



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Oifig an Stiúirthóra Náisiúnta, Acmhainní Daonna
Feidhmeannacht na Seirbhíse Sláinte
Ospidéal Dr. Steevens'
Baile Átha Cliath 8

Office of the National Director of Human Resources
Health Service Executive
Dr. Steevens' Hospital
Dublin 8

Queries from HR / Employee Relations Managers to:

Corporate Employee Relations Service,
HSE HR Directorate,
63-64 Adelaide Road,
Dublin 2.
Tel: 01 6626966
Email: info.t@hse.ie

Queries from individual employees:

Contact your local HR / Employee Relations Dept.

HSE HR Circular 004/2012

18th January, 2012.

**To: Each Member of Management Team, HSE;
Each Regional Director of Operations, HSE;
Each Regional Assistant National Director of Human Resources, HSE;
Each Employee Relations Manager, HSE;
Each HR Manager, funded Voluntary Hospital / Agency, Intellectual Disability Sector.**

Re: Public holiday entitlement - during sick leave (all officers and general support staff who work a Monday to Friday attendance regime).

I refer to Labour Court Recommendations LCR20061 and LCR19769 which issued in respect of 5 national claims referred by the health service unions.

The arrangements to give effect to the Court's recommendation in respect of public holiday entitlements for employees during sick leave are as follows:

This provision only applies to employees who work a Monday to Friday attendance regime and normally receive a paid day off on the public holiday. Under this new arrangement if the public holiday occurs during a period of medically certified sick leave, the employee will now be entitled to a paid day off in lieu of public holidays following their return to work. The public holiday should be recorded as sick leave and the normal sick pay arrangements will apply.

This arrangement will apply to all relevant employees with effect from 14th April 2010.

In the case of employees in respect of whom claims were served or in process on or after 14th April 2010, the revised arrangement will apply to the specific public holiday(s) which are the subject of their claim provided the employee can provide written documentary evidence of the claim.

When establishing an employee's entitlement, please note that the Organisation of Working Time Act 1997 provides that an employee is not entitled to a public holiday if s/he is absent from work immediately before the holiday for one of the following reasons:

- absence in excess of 52 consecutive weeks by reason of an occupational injury;
- absence in excess of 26 consecutive weeks by reason of an illness or injury (not referred to above);
- absence in excess of 13 consecutive weeks caused by a reason not referred to above but being an absence authorised by the employer, including lay-off;
- absence by reason of a strike in the business or industry in which the employee is employed.

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An employee who is absent on statutory maternity leave, adoptive leave or parental leave continues to accrue an entitlement to public holidays which occur during this period.

Please bring this to the attention of all relevant staff.



Séan McGrath,
National Director of Human Resources.

Enc. 2 (LCRs)

FULL RECOMMENDATION

CD/11/13
(CCc-098710-10)

RECOMMENDATION NO. LCR20061

INDUSTRIAL RELATIONS ACTS, 1946 TO 1990
SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

HSE

- AND -

SERVICES INDUSTRIAL PROFESSIONAL TECHNICAL UNION

INMO

PNA

IRISH MUNICIPAL, PUBLIC AND CIVIL TRADE UNION

DIVISION :

Chairman: Mr Duffy

Employer Member: Ms Cryan

Worker Member: Mr Shanahan

SUBJECT:

1. 4 issues relating to Lcr19769

BACKGROUND:

2. The issues before the Court concerns Labour Court Recommendation No.19769 and the introduction of a Rule book by the Health Service Executive (HSE). In April, 2010 the Court issued a Recommendation dealing with five outstanding issues in relation to the Rule Book Management wished to introduce. A number of meetings were held between the parties to discuss the implementation of the Court's Recommendation but they were unable to agree on four of the five issues. The issues that remain outstanding are; (i) Method of application of sick pay scheme to fixed-term employees (ii) Accrual of annual leave during sick leave (iii) Accrual of annual leave in respect of hours worked in excess of contracted hours (iv) Entitlement in respect to public holidays during sick leave.

The dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Labour Relations Commission. As Agreement could not be reached, the dispute was referred to the Labour Court on the 10th January 2011, in accordance with Section 26(1) of the Industrial Relations Act, 1990. A Labour Court hearing took place on the 21st April, 2011.

