



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 at Appendix A.
- 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 and are included at Appendix B.
- 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.

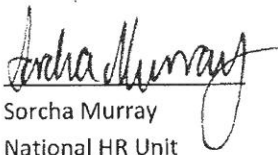
5. Queries

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

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

Encl.

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 greater¹.
- 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

¹ 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.

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 delay² in the employer referring an employee to the Occupational Health Service of the organisation, or a delay³ in being seen by this Occupational Health Service, there will be no financial loss to the employee if they are later

² Where the delay is of a duration in excess of the period of time currently allowed for a referral to an Occupational Physician.

³ Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.

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.

Definitions

Current or recent Clinical Care

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

Hospital Consultant

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

Occupational Physician

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

Specialist Occupational Physician

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

Limitation of Life Expectancy

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