unpaid sick leave or a shorter period where the employer has reasonable grounds for concern must submit medical certification of fitness for duties. Confirmation of fitness to return to duties must also be obtained by the employer from the OHS.
- 14.4 Where a special needs assistant is absent on sick leave and has not returned to duty for a reasonable period before and after a period of school closure, the special needs assistant will be deemed to be on sick leave for the whole duration unless

- the special needs assistant provides a medical certificate of fitness to resume full duties prior to or during a period of school closure and
- the advice of the OHS as to the special needs assistant's fitness for full duties has been obtained and to whether the school closure period or any part thereof might be discounted and
- the OHS has deemed the period of return to duty to be reasonable taking into account the medical circumstances in individual cases.

15. Maternity Related Illness Provisions

- 15.1 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.
- 15.2 If a pregnant special needs assistant is medically unfit for work due to a pregnancy related illness and has exhausted sick leave at half pay she will continue to receive sick leave at half pay for the duration of her pregnancy-related illness, prior to going on maternity leave. This is regardless of whether she has reached the maximum limit for half pay due to prior sick leave.
- 15.3 If a special needs assistant is unfit for work following maternity leave, her access to sick leave at half-pay will be extended by the period of absence on sick leave at half pay due to pregnancy-related illness, which occurred before she went on maternity leave.

16. Salary Adjustment

- 16.1 In cases where, prior to resumption of duty, entitlement to incremental salary has been exhausted, salary will be restored only from the date that the OHS deems the special needs assistant fit to resume full duties. This is also conditional on the special needs assistant actually resuming duty on the first possible day following the OHS certification.
- 16.2 Any action which necessitates an adjustment to a special needs assistant's salary should be notified to the Department/Education and Training Board immediately.

17. Statutory Annual Leave/Public Holiday Entitlement

- 17.1 In general full time employees are entitled to 20 days annual leave. Employees who work less than full hours are entitled to annual leave on a pro rata basis.

- 17.2 Any entitlements in respect of public holidays occurring while on sick leave will be addressed by additional annual leave.
- 17.3 These annual leave entitlements are to be taken on existing school closure days that occur in the leave year in question i.e. after the sick leave period. Annual leave entitlements are to be taken at a time outside of the period of sick leave.
- 17.4 When absent on sick leave and there are not enough school closure days in the leave year to absorb all annual leave entitlements, it is permitted to take the necessary days immediately after the sick leave in the same leave year. Alternatively, special needs assistants will be permitted to carry the balance forward to the following leave year but must then take these days during school closures.
- 17.5 Special needs assistants who resign/retire or whose employment ceases may be entitled to additional payment in lieu of their accrued leave.

18. Status during Leave

- 18.1 Absences on paid sick leave (full or half pay) are fully reckonable for all purposes including seniority, determination of panel rights etc. Absences on TRR are not reckonable for superannuation and increment purposes.

19. PRSI Arrangements

- 19.1 In the case of Class A PRSI contributors, the MC1 Social Welfare Certificate must be submitted by the school to the relevant payroll section of this Department/Education and Training Board after a period of 6 consecutive days of sick leave for referral by the relevant payroll section to the Department of Social Protection. This is required for compliance with PRSI regulations.

20. Retirement on ill health grounds

- 20.1 A special needs assistant deemed medically unfit to continue duties in the longer term may be entitled to certain pension benefits under the Pension Scheme for special needs assistants.

21. Special Needs Assistants on leave of absence in excess of two full school years

- 21.1 A special needs assistant who has been on long term leave of absence of any kind in excess of two full school years will be required, prior to return, to undergo a medical assessment and be deemed medically fit by the OHS.

22. Correspondence Address

- 22.1 The employer will address all necessary correspondence to the special needs assistant at the email/ home address last notified. No fault shall lie with the employer in the event that the special needs assistant does not receive such correspondence. Any information which the special needs assistant provides will not be made available to any third parties and will be used only in line with the purpose for which it was provided.

23. Compliance

- 23.1 All special needs assistants/employers must adhere to the regulations and procedures set out in this circular. Failure to abide with the regulations and procedures will be dealt with under the agreed disciplinary procedures and may lead to the cessation of salary in the case of special needs assistants and/or withdrawal of substitute cover for schools.
- 23.2 The Department intends to carry out regular examinations of sick leave records. All documentation relating to sick leave (e.g. medical certification, occupational health referrals, other supporting documentation) must be retained by the employer with the relevant personnel records.

