



Eilimhannacht na Scríbhne Stáinz
Health Service Executive

Public Service Sick Leave Scheme

COMMUNICATION PACK

03/03/2014

DOCUMENT 1: UPDATE FOR HR/Employee Relations Departments

To: All HR Managers/Employee Relations Managers

Re: Update on the New Public Service Sick Leave Scheme

1. Date of Commencement

The Public Service Management (Recruitment and Appointments)(Amendment) Act 2013 gives the Minister for Public Expenditure and Reform the power to make Regulations setting out in detail the terms of the scheme. The Minister has decided it is appropriate that both Houses of the Oireachtas are given an opportunity to consider the detail of the new Public Service Sick Leave Scheme. Therefore the Regulations will be laid before the Houses and the commencement date will be 31 March 2014.

2. Legislating for the new Public Service Sick Leave Scheme

While the new sick leave arrangements can be applied to civil servants by circular under section 17 of the *Civil Service Regulation Act 1956*, legislation was required to ensure that the new Public Service Sick Leave Scheme can be applied across the public service. Therefore, the *Public Service Management (Recruitment and Appointments) (Amendment) Act 2013*, passed at the end of December 2013, includes a Part relating to the new sick leave arrangements. The legislation provides the Minister for Public Expenditure and Reform with the power to make regulations that will set out the specific details of the new Scheme. The Regulations, referred to in Paragraph 1, are currently being developed.

3. Critical Illness Protocol

A Critical Illness Protocol has been developed which will set out the arrangements for extended paid sick leave for staff that are critically ill or seriously injured. Document 5 sets out these arrangements but the overall parameters are set out in section 4.3 below.

4. Provisions of the Scheme

The general provisions of the new Public Service Sick Leave Scheme are set out below:

4.1 Paid Sick Leave

The new Public Service Sick Leave Scheme provides for the payment of the following financial support to staff during periods of absence from work due to illness or injury:

- **A maximum of 92 calendar days on full pay in a year**
- **Followed by a maximum of 91 calendar days on half pay**
- **Subject to a maximum of 183 calendar days paid sick leave in a rolling four year period.**

4.2 Temporary Rehabilitation Remuneration

Temporary Rehabilitation Remuneration (TRR) was formerly referred to as Pension Rate of Pay (PRP) and will be calculated in the same way. TRR will apply to all employees who have at least 5 years' service (pension rate of pay only applied to officer grades). It will only be payable when there is **a realistic prospect of an individual returning to work**. The key change in the move from PRP to TRP is that **the maximum period for which TRR can be paid is 548 days under ordinary sick leave arrangements**. There will be access to a maximum of 1095 days TRR under the CIP

4.3 Critical Illness Provisions

In recognition of the fact that, sometimes, a longer period of sick leave can be required to address a critical illness or serious physical injury there is provision for the following to apply **in exceptional circumstances**:

- **A maximum of 183 calendar days on full pay in a year**
- **Followed by a maximum of 182 calendar days on half pay**
- **Subject to a maximum of 365 calendar days paid sick leave in a rolling four year period.**

There will be access to TRR under the CIP as follows:

- Where a staff member has been granted extended sick pay under the CIP and they have exhausted TRR of 365 days, management may continue to pay TRR for a further period not exceeding 730 days. This can only be granted in cases where the occupational health specialist has confirmed that there is a reasonable prospect of return to work and is subject to six monthly reviews.

The award of extended sick leave for critical illness or serious physical injury is a management decision, after medical advice from the Occupational Health Physician has been received. The criteria that should be considered when an application is made for access to this extended sick leave are set out in the Critical Illness Protocol (see Document 5).

5. Transitional Arrangements

If an individual has begun a period of absence due to sick leave that continues after 31 March 2014, that individual will continue to avail of the current sick leave provisions for that sick leave absence, i.e., a maximum of 6 months on full pay and a maximum of 6 months on half pay. When that individual returns to work any future sick leave absence will be dealt with under the terms of the new Public Service Sick Leave Scheme.

6. Treatment of Previous Periods of Sick Leave under the New Scheme

As has always been the case, sick leave records will continue to be reviewed over a rolling 4 year period. This means that an individual who has exceeded 183 days sick leave in a rolling 4 year period and is absent on sick leave again after the new Scheme commences on 31 March 2014 may find themselves off pay or in receipt of TRR, if applicable.

7. “Dual Look Back”

A “Dual Look Back” will be retained as part of the new Scheme. The process will be the same as that currently in place but the new limits will apply when an individual is absent on sick leave:

- Step 1: Determine whether the individual has access to paid sick leave

The individual’s sick leave is reviewed over the 4 year period from the current date of absence. If 183 days paid sick leave have not been exhausted over that 4 year period, access may be granted to paid sick leave.

- Step 2: Determine whether full pay, half pay or TRR apply

If step 1 indicates that the individual has access to paid sick leave, their sick leave record is then reviewed over the 1 year period from the current date of absence to determine the rate at which sick leave may be paid. If the initial 92 day limit at full pay has not been exhausted, full pay may be awarded until the limit of 92 days is reached. Thereafter, the amount paid will be calculated based on half pay or TRR, as appropriate.

Specific arrangements will be in place for the “look back” for the purposes of the Critical Illness Protocol (see Note 4 of Document 3). The scenarios set out in Document 4 illustrate how the “Dual Look Back” arrangements might operate in practice under the new Scheme.

