

Department of Public Expenditure and Reform

Guide to Sick Regulations

**Public Service Management (Sick Leave) Regulations 2014
(S.I. No. 124 of 2014) as amended by Public Service Management (Sick
Leave) (Amendment) Regulations 2015 (S.I. No. 384 of 2015)**

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Introduction

What is the purpose of the Public Service Management (Sick Leave) Regulations?

The Public Service Management (Sick Leave) Regulations 2014 (as amended by the Public Service Management (Sick Leave) (Amendment) Regulations 2015) set out the terms of the new Public Service Sick Leave Scheme.

The rationale for the new scheme is:

- to increase productivity, and
- lower the cost of sick leave,

by reducing the periods during which paid sick leave will be available in future and capping the period during which “temporary rehabilitation remuneration”, formerly “pension rate of pay”, may be paid.

The new scheme also provides for the award of extended paid sick leave, on an exceptional basis, where an individual becomes incapacitated as a result of a critical illness or serious physical injury.

What is the legal basis for the Regulations?

The Regulations are made under section 58B of the Public Service Management (Recruitment and Appointments) Act 2004, inserted by section 7 of the Public Service Management (Recruitment and Appointments) (Amendment) Act 2013. Section 58B enables the Minister for Public Expenditure and Reform to make regulations regarding sick pay that will apply across the Public Service.

Who is covered by the new Public Service Sick Leave Scheme?

The new Public Service Sick Leave Scheme applies to all individuals apart from members of the judiciary, members of the Permanent Defence Force and staff of the Central Bank of Ireland.

Where will the administrative arrangements for the new sick leave scheme be set out?

The administrative arrangements for the new sick leave scheme will be set out in circular or any other relevant document distributed or prepared by or on behalf of each public service employer.

What is the purpose of this Guide?

The purpose of this Guide is to assist public service staff in understanding and applying the new sick leave scheme that is set out in the Regulations. The Guide is not a legal interpretation and should be used in conjunction with the Regulations.

Part 1: Preliminary and General (*basic issues relating to the operation of the new sick leave scheme*)

Introduction

Part 1 deals with a number of basic issues relating to the operation of the new sick leave scheme. It explains:

- when the new sick leave scheme will start,
- certain roles and concepts under the new scheme,
- who will be covered by the new scheme,
- how the new scheme will affect occupational injury/illness schemes, and
- the calculation of sick pay.

Regulation 1: Citation and commencement

Regulation 1 sets the date that the new sick leave scheme will come into operation:

- **31 March 2014** for the generality of the public service; and
- **1 September 2014** for:
 - (a) teachers,
 - (b) special needs assistants,
 - (c) employees of recognised schools,
 - (d) employees of education and training boards, and
 - (e) employees of universities, institutes of technology and other higher education institutions.

Regulation 2: Interpretation

The Regulations identify certain roles and concepts that are necessary for the operation of the new sick leave scheme. Regulation 2 explains what these roles and concepts mean. The most significant new terms defined in the regulations include:

- an “**administrator**” means any staff member(s) that is/are authorised to make decisions in relation to the award of paid sick leave;
- a “**relevant employer**” means any public service employer;
- a “**relevant person**” means any individual who is absent on sick leave;

- **“sick pay”** means the pay that an individual may be awarded when he or she is absent on sick leave; and
- **“temporary rehabilitation remuneration”** means the rate of pay an individual may be awarded if he or she has exhausted his or her access to paid sick leave;

Regulation 3: Application of the regulations

Regulation 3 provides that the new sick leave scheme will apply to all individuals apart from members of the judiciary, members of the Permanent Defence Force and staff of the Central Bank of Ireland.

Regulation 4: Occupational injury and illness schemes are not prejudiced

Regulation 4 clarifies that the terms of any occupational injury or illness schemes in place in the public service are not changed by the new public service sick leave scheme. As a result, where an individual suffers from an injury/illness that may be classified as an “occupational” injury/illness the individual may still have access to his or her occupational injury/illness scheme regardless of the sick pay limits set out in the new sick leave scheme.

