



## Information Note

**To: The Managerial Authorities of Recognised Primary, Secondary, Community, and Comprehensive Schools  
and  
The Chief Executives of Education and Training Boards**

**REVISED SICK LEAVE ARRANGEMENTS  
FOR SPECIAL NEEDS ASSISTANTS  
IN  
RECOGNISED PRIMARY AND POST-PRIMARY SCHOOLS**

### **1. Background**

- 1.1 On 19 July 2012 the Labour Court made a recommendation (Recommendation No. LCR20335) in relation to sick leave arrangements in the public service. A further Labour Court recommendation (Recommendation No. LCR 20667) in relation to critical illness was made on 20 December 2013. The *Public Service Management (Recruitment and Appointments) (Amendment) Act 2013*, passed at the end of December 2013, included a part in relation to the new sick leave arrangements. The legislation provided the Minister for Public Expenditure and Reform with the power to make regulations that set out the specific details of the new Scheme. These Regulations SI No. 124 of 2014 were signed by the Minister for Public Expenditure and Reform on 6 March 2014 and have been laid before the Houses of the Oireachtas.
- 1.2 Following the holding of consultative meetings which formed part of the Labour Court recommendation, the Department of Education and Skills wishes to inform School Management Authorities and Education and Training Boards of the changes to sick leave entitlements for special needs assistants.
- 1.3 These revised entitlements, which are set out below, will take effect from 1 September 2014 and will be incorporated into a consolidated sick leave circular which will issue before that date.

### **2. Entitlement to Paid Sick Leave**

- 2.1 A special needs assistant who is absent from duty because of personal illness or injury, may be granted paid sick leave of:
- A maximum of 3 months (92 days) on full pay in a year
  - Followed by a maximum of 3 months (91 days) on half pay

- Subject to a maximum of 6 months (183 days) paid sick leave in a rolling four year period.

### **3. Critical Illness Provisions**

3.1 A special needs assistant who becomes incapacitated as a result of a critical illness or serious physical injury may be granted extended paid sick leave, in exceptional circumstances of:

- A maximum of 6 months (183 days) on full pay in a year
- Followed by a maximum of 6 months (182 days) on half pay
- Subject to a maximum of 12 months (365 days) paid sick leave in a rolling four year period.

3.2 The award of extended sick leave for critical illness or serious physical injury is a decision for the employer following receipt of medical advice from the Occupational Health Service.

3.3 If a special needs assistant has an ordinary illness within 12 months of the critical illness, the critical illness provisions will apply.

3.4 Further information on critical illness is contained in the public service critical illness protocol document attached at Appendix A.

### **4. Temporary Rehabilitation Remuneration (TRR)**

4.1 Where the relevant period of paid sick leave has been exhausted, a special needs assistant with a minimum of 5 years' service at the end of the period of paid sick leave may, subject to certain conditions, be granted further leave with Temporary Rehabilitation Remuneration (TRR). TRR will be calculated on paid pensionable service which the special needs assistant has actually accrued in the employment at the time TRR commences plus added years. TRR shall be paid at the same rate as the rate at which an ill health retirement pension would be paid to the special needs assistant concerned if such pension were to be granted to him or her.

4.2 The period during which TRR is paid is not a period of pensionable service.

4.3 The granting of TRR will be conditional at all times on the Occupational Health Service confirming that there is a reasonable prospect of recovery and return to work.

4.4 TRR will not exceed 18 months (548 days) in the case of ordinary illness.

4.5 In the case of a special needs assistant who has been granted extended sick pay under the critical illness provisions, he/she may have access to 12 months (365 days) TRR followed by a further period of TRR not exceeding 24 months (730 days). This further period of TRR is subject to six monthly reviews.

## **5. Dual Look Back**

5.1 To calculate a special needs assistant's appropriate rate of pay when absent as a result of illness or injury there will be a dual look back system as follows:

- Step 1 : Determine whether the special needs assistant has access to paid sick leave

The special needs assistant's sick leave is reviewed over the 4 year period from the current date of absence. If 6 months (183 days) paid sick leave have not been exhausted over that 4 year period, access may be granted to paid sick leave.

- Step 2 : Determine whether full pay, half pay or TRR apply

If Step 1 indicates that the special needs assistant has access to paid sick leave, his/her sick leave record is then reviewed over the 1 year period from the current date of absence to determine the rate at which sick leave may be paid. If the initial 3 months (92 day) limit at full pay has not been exhausted, full pay may be awarded until the limit of 3 months (92 days). Thereafter, the amount paid will be calculated based on half pay or TRR, as appropriate.

5.2 Similar arrangements will be in place for the dual look back in the case of critical illness. The scenarios set out at Appendix B illustrate how the dual look back arrangement will operate in practice.

## **6. Maternity Relations Provisions**

6.1 The public Service Management (sick leave) Regulations 2014, SI 124 of 2014, set out the provisions which relate to the interaction of pregnancy related illness with sick leave limits. The regulations set out how the time on half pay due to pregnancy related illness is protected.

## **7. Transitional Arrangements**

7.1 Where a special needs assistant has commenced a period of sick leave prior to 1 September 2014 and sick leave continues after that date, he/she will continue to avail of the current sick leave arrangements for special needs assistants for that absence i.e. a maximum of paid sick leave for up to 91 days in any period of 12 months service. Following resumption of duties, any future sick leave absence will be dealt with under the terms of this revised sick leave scheme.

## **8. Treatment of previous periods of Sick Leave under the new Scheme**

8.1 As has always been the case, sick leave records will continue to be reviewed over a rolling 4 year period. This means that if a special needs assistant has been paid more than 183 days sick leave in a rolling 4 year period on 1 September 2014, that special needs assistant may find, him/herself moving immediately to half pay or TRR, as appropriate.