8. Query Handling

HR/Employee Relations Departments should refer their queries (**not** those of individual employees) to info.t@hse.ie in the first instance. Briefing sessions for HR managers will be arranged as required.

DOCUMENT 2: INFORMATION NOTE FOR STAFF

To: All Staff in the Health Service

THIS IS AN INFORMATION NOTE ONLY AND CONFERS NO LEGAL ENTITLEMENT ON ANY INDIVIDUAL.

Re: Update on the New Public Service Sick Leave Scheme

1. Start Date for new Public Service Sick Leave Scheme

The new Public Service Sick Leave Scheme will be introduced from 31 March 2014 and will apply to all health service employees. If you are absent from work on sick leave from 31 March 2014 you may have access to paid sick leave, subject to the limits that are set out below.

2. Main Provisions of the New Sick Leave Scheme

2.1 Paid Sick Leave

The new scheme provides for:

- **A maximum of 92 calendar days sick leave on full pay in a year**
- **Followed by a maximum of 91 calendar days sick leave on half pay**
- **Subject to a maximum of 183 calendar days paid sick leave in a rolling four year period.**

2.2 Temporary Rehabilitation Remuneration (TRR)

If you have exhausted 183 days paid sick leave in a rolling 4 year period and are absent on sick leave again, you may be granted Temporary Rehabilitation Remuneration for a further 548 days. Temporary Rehabilitation Remuneration used to be called "Pension Rate of Pay" and will be calculated in the same way (pension rate of pay only applied to officer grades). You must have a minimum of 5 years' service in order to be eligible for TRR. Temporary Rehabilitation Remuneration will only be available when there is a realistic prospect that

you will be able to return to work following your illness. TRR applies to **all** employees who meet the criteria.

2.3 Critical Illness Provisions

Additional support for staff who are critically ill has also been agreed. The criteria for assessing whether someone is eligible for extended sick leave as a result of critical illness or serious physical injury are set out in the Critical Illness Protocol (CIP) which is available from your HR/Employee Relations Department.

If someone becomes critically ill or has a serious physical injury and is eligible for support under the CIP they may have access to:

- **A maximum of 183 calendar days on full pay in a year**
- **Followed by a maximum of 182 calendar days on half pay**
- **Subject to a maximum of 365 calendar days paid sick leave in a rolling four year period.**

If you have exhausted 365 days extended paid sick leave under the CIP, you may be considered for a maximum of 12 months Temporary Rehabilitation Remuneration in the first instance. Management may then consider paying TRR for a further period of time not exceeding 730 days. This is subject to 6 monthly reviews and may only be granted where the occupational health physician has confirmed there is a reasonable prospect of a return to work.

3. Transitional Arrangements

If you have started a period of sick leave before 31 March 2014 that continues after that date, you will stay on the current sick leave arrangements, i.e., a maximum of 6 months on full pay and a maximum of 6 months on half pay. After you return to work your next sick leave absence will be dealt with under the terms of the new Public Service Sick Leave Scheme.

4. Treatment of Previous Periods of Sick Leave under the New Scheme

As has always been the case, sick leave records will continue to be reviewed over a rolling 4 year period. This means that if you have been paid more than 183 days sick leave in a rolling 4 year period on the commencement date, you may not get paid the next time you are off sick or you may only be paid Temporary Rehabilitation Remuneration.

5. Further Information

Please contact your HR/Employee Relations Department, as appropriate, for further information on the new Public Service Sick Leave Scheme.

DOCUMENT 3: GUIDANCE NOTES

INTRODUCTION

The following notes provide guidance and clarification on the application of the following aspects of the new Public Service Sick Leave Scheme:

- Note 1: Calculation of Sick Leave under the new Public Service Sick Leave Scheme
- Note 2: Transitional Arrangements
- Note 3: Access to Critical Illness Protocol
- Note 4: Calculation of Sick Leave during a period of Critical Illness
- Note 5: Access to Sick Pay during the year of a Critical Illness
- Note 6: Treatment of Pregnancy Related Illness
- Note 7: Access for Staff with a Disability to Sick Leave
- Note 8: Return to Work on Temporarily Modified Duties

Note 1: Calculation of Sick Leave under the new Public Service Sick Leave Scheme

As is currently the case, to calculate the level of paid sick leave that can be awarded there will be a “dual look back” over an individual’s sick leave record. When an individual goes out on sick leave, their sick leave record will be reviewed over 4 years from the latest date of absence to determine (a) if the individual has access to paid sick leave and (b) if they do, what rate of paid sick leave applies.

- **Step 1: Determine whether the individual has access to paid sick leave**

If there has been access to less than 183 calendar days sick leave over the 4 year period from the latest date of absence, access may be granted to paid sick leave.

- **Step 2: Determine whether full pay, half pay or TRR applies**

If less than 183 calendar days paid sick leave has been exhausted, the individual's record is reviewed over the previous year to determine the rate at which the sick leave should be paid. If less than 92 calendar days paid sick leave at full pay has been used in the last 12 month period, sick pay will be at full pay until a limit of 92 calendar days is reached. Thereafter, pay will be at half pay or Temporary Rehabilitation Remuneration, as appropriate.