Regulation 5: Sick pay not to include certain allowances

The purpose of Regulation 5 is to accommodate the practices that exist across the Public Service regarding the calculation of sick pay. This Regulation means that, depending on the ‘rule, custom or practice’ in the organisation/sector allowances may not be included in sick pay under any circumstances or in certain circumstances.

Part 2: Limitation on Temporary Rehabilitation Remuneration (*basic criteria for the award of temporary rehabilitation remuneration*)

Introduction

Part 2 sets out the basic criteria that an individual must meet before he or she will be eligible for payment of temporary rehabilitation remuneration.

Regulation 6: Provisions concerning temporary rehabilitation remuneration (including rate thereof)

Regulation 6 sets out the conditions to be met before temporary rehabilitation remuneration can be paid:

- (a) the individual concerned must have the service required for an ill health retirement pension*; and
- (b) there must be a reasonable prospect that the individual will be able to return to work and give regular and effective service.

* An ill health retirement pension is a pension that may be paid to an individual where he or she retires on health grounds.

Regulation 6 also provides that the rate of pay of temporary rehabilitation remuneration is the same as the rate of pension that the individual would be paid if they were to be ill-health retired.

Regulation 6 must be read in conjunction with Regulations 15-18 (Part 5: Temporary Rehabilitation Remuneration) which sets out the maximum length of time which temporary rehabilitation remuneration can be paid.

Part 3: Sick Pay Generally (*conditions and duration of sick pay for non-critical illness/injury*)

Introduction

Part 3 sets out the conditions for the payment of sick pay and the length of time that sick pay may be paid in cases of non-critical illness/injury.

Regulation 7: Conditions for payment of sick pay

Regulation 7 states that for sick pay to be paid:

- (1) a medical practitioner must certify in writing that the individual cannot attend work because of illness or injury;
- (2) any communication made by or on behalf of the individual concerned – either at the start of the sick leave absence or during the course of the sick leave absence – must be genuine, made in good faith and comply with the provisions of any relevant circular; and
- (3) where the individual is employed on a probationary or temporary basis, he or she may not be paid sick pay where that is the ‘rule, practice or custom’.

If any of these conditions are not satisfied sick pay may be refused or stopped.

Regulation 8: Operation of Part: construction of certain references

Regulation 8 explains certain concepts that are relevant in the calculation of the number of days an individual may be given paid sick leave. (The total number of days which an individual may be given paid sick leave (for non-critical illness) is set out in the following two Regulations – 9 & 10):

- “a period of sick leave” can include consecutive and non-consecutive days, in other words, an individual may have no access to paid sick leave where he or she has been absent for one or more extended period(s) (e.g. a period of 183 consecutive days) or several shorter periods (e.g. a period of 100 consecutive days, a period of 80 consecutive days and three separate periods of 1 day each); and
- the number of paid sick leave days are based on a 7-day working week, therefore, where an employer calculates periods of sick leave on the basis of a shorter working week (e.g. 5-day working week) the sick leave limits should be reduced proportionately.

Regulation 9: Amounts and rates (generally) of sick pay

Regulation 9, below, sets out the maximum length of time that an individual may be paid sick leave:

[These limits (i.e. maximum length of time an individual can be given sick pay) set out below do not apply in cases of critical illness, pregnancy-related provisions, and temporary rehabilitation remuneration. These limits are set out in Parts 4, 5 & 6]

- a maximum of 92 days (3 months) on full pay in a rolling 12-month period,
- followed by a maximum of 91 days on half pay (3 months),
- the length of time an individual can be paid sick leave for is subject to an overall maximum of 183 days of paid sick leave as set out in Regulation 10 below.

Regulation 10: Maximum period of paid sick leave by reference to 4 year period preceding relevant time

Regulation 10 provides that an individual cannot have more than 183 days (6 months) of paid sick leave in a rolling 4-year period (i.e. a 4-year look back).

