

Reference No: 22/2/2008 LP; **Date:** 22/02/2008

22/2/2008 LP:- Management of Sick Leave and Case Referral to the CMO's Office

22 February 2008

Re: Management of Sick Leave and Case Referrals to the CMO's Office

Dear Personnel Officer

At the Personnel Officers Network Meeting on 6 December 2007, the Chief Medical Officer (CMO) presented a paper on absence related to work place stress related sick leave. The paper and the discussion that followed raised issues about the management of sick leave in Departments and Offices including the matter of referral to the CMO. In that context I am writing to clarify some of the relevant provisions in the Civil Service circulars on sick leave relating to the management of short and long-term sickness absence.

The Civil Service Code of Standards and Behaviour requires civil servants *'to attend at work as required and not to absent themselves without proper authorisation and to comply with sick leave regulations.'*

HR sections must ensure that managers and supervisors are fully aware of the provisions of the circulars dealing with sick leave, in particular Circulars 25/1978, 7/1978 and 34/1976 and 17/03 [Copies attached]. The circulars promote the control of sick leave and the elimination of abuse. Heads of Departments and Offices are reminded that within the sick leave regulations they may withdraw or modify the uncertified sick leave concession where it is being abused and that the granting of and payment for sick leave is at the discretion of the Department or Office.

HR sections should inform managers and supervisors of their responsibilities to manage sick leave and provide them with guidance on the application of the regulations in individual cases. The CMO's Office can provide assistance to HR where clarification of medical issues is required.

Set out below are some important elements of effective absence management:

Recurrent Short-Term Absences

1. Recurrent short-term absences can be attributable to a number of factors and in general problems encountered in this area relate more to attendance at work issues records than to questions of health.

2. In general, repeated short-term absences should be dealt with by local management with the support of HR. A pattern of absences may be attributable to a number of factors. The failure by supervisors and managers to take early action in relation to the absence pattern may facilitate such absences. Supervisors and managers should take an interest in the attendance patterns of staff and should discuss attendance with staff and give whatever help and advice they can when difficulties emerge or seem likely to emerge.

3. At the same time staff, particularly in their initial probationary period, should have the sick leave regulations explained to them and should be told of the standard expected, both in general and in relation to being confirmed in their appointment, the award of increments and their entitlement to compete in competitions or for promotion. Circular 34/1976 provides the reference point for managers in assessing a person's sick leave record. It is a matter for the manager to decide, having regard to the nature of the absence/s and the overall performance of the member of staff, whether the sick leave record is compatible with effective performance on the job. Circular 34/1976 sets out the standards to be applied in assessing whether a staff member's sick leave record is compatible with the requirements of regular and effective service. The general standard is 56 days and 25 sick absences in four years (or pro rata where the service is less than four years). Circular 17/2003 amends the provisions on clearance of candidates in relation to persons with a disability.

4. Where problematic patterns of attendance arise HR personnel or local management should meet with the staff member to discuss their attendance pattern. A case should only be referred to the CMO's Office where following such a meeting, an individual states that they have an ongoing medical condition and where medical advice is required by management. Repeated short-term absence cases should not be referred routinely to the CMO's Office.

Long-Term Absences

5. Long-term absences should be referred at an early stage to the CMO. The CMO advises that the earlier a person is seen, the better are their chances of returning to work. The CMO advises that long-term absences should be referred after 7 - 8 weeks duration. In some instances, it may be useful to refer cases earlier than this, particularly absences for medical reasons that are stated to be work-related. These cases should first be discussed with the CMO's Office prior to referral. The CMO's Office will then decide whether a medical report is necessary, and/or whether the individual should be seen for an appointment by a doctor/nurse. The CMO requires full background information on cases, especially where work-related issues are being claimed. This may involve contacting local management to clarify any workplace issues.

6. The payment of pension rate of pay is subject to the condition of a reasonable prospect of a resumption of duty, with an ability to render regular and effective service. The advice of the CMO may be required on the medical aspects of such cases

but Departments/Offices must decide on the grant of pension rate of pay taking into account all the circumstances.

7. Absences after career breaks/maternity leave should be referred straight away, as any illness is likely to have been ongoing for several weeks at least. Ideally HR should write to staff members on career breaks and maternity leave, one month prior to their return to work date, to inquire if they intend to return to work on that date or if (in the case of staff on maternity leave) they intend to take unpaid maternity leave.

Discounting - Clearance of candidates for promotion or confirmation of appointment by reference to sick absences and health considerations

8. Almost all cases of discounting can be decided locally, including suitability in view of significant two year improvement (Ref. Circular 34/76). Only difficult or complicated cases should be referred to the CMO. The provisions of Circular 34/1976 state that even if the CMO advises that the officer is suitable from the point of view of health, the question could still remain whether the officer is capable of effective performance on the job, having regard to the extent and pattern of sick absences. This latter question has to be decided by the Department or Office in the light of the advice of the CMO and having regard to the limits set out in the Circular.

9. The provisions of the discounting circulars do not apply to the award of increments. Departments and Offices should not refer cases in relation to the award of increments to the CMO for discounting purposes.

Disability Issues

Disability is defined in the *Disability Act 2005* as:

“disability, in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment”

10. The recently published ***Code of Practice on the employment of persons with a disability in the Civil Service***, provides the framework for the management of the appointment and career progression of staff with a disability.

11. Employers are obliged to take appropriate measures to accommodate the needs of a person who has a disability. The requirement to undertake appropriate measures is based on the understanding that a person who has a disability is fully competent and available to undertake, and fully capable of undertaking, any duties, on provision of reasonable accommodation (appropriate measures) by the Department or Office. Appropriate measures include the adaptation of premises and equipment, patterns of working time, distribution of tasks or the provision of training and integration of resources, but not including any treatment, facility or thing that the person might ordinarily or reasonably provide for himself or herself.

12. In managing the sick leave of persons with a disability, HR sections should advise supervisors and managers that the same standards apply to the management of sick leave as apply to other staff. Where sick leave is being considered in the assessment of performance on the job, the objective is to determine whether the sick leave record is compatible with effective performance on the job.

13. Where a person with a disability has been recruited on a one year probationary contract, the supervisor or manager is required to manage the performance of that person in the probationary period in the normal way.

14. The person with a disability should have the sick leave regulations explained to them and should be told of the standard expected both in general and in relation to being made permanent in their employment, the award of increments and their entitlement to compete in competitions or to promotion.

Yours sincerely

Marie McLaughlin
Principal Officer
Personnel and Remuneration Division