UNION'S ARGUMENTS:

3. 1 In relation to the accrual of annual leave during sick leave, it is the Unions position that the provisions of Circular 27/03 from the Department of Finance should be adopted. This arrangement must apply from the date on which conditions of employment were altered.

2 In relation to the accrual of annual leave in respect of hours worked in excess of contracted hours,

it is the Unions position that the application of the arrangements set out in the Department of Finance Circular must be backdated to 2006.

3 Fixed-term workers have to be treated in accordance with their comparative full-time worker in order to ensure that they are not unfavourably treated. The HSE has worsened the conditions of fixed-term employees by incorrectly imposing its version of a pro-rata application in respect of the sick pay entitlements provided for in Circular 10/71.

4 Health Service workers contract of employment refer to Circular 10/71 as the employing authority, it is clear that sick leave is recorded as sick leave and public holidays falling during that period cannot be recorded as anything other than sick leave. The worker must have a day off in lieu at another time.

MANGEMENT'S ARGUMENTS:

4. 1 Management have been prepared to go beyond the provisions of the Department of Finance Circular 27/03 in relation to the accrual of annual leave during sick leave but propose that this arrangement should apply from April, 2010.

2 In relation to the accrual of annual leave in respect of hours worked in excess of contracted hours, Management have been prepared to go beyond the provisions of the Department of Finance Circular with an implementation date of April, 2010.

3 The pro-rata arrangement in relation to the application of the sick pay scheme to fixed-term workers, which currently applies in the HSE, complies with the terms of the Protection of Employees (Fixed Term Work) Act, 2003.

4 Management contends that the provisions relating to public holiday entitlements during sick leave as set out in the HSE Terms and Conditions document are fully compliant with its statutory obligations under the Organisation of Working Time Act, 1997 and subsequent case law.

RECOMMENDATION :

In the course of the hearing and in their submissions the parties referred to various statutory provisions and to what they regarded as the legal entitlements derived from these provisions. This matter is before the Court pursuant to the Industrial Relations Acts 1946 – 2004. The role of the Court in this referral is to set out its opinion on the merits of the dispute and the basis upon which it should be resolved having regard to principles of fairness and good practice. It is not the function of the Court to interpret and apply statutory provisions in relation to the issues raised in this referral.

Consequently, nothing in this recommendation should be construed as defining the legal rights or duties of the parties in respect to any of the issues in dispute.

Having considered the submissions of the parties the Court recommends as follows in relation to each of the Unions' claims: -

Accrual of Annual Leave during Sick Leave

The Court recommends that the effective date for the agreement reached between the parties on this issue should be 14th April 2010. The Court further recommends that the rights of individuals to pursue claims for accrual of annual leave during periods of unpaid sick leave should be acknowledged in terms similar to those provided to IMPACT by the Department of Finance in its letter of 7th April 2010.

Accrual of Annual Leave in Respect of Hours Worked in Excess of Contracted Hours.

The Court recommends that the effective date for the agreement reached between the parties on this issue should be 14th April 2010.

Application of Sick Leave to Fixed-Term employees

From a practical industrial relations perspective the arrangement for applying sick leave to fixed-term employees must reflect the entitlement of permanent employees which is measured over a four year period. It must also take account of the fact that a fixed-term employee may be employed for a period significantly less than four years.

The Court recommends that the entitlement to sick leave should accrue on the basis of 10 weeks full pay and 10 weeks half pay per year of service, and proportionately less for an incomplete year, up to a maximum of 26 weeks full pay and 26 weeks half pay in a four year period.

Public Holidays during Sick Leave

It is noted that, historically, where a public holiday occurred at a time an employee was on sick leave they day was treated as part of the period of sick leave, although no compensatory arrangements were in place in respect of the public holiday. The HSE now wish to alter that arrangement in light of a decision of the Court which held that arrangements which supplanted an entitlement to the benefit of a Public Holiday, by paid sick leave on the day on which the holiday fell, was unlawful.

