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**From:** Anne Marie Hoey, National Director of Human Resources

**Date:** 21<sup>st</sup> June 2022

**Subject:** HR Circular 018/2022 - Guidance and FAQs for Public Service Employers during COVID-19 in relation to working arrangements and temporary assignments across the Public Service dated 27 May 2022.

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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 working arrangements and temporary assignments across the Public Service dated 27 May 2022 (Appendix A)**. This guidance document consolidates and 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

work arrangements during the COVID-19 recovery period across the public service. A copy of these FAQs is also available [here](#). The DPER FAQs should be read in conjunction with this Circular.

## 1. Attendance in the work premises

1.1 As previously outlined, the requirement to work from home unless it is necessary to attend the workplace in person has ended and this means a phased return to physical attendance in workplaces in the case of health service employees who were required to temporarily work from home. This phased return should proceed dependent on the circumstances of individual workplaces, informed by consultations with employees, and as appropriate to each employer/HSE service. The phased return may include a resumption of temporary blended working arrangements (i.e. a combination of on-site and remote working) where appropriate and subject to service requirements. It is up to each employer and relevant management to determine the appropriate working arrangements and to engage with their employees in relation to arrangements to support the safe return to physical attendance in the workplace and effective delivery of services.

1.2 The [Transitional Protocol - Good Practice Guidance for Continuing to Prevent the Spread of COVID-19](#), which has evolved from the Work Safely Protocol, and reflects the most recent public health advice, is the current guidance for the safe return and continued safe operating of workplaces. For further information on recommended health measures, employers should read the Transitional [Protocol](#) in detail. Please also refer to the HSE's updated guidance at this link: <https://healthservice.hse.ie/staff/coronavirus/safety-in-the-workplace/managing-employees-return-to-work-safely1.html>

1.3 The ***HSE Policy on Public Health Service Employees Working From Home during COVID-19*** is available [here](#). Please note that this policy also applies to health service employees who have a temporary blended working arrangement as part of a phased return to the work premises. The development of the HSE's longer term blended working policy will be informed by the introduction of new legislation which will provide for the right to request to work remotely and the DPER framework document on blended working.<sup>1</sup> In the interim, the HSE is supportive of a hybrid model of working in line with the requirements as set out above.

## UPDATED 2. COVID-19 Special Leave with Pay Arrangements See updated Quick Guide for Public Service Employers (Appendix D)

2.1 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.

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<sup>1</sup> The Right to Request Remote Work Bill 2021 is under review..

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.

2.2 SLWP will only apply when an employee is required to self-isolate and is displaying symptoms of COVID-19 and is either awaiting a test result or had a positive PCR test / or a positive antigen test which has been registered on the HSE portal. Medical or HSE advice should be followed. The HSE sets out the latest criteria for self-isolation [at this link](#). **In order to avail of SLWP evidence is required in the form of a PCR test result or antigen test result registered on the HSE portal.** While public health advice, as set out in the [HSE website](#), no longer requires testing for certain groups<sup>2</sup>, individuals can still access the HSE portal to register antigen test results. SLWP **does not** apply in any other scenarios.

Please refer to the following documents

- Procedure for public health service employees and managers for absences due to COVID-19 Appendix B
- COVID-19 Self-Declaration Form for Public Health Service Employees for Special Leave with Pay<sup>3</sup> Appendix C
- Quick Guide of Scenarios Appendix D

2.3 Note that at any stage if employees state that they feel well enough to work, but have tested positive for COVID-19 or are self-isolating because they were symptomatic, 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 as it relates to self-isolation.

2.4 SLWP only applies to employees who were rostered or due to be working. SLWP cannot be substituted for other forms of leave, for example, sick leave.

2.5 Since 7 February 2022, in instances where an employee is symptomatic and subsequently has a confirmed case of COVID-19, SLWP may continue for up to calendar 10 days<sup>4</sup> if necessary and where it is supported by a positive PCR test for COVID-19 or a positive antigen test registered on the HSE portal. If an employee is still unwell after 10 calendar days they will move to ordinary sick leave arrangements, including a referral to Occupational Health. As set out in [HSE HR Circular 004-2022](#), employees who are in receipt of SLWP since before 7 February

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<sup>2</sup> The HSE website states that healthcare workers who have symptoms should get a PCR test.

<sup>3</sup> This Form is intended solely for those employees who meet the criteria for special leave with pay as set out in the DPER FAQs but do not have access to medical certification.

<sup>4</sup> Separate unrelated instances of absence due to HSE/medical advice to self-isolate due to COVID-19 are not cumulative for the purpose of determining whether the 10-day limit has been reached.

2022 will continue to be subject to the time limits and conditions set out in [HSE HR Circular 073-2020](#) for that period of absence.

**2.6 From 1 July 2022, SLWP will change for all cases.** SLWP will apply for the duration of the stated self-isolation period only (whatever duration is in place at the time of the absence, currently 7 calendar days). From 1 July 2022 any periods of COVID-19 related illness which extend beyond the stated self-isolation period will be treated as ordinary sick leave.

