



STATUTORY INSTRUMENTS.

S.I. No. 124 of 2014



PUBLIC SERVICE MANAGEMENT (SICK LEAVE) REGULATIONS
2014

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I, BRENDAN HOWLIN, Minister for Public Expenditure and Reform, in exercise of the powers conferred on me by section 58B of the Public Service Management (Recruitment and Appointments) Act 2004 (No. 33 of 2004) (inserted by section 7 of the Public Service Management (Recruitment and Appointments) (Amendment) Act of 2013 (No. 47 of 2013)), and having complied with subsection (4) of that section 58B, hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the Public Service Management (Sick Leave) Regulations 2014.

(2) Subject to paragraph (3), these Regulations shall come into operation on 31 March 2014.

(3) In so far as they relate to a relevant person who is—

(a) a teacher,

(b) a special needs assistant,

(c) an employee of a recognised school,

(d) an employee of an education and training board, or

(e) an employee of a university, institute of technology or other higher education institution,

these Regulations shall come into operation on 1 September 2014.

Interpretation

2. (1) In these Regulations—

“Act of 2004” means the Public Service Management (Recruitment and Appointments) Act 2004 (No. 33 of 2004);

“administrator” shall be read in accordance with Regulation 23(2);

“commencement of these Regulations” means—

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 11th March, 2014.*

- (a) subject to paragraph (b), 31 March 2014;
- (b) in so far as the provision (in which that expression appears) falls to be applied to a relevant person referred to in Regulation 1(3), 1 September 2014;

“illness benefit” means either—

- (a) disability benefit under Chapter 8 of Part 2 of the Social Welfare Consolidation Act 2005 (No. 26 of 2005), or
- (b) illness benefit under Chapter 1 of Part 2 of the Social Welfare (Consolidated Claims Payments and Control) Regulations 2007 (S.I. No. 142 of 2007);

“ill health retirement pension” means a pension that may be granted to a person under the relevant enactment in circumstances of the person’s retiring from his or her employment or office (or other position) on health grounds;

“medical practitioner” has the same meaning as it has in section 2 of the Medical Practitioners Act 2007 (No. 25 of 2007);

“occupational health physician” means a medical practitioner registered under the Medical Practitioners Act 2007 who—

- (a) has a postgraduate qualification in occupational medicine or occupational health, or
- (b) is on a training scheme in occupational medicine;

“personal rate”, in relation to illness benefit, means the weekly rate of illness benefit to which a person would be entitled excluding any increases for qualified adults or qualified children, as those latter 2 expressions are defined by the Social Welfare Consolidation Act 2005 and the Social Welfare (Consolidated Claims Payments and Control) Regulations 2007;

“relevant employer” means—

- (a) the public service body that employs the relevant person, or
- (b) the public service body in which the relevant person holds office or another position;

“relevant enactment” means the enactment, or instrument under an enactment, that makes provision for the grant of superannuation benefits to the relevant person;

“relevant person” means a public servant falling within the class of public servant specified in Regulation 3(1);

“temporary rehabilitation remuneration” shall be read in accordance with Regulation 16;

“sick leave remuneration” means remuneration paid to a relevant person in respect of a period of sick leave on that person’s part.

(2) A reference in these Regulations to—

- (a) payment of sick leave remuneration at the full rate shall be read as a reference to payment of the whole amount of remuneration that would otherwise accrue to the relevant person concerned, and
- (b) payment of sick leave remuneration at the half rate shall be read as a reference to payment of sick leave remuneration at the rate of 50 per cent of the whole amount referred to in subparagraph (a),

but this paragraph does not prejudice Regulation 5.

(3) For the avoidance of doubt, a reference in these Regulations to a day of sick leave includes a reference to a Saturday or Sunday.

(4) A reference in these Regulations to a day of sick leave includes a reference to a day on which the place of employment is closed or on which the relevant person is not scheduled for attendance to his or her duties, but this paragraph is without prejudice to any provision of these Regulations that specifies that a pro rata reduction, in respect of a particular matter, shall apply in specified circumstances.