It is generally accepted that in the case of annual leave where an employee is ill and cannot avail of the opportunity for rest and relaxation the period in question cannot be regarded as a holiday. A provision to that effect is now contained in the Organisation of Working Time Act 1997. While there is no corresponding express provision in the Act in relation to Public Holidays, in the Court's view there is considerable merit, from an industrial relations perspective, in the argument that the same general principle should apply in the case of Public Holidays.

Accordingly, the Court recommends that the current established arrangements should continue to apply and where a public holiday arises during a continuous period of sick leave it should be regarded as part of that period.

Signed on behalf of the Labour Court

Kevin Duffy

18th May, 2011

DN Chairman

NOTE

Enquiries concerning this Recommendation should be addressed to David P Noonan, Court Secretary.

FULL RECOMMENDATION

CD/09/422
(CCc-071840-09)

RECOMMENDATION NO. LCR19769

INDUSTRIAL RELATIONS ACTS, 1946 TO 1990 **SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990**

PARTIES :

HSE
(REPRESENTED BY HSE - EA)

- AND -

APPROX 100,000 WORKERS
(REPRESENTED BY HEALTH SERVICE STAFF PANEL OF UNIONS)

DIVISION :

Chairman: Mr Duffy
Employer Member: Mr Murphy
Worker Member: Mr Nash

SUBJECT:

1. Method of application of sick pay scheme to Fixed Term Employees, accrual of AI during sick leave, entitlement of Public Holidays occurring during sick leave, payment of T+1/4 For Hrs worked after 8pm. Accrual of AI Of Hrs worked in excess of contracted Hrs

BACKGROUND:

2. The issue before the Court concerns a claim by the Unions that the Health Service Executive (HSE) produced a document regarding terms and conditions of employment, referred to as the Rule Book, without prior consultation between the parties. The Unions contend that this is a departure from the established practice. There is disagreement between the parties on five issues within the Rule Book. They are; (i) Method of application of sick pay scheme to fixed-term employees (ii) Accrual of annual leave during sick leave (iii) Accrual of annual leave in respect of hours worked in excess of contracted hours (iv) Payment of night duty premium (T+ ¼) for hours worked after 8pm (v) Entitlement in respect to public holidays during sick leave. The HSE contends that the Rule Book is a compendium of national rules and conditions deriving from circulars, agreements and employment legislation.

The dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Labour Relations Commission. As Agreement could not be reached, the dispute was referred to the Labour Court on the 10th June 2009, in accordance with Section 26(1) of the Industrial Relations Act, 1990. A Labour Court hearing took place on the 6th April, 2010.

UNION'S ARGUMENTS:

3. 1 In accordance with Section 60 of the Health Act, 2004 any change to employees conditions should only occur following consultation with their representative groups. This did not occur here.

2 The Rule Book sets out the rules as interpreted by the HSE and ignores collective agreements and

Department of Health Circulars from which contracted conditions are derived.

3 The HSE in refusing to withdraw the Rule Book pending full discussion and negotiations between the parties, breached the provisions of Towards 2016 and the Consultation Information Directive.

COMPANY'S ARGUMENTS:

4. 1 The HSE rejects the Unions claim that the terms and conditions within the Rule Book have been unilaterally imposed. The original Rule Book was circulated in 2006 and a revised version in May 2009.

2 The Unions are seeking to exploit local deviations from the national rules by claiming that these anomalies set national precedent.

3 Improvements in existing terms and conditions over and above what is set out in the Rule Book constitute new claims and as such run contrary to Towards 2016.

RECOMMENDATION :

This dispute arose from the decision of the HSE to produce a comprehensive manual covering conditions of employment applicable to its staff, referred to as the 'Rule Book'. It is intended to incorporate and update agreed arrangements which applied in the former Health Boards. There is no disagreement between the parties on the majority of issues covered in the draft document but the parties have disagreed on how entitlements in respect to five items covered should be defined.

In respect of some of these items the disagreement relates to the construction of statutory rights. This dispute is before the Court under the Industrial Relations Acts 1946-2004. In consequence the Court's role is to assist the parties in identifying an industrial relations solution to the issues in dispute. In this referral the Court cannot provide a definitive legal interpretation of the statutes in question and nothing in this Recommendation should be understood as purporting to define the legal rights or duties of the parties or of any individual under relevant legislation. Should the parties wish to obtain a legal determination of individual rights in respect of any of the matters in issue the appropriate course of action would be to process test cases under the relevant statutes.