Note 2: Transitional Arrangements

The guiding principle for the new scheme in relation to access to paid sick leave is that the new scheme will apply from 31 March 2014 except where an individual has commenced a period of sick leave before that date and continues to be absent on sick leave after that date. In such circumstances, the individual will continue to have access to the provisions in place at the time of commencement of sick leave. Following their return to work, the next absence on sick leave will be dealt with in accordance with the new sick leave scheme.

Note 3: Access to Critical Illness Protocol

While it is expected that almost all illnesses covered by the Critical Illness Protocol will require consultant clinical care, an application for access to extended sick leave arrangements under the Protocol can be made on the basis of medical evidence provided by a medical practitioner who is not a consultant.

Note 4: Calculation of Sick Leave during a period of Critical Illness

Where an individual is granted Critical Illness sick pay they may be given access to 183 calendar days on full pay, followed by 182 calendar days on half pay, subject to a maximum of 365 calendar days paid sick leave in a rolling four year period. There is also a provision for Temporary Rehabilitation Remuneration for individuals who need a longer period of time to address their health needs. This Temporary Rehabilitation Remuneration will be granted for a maximum of 1095 calendar days after the Critical Illness provisions have been exhausted and only where there is a realistic prospect of a return to work. After the initial year on TRR, it will be subject to a review at 6 monthly intervals.

To calculate the level of paid sick leave that can be awarded there should be a “dual look back” over an individual’s sick leave record. When an individual goes out on sick leave under the provisions of the CIP, their sick leave record will be reviewed over the 4 year period from the latest date of absence to determine (a) if the individual has access to paid sick leave and (b) if they do, what rate of paid sick leave applies.

- **Step 1: Determine whether the individual has access to paid sick leave**

If there has been access to less than 365 days sick leave over the 4 year period from the latest date of absence, access may be granted to paid sick leave.

- **Step 2: Determine whether full pay, half pay or TRR applies**

If less than 365 calendar days sick leave has been exhausted, the individual’s record is reviewed over the previous year to determine the rate at which the sick leave should be paid. If less than 183 calendar days sick leave on full pay has been used in the last 12 months sick pay will be at full pay until the 183 calendar day limit is reached. Thereafter, sick pay will be at half pay until the 365 calendar day limit is reached. Temporary Rehabilitation Remuneration may then be paid, if appropriate for 365 calendar days in the first instance. After the period of 365 calendar days, management may continue to pay TRR for a further period of 730 calendar days in cases where the occupational health physician has confirmed that there is a reasonable prospect of return to work. The grant of additional TRR is subject to 6 monthly reviews.

Note 5: Access to Sick Pay during the year of Critical Illness

Under the Critical Illness Protocol (CIP), in order to support individuals who have suffered a critical illness or serious physical injury, an individual will continue to have access to the limits that apply to Critical Illness for a period of one year following the commencement of the absence. This means that an individual may have up to 365 calendar days of paid sick leave (either full pay or half pay) in any rolling four year period up to 12 months after the commencement of the absence. Following the expiry of that period ordinary sick leave arrangements will fully apply.

Note 6: Treatment of Pregnancy Related Illness

Pregnancy related illness which does not meet the criteria for inclusion under the Critical Illness Protocol will continue to be treated in accordance with HSE Circular 25/2008 (Appendix 1 – Circular and Explanatory Guide). . While the new time limits around standard sick leave will apply (i.e. access to 92 calendar days full pay and 91 calendar days half pay in a 4 year rolling period) women who have a pregnancy related illness that is not covered by the CIP will have access to extended paid sick leave so that they do not go off half pay and onto TRR. It should be recognised that not all illnesses occurring during pregnancy are pregnancy related.

Note 7: Access for staff with a Disability to Sick Leave

Under the new scheme there is no differentiation between different groups of workers; everyone is treated equally. In accordance with the Employment Equality Acts 1998 to 2011 management are required to make reasonable accommodation for people with a disability, if required.

Note 8: Return to Work on Temporarily Modified Duties

Management should take all reasonable steps to accommodate the return to work of an employee on temporarily modified duties when this is recommended by an Occupational Health physician.

DOCUMENT 4: SCENARIOS

Note: the dates for the 'look back' periods reflect the methodology used by the HSE SAP system. HSE locations which do not use SAP and other health service employers may retain their existing methodology.

Examples of how the new sick leave provisions might operate in practice under different scenarios are set out for illustrative purposes below.

SCENARIO ONE: Sean goes on sick leave on 4 April 2014 and returns to work on 15 April (length of absence – 12 days). He hasn't been on a period of unpaid leave. How do I calculate his sick leave?

STEP 1:

Find out if Sean has had 183 days sick leave over a rolling four year period by looking back over his sick leave record from 3 April 2014 to 4 April 2010

No, Sean has had 90 day's sick leave over this period.

Sean has access to paid sick leave. Now find out what rate Sean will be paid at.

STEP 2:

Look back over the last year to find out if Sean has had over 92 days sick leave at full pay. The relevant period is 3 April 2014 to 4 April 2013

Sean will receive full pay for this 12 day absence.

SCENARIO TWO: Clare goes on sick leave on 7 May 2014 and we haven't heard when she is due back to work. She hasn't been on a period of unpaid leave. How do I calculate her sick leave?

STEP 1:

Find out if Clare has had 183 days sick leave over a rolling four year period by looking back over her sick leave record from 6 May 2014 to 7 May 2010.