**9. Notification**

- 9.1 Please ensure that copies of this information note are provided to all members of the Board of Management/Education and Training Boards and its contents are brought to the attention of all special needs assistants in your employment including those on leave of absence.
- 9.2 This information note can be accessed on the Department's website under [www.education.ie](http://www.education.ie) Home – Education Staff – Breaks/Leave – Sick Leave and all enquiries should be emailed to: [teachersna@education.gov.ie](mailto:teachersna@education.gov.ie)

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9 April 2014

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9 April 2014

**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<sup>1</sup>
    - (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment
    - (d) In-patient hospital care of two consecutive weeks or greater<sup>2</sup>.
- 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 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 having consulted with the relevant line manager. Whilst management must primarily consider the Occupational Medical advice, management should consider all the circumstances of the case.

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<sup>1</sup> In circumstances where there is no medical intervention.

<sup>2</sup> In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of two consecutive weeks will be reduced to two or more consecutive days of in-patient hospital / clinic care.

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 in particular consider the following:-

- the individual's sick leave record;
- the potential impact of an early return on the workplace efficiency and effectiveness;
- it has not been possible to make an accommodation to facilitate the return to work of a person with a disability-related illness or condition.<sup>3</sup>

Management should also confer with the Occupational Physician in such cases.

#### **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.

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<sup>3</sup> Management are required in the case of an employee with a disability-related illness take all reasonable steps in terms of making an accommodation to facilitate the employee's return to work consistent with, for example, specialist occupational health advice and service requirements.

5.2 Should there be a delay<sup>4</sup> in the employer referring an employee to the Occupational Health Service of the organisation, or a delay<sup>5</sup> in being seen by this Occupational Health Service, there will be no financial loss to the employee if they are later 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 PAY**

7.1 In advance of the termination of the payment of Temporary Rehabilitation Pay (TRP), following payment of paid sick leave and TRP 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 TRP may be continued subject to review at six-monthly intervals for a further period not exceeding two years.

## **8 REVIEW OF THE OPERATION OF THE PROTOCOL**

8.1 There will be a review of the operation of this protocol following 1 full year after its introduction.

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<sup>4</sup> Where the delay is of a duration in excess of the period of time currently allowed for a referral to an Occupational Physician.

<sup>5</sup> Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.



## **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.

**Scenario 1**

Sean's sick leave record is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
12 May 11	23 May 11	12 days	Certified Illness
01 Sep 12	16 Nov 12	77 days	Certified Illness
	<b>TOTAL</b>	<b>89 days</b>	

Sean goes on certified sick leave from the 01 Oct 2014 to 08 Oct 2014 (8 days).

- Looking back over 4 years – 183 days sick leave was not reached
- Looking back over 1 year – 92 days sick leave was not reached

Sean will be paid full pay for the 8 days. Using the dual look back, in the one year review of the sick leave record back to 02 Oct 2013 there has been no sick leave. Therefore he is entitled to 8 days on full pay.

**Scenario 2**

Ann's sick leave record is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
10 Nov 10	22 Dec 10	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	02 Jul 12	124 days	Certified Illness
	<b>TOTAL</b>	<b>182 days</b>	

Ann goes on certified sick leave from the 01 Oct 2014 to 31 Oct 2014 (31 days).

- Looking back over 4 years – 183 days sick leave was not reached
- Looking back over 1 year – 92 days sick leave was not reached

Ann will be paid full pay for 1 day. Using the dual look back, Ann has already had 182 days in the rolling 4 year period therefore she has 1 day of paid sick leave remaining. As she has not had any sick leave in the 12 months to 1 September 2014, she has access to full pay for that day. If Ann fulfills the criteria for TRR, the remaining 30 days would be paid at that rate.

**Scenario 3**

Joe's sick leave is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
10 Nov 10	22 Nov 10	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	04 Jul 12	126 days	Certified Illness
	<b>TOTAL</b>	<b>184 days</b>	

Joe goes on certified sick leave from the 01 Oct 2014 to 31 Oct 2014 (31 days).

- Looking back over 4 years – 183 days sick leave was reached

As the limit of 183 days is exceeded in the rolling 4 year period, Joe may be paid TRR if he fulfills the criteria.

#### **Scenario 4**

Marie's sick leave is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
12 Nov 11	23 Nov 11	12 days	Certified Illness
01 Dec 12	15 Dec 12	15 days	Certified Illness
	<b>TOTAL</b>	<b>27 days</b>	

Marie goes on certified sick leave from the 01 October 2014 to 30 March 2015 (181 days). Marie submits an application for critical illness which is approved.

- Looking back over 4 years – 365 days sick leave was not reached
- Looking back over 1 year – 183 days sick leave was not reached

Marie will be paid full pay for the 181 days as the dual look back limits in the case of critical illness are 365 days to determine whether the special needs assistant has access to paid sick leave and 183 days to determine the rate of pay.

#### **Scenario 5**

John's sick leave is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
12 May 11	23 June 11	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	20 Jun 12	112 days	Certified Illness
	<b>TOTAL</b>	<b>170 days</b>	

John goes on certified sick leave from the 01 Oct 2014 to 30 April 2015 (212 days). John submits an application for critical illness which is approved.

- Looking back over 4 years – 365 days sick leave was not reached
- Looking back over 1 year – 183 days sick leave was not reached

John has already had 170 days prior to commencement of this leave in the rolling 4 year period but has had no sick leave in the rolling 1 year back to 2 Oct 2013, therefore he will be paid 183 days on full pay. This brings the total sick leave to 353 days in 4 years. He will then have the remaining 12 days at half pay and, if eligible the final 17 days at TRR.