



An Roinn Airgeadais
Department of Finance

E109/58/02

30 May 2003

73-79,
Sráid an Mhóta Íocht.,
Baile Átha Cliath 2,
Éire.

73-79,
Lower Mount Street,
Dublin 2,
Ireland.

Telephone: 353-1 676 7571
Facsimile: 353-1 604 5751
LoCall: 1890 66 10 10
VPN: 8109
<http://www.irlgov.ie/finance>

Circular 17/03: Amendment to provisions on clearance of candidates for promotion or establishment: sick absences and health considerations

A Dhuine Uasail,

1. I am directed by the Minister for Finance to refer to the arrangements in the civil service for the clearance of candidates for promotion or establishment by reference to sick absences and health considerations.
2. The existing arrangements are set out in Circular 34/76 (as amended by Circular 32/91), Circular 33/99 and in two letters to Personnel Officers. A letter dated 23 October 1978 clarified "The discretion allowed to Departments" and a letter dated 12 July 1996 changed the timing of the clearance of a candidate on the grounds of sick leave from before admittance to competition to the point where a person is actually considered for promotion.

Current Sick Leave Circulars

3. Circular 34/76 specifies that, in assessing the sick absence record of a candidate, limits are to be applied by Departments in considering his/her suitability for establishment or promotion. The limits are used in the context of determining the compatibility of sick absences with the requirements of regular and effective service. The limits to be applied are not more than 56 days of sick leave and (having regard to the pattern of absence) not more than 25 sick absences in 4 years or pro rata where the service of the officer is less than 4 years. In applying these limits the following factors should be borne in mind:-
 - (a) absences for minor curative or "repair" operations need not be counted;
 - (b) non-recurring illnesses may be ignored;
 - (c) regard should be had to the pattern of absence, e.g. if most of the absences have been in the earlier part of the four year period and there has been a very significant improvement in the last two years the candidate may be given the benefit of the doubt;
or
 - (d) if most of the absences were due to a health problem which the Chief Medical Officer accepts has been rectified and if, on ignoring such absences, the sick leave record is within the limit, the candidate may be accepted as suitable.

4. Circular 33/99 provided for the modification of the above provisions by allowing Departments to discount an absence associated with an isolated episode of illness (e.g. an uncomplicated heart attack) when determining suitability for promotion.
5. Circulars 34/76, 32/91, 33/99 and 25/78 confer a measure of discretion upon Departments with regard to the assessment of sick leave. The Department must consider the extent and pattern of the candidate's sick absence record and decide whether on both counts the record is compatible with the requirements of regular and effective service. It is important that Departments exercise and are seen to exercise this discretion.

Obligations under the Employment Equality Act 1998 and the Equal Status Act 2000

6. Departments/Offices are reminded of their obligations under the Employment Equality Act 1998 and the Equal Status Act 2000 not to discriminate, directly or indirectly, against a person with a disability.
7. The 1998 Act also states that an employer is not obliged to recruit, retain or promote a person with a medical condition which prevents him or her from being competent, capable and available to do the job. Employers have an obligation to do all that is reasonable to accommodate the needs of a person who has a disability, by providing special treatment or facilities (e.g. the provision of adaptive technology; the provision of specialised furniture; the provision of access to buildings; reorganisation of work; the provision of additional training) which would assist that person in undertaking his/her duties. It is essential however that Departments show in advance of considering questions of establishment or promotion that they have addressed the needs of staff with a disability and, at the same time, have taken account of the operational needs of the Department.
8. In accordance with the 1998 Act, Departments should be aware that an employer has the right to decide that an existing employee's sick leave record is relevant when considering his/her suitability for promotion. A staff member with a disability may have a sick leave record associated with his/her disability which does not interfere with carrying out his/her functions effectively at his/her present grade. However, this may not always be the case. In the normal course of managing staff through the Performance Management and Development System (PMDS), annual reviews, decisions on increments, etc., Departments should identify cases where a staff member with a disability has a sick leave record which is likely to affect his/her ability to carry out the functions of a higher grade. It is essential that Departments should assess the position of each staff member who may fall into this category. Such assessments must be carried out in a fair and consistent manner taking full account of the operational requirements of the Department or Office and the jobholder's circumstances. If it is found after such an assessment that the sick leave record would affect promotion to the higher grade in all areas of the Department or Office, Personnel Officers should inform the staff member accordingly.
9. Staff with a disability who are concerned about their sick leave record may wish to consider discussing these issues with local management or with the Personnel Officer.

Sick Leave for Staff with Disabilities

10. In cases where a candidate for establishment or promotion exceeds the limits (not more than 56 days of sick leave and (having regard to the pattern of absence) not more than 25 sick absences in 4 years or pro rata where the service of the officer is less than 4 years), and the person can establish, to the satisfaction of the Personnel Officer, that some or all of the excess sick days or sick absences have been due to a disability, the Personnel Officer must then decide if the person is capable, competent and available to provide regular and effective service.
11. In certain instances, Departments may refer the case of a person with a disability whose sick leave record is likely to affect his/her ability to carry out the functions of a higher grade to the CMO for review. The submission to the CMO should (i) state the officer's sick leave record, (ii) indicate the Department's view that the officer would not be able to carry out the functions of a higher grade, and (iii) state the grounds for referral. The CMO will advise the Personnel Officer whether, in the light of the medical evidence, some or all of the sick absences have been due to a disability and may also provide advice on the application of the limits set out in circular 34/76 (see paragraph 3 above).
12. In light of all of the available information, the Personnel Officer must then decide if the person is capable, competent and available to provide regular and effective service and inform the jobholder accordingly.

Mise le meas,

John O'Connell

John O'Connell
Assistant Secretary