Yes, Clare has had 195 days sick leave over this period.

Clare has no further access to paid sick leave (either on full or half pay). Check now if she has access to TRR.

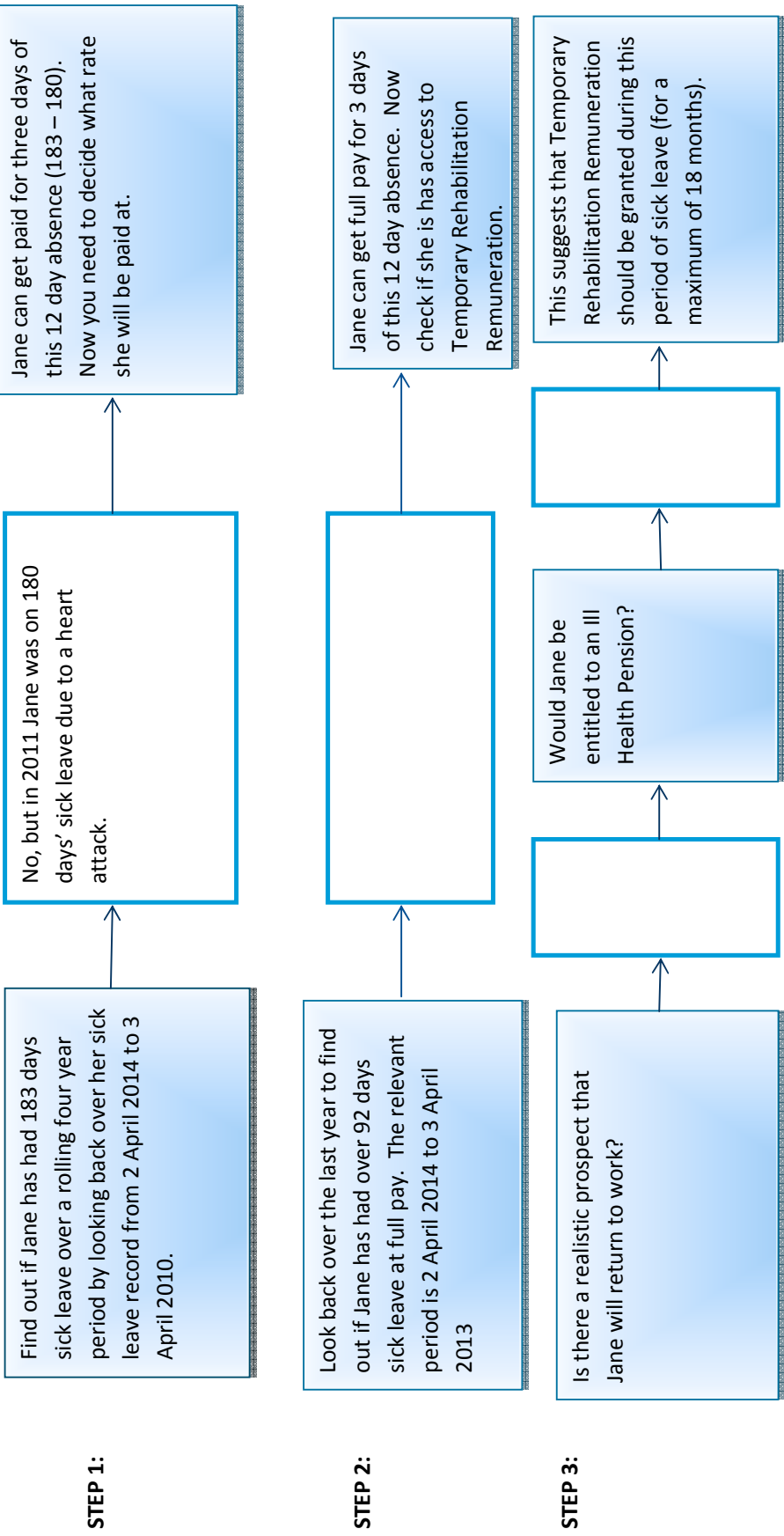
STEP 2:

Is there a realistic prospect that Clare will return to work?

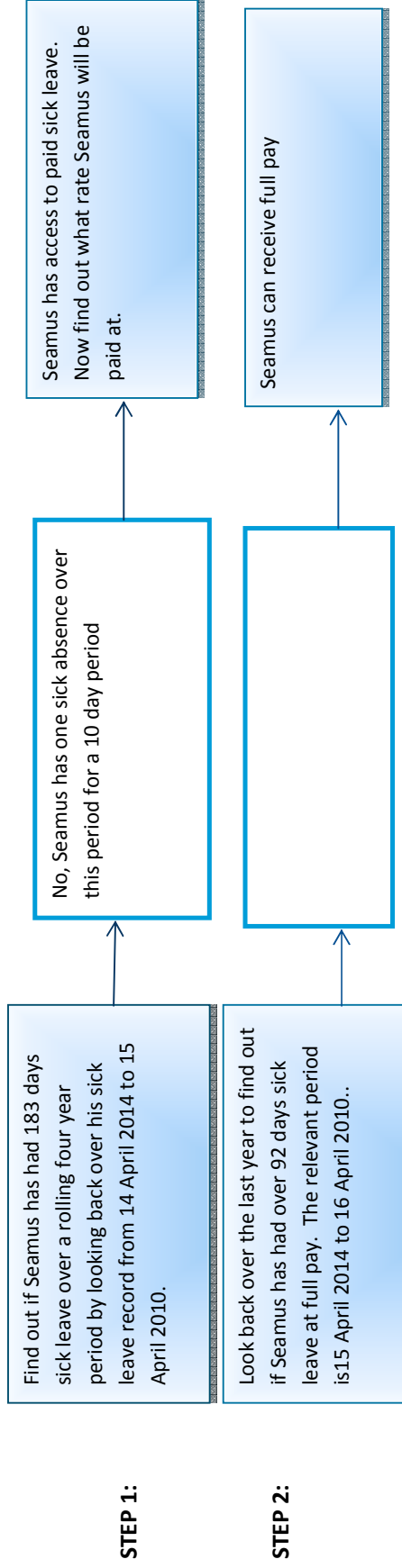
Would Clare be entitled to an Ill Health Pension?