Application of Regulations (including provision concerning past sick leave)

3. (1) Subject to paragraph (2), the following shall be a class of public servant for the purpose of these Regulations, namely a public servant falling within any of paragraphs (a) to (e) of the definition of “public servant” in section 58A(1) of the Act of 2004.

(2) There is excluded from the foregoing class, and accordingly these Regulations shall not apply to—

- (a) a member of the judiciary,
- (b) a member of the Permanent Defence Force, or
- (c) a member of staff of the Central Bank of Ireland.

(3) Each of the following—

- (a) a period of sick leave on the part of a relevant person that has occurred, and
- (b) sick leave remuneration (whether described as such or not) paid to a relevant person

before the commencement of these Regulations shall (to the extent that, if it occurred or were paid after such commencement, it would be taken into account for those purposes) be taken into account—

- (i) in reckoning for the purposes of these Regulations the period of sick leave that has occurred on the part of a relevant person or the period in respect of which sick leave remuneration has been paid to the relevant person, and
- (ii) for any other relevant purposes of these Regulations.

Occupational injury and illness schemes not prejudiced

4. These Regulations are without prejudice to the rights and obligations of a relevant person under an occupational injury scheme or an occupational illness scheme.

Sick leave remuneration not to include certain allowances

5. (1) Where a provision of these Regulations specifies circumstances in which sick leave remuneration is payable it shall not be read as extending to the payment of so much of the remuneration (of the relevant person concerned) as consists of an excepted allowance.

(2) In this Regulation “excepted allowance” means an allowance that, by virtue of any rule, custom or practice of the relevant employer, is either—

- (a) not payable during sick leave on the part of a relevant person, or
- (b) not payable in particular circumstances of a relevant person’s being on sick leave and those particular circumstances obtain in the particular case concerned.

Part 2

LIMITATION ON TEMPORARY REHABILITATION REMUNERATION

Provisions concerning temporary rehabilitation remuneration (including rate thereof)

6. (1) In any of the cases in which these Regulations provide that there may be paid remuneration expressed to be temporary rehabilitation remuneration, such remuneration may only be paid if—

- (a) the relevant person concerned has given not less than the minimum length of service that is required under the relevant enactment for the person to be eligible for the grant of an ill health retirement pension, and
- (b) there is a reasonable prospect, on the person’s part, of resumption of duty with ability to render regular and effective service.

(2) Such temporary rehabilitation remuneration shall be paid at the same rate as the rate at which an ill health retirement pension would be paid to the relevant person concerned if such a pension were to be granted to him or her.

Part 3

SICK LEAVE REMUNERATION GENERALLY

Conditions for payment of sick leave remuneration

7. (1) Subject to Regulation 24, it shall be a condition for the payment of remuneration during a period of sick leave on a relevant person's part that a medical practitioner certifies in writing that the person is unable to attend to his or her duties due to illness or injury.

(2) Notwithstanding satisfaction of the foregoing condition, it shall be a condition for the payment of remuneration during a period of sick leave on a relevant person's part (or, in the case of subparagraph (b), for the continued payment of such remuneration)—

(a) that—

- (i) any initial representation or communication, by or on behalf of the person, to the administrator (concerning the person's being unable to attend to duties due to illness or injury) appears to the administrator to be bona fide, and
- (ii) any relevant circular is complied with,

and

(b) that

- (i) any subsequent representation or communication, by or on behalf of the person, to the administrator (concerning the person's continued inability to attend to duties due to illness or injury) appears to the administrator to be bona fide, and
- (ii) any relevant circular, in so far as it relates to that continued inability, is complied with.

(3) It shall be a condition for the payment of remuneration during a period of sick leave on a relevant person's part, being a person who is serving with the relevant employer on a probationary or temporary basis, that no rule, practice or custom of the relevant employer precludes the payment of such remuneration to a person serving with the employer in such a capacity.

(4) In this Regulation—

“bona fide”, in relation to a representation or communication, means in good faith and well founded in fact;

“relevant circular” means any circular or other document that is for the time being—

- (a) disseminated or prepared by the relevant employer, or

- (b) disseminated or prepared by another public service body in respect of the relevant employer,

in so far as it specifies procedures that must be complied with by a person before the person may absent himself or herself from duties on account of illness or injury or, in the case of paragraph (2)(b), continue to so absent himself or herself.