[This overall limit (i.e. maximum length of time an individual can be given sick pay) does not apply in cases of critical illness, pregnancy-related provisions, and temporary rehabilitation remuneration. These limits are set out in Parts 4, 5 & 6]

Part 4: Critical Illness or Injury: Sick Leave Provision (*conditions and limits in relation to sick pay for critical illness/injury*)

Introduction

Part 4 sets out the conditions for the payment of sick pay and the length of time that paid sick leave can be given in cases of critical illness/injury. This Regulation should be read in conjunction with the Critical Illness Protocol (CIP) which sets out the policy and procedures contained in the CIP.

Regulation 11: Operation of Part: construction of certain references

Regulation 11, which is the same as Regulation 8, explains certain concepts that are relevant in the calculation of the number of days an individual may be given paid sick leave for critical illness or injury: (The total number of days which an individual may be given paid sick leave for a critical illness or injury is set out in the following two Regulations – 12 & 13):

- “a period of sick leave” may include consecutive and non-consecutive days, in other words, an individual may exhaust the sick pay limits where he or she has been absent for one extended period (e.g. a period of 365 consecutive days) or several shorter periods (e.g. a period of 300 consecutive days, a period of 60 consecutive days and five separate periods of 1 day each); and
- the sick pay limits are based on a 7-day working week, therefore, where the relevant employer calculates periods of sick leave on the basis of a shorter working week (e.g. 5-day working week) the sick leave limits should be reduced proportionately.

Regulation 12: Sick leave provision for critical illness or injury

Regulation 12 provides that extended sick pay for critical illness or injury may be awarded in two types of situation:

- (a) where the occupational health physician has certified that the individual is suffering from a critical illness, serious injury or serious medical condition; and
- (b) where there are exceptional circumstances relating to an illness, injury or condition – either previous or current – that justifies its award.

Regulation 12 also sets out the maximum levels of sick pay to which an individual may have access in cases of critical illness or injury. These are:

- a maximum of 183 days (6 months) on full pay in a rolling 12-month period,
- followed by a maximum of 182 days (6 months) on half pay,

- subject to an overall maximum of 365 days of sick pay in a rolling 4 year period (as set out in Regulation 13 below).

[These limits (i.e. maximum length of time an individual can be given extended sick pay under the Critical Illness provisions) set out below do not apply in cases of pregnancy-related provisions and temporary rehabilitation remuneration. These limits are set out in Parts 5 & 6]

Regulation 13: Maximum period of extended paid sick leave by reference to period of 4 years that has preceded relevant time

Regulation 13 provides that where an individual is being given extended sick pay under the Critical Illness provisions they cannot have more than 365 days (1 year) of paid sick leave in a rolling 4-year period (i.e. a 4-year look back).

[This overall limit (i.e. maximum length of time an individual can be given extended sick pay under the Critical Illness provisions) does not apply in cases of pregnancy-related provisions and temporary rehabilitation remuneration. These limits are set out in Parts 5 & 6]

Regulation 14: Provision for cases in which non-critical illness or injury follows critical illness or injury

The purpose of Regulation 14 is to deal with situations where an individual has taken sick leave because of a critical illness/injury and subsequently suffers from a non-critical illness/injury within a 12 month period. In such situations, it is likely that the individual, who has had access to extended sick pay for critical illness/injury (i.e. 365 days), will have no further access to sick pay as they will have exhausted any access to sick pay. (The sick pay limits (i.e. the maximum number of days, either consecutive or non-consecutive that an individual can be paid sick pay) for non-critical illness/injury are 183 days)

As a result, Regulation 14 provides that an individual can continue to access the extended sick pay limits normally given for critical illness/injury only (i.e. 365 days), even where they are not critically ill provided that:

- the individual has previously been absent because of a critical illness/injury; and
- the individual suffers from a non-critical illness/injury during the 12 months following the first day of the critical illness/injury absence.

