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From: Anne Marie Hoey, National Director of Human Resources

Date: 5th October 2023

Subject: HR Circular 024/2023: Changes to the Public Service Sick Leave Scheme

Dear Colleagues

Please find attached a copy of Department of Health Circular 14/2023.

The following is a brief overview of the main changes to the public service sick leave scheme as set out in the Circular:

- Transitional arrangements apply. This means that where employees are receiving sick pay on the date of commencement of the changes (i.e. 4 September 2023) the pre-existing sick leave provisions will continue to apply for the duration of that episode of sickness absence. When the employee returns to work any future sickness absence will be dealt with under the terms of the revised Public Service Sick Leave Scheme.
- All periods of full pay, half pay and TRR will be included in the four-year look back to determine access to ordinary sick pay and extended sick pay under the Critical Illness Protocol (CIP).

- The four-year look back period in determining access to payment during sick leave will be extended for breaks in service of six months or more, and that additionally fulfil all the following criteria: unpaid / does not accrue annual leave /does not reckon towards pension.
- Temporary Rehabilitation Remuneration (TRR) is paid at a flat rate of 37.5% of an employee's pensionable remuneration (basic salary, fixed allowances and unsocial hours premium payments). The TRR payment is no longer based on the rules governing ill-health retirement pension payments. The Circular sets out the methodology to be used for the calculation of the unsocial hours premium pay element¹. Any Illness/Injury Benefit payments from the Department of Social Protection to which an employee is entitled will be offset against the TRR payment in the same manner as ordinary sick pay.
- HSE employees who are eligible for TRR are no longer required to submit an application form to claim the TRR payment. Please note that **TRR Form - HR114** no longer applies to HSE employees whose sick leave commenced on or after 4 September 2023. This Form only applies to HSE employees whose current period of sickness absence commenced prior to 4 September 2023 in line with the transitional arrangements.
- For a five year period from 4 September 2023, a "top up" model will operate for TRR payments for eligible employees. This transitional arrangement will conclude on 3 September 2028. During this period of 5 years, employees who consider themselves eligible can apply for a calculation of TRR using the pre-existing ill-health retirement provisions in order to determine whether they would receive a higher amount using this calculation. If the amount is higher, the difference will be given as a TRR "top-up" payment. HSE employees who wish to apply will be required to complete a new HSE TRR Top-Up Payment Application Form (HR118) which will be available [at this link](#). This form will contain details of the process to be followed for HSE employees. Section 38 employers should put a similar form and process in place for employees who wish to apply for a TRR top-up payment. Where the application is approved by the employer, the completed calculations should be submitted to the VHSS Unit in Manorhamilton for checking/approval.
- A waiting period of three calendar days now applies before TRR is paid except where an employee transitions from full pay or half pay during an ongoing absence, or where the employee has exhausted the extended sick pay limits under the Critical Illness Protocol (CIP) during the "protective year". The protective year is effective from the employee's date of return following CIP and applies to non-critical illnesses/injuries which occur within 12 months of the date of return.

¹ This methodology is similar but not identical to the methodology used for calculating Special Leave with Pay for COVID-19. It applies to pensionable payments only.

- Regulation 22 of the existing Regulations deals with sick leave during a period of probation and training² and replaces the pre-existing arrangements in the public health service with effect from 4 September as follows:-

- (i) The sick leave limits for permanent and fixed-term employees on a period of probation will apply on a pro rata basis. Upon satisfactory completion of their probationary period, an employee (permanent or fixed-term) will have access to the full sick leave limits. See section 6.10 of the Department of Health Circular.

It is important to note that these provisions supersede the pro rata entitlements of fixed-term employees under section 5 of Department of Health Circular 5/2014 <https://www.hse.ie/eng/staff/resources/hr-circulars/00514.pdf>. Managers should identify all employees (both permanent and fixed-term) who are currently serving a probationary period as set out in their contract of employment. In the case of fixed-term employees, if the employee's contract of employment does not contain a probationary clause, they will have access to the full sick leave limits with effect from 4 September 2023.

Section 38 employers and HSE areas should check that their fixed-term and specified purpose contract of employment templates provide for the inclusion of a probationary clause. Please note that the *European Union (Transparent and Predictable Working Conditions) Regulations 2022* provide that where a fixed-term employee has entered into a fixed-term contract with an employer which provides for a probationary period, the length of such probationary period shall be proportionate to the expected duration of the fixed-term contract and the nature of the work. Where an employer proposes to renew a fixed-term contract for the same functions and tasks, the fixed-term contract should not be subject to a new probationary period.