Operation of Part: construction of certain references

8. (1) A reference in this Part to a period of sick leave is a reference to a period of sick leave on the relevant person's part, and a reference in this Part to a period of sick leave (specified as a number of days) is a reference to a period of days of sick leave of that number, whether consecutive or otherwise.

(2) If the relevant employer calculates (for the purposes of payment by the employer of sick leave remuneration) periods of sick leave on the basis of a number of days per working week that is less than 7, then each reference in this Part to a particular number of days shall, in the case of that relevant employer, be read as a reference to that number of days reduced pro rata.

Amounts and rates (generally) of sick leave remuneration

9. (1) This Regulation is subject to Regulation 10.

(2) Sick leave remuneration at the full rate may be paid in a given instance if, in the 12 months preceding the first day of the relevant person's current period of sick leave (the "12 month reference period"), the period of sick leave, remunerated at the full rate, has not exceeded 92 days.

(3) Subject to paragraph (4), sick leave remuneration at the half rate may be paid in respect of any period of sick leave, in the 12 month reference period, following on, or occurring after, the period of 92 days sick leave referred to in paragraph (2).

(4) Payment of sick leave remuneration at the half rate shall be limited to 91 days of sick leave.

(5) Save as provided in the preceding paragraphs (and unless a decision to grant temporary rehabilitation remuneration is made or Part 4 or 6 applies), no sick leave remuneration shall be paid in the 12 month reference period.

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

10. Notwithstanding anything in Regulation 9, but subject to Parts 4, 5 and 6, if, in the period of 4 years preceding the first day of the relevant person's current period of sick leave, there has occurred a period of sick leave that is in excess of 183 days (being a period of 183 days in respect of which remuneration at the full rate or the half rate has been paid) no sick leave remuneration shall be paid in respect of that part of that sick leave that exceeds 183 days.

Part 4

CRITICAL ILLNESS OR INJURY: SICK LEAVE PROVISION

Operation of Part: construction of certain references

11. Regulation 8 applies for the purpose of this Part as it applies for the purpose of Part 3.

Sick leave provision for critical illness or injury

12. (1) This Part applies to a case in which the administrator determines—

- (a) that the sick leave on the part of the relevant person is as a result of a critical illness, serious injury or serious medical condition as evidenced in writing by an occupational health physician (nominated for the purpose by the relevant employer), or
- (b) notwithstanding the absence of any of the foregoing matters being so evidenced in writing, that the exceptional circumstances relating to an illness, injury or condition of the relevant person warrant the application of this Part to the person.

(2) Paragraphs (3) to (5) are subject to Regulation 13.

(3) In a case to which this Part applies, sick leave remuneration at the full rate may be paid in a given instance if, in the 12 months preceding the first day of the relevant person's current period of sick leave (the "12 month reference period"), the period of sick leave, remunerated at the full rate, has not exceeded 183 days.

(4) Subject to paragraph (5), in a case to which this Part applies sick leave remuneration at the half rate may be paid in respect of any period of sick leave, in the 12 month reference period, following on, or occurring after, the period of 183 days sick leave referred to in paragraph (3).

(5) Payment of sick leave remuneration at the half rate shall be limited to 182 days of sick leave.

Maximum period of paid sick leave for critical illness or injury by reference to 4 year period preceding relevant time

13. Notwithstanding anything in Regulation 12, but subject to Parts 5 and 6, if, in the period of 4 years preceding the first day of the relevant person's current period of sick leave, there has occurred a period of sick leave that is in excess of 365 days (being a period of 365 days in respect of which remuneration at the full rate or the half rate has been paid) no sick leave remuneration shall be paid in respect of that part of that sick leave that exceeds 365 days.

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

14. (1) Provided that such payment does not result in a contravention of Regulation 13, if the conditions specified in paragraph (2) are satisfied, Regulation 12 shall apply to the payment of sick leave remuneration in respect of a

period of sick leave even though the particular case of illness or injury concerned (the “non-critical illness or injury”) is not one falling within Regulation 12(1).