In such circumstances, the individual can continue to access the extended sick pay limits until:

- the 12 months is up, or
- the limit of 365 days of paid sick leave in a 4-year rolling period is reached,

whichever happens first.

Part 5: Temporary Rehabilitation Remuneration (*limits in relation to temporary rehabilitation remuneration*)

Introduction

Part 5 sets out that where an individual has been paid full or half pay up to the maximum length of time allowed for in Part 3 of the Regulations (general sick leave provisions) and/or Part 4 (Critical Illness Provisions) they may be paid temporary rehabilitation remuneration (TRR).

Regulation 15: Operation of Part: construction of certain references

Regulation 15, which is the same as Regulations 8 and 11 explains certain concepts that are relevant in the calculation of the number of days an individual may be given paid temporary rehabilitation remuneration: (The total number of days which an individual may be given paid sick leave for a critical illness or injury is set out in the following two Regulations – 16 & 17.)

- “a period of sick leave” may include consecutive and non-consecutive days, in other words, an individual may exhaust the sick pay limits where he or she has been absent for one extended period (e.g. a period of 365 consecutive days) or several shorter periods (e.g. a period of 300 consecutive days, a period of 60 consecutive days and five separate periods of 1 day each); and
- the sick pay limits are based on a 7-day working week, therefore, where the relevant employer calculates periods of sick leave on the basis of a shorter working week (e.g. 5-day working week) the sick leave limits should be reduced proportionately.

Regulation 16: Payment of temporary rehabilitation remuneration: decision of administrator

Regulation 16 sets out the length of time that an individual can be paid temporary rehabilitation remuneration. It provides that an individual may be paid TRR where he or she has exhausted the sick pay limits for either non-critical illness/injury or critical illness/injury. It also provides that where an individual has received 365 days’ of sick leave pay in a 4 year rolling period, he or she may be paid TRR for a max of 365 days.

For example, if an individual has exhausted the sick pay limits under Regulation 9 (i.e. 183 days), he or she may be granted up to 547 days of temporary rehabilitation remuneration. Similarly, if an individual has exhausted the sick pay limits under Regulation 12 (i.e. 365 days), he or she may be granted up to 365 days of temporary rehabilitation remuneration.

In practice, this means that any individual may be paid

- sick pay at the full rate of pay;

- sick pay at the half rate of pay;
- sick pay at the rate of TRR

for a combined max period of 2 years in any 4 year rolling period.

Regulation 17: Additional temporary rehabilitation remuneration following paid sick leave for critical illness or injury

Regulation 17 provides that a further period of temporary rehabilitation remuneration of up to 730 days (2 years) may be paid where it is a direct continuation of an illness under the Critical Illness Protocol and

- a further period of sick leave is required to rehabilitate from the critical illness/injury;
- an occupational health physician certifies that there is a reasonable prospect of the individual returning to work and giving regular and effective service; and
- the decision to award the additional period of temporary rehabilitation remuneration is reviewed every 6 months.

Regulation 18: Inclusion of payments under previous regime in calculation of temporary rehabilitation remuneration

Regulation 18 (as amended by the Public Service Management (Sick Leave) (Amendment) Regulations 2015) was included in the Regulations to ensure that there is absolute clarity that any amount of pension rate of pay paid under the previous sick leave scheme (i.e. before 31st March or while an individual is covered by the transitional arrangements) will be taken into account for the purpose of calculating the amount of temporary rehabilitation remuneration that may be paid.

Part 6: Sick Leave Provisions: Maternity Related Provisions (*treatment of pregnancy-related illness*)

Introduction

Part 6 provides for situations in which an individual who has exhausted her sick pay limits suffers from a pregnancy-related illness. Part 6 was amended by Public Service Management (Sick Leave) (Amendment) Regulations 2015.

Regulation 19: Pregnancy-related illness: additional entitlement to paid sick leave at the half rate

Regulation 19 is intended to deal with a situation where an individual is absent because of a pregnancy-related illness and has exhausted the limits for sick leave on half pay. In such a case, Regulation 19 provides that she will have access to an extended period of sick pay at the half rate for the duration of her pregnancy-related illness.