This suggests that TRR should be granted during this period of sick leave (for a maximum of 548 days)

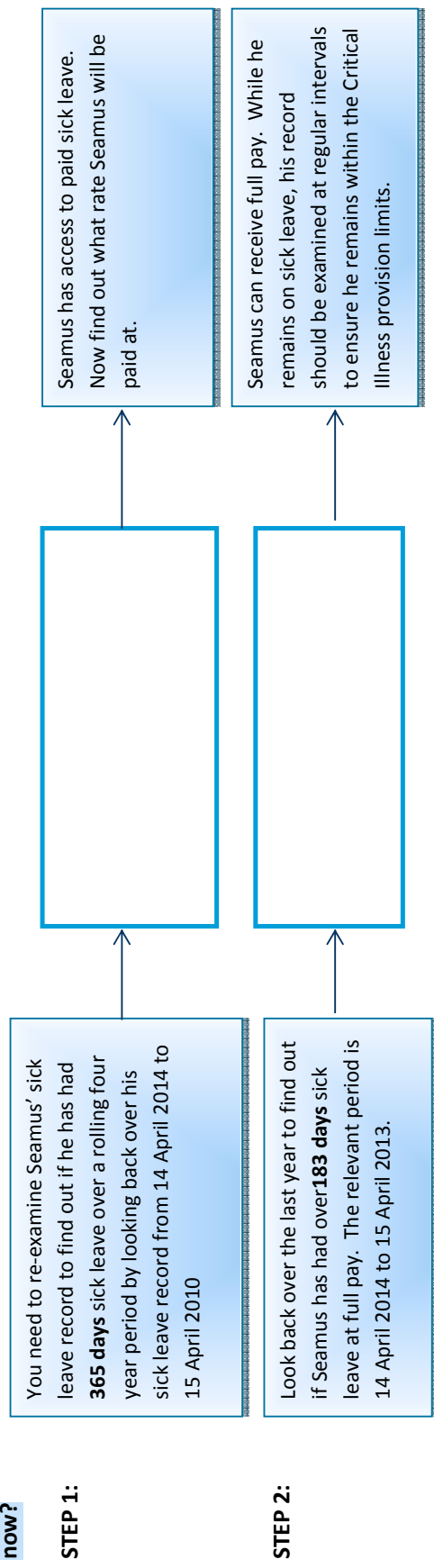
SCENARIO THREE: Jane goes on sick leave for a period of 12 days from 3 April 2014. She hasn't had a period of unpaid leave. How do I calculate her sick leave?



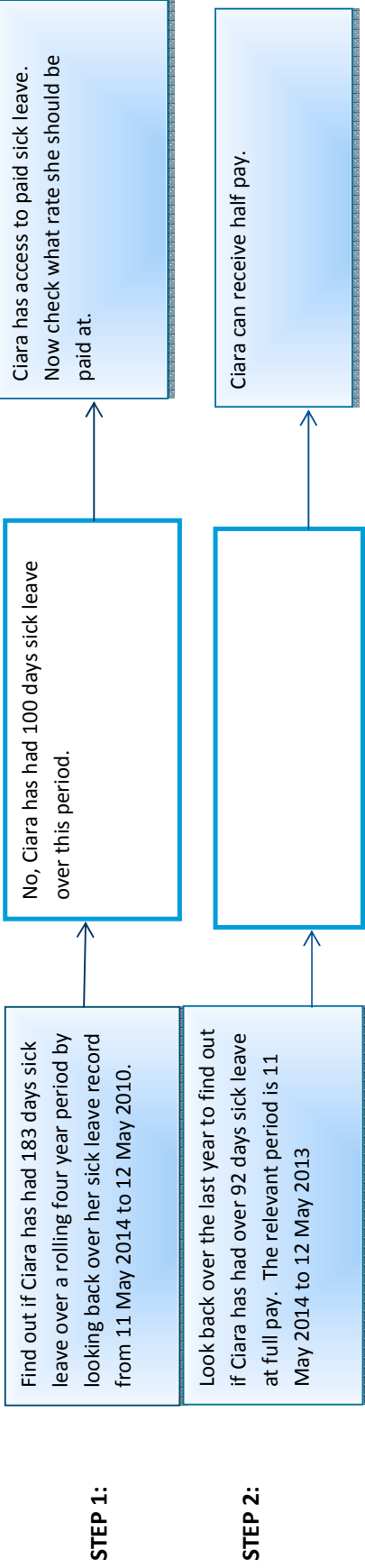
SCENARIO FOUR: Seamus goes on sick leave on 15 April 2014 and remains on sick leave. He hasn't had a period of unpaid leave. How do I calculate his sick leave?



