



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Oifig an Stiúrthóra 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 008/2012

15th March, 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 CEO & HR Manager, directly funded Voluntary Hospital / Agency;
Each CEO & HR Manager, Intellectual Disability Sector;
Each CEO & HR Manager, Specialist Agencies.**

Re: Accrual of annual leave during sick leave.

The Organisation of Working Time Act 1997 provides that accrual of annual leave is based on time actually worked in a leave year. An employee who accrues annual leave by reason of time worked¹ as defined by the Act retains this entitlement and can carry forward that annual leave to the following leave year(s) if s/he is unable, for whatever reason, to avail of the leave in the current leave year.

Under the existing arrangements in the health service, employees were not entitled to carry forward annual leave accrued during paid sick leave² into a new leave year. This arrangement will be amended as follows: With effect from **1 April 2010**, employees will be entitled to carry forward annual leave accrued during paid sick leave into new leave years over a **three year cycle** as follows:

Where, because of illness or another reason in the 1st year of the three year cycle, an employee cannot avail of annual leave accrued during paid sick leave, this annual leave may be carried forward to the new leave year (2nd year of cycle). If because of illness or another reason in the second year, the employee cannot avail of any annual leave accrued during paid sick leave in the first or second year, s/he may carry forward all annual leave accrued during paid sick leave into the third leave year (3rd year of cycle). At the end of the 3 year cycle, the maximum amount of annual leave accrued during *paid sick leave* that can be carried forward into the new leave year (Year 1 of new 3 year

¹ This includes time spent on maternity leave, additional maternity leave, adoptive leave, additional adoptive leave, parental leave, the first 13 weeks of carer's leave, and annual leave and public holidays

² Health service employees absent from duty on sick leave continue to accrue annual leave (based on the contractual entitlement for his/her grade) during periods of paid sick leave (at full and half pay). Annual leave is not accrued during unpaid sick leave, and during pension rate of pay.

cycle) is **10 days**. The employee retains his/her entitlement to annual leave accrued by reason of time worked regardless of the duration of his/her absence.

Example: Officer

An employee with an annual leave entitlement of 24 days goes absent on long-term sick leave six months into the leave year. Prior to his absence on sick leave, the employee had accrued 12 days annual leave (by reason of time worked) and had availed of 8 days. The employee remains absent on sick leave over the following two and a half years. The employee's annual leave entitlement over the new three year cycle is as follows:

Year 1: The employee accrues 12 days annual leave (by reason of time worked) for the first six months at work and avails of 8 of these days leaving an entitlement of **4 days**. The employee accrues an additional **12 days** annual leave for the second six months of the year while on paid sick leave.

Annual leave carried forward into year 2: 4 days (time worked) + 12 days (paid sick leave) = **16 days**

Year 2: The employee carried forward the **16 days** (accrued by reason of time worked and during paid sick leave) into the new leave year. He continues to accrue annual leave for the first six months of the second year (**12 days**) until he exhausts his sick pay entitlement. He remains on unpaid sick leave for the remainder of the year.

Annual leave carried forward into year 3: 12 days (paid sick leave 2nd year) + 16 days (carry over) = **28 days**

Year 3: The employee remains on unpaid sick leave for the duration of the third year, and has carried over **28 days** leave from the previous 2 years. The maximum amount of annual leave accrued during *paid sick leave* that the employee is permitted to carry over into the new leave year is **10 days**. The employee retains his/her entitlement to annual leave accrued by reason of time worked regardless of the duration of his/her absence.

Annual leave carried forward into year 1 of new 3 year cycle: 4 days (annual leave accrued during time worked in year 1 of cycle³) + 10 days (maximum carryover of annual leave accrued during paid sick leave) = **14 days**

Implementation

As outlined above, the new arrangements take effect from **1st April 2010**. The leave year beginning on this date should be treated as Year 1 of the 3 year cycle.

ECJ judgments

Rulings of the European Court of Justice in the joined cases of Schultz-Hoff and Stringer and, most recently, in the case of KHS AG v Winfried Schulte (C-214/10), provide that statutory annual leave may be accrued by employees while on sick leave in certain circumstances.

It is accepted that this ECJ judgement has implications for the public service in the context of the Organisation of Working Time Act 1997. However, there are a number of aspects of these judgments which will require further deliberation, including the setting of a time limit on the accumulation of unused entitlements to paid annual leave acquired during a period of unfitness for work.

In the meantime, any specific cases that arise in the health service and which fall within the scope of the ECJ judgments will be considered now, without prejudice, and having regard to the proposed review of the public service sick leave arrangements as outlined in the recent announcements by Government in relation to Public Sector Reform (17 November 2011, heading 12.5 of Public Service Reform Plan).

³ Employees retain their entitlement to annual leave accrued by reason of time worked regardless of the duration of his/her absence.

Please bring this Circular to the attention of all relevant staff within your area of responsibility.

Queries from HR and Employee Relations in relation to the implementation of this Circular should be referred to Corporate Employee Relations Services, HSE HR Directorate, 63/64 Adelaide Road, Dublin 2. Tel: 01 6626966; Email: info@hse.ie

Individual employees who have queries in relation to the application of this Circular must contact their local Employee Relations/HR Department.

Yours sincerely,



Séan McGrath,
National Director of Human Resources.