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From: Anne Marie Hoey, National Director of Human Resources

Date: 8th June 2023

Subject: HR Circular 013/2023 - Guidance and FAQs for Public Service Employers during COVID-19 in relation to Special Leave with Pay for Covid-19 dated 8 May 2023

Dear Colleagues

I wish to advise that the Department of Public Expenditure and Reform (DPER) has issued its revised **Guidance and FAQs for Public Service Employers during COVID-19 in relation to Special Leave with Pay for Covid-19 dated 8 May 2023 (Appendix A)**. This guidance document supersedes previous guidance and FAQs issued by DPER relating to Civil and Public Service working arrangements and temporary assignments during COVID-19. The FAQs have been prepared to assist employees and management to understand the process, rules and expectations associated with Special Leave with Pay during COVID-19 across the public service. A copy of these FAQs is also available [here](#).

The DPER FAQs should be read in conjunction with this Circular.

UPDATED 1. COVID-19 Special Leave with Pay Arrangements

1.1 Special leave with pay for COVID-19 (SLWP) is currently used in lieu of sick leave for COVID-19 to assist in the prevention of the possible onward spread of COVID-19 in the work premises. SLWP applies to eligible public servants only. Employers / managers will need to determine which workers fall into the category of public health service employees. The arrangements relating to the application of SLWP are temporary and will be kept under regular review.

1.2 SLWP will only apply when an employee has had a positive test for COVID-19. The HSE sets out the latest guidance following a positive COVID-19 test result at this [link](#). **In order to avail of SLWP evidence of a positive test result is required alongside a declaration form by the employee.** SLWP **does not** apply in any other scenarios.

Please refer to the following documents

- Procedure for SLWP absence Appendix B
- COVID-19 Self-Declaration Form for Public Health Service Employees for Special Leave with Pay Appendix C

1.3 Note that at any stage if employees state that they feel well enough to work, but have tested positive for COVID-19, the employer may facilitate working from home instead of SLWP, if this is feasible and agreeable to both parties. The employee must not attend the work premises and must also follow medical and HSE [advice](#).

1.4 SLWP only applies to employees who were rostered or due to be working. SLWP cannot be substituted for other forms of leave, for example, annual leave. If employees are on annual leave and have valid medical certification they can opt to apply for sick leave as per the normal rules of sick leave¹.

1.5 SLWP applies for the duration of the HSE recommended 'stay at home period' following a positive COVID-19 test result (whatever duration is in place at the time of the absence). The maximum limit for SLWP is currently **5 calendar days** to reflect the latest public health advice as of **18 April 2023**² linked [here](#)). Any periods of COVID-19 related illness which extend beyond the HSE guidance to 'stay at home' (currently five calendar days) following a positive COVID-19 test, will be treated as ordinary sick leave.

¹ Section 19(2) of the Organisation of Working Time Act, 1997 provides as follows:

(2) A day which would be regarded as a day of annual leave shall, if the employee concerned is ill on that day and furnishes to his or her employer a certificate of a registered medical practitioner in respect of his or her illness, not be regarded, for the purposes of this Act, as a day of annual leave.

² This change was communicated to public health service employers by email dated 21 April 2021 from National Employee Relations.

1.6 Public health advice for the management of COVID-19 cases and contacts' now includes guidance for HCWs relating to management of covid-19 infection and return to work linked [HERE](#).

1.7 The local dynamic institutional risk assessment may indicate a requirement for specific HCWs to undertake antigen testing prior to returning to work particularly if they are working with the most clinically vulnerable. As part of this risk assessment, consideration should be given to redeployment until 10 days after their symptoms started (or the day their first positive test was taken if they did not have symptoms). If the outcome of the local risk assessment is redeployment and the employee is fit and available to work, they should be paid in the normal manner during this period. The public service sick leave scheme does **not** apply in these circumstances.

1.8 After the expiry of the HSE recommended 'stay at home period' (currently 5 days), an employee is no longer entitled to SLWP. If an employee is still unwell, the ordinary sick pay scheme will apply for the duration of their sickness absence. Please refer to the latest HSE Covid-19 Public Health advice [here](#).

1.9 The general principles applying to the management of sick leave, as outlined in the HSE's *Managing Attendance Policy and Procedure* and *HSE Rehabilitation of Employees Back to Work after Illness or Injury Policy*, will continue to apply. This includes the requirement for managers and employees to maintain regular contact during the period of special leave with pay. Both policies are available [HERE](#). Section 38 organisations should refer to their relevant HR policies and procedures.

1.10 SLWP while absent from work due to COVID-19 is based on basic salary and fixed allowances only except for those employees who come within the scope of [HSE HR Circular 064/2020 Special Leave with Pay for COVID-19 Premium Payments](#). This Circular should be read in conjunction with [HSE HR Circular 13-2021](#) which sets out the two methodologies that may be applied, depending on the circumstances, for the purposes of calculating the 'unsocial hours' premium pay element. Please note that 'unsocial hours premium earnings' is an umbrella term that refers to a variety of premium payments/allowances based on an employee's rostered hours of work which vary depending on the roster worked in a specific period. It includes, but is not limited to, night duty (T1/4), time and one-sixth (T1/6), Saturday allowance, Sunday premium, regular on-call etc. The calculation excludes overtime payments with the exception of regular and rostered overtime payments. Please note that for the duration an employee is entitled to receive SLWP, the inclusion of premium payments will still apply to those who meet the eligibility criteria as outlined in the aforementioned Circulars.