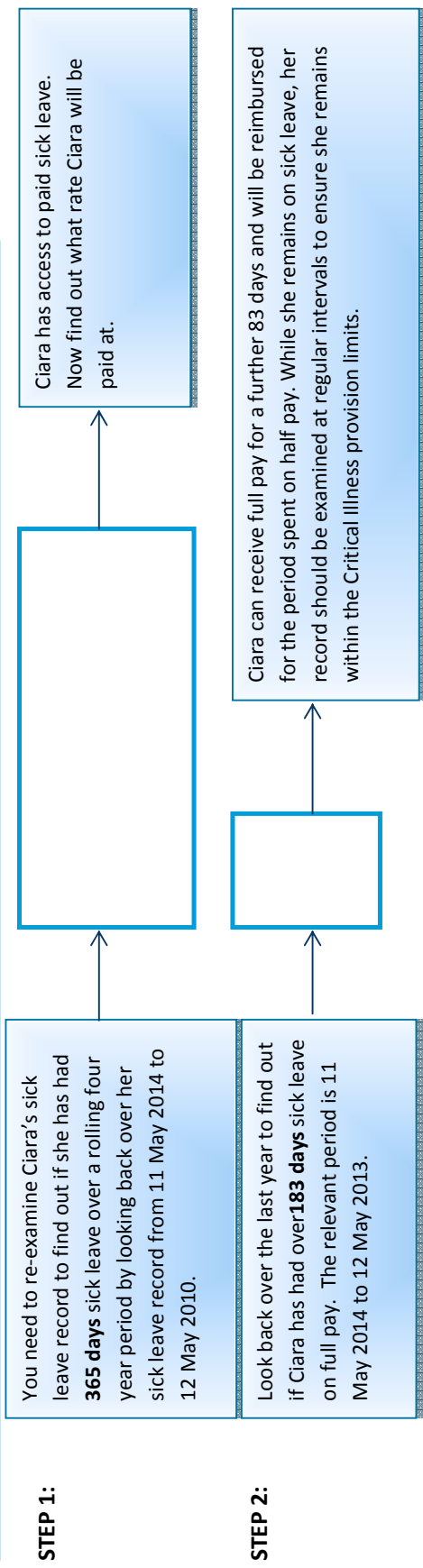
Following one month's absence on sick leave, Seamus submits an application for critical illness provisions which is approved. What do I need to do now?



SCENARIO FIVE: Ciara goes on certified sick leave on 12 May 2014 and remains on sick leave. She hasn't had a period of unpaid leave. How do I calculate her sick leave?



Ciara applies for access to the critical illness provisions and is granted access to extended sick leave. What do I need to do now?



DOCUMENT 5: CRITICAL ILLNESS PROTOCOL

1. INTRODUCTION

1.1 It is recognised that public service bodies, as employers, need to continue to provide support for their employees who may be incapacitated as a result of critical illness or serious physical injury. Therefore when an individual becomes incapacitated as a result of critical illness or serious physical injury, and has supporting medical evidence for an extended period of sick leave, the individual may, on an exceptional basis, be granted paid sick leave extended as follows:

- A maximum of 183 calendar days on full pay in the previous rolling one-year period
- Followed by a maximum of 182 calendar days on half pay in the previous rolling one-year period
- Subject to a maximum of 365 calendar days paid sick leave in the previous rolling four-year period.

1.2 **The granting of exceptional extended paid sick leave is a decision of management** having considered the occupational medical advice.

1.3 These arrangements will exclude individuals whose illness relates to an occupational injury/illness and who have access to an occupational injury/illness scheme.

2. CRITERIA FOR AWARD OF EXTENDED PAID SICK LEAVE

2.1 In determining whether an individual may be granted access to exceptional extended paid sick leave the following criteria apply:

- 2.1.1 The employee should ordinarily be under the current or recent clinical care of a consultant either as an inpatient or outpatient. This excludes employees attending primarily for report preparation or medico legal purposes.

- 2.1.2 The case must be referred by the employer to its Occupational Health Service for medical advice.
- 2.1.3 The responsibility lies with the employee to furnish any treating doctor's medical reports requested within an appropriate time-frame to avail of the exceptional extended paid sick leave. A treating consultant's specialism must be appropriate to the critical illness for which the employee is making a claim.
- 2.1.4 The Occupational Physician, from the employer's Occupational Health Service, will advise whether, in their opinion, the following criteria are met:
- i. The employee is medically unfit to return to his or her current duties or (where practicable) modified duties in the same pay grade
 - ii. The nature of this medical condition has **at least one** of the following characteristics:
 - (a) Acute life threatening physical illness
 - (b) Chronic progressive illness, with well-established potential to reduce life expectancy¹
 - (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment
 - (d) In-patient hospital care of two consecutive weeks or greater².
- 2.1.5 The Occupational Physician will consider the information provided by the treating doctor, and may confer with them with consent if they feel this would be helpful. It is not an absolute requirement that a definitive final diagnosis has been made. The Occupational Physician may accept a presumptive diagnosis on a case by case basis.

¹ In circumstances where there is no medical intervention.

