

**File Ref:** E109/146/01

8 July 2009

**Circular 15/2009 Sick Leave: Pregnancy-Related Sick Leave**

A Dhuine Uasail,

1. I am directed by the Minister for Finance to refer to a European Court of Justice ruling and a Labour Court determination (ref: case C-191/03) on a case taken by a HSE staff member in relation to the application of sick leave regulations to staff who are absent on pregnancy related sick leave.

2. The ruling/determination was that:

- (i) during pregnancy-related illness “the amount of payment made is not so low as to undermine the objective of protecting pregnant workers” and
- (ii) if the officer is absent due to ill-health following maternity leave, the effect of offsetting absences due to pregnancy-related illness must not result in her receiving an amount “that is lower than the minimum amount to which she was entitled during the illness which arose while she was pregnant”.

3. In view of the ruling of the European Court of Justice and the Labour Court determination, the Minister has agreed to the following amendment to civil service sick leave arrangements which is effective from 27 April 2006.

**Pregnancy-related illness occurring before maternity leave commences**

4. A period of pregnancy-related illness, occurring before maternity leave commences, will not be combined with a period of absence due to ordinary illness in the case of an officer who has exhausted her entitlement to sick leave at half-pay<sup>1</sup> under normal rules. In these circumstances, she will continue to receive sick leave at half-pay for the duration of her pregnancy-related illness.

**Illness occurring after maternity leave completed**

5. Subject to paragraph 6, if an officer is unfit for work following maternity leave, her entitlement to sick leave at half-pay will be extended by the period of absence due to pregnancy-related illness on sick leave at half-pay which occurred prior to maternity leave.

6. However, the period on half-pay will not be extended by any period of pregnancy-related illness which occurred before maternity leave commenced, where the officer benefited from extended pregnancy-related sick leave at half-pay in accordance with paragraph 4.

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<sup>1</sup> The amount of sick leave at half pay to which the officer is entitled is inclusive of social welfare payments.

7. If, at the end of the period of sick leave on half-pay extended in accordance with paragraph 5, the officer is still medically unfit for work the normal considerations apply in respect of ongoing pay arrangements.

8. This amendment to the sick leave arrangements applies only to pregnancy-related sick leave during pregnancy. Illnesses occurring during pregnancy are not necessarily pregnancy-related. Where doubt arises, the matter may be referred to the Chief Medical Officer for advice.

9. The revised arrangements in relation to sick leave should be brought to the attention of all staff.

Mise le meas,

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Patricia Coleman  
Director

To: All Departments etc.

## Appendix

The following hypothetical cases may help to illustrate the forgoing:

### Example 1

An officer is due to go on maternity leave on 1 June. Prior to becoming pregnant, she had a total of 93 days sick leave in the past year. She had no previous record of sick leave. On 1 January she commenced sick leave due to pregnancy-related illness.

Her sick leave record is as follows:

	93 days sick leave taken to 31 December
January	31
February	28
March	31
<b>Total</b>	<b>183</b>

Therefore the officer will go on half-pay on 1 April to 31 May (a total of 61 days) and will be placed back on full pay for the period of maternity leave. If she incurs sick leave following maternity leave she will be entitled to half-pay for an additional period equal to 1 April to 31 May (a total of 61 days). At the end of this period normal sick leave rules apply. Officers with less than four years service are treated on a pro rata basis.

### Example 2

An officer is due to go on maternity leave on 1 June. Prior to becoming pregnant she had a total of 153 days sick leave in the year and 125 in the previous three years. On 1 January she commenced sick leave due to pregnancy-related illness.

Her sick leave record is as follows:

Total for Year 1, 2 and 3	125
Year 4	153
January (pregnancy related)	30
<b>Total</b>	<b>183</b>

Therefore the officer will go on half-pay on 31 January to 28 March (a total of 57 days). At this stage, under normal sick leave rules, she would be due to go off pay on 29 March; however, as this sick leave is pregnancy-related, she will remain on half-pay until she goes on maternity leave and will resume full pay at that stage. If she incurs sick leave following maternity leave, she will be entitled to half-pay for an additional period equal to 31 January to 28 March (a total of 57 days). Officers with less than four years service are treated on a pro rata basis.