- (ii) The sick leave limits for trainees who have a contract of employment during their period of training will be adjusted pro rata for this period (see section 6.10 of the Department of Health Circular). For example, undergraduate nursing/midwifery students undertaking the continuous thirty six week internship in year four are entitled to 16 days at full pay and 16 days at half pay. The arrangements for NCHDs provide that the 2023 NCHD Intern intake will retain their paid sick leave entitlements as set out in the NCHD contract³ for the duration of their internship. All other NCHD grades will have access to the full sick leave limits with effect from 4 September 2023. The 2024 NCHD Intern intake will be subject to the standard

² In general, 'training' would typically refer to individuals on Trainee/Student/Intern type contracts.

³ 9(f)(v) The entitlement to sick leave for NCHDs will accrue on the basis of 35 days full pay and 35 days half pay per year of service, and proportionately less for an incomplete year, up to a maximum of 92 days full pay and 91 days half pay in a four-year period.

9(f)(vi) Service provided over a number of fixed-term contracts in the public health service shall be considered cumulatively for the accrual of paid sick leave.

pro-rata limits in their Intern year but will have full access to the sick leave provisions thereafter.

Other elements of the Public Service Sick Leave Scheme remain unchanged. Self-certified paid sick leave arrangements (referenced in section 3.1 of the Department of Health Circular) are set out in HSE HR Circular 20/2012 [here](#). Please note that the *Sample Form for Self-Certification of Sickness Absence* at Appendix 1 of Circular 20/2012 should not be used as there is no longer a requirement to disclose the nature of the illness or injury. A new Sample Form is attached at Appendix 1 of this Circular and should be read in conjunction with Circular 20/2012.

In the HSE, a national working group was set up to identify the system changes required to support implementation. SAP CoE will hold information sessions outlining the system changes prior to the changes being implemented into the SAP HR/Payroll system. Please note the following:

Section 4.2 of the Circular sets out the methodology for calculating the “unsocial hours premium pay element” of TRR payments for employees whose remuneration is not fixed. SAP CoE has devised an automated solution for applying the 37.5% to basic salary and is currently exploring the feasibility of an automated solution for allowances / unsocial hours premium payments under option (i) i.e. the roster that the employee was scheduled to work in the forthcoming period. SAP CoE will issue an update in due course.

It is important to note that the SAP system will not be able to automate the recording of TRR payments to employees prior to the introduction of TRR at 37.5% on 4 September 2023. This means that line managers will also need to check if the employee received TRR payments prior to 4 September 2023 during the four-year lookback so that this can be taken into account for the purpose of:

- (i) establishing whether the employee has exceeded the maximum limits for sick pay (183/365 days); and
- (ii) ensuring that payment of TRR does not exceed the maximum limits for TRR under ordinary sick leave or for CIP approved absences.

Line managers are responsible for ensuring that accurate information is provided to local sick pay processing units in relation to the inclusion of TRR payments made prior to 4 September 2023 to avoid overpayment or underpayment of sick pay to employees.

Non SAP areas within the HSE and Section 38 employers are required to implement the system changes required within their area/organisation.

The Department of Public Expenditure & Reform has produced a number of supporting documents which are available at the following link:- <https://www.gov.ie/en/publication/0cbbbe-updated-public-service-management-sick-leave-regulations-si-124-of-2014/>

Line managers have a key role in the implementation of the Public Service Sick Leave Scheme within their area of responsibility and should avail of support from Human Resources/Employee Relations if required. In addition to the responsibilities outlined above, additional responsibilities include but are not limited to the following:

- Inform employees of the various elements of the sick pay scheme (e.g. ordinary sick pay, Critical Illness, TRR etc.) and other sickness absence schemes to ensure that employees are fully aware of their entitlements while on sickness absence.
- Communicate to employees the organisation's HR policies and procedures in relation to sickness absence (e.g. HSE Managing Attendance Policy and Procedure, HSE Rehabilitation Policy) and inform them that the granting of sick pay is conditional on their compliance with these policies and procedures.
- Inform employees of their obligation to provide notification of any Illness/Occupational Injury Benefit payable from the Department of Social Protection during sick leave (see National HR Memo 6 October 2022 and HSE HR Circular 005/2018 [here](#)).
- Monitoring employees' sick pay entitlements and liaising with other personnel as appropriate (e.g. Time Returning Officers, payroll, HR etc.) to avoid under or over payments in sick pay. Employees should receive written notification of changes that will apply to their sick pay (e.g. moving from full pay to half pay).

Please ensure that this Circular is brought to the attention of all managers and staff within your area of responsibility.

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 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 National Employee Relations will provide briefings for HR/Employee Relations departments upon request.

Yours sincerely



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