1.11 The total payment is made by the employer. Public servants who can avail of SLWP are excluded from claiming the special DEASP COVID-19 illness benefit

payment. Any instances of public health service employees found to be in receipt of both special leave with pay and the COVID-19 illness benefit will be subject to disciplinary action and the appropriate amount shall be recouped from his/her salary.

1.12 When granting SLWP, health service employees are expected to comply at once with any directions which may be given by his/her employer and to take all practicable steps to resume duty as soon as possible. Otherwise, unless adequate reason is shown for non-compliance, the question of withholding pay will arise.

1.13 In the event of non-compliance with the provisions of SLWP (including the requirement to provide bona fide confirmation of a positive COVID-19 test) existing procedures, including the disciplinary procedure may be invoked.

1.14 Employees are **not** entitled to days in lieu of any public/bank holidays that occur whilst in receipt of SLWP.

1.15 **HSE HR Circular 022/2022** sets out the temporary scheme of paid leave for public service employees unfit for work post COVID-19 infection which was introduced on 1 July 2022. The eligibility criteria and conditions governing the scheme are set out [here](#). The scheme is in place until **30 June 2023**.

2. Health Care Workers in the Higher Risk Categories

2.1 Please refer to latest HSE COVID-19 Occupational Health guidelines available [here](#).

3. COVID-19 recording/reporting requirements

3.1 COVID-19 Special Leave with Pay (SLWP) is being used in place of normal sick pay for public servants and should be recorded separately as **“Covid-19 SLWP” Absence Code 0403**. The Temporary Scheme of paid leave is being used for employees unfit for work post COVID 19 infection and should be recorded separately as **“Temporary Covid Scheme” Absence Code 0404**. This separate classification is important for the following reasons:

- (i) to ensure that periods of COVID-19 absences covered by SLWP and the Temporary Covid Scheme, do not impact on an employee’s entitlements under the public service sick leave scheme, and
- (ii) to comply with DPER/Department of Health directions to provide an aggregate summary of data/costings for the public health sector. The HSE and each Section 38 employer is required to ensure that relevant data³ and all expenditure in relation to SLWP & Temporary COVID-19 absences can be tracked separately in order to ensure that all exceptional spending on COVID-

³ <https://dataprotection.ie/en/news-media/blogs/data-protection-and-covid-19>

19 within the health sector is capable of being identified and reported on at national level.

3.2 National Absence Instructions ([here](#)), collection of Monthly National Absence data.

3.3 Please refer to *HR Memo re COVID-19 Revised Incident Reporting Requirements* (dated 13 January 2021) for information on reporting certain cases of COVID-19 to the Health and Safety Authority (HSA).

4. Employees attending a COVID-19 vaccination appointment

4.1 Where an employee in the public service has an appointment to attend a COVID-19 vaccination during working hours, they will be facilitated to attend.

5. Employees who may have a reaction to a COVID-19 vaccination

5.1 Where there may be a reaction to a COVID-19 vaccination and the employee is unfit for work, then the provisions of the public service sick leave scheme apply.

5.2 Employees who display symptoms of COVID-19 after vaccination may be granted SLWP for COVID-19 provided they satisfy the qualifying criteria as set out in section 1 of this Circular.

6. Legal basis for processing employee data in relation to COVID-19

6.1 Health service employers are obliged to provide a safe workplace, which may include the processing of health data in order to ensure that safety. Articles 6(1)(c), 9(2)(b) and (g) of GDPR, along with section 53 of the Data Protection Act, 2018 (which permits the processing of special categories of personal data for purposes of public interest in the area of public health) will likely be the most appropriate legal bases for processing this data.

For further information please visit the [Data Protection Commission website](#).

7 Requesting information on whether an employee has had COVID-19 or been vaccinated⁴

7.1 As noted in the Work Safely Protocol the decision to get a vaccination against COVID-19 is voluntary and employees will therefore make their own individual decisions in this regard.

⁴ The HSE process in relation to carrying out a risk assessment in respect of employees in certain roles who declined COVID-19 vaccination was discontinued from 1 March 2022.

7.2 Employers may ask employees for information in relation to their COVID-19 special category data in certain circumstances, for example, an employee who requests to avail of special leave with pay will be required to provide details of the results of their COVID-19 test result. At all times the data collection and processing must be necessary, proportionate and safeguarded.

Please ensure that this Circular and related documents are brought to the attention of managers within your area of responsibility and that updated information is disseminated to all employees (including those who are absent from work on any type of leave).

Queries

Queries from individual employees or managers should be referred to local HR/Employee Relations Departments. Please note that the National HR Helpdesk is also available to take queries from employees Tel: 1800 444 925 Email:

Ask.HR@hse.ie

Queries on the HSE Workplace Health & Wellbeing Unit's Covid-19 Occupational Health Guidance Documents may be referred to hr.wellbeing@hse.ie.

Queries from HR/Employee Relations Departments on this Circular may be referred to National Employee Relations, HR Directorate, 63-64 Adelaide Road, Dublin 2 Tel: 01 6626966 Email: info.t@hse.ie

Yours sincerely



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