(2) The conditions referred to in paragraph (1) are—

(a) a period of sick leave on the part of a relevant person occurs, being a period of sick leave that (by reason of the illness, injury or condition concerned falling within Regulation 12(1)) results in the application of this Part,

and

(b) in the 12 months following the commencement of the foregoing period of sick leave, a period of sick leave, occasioned by a non-critical illness or injury, occurs on the part of the relevant person.

Part 5

TEMPORARY REHABILITATION REMUNERATION

Operation of Part: construction of certain references

15. Regulation 8 applies for the purpose of this Part as it applies for the purpose of Part 3.

Payment of temporary rehabilitation remuneration: decision of administrator

16. (1) Notwithstanding anything in Part 3 or 4, the administrator may, for the purpose specified in paragraph (2), determine that a relevant person shall, in circumstances where the relevant person’s entitlement otherwise under these Regulations to be paid sick leave remuneration has been exhausted, be paid remuneration (in this Part referred to as “temporary rehabilitation remuneration”) for such period as the administrator decides, but this is subject to paragraph (3) and Regulation 17.

(2) The purpose mentioned in paragraph (1) is the purpose of the relevant person’s rehabilitation from illness or injury.

(3) If, in the period of 4 years preceding the first day of the relevant person’s current period of sick leave, sick leave remuneration (under whatever provision of these Regulations (including, if such be the case, this Part)) has been paid to the relevant person for 365 days, temporary rehabilitation remuneration shall not be paid under this Regulation to the person for a further period that exceeds 365 days.

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

17. (1) Notwithstanding Regulation 16, the administrator may decide to pay to the relevant person temporary rehabilitation remuneration in the period following the expiry of the 365 days last mentioned in Regulation 16(3) if the conditions specified in paragraph (3) are satisfied.

(2) The period for which such remuneration may be paid under this Regulation to the person shall not exceed 730 days.

(3) The conditions referred to in paragraph (1) are—

- (a) the prior period of sick leave on the part of the relevant person (that is to say the sick leave which the current sick leave, attracting the application of this Part, represents a continuation of) was the subject of the application of Part 4,
- (b) an occupational health physician states in writing that there is a reasonable prospect of the relevant person's being able to resume his or her duties, and
- (c) the initial decision under paragraph (1) by the administrator to pay temporary rehabilitation remuneration under this Regulation to the relevant person is reviewed by the administrator at intervals of 6 months (and this subparagraph shall be read as operating to enable the administrator, on foot of any such review, to decide that no further temporary rehabilitation remuneration shall be paid to the person).

Inclusion of payments under previous regime in calculation of temporary rehabilitation remuneration

18. For—

- (a) the purpose of making any determination under this Part in respect of a relevant person to whom pension related pay was, before the commencement of these Regulations, paid, and
- (b) the purposes otherwise of the operation of this Part in respect of such a person,

such pension related pay shall, to the same extent as temporary rehabilitation remuneration (apart from this Regulation) is treated for the purposes of this Part, be treated as if it were temporary rehabilitation remuneration paid to the person.

Part 6

SICK LEAVE PROVISIONS: MATERNITY RELATED PROVISIONS

Pregnancy-related illness occurring before maternity leave commences

19. (1) Where—

- (a) a period of sick leave on the part of a relevant person occurs that is due to a pregnancy-related illness,
- (b) that sick leave occurs prior to the commencement of maternity leave on her part, and

- (c) the relevant person has, apart from this Regulation, no further entitlement to be paid sick leave remuneration at the half rate,

then, notwithstanding anything in Part 3 or 4, she shall be paid sick leave remuneration at the half rate for the duration of the sick leave that is due to that pregnancy related illness.

(2) In reckoning, for any purpose of these Regulations, the period of sick leave (in respect of which remuneration has been paid) that has occurred on the part of a relevant person, no account shall be taken of a period in respect of which (by virtue of this Regulation) sick leave remuneration at the half rate has been paid to the person.