24. Further Information

- 24.1 In accordance with the introductory paragraph the regulations in this circular are to be implemented by the employer. All queries should initially be brought to the attention of the employer who may wish to consult with their representative organisation, who may further wish to consult with the Department at the following email address: teachersna@education.gov.ie
- 24.2 To access Statutory Instrument 124 of 2014 Regulations please click on the following link: [Statutory Instrument 124](#)

To access the Public Service Critical Illness Protocol document please click on the following link: [Public Service Critical Illness Protocol](#)

Appendix A

Scenario 1 - Ordinary Illness

Sean's sick leave record is as follows:

From	To	No of days	Details
12 May 11	23 May 11	12 days	Certified Illness
01 Sep 12	16 Nov 12	77 days	Certified Illness
	TOTAL	89 days	

Sean goes on certified sick leave from the 01 Oct 2014 to 08 Oct 2014 (8 days).

- Looking back over 4 years – 183 days sick leave was not reached
- Looking back over 1 year – 92 days sick leave was not reached

Sean will be paid full pay for the 8 days. Using the dual look back, in the one year review of the sick leave record back to 02 Oct 2013 there has been no sick leave. Therefore he is entitled to 8 days on full pay.

Scenario 2 – Ordinary Illness

Ann's sick leave record is as follows:

From	To	No of days	Details
10 Nov 10	22 Dec 10	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	02 Jul 12	124 days	Certified Illness
	TOTAL	182 days	

Ann goes on certified sick leave from the 01 Oct 2014 to 31 Oct 2014 (31 days).

- Looking back over 4 years – 183 days sick leave was not reached
- Looking back over 1 year – 92 days sick leave was not reached

Ann will be paid full pay for 1 day. Using the dual look back, Ann has already had 182 days in the rolling 4 year period therefore she has 1 day of paid sick leave remaining. As she has not had any sick leave in the 12 months to 1 September 2014, she has access to full pay for that day. If Ann fulfils the criteria for TRR, the remaining 30 days would be paid at that rate.

Scenario 3 - Ordinary Illness

Joe's sick leave is as follows:

From	To	No of days	Details
10 Nov 10	22 Dec 10	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	04 Jul 12	126 days	Certified Illness
	TOTAL	184 days	

Joe goes on certified sick leave from the 01 Oct 2014 to 31 Oct 2014 (31 days).

- Looking back over 4 years – 183 days sick leave was reached

As the limit of 183 days is exceeded in the rolling 4 year period, Joe may be paid TRR if he fulfils the criteria.

Scenario 4 - Critical Illness

Marie's sick leave is as follows:

From	To	No of days	Details
12 Nov 11	23 Nov 11	12 days	Certified Illness
01 Dec 12	15 Dec 12	15 days	Certified Illness
	TOTAL	27 days	

Marie goes on certified sick leave from the 01 October 2014 to 30 March 2015 (181 days).

Marie submits an application for critical illness which is approved.

- Looking back over 4 years – 365 days sick leave was not reached
- Looking back over 1 year – 183 days sick leave was not reached

Marie will be paid full pay for the 181 days as the dual look back limits in the case of critical illness are 365 days to determine whether the special needs assistant has access to paid sick leave and 183 days to determine the rate of pay.

Scenario 5 - Critical Illness

John's sick leave is as follows:

From	To	No of days	Details
12 May 11	23 June 11	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	20 Jun 12	112 days	Certified Illness
	TOTAL	170 days	

John goes on certified sick leave from the 01 Oct 2014 to 30 April 2015 (212 days). John submits an application for critical illness which is approved.

- Looking back over 4 years – 365 days sick leave was not reached
- Looking back over 1 year – 183 days sick leave was not reached

John has already had 170 days prior to commencement of this leave in the rolling 4 year period but has had no sick leave in the rolling 1 year back to 2 Oct 2013, therefore he will be paid 183 days on full pay. This brings the total sick leave to 353 days in 4 years. He will then have the remaining 12 days at half pay and, if eligible the final 17 days at TRR.