It also provides that the extended period of sick pay at the half rate will not be used in calculating how much sick leave she has taken i.e. it will not be reckoned in calculating her sick leave record.

Regulation 20: Pregnancy-related and non-pregnancy-related illness; provisions for the purpose of Regulations 9, 12, etc.

Regulation 20 sets out how paid sick leave should be treated for absences following pregnancy-related sick leave. The Regulation provides that a woman who has exhausted her access to paid sick leave due to pregnancy-related sick leave in the previous 4 years may have access to additional non-pregnancy-related sick leave at the half rate of pay. The number of additional days allowed:

- Will be the equivalent number of days taken on pregnancy-related sick leave in the 4 years;
- Must not exceed normal sick leave limits (i.e. 183 days/365 for CIP) for non-pregnancy-related sick leave (when counted with other non-pregnancy-related sick leave in the previous 4 years).

Regulation 20A: Transitional provision with respect to pregnancy-related sick leave

Regulation 20A sets out how pregnancy-related sick leave which was taken prior to the introduction of the new scheme should be treated for the purpose of determining access to paid sick leave. The Regulation discounts all pregnancy-related sick leave that occurred before

the introduction of the new Public Service Sick Leave Scheme for the purpose of calculating access to paid sick leave under the current Scheme.

Part 7: Miscellaneous

Introduction

Part 7 deals with a number of miscellaneous matters:

- paid sick leave floor for pre-1995 recruits;
- calculations for those on contract, in training or worksharing;
- authorisation of staff member(s) to make decisions in relation to the award of paid sick leave; and
- how self-certified paid sick leave should be treated in calculating how much sick leave an individual has taken.

Regulation 21: Paid sick leave floor (temporary rehabilitation remuneration) – pre 6 April 1995 recruits

Regulation 21 provides for a minimum rate of paid sick leave for public servants who are awarded temporary rehabilitation remuneration but are not eligible for Illness Benefit (i.e. those who were recruited before 6 April 1995 and do not make Class A PRSI contributions). To ensure that such public servants are not in a worse position than public servants recruited after 6 April 1995, Regulation 21 provides that any amount of temporary rehabilitation remuneration awarded to a pre-1995 public servant must equal the amount of Illness Benefit (calculated at the personal rate) that would have been awarded to him or her had he or she been eligible.

Illness Benefit calculated at the “personal rate” means the weekly rate of Illness Benefit to which a person would be entitled excluding any increases for qualified adults or qualified children as defined by the Department of Social Protection.

Regulation 22: Pro rata calculations

Regulation 22 provides that any sick pay awarded to an individual who is on a period of probation or training, or has a work pattern that is less than full-time must be calculated on a pro rata basis. Regulation 22 only applies where the individual concerned has access to sick pay i.e. where the relevant employer makes sick pay available to individuals who are on periods of probation or training, or have work patterns that are less than full-time. (See Regulation 7 which provides that it is a condition for the payment of sick pay to an individual who is employed on a probationary or temporary basis that the relevant employer does not have any “rule, practice or custom” that prohibits the payment of sick pay.)

Regulation 23: Delegation of function of making determinations

Regulation 23 is a technical provision which enables ‘relevant employers’ (i.e. any public service employer) – acting through their ‘administrators’ (any staff member that is authorised to make decisions in relation to the award of paid sick leave) –to make decisions in relation to the award of paid sick leave. In this regard, a relevant employer may authorise one or more members of staff to carry out one or more functions relating to sick pay. For example, in the Civil Service an “administrator” may be the line manager/supervisor, HR manager or HR Unit.

Regulation 24: Self certified periods of sick leave: discretion of relevant employer

Regulation 24 provides that an administrator may award sick pay for limited periods of self-certified sick leave. This has been provided for in the sectors by circular. Regulation 24 also states that any period of self-certified sick leave must be taken into account for the purpose of calculating how much paid sick leave an individual can access.