Illness occurring on or after maternity leave completed: provision for the purpose of Regulations 10 and 13

20. If a period of sick leave on the part of a relevant person occurs on or after the expiry of her maternity leave, then, for the purposes of the application of Regulation 10 or, as the case may be, Regulation 13, there shall not be taken into account any prior period of sick leave due to a pregnancy related illness (occurring in the period of 4 years referred to in Regulation 10 or 13) on her part that was remunerated at the half rate.

Part 7

MISCELLANEOUS

Paid sick leave floor (temporary rehabilitation remuneration) — pre 6 April 1995 recruits

21. Notwithstanding anything in these Regulations, the rate at which temporary rehabilitation remuneration is paid to a relevant person who—

- (a) was recruited before 6 April 1995, and
- (b) does not make Class A PRSI contributions,

shall not be less than the rate at which illness benefit, if such were to be paid to the person (and calculated at the personal rate), would be payable.

Pro rata calculations

22. Where a relevant person is on a period of probation (as determined by his or her terms and conditions of appointment) or training, or has a work pattern that is less than full-time, then in determining the amount of sick leave remuneration to be paid to that person under a provision of these Regulations the amount shall be calculated on a pro rata basis.

Delegation of function of making determinations

23. (1) There is delegated by this Regulation to the relevant employer (that is to say to the relevant employer acting through the administrator authorised by the employer under the subsequent paragraphs of this Regulation) the function of determining any matter in respect of which these Regulations provide that a determination shall be made.

(2) The relevant employer shall authorise a member of the staff of the employer (in these Regulations referred to as an “administrator”) to perform each function, or one or more of the functions, of the employer referred to in paragraph (1), whether in respect of determinations generally (to which the function relates) or specified classes of determination (to which the function relates).

(3) Without prejudice to the generality of paragraph (2), in fulfilment of the requirement under this Regulation that there shall be authorised one or more members of staff of the employer to perform every function concerned of the employer, the relevant employer may—

- (a) authorise different members of staff to perform different functions concerned or different classes of the functions concerned,
- (b) determine that a class of function, for the foregoing purposes, shall be constituted by reference to such matters as the employer considers appropriate.

(4) An authorisation may be revoked in whole or in part or amended by the relevant employer.

(5) An authorisation shall operate, so long as it continues in force, to confer on and vest in the person concerned, as the case may be—

- (a) each function in respect of determinations generally (to which the function relates),
- (b) each function in respect of specified classes of determination (to which the function relates), or
- (c) each specified class of function,

provided for in the authorisation.

Self certified periods of sick leave: discretion of relevant employer

24. (1) Subject to paragraph (2), an administrator may, in respect of periods of sick leave on the part of a relevant person that are of limited duration, determine that sick leave remuneration shall be paid to the person notwithstanding that the condition specified in Regulation 7(1) is not satisfied.

(2) An administrator shall not make a determination referred to in paragraph (1) unless the relevant person provides a statement to the administrator that, in respect of the period concerned, the person is unable to attend to his or her duties due to illness or injury.

(3) For the avoidance of doubt, any period in respect of which sick leave remuneration is paid, on foot of determination under this Regulation, shall be reckoned for all the purposes of these Regulations that sick leave remuneration, paid on foot of a determination otherwise under these Regulations, is reckoned for.



GIVEN under my Official Seal,
6 March 2014.

BRENDAN HOWLIN,
Minister for Public Expenditure and Reform.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations set out in detail the terms of a new sick leave scheme which will apply across the Public Service. The rationale for the new scheme, which is reflected in the main provisions of these Regulations, is to 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.

These Regulations specify the sick leave remuneration limits in respect of illness or injury and critical illness or injury. In cases of illness or injury, Part 3 provides for a maximum of 92 days (three months) on full pay in a one-year period followed by 91 days (three months) on half pay, subject to an overall maximum of 183 days’ (six months’) paid sick leave in a four-year period. In cases of critical illness or injury, Part 4 provides for a maximum of 183 days (six months) on full pay in a one-year period followed by 182 days (six months) on half pay, subject to an overall maximum of 365 days’ (one year’s) paid sick leave in a four-year period. Where access to paid sick leave has been exhausted, provision is made for temporary rehabilitation remuneration.

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