It should be clearly understood that the recommendations which follow are without prejudice to the legal rights of the parties and those whom they represent and it should not be relied upon in any legal proceedings under employment rights legislation or otherwise.

Having considered the submissions of the parties the Court recommends as follows in respect to each of the issues in dispute: -

1. Method of application of sick pay scheme to fixed-term employees.

The Court notes that there is considerable disagreement between the parties on how the sick pay entitlements of fixed-term employees should be defined having regard to the provisions of the Protection of Employees (Fixed-Term Work) Act 2003. The Court recommends that the arrangements in respect of fixed-term employees in place immediately before the introduction of the Rule Book should continue to apply until an agreed alternative arrangement is put in place.

2. Accrual of annual leave during sick leave

The Court notes that Department of Finance Circular 27/03, issued on 30th September 2003, makes comprehensive provision in relation to the granting of sick leave in the broad public service. This Circular recites the fact that its content arose from an Arbitration Board finding and consequential negotiations with Civil Service Unions. While this Circular may not be strictly applicable to the parties to this dispute it nonetheless provides a definitive guidance on how similar sick-pay arrangements apply in the broad public service.

The Court recommends that the provisions of this Circular, as it relates to the accrual of annual leave during sick leave, should be adopted by the parties and applied unless and until an alternative arrangement is agreed between the parties.

3. Accrual of annual leave in respect of hours worked in excess of contracted hours.

This aspect of the dispute relates to the accrual of annual leave to part-time workers and those who are contracted to work less than normal working hours during a leave year.

Department of Finance Circular 27/03 also covers this matter. The Court again recommends that the arrangements prescribed in that Circular be applied unless and until an alternative arrangement is agreed between the parties.

4. Payment of night duty premium ($T + \frac{1}{4}$) for hours worked after 8pm.

The Court recommends that the arrangement proposed in the Rule Book be accepted unless alternative arrangements are agreed between the parties or by any Public Sector Agreement

5. Entitlement in respect to Public Holidays during sick leave

This aspect of the dispute arose from Determinations of the Court made under the Organisation of Working Time Act 1997. The import of those Determination is that where an employee is absent from work through illness at the time a public holiday occurs, and is contractually entitled to a day off with pay on that day under the terms of a sick pay scheme, he or she is entitled to be separately compensated for the Public Holiday. It follows that where a sick pay scheme provides that a day of illness, which coincides with a public holiday, is not covered under the scheme a different situation arises.

In the present case the Court notes that the draft Rule Book provides, at page 14, that in future where an employee is absent on sick leave at the time a Public Holiday occurs he or she will receive a day's pay in respect of the Public Holiday rather than a days pay in respect of their sick leave entitlements. The effect of this provision, in practice, would be to interrupt the continuity of sick leave. However, in dealing with the sick pay scheme itself, on page 16 of the draft Rule Book, the terms of Circular 10/71 are adopted and in particular a provision to the effect that every day occurring within a continuous period of sick leave is to be reckoned for the purpose of offset against the employees total entitlement. These provisions are clearly incompatible.

Furthermore, it is noted that the Rule Book provides that social welfare entitlements are deducted from sick pay. No explanation is provided as to how this provision would operate in practice where a continuous period of sick leave

is interrupted so as to take account of a Public Holiday occurring during that period.

In the circumstances the Court is not satisfied that the parties have given sufficient consideration to the detailed application of what is proposed and how it could operate within the parameters of the sick pay scheme as it is provided for in the relevant section of the Rule Book. The Court feels that this aspect of the dispute should be the subject of further discussion / negotiation between the parties. It recommends that the parties enter into such discussions without further delay.

If final agreement is not reached on this matter within two months it may be referred back to the Court. In the interim existing arrangements should continue to apply.

Signed on behalf of the Labour Court

Kevin Duffy

13 April, 2010 _____

DN Chairman

NOTE

Enquiries concerning this Recommendation should be addressed to David P Noonan, Court Secretary.