² In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of two consecutive weeks will be reduced to two or more consecutive days of in-patient hospital / clinic care.

3 DECISION TO AWARD

3.1 The decision on whether to award extended paid sick leave is a management decision having consulted with the relevant line manager. Whilst management must primarily consider the Occupational Medical advice, management should consider all the circumstances of the case.

3.2 Thus, although an employee may not meet the medical criteria outlined above, management may still make a decision to award in exceptional circumstances.

3.3 In exercising this discretion management must demonstrate the reasons why they are awarding an extended period of paid sick leave although the individual does not meet the requirements set out at 2.1.4(ii) above. In this regard management should in particular consider the following:-

- the individual's sick leave record;
- the potential impact of an early return on the workplace efficiency and effectiveness;
- it has not been possible to make an accommodation to facilitate the return to work of a person with a disability-related illness or condition.³

Management should also confer with the Occupational Physician in such cases.

4 APPEAL OF THE MEDICAL DECISION

4.1 The advice of the Occupational Physician may be appealed to an appropriate Specialist Occupational Physician in another location/employment... This appeal will ordinarily be a file only review.

4.2 In The individual may arrange to meet with the Specialist Occupational Physician on the basis of an appropriate cost sharing arrangement.

³ Management are required in the case of an employee with a disability-related illness take all reasonable steps in terms of making an accommodation to facilitate the employee's return to work consistent with, for example, specialist occupational health advice and service requirements.

4.3 The final decision on any appeal lies with the employer, having considered the medical advice.

4.4 Should there be a delay⁴ in the employer referring an employee to the Occupational Health Service of the organisation, or a delay⁵ in being seen by this Occupational Health Service, there will be no financial loss to the employee if they are later awarded the exceptional extended paid sick leave. Where, in these circumstances, an employee moves on to half pay and it is later found that access to exceptional extended paid sick leave should have been granted, pay will be restored appropriately.

5 APPEAL OF THE MANAGEMENT DECISION

5.1 The management decision may be appealed in accordance with the Grievance Procedure. The timeframes under the Grievance Procedure will be strictly adhered to.

5.2 Should there be a delay⁶ in the employer referring an employee to the Occupational Health Service of the organisation, or a delay⁷ in being seen by this Occupational Health Service, there will be no financial loss to the employee if they are later awarded the exceptional extended paid sick leave. Where, in these circumstances, an employee moves on to half pay and it is later found that access to exceptional extended paid sick leave should have been granted, pay will be restored appropriately.

6 RETURN TO WORK

6.1 There will be no financial loss to an employee in circumstances where the employee has fully engaged with the process around the management of sick leave and their own

⁴ Where the delay is of a duration in excess of the period of time currently allowed for a referral to an Occupational Physician.

⁵ Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.

⁶ Where the delay is of a duration in excess of the period of time currently allowed for a referral to an Occupational Physician.

⁷ Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.

consultant has certified fitness to return to work, but the employee has not been able to return to work because there is a delay in the employer referring the employee to the Occupational Health Service of the organisation, or a delay in being seen by this Occupational Health Service. Pay will be restored appropriately. The HSE Managing Attendance Policy and HSE Rehabilitation Policy will continue to apply where appropriate.

7 TEMPORARY REHABILITATION PAY

7.1 In advance of the termination of the payment of Temporary Rehabilitation Pay (TRP), following payment of paid sick leave and TRP for a period not exceeding two years, local management shall secure expert specialist occupational health advice on whether there is any reasonable prospect of the employee returning to work within a foreseeable timeframe. Where a reasonable prospect of return to work is confirmed by the Occupational Health Specialist the payment of TRP may be continued subject to review at six-monthly intervals for a further period not exceeding two years.

8 REVIEW OF THE OPERATION OF THE PROTOCOL

8.1 There will be a review of the operation of this protocol following 1 full year after its introduction.

DEFINITIONS

Current or recent Clinical Care

This means that the employee has received medical investigations and treatment ordinarily under the direct care / supervision of a hospital consultant. They may be either a hospital inpatient or outpatient. It excludes referrals that in the opinion of the Occupational Physician are primarily for report preparation purposes/medico-legal purposes.

Hospital Consultant

This is a medical doctor who is on the relevant specialist register, and holds a HSE / Voluntary Hospital / NHS hospital consultant appointment or has admission rights to a recognised private hospital.

Occupational Physician

This is a medical doctor registered with the Irish Medical Council who has a postgraduate qualification in Occupational Medicine / Occupational Health, or who is on a specialist training scheme in Occupational Medicine.

Specialist Occupational Physician

This is a medical doctor registered with the Irish Medical Council in the specialist division of Occupational Medicine.

Limitation of Life Expectancy

This refers to the condition and not the individual person. It must be well established in the peer reviewed medical literature that the medical condition results in a reduction of life expectancy.

Sample Critical Illness Cases

Case 1:

Mary works as a healthcare professional. She has a recent diagnosis of invasive breast cancer, detected at routine breast cancer screening. She was admitted to hospital for 2 weeks and had a partial mastectomy, and is now half way through a six month course of outpatient chemotherapy.

The Occupational Physician considers Mary is unfit for work due to chemotherapy side effects, and has an acute life threatening physical illness.

She meets medical criteria 2.1.4(i), 2.1.4(ii) (a) for a critical illness. Management decide to award critical illness pay.