The current HSE Occupational Health Guidance provides that healthcare workers must self-isolate for a full 7 days in line with the current Public Health advice. If symptoms have substantially or fully resolved for the final 2 days of 7 full days, the employee can return to work in any healthcare facility on day 8. Where symptoms have not resolved, the employee should remain away from the work premises for the full 10 days and return to the work premises is allowed if symptoms have substantially or fully resolved for the final two of those 10 days. After the expiry of the self-isolation period, as per Public Health advice, an employee is no longer entitled to SLWP. During any additional period beyond the Public Health self-isolation period that an employee is required by their employer not to attend the work premises solely as a precautionary measure, as per HSE Occupational Health Guidelines, they should be facilitated to work from home if they feel well enough to work. This may include assigning duties outside the employee's normal role so that they can work remotely. If the employee is still unfit for work from day 8, the ordinary sick pay scheme will apply for the duration of their sickness absence. Please refer to the latest HSE Covid-19 Occupational Health advice [here](#).

**2.7** 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.

**2.8** 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.

2.9 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.

2.10 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.

2.11 In the event of non-compliance with the provisions of SLWP (including the requirement to provide bona fide confirmation of self-isolation/diagnosis of COVID-19) the disciplinary procedure may be invoked.

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

2.13 In the case of employees who contracted COVID-19 and are on long-term absence due to long COVID, the Occupational Health Physician (OHP) may recommend a phased return to work as part of the employee's rehabilitation plan. In the case of employees who were in receipt of SLWP<sup>5</sup> prior to 7 February 2022, they continue to retain access to SLWP during the phased return to work, up to 1 July 2022, subject to the following conditions:

- (i) In accordance with the employer's standard management referral process, the Occupational Health Physician (OHP) carries out a medical assessment and recommends a phased return to work, on a temporary basis, in line with the employer's Rehabilitation Policy (or equivalent policy). The specific time limit for the temporary phased return arrangement should be determined on a case-by-case basis.

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<sup>5</sup> These employees are covered by HSE HR Circular 73/2020 which provides that the maximum 28-day limit for SLWP for COVID-19 does not apply to employees who satisfy the conditions set out in section 3 of [HSE HR Circular 73/2020](#). Please note that from 7 February 2022, all new cases are subject to a maximum limit of 10 consecutive calendar days.

- (ii) SLWP may apply, subject to defined time limits, to the portion of contracted hours that the employee is deemed temporarily unfit to work due to the medically certified COVID-related illness.
- (iii) During the phased return, the OHP confirms that the employee is accessing appropriate medical care and rehabilitation supports.
- (iv) The employee will be required at all times to comply with their employer's HR policies and procedures governing sickness absence, such as the organisation's Managing Attendance Policy and Rehabilitation Policy, and to co-operate with medical referrals by the employer.

### **3. Health Care Workers in the Higher Risk Categories**

3.1 Please refer to *HSE HR Circular 7/2022 High/Higher Risk Health Care Worker including pregnant Health Care Workers in the context of post peak COVID-19* [here](#). The latest HSE COVID-19 Occupational Health guidelines are available [at this link](#).

### **4. COVID-19 recording/reporting requirements**

4.1 SLWP is being used in place of normal sick pay for public servants and should be recorded separately as "**Covid-19 Paid Leave**". This separate classification is important for the following reasons:

- (i) to ensure that periods of COVID-19 absences covered by SLWP 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 data<sup>6</sup> and all expenditure in relation to special leave with pay for COVID-19 can be tracked separately in order to ensure that all exceptional spending on COVID-19 within the health sector is capable of being identified and reported on at national level.

New 4.2 Please refer to *HR Circular 017/2022 - Updated HR Circular on National Absence Reporting and the Collection of Monthly Absence Data* [here](#).

4.3 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).

### **5. Employees attending a COVID-19 vaccination appointment**

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<sup>6</sup> <https://dataprotection.ie/en/news-media/blogs/data-protection-and-covid-19>



5.1 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.

## **6. Employees who may have a reaction to a COVID-19 vaccination**

6.1 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.

6.2 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 4 of this Circular.

## **7. Legal basis for processing employee data in relation to COVID-19**

7.1 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](#).

## **8 Requesting information on whether an employee has had COVID-19 or been vaccinated<sup>7</sup>**

8.1 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.

8.2 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 PCR test. 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).

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<sup>7</sup> 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.

## 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](mailto:Ask.HR@hse.ie)

Queries on the occupational safety and health implications of the COVID-19 Transitional Protocol may be referred to the HSE National Health and Safety Function (NHSF). Log your request at: <https://healthservice.hse.ie/staff/benefits-services/health-and-safety/health-and-safety-helpdesk.html> or go to: <http://pndchssdweb02.healthirl.net/Health.WebAccess/ss>  
Alternatively contact the National Health & Safety Helpdesk Tel: 1800 420420 Monday to Friday between 10.30-12.00 and 14.00-15.30.

Queries on the HSE Workplace Health & Wellbeing Unit's Covid-19 Occupational Health Guidance Documents may be referred to [hr.wellbeing@hse.ie](mailto: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](mailto:info.t@hse.ie)

Yours sincerely



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