Case 2:

John works in a clerical role. He has a longstanding diagnosis of paranoid schizophrenia, and is under the longstanding care of the mental health services. He has been well for an extended period of time, but has suffered a recurrence due to bereavement. He is acutely unwell and has been attending the psychiatric day hospital under the care of a consultant psychiatrist.

The Occupational Physician considers John unfit for work due to his mental state. He has a well-documented chronic progressive condition that has the potential to significantly limit life expectancy.

He meets medical criteria 2.1.4(i), 2.1.4(ii) (b) for a critical illness. Management decide to award critical illness pay.

Case 3

Paul works in a manual occupation. He has been involved in a serious Road Traffic Accident. He has sustained several rib fractures, a fractured pelvis and femur (long bone of the leg).

Both the pelvic fracture and the femoral fracture have required internal fixation (surgical stabilisation). He has been an inpatient on the orthopaedic ward for over four weeks.

The Occupational Physician considers Paul unfit for work due to significant physical injuries. He has had both major physical trauma and hospital inpatient care in excess of 2 consecutive weeks.

He meets medical criteria 2.1.4 (i), 2.1.4 (ii)(c) and (d) for a critical illness. Management decides to award critical illness pay.

Case 4:

Clare works at sedentary office employment. She has a longstanding diagnosis of Chronic Fatigue Syndrome and is now absent from work.

Her GP feels that she is unfit for work but the Occupational Physician considers her fit for work with work accommodations. She does not have an acute life threatening physical illness, this condition is not considered to significantly affect life expectancy, and she has not required hospitalisation

She does not meet the medical criteria for a critical illness. Management decide not to award critical illness pay.

Case 5

Brigid works as a lecturer for the last 10 years. Her long-time partner has died suddenly. Brigid has had almost no sick leave during her employment, and management report that her colleagues are seriously concerned for her wellbeing. Her GP has referred her to a local HSE consultant, diagnosed new onset depression, commenced her on anti-depressants, and referred her for counselling. Her GP considers her unfit for work and the Occupational Physician concurs fully with this. She meets medical criteria 2.1.4(1) but does not meet any of the medical criteria in 2.1.4(ii) a-d for a critical illness. The HR manager considered the facts of the case.

- Brigid had until that point had an exemplary attendance record; Brigid was responsible for a team of 5 staff and had responsibility for delivery of key outputs within demanding time frames.

- The occupational physician considered at this time that she may not be able to cope with the demands of such a busy role and it may compound issues
- The HR manager decided that if Brigid returned to work it could have a negative impact on workplace performance and could potentially slow down her full return to fitness to work.

On the basis of the above Critical Illness Pay was granted by the HR manager.

Appendix A

Circular on Pregnancy Related Sick Leave and Explanatory Guide

Explanatory Note on

Sick Pay Entitlements and Pregnancy-related Illness

(HSE Circular 25/2008)

HSE HR Circular 25/2008 gives effect to a European Court of Justice ruling (ref: case C-191/03) and a subsequent Labour Court determination (LCR061) in relation to the application of sick leave regulations to employees who are absent on pregnancy-related sick leave.

The ruling/determination provided that it is *not discriminatory* under equality legislation to treat pregnancy-related illness the same as any other illness for the purposes of determining an employee's sick pay entitlements. However, it also provided that (i) during pregnancy-related illness, "the amount of payment made is not so low as to undermine the objective of protecting pregnant workers" and (ii) if the employee is absent due to ill-health following maternity leave, the effect of offsetting absences due to pregnancy-related illness must not result in her receiving an amount "that is lower than the minimum amount to which she was entitled during the illness which arose while she was pregnant".

In view of the ECJ's ruling and the Labour Court determination, the HSE has amended the sick leave regulations for health service employees to provide that an employee who is absent due to pregnancy-related illness may receive an extension to her sick pay entitlements as outlined below. These revised arrangements apply to both officer grades **and** general support staff.

i) Pregnancy-related illness occurring before maternity leave commences

An employee who is medically certified as unfit for work due to pregnancy-related illness prior to the commencement of maternity leave *and who has exhausted her entitlement to sick pay in accordance with the normal sick leave rules*, will continue to receive sick leave at **half pay** (less any social welfare benefit to which the employee may be entitled on foot of her social welfare contributions) for the duration of her illness until maternity leave commences.

It is important to note that while the sick pay scheme for support staff does not provide for payment at half-pay¹, support staff who have exhausted their normal sick pay entitlements will also receive the extension to sick pay but at **half pay** only.

1 Support staff may be granted up to a maximum of 12 weeks' full pay in any period of 12 months, commencing on the first day of illness.

ii) Illness occurring after maternity leave

If an employee is unfit for work following maternity leave (irrespective of whether or not the illness is related to pregnancy or childbirth) her entitlement to sick leave at half-pay will be extended by the period of absence due to pregnancy-related illness *for which she was in receipt of half pay*² under normal sick leave rules i.e. the previous extension to sick pay does not create a further entitlement.

Examples

Example 1 Officer Grades

An employee who is absent from work due to pregnancy-related illness exhausts her entitlement to sick leave at full pay on 31 March. She goes on sick leave at half pay from 1 April to 31 May (a total of 61 calendar days) until she commences maternity leave on 1 June. During maternity leave she receives maternity pay under the maternity pay scheme.³

On return to work after maternity leave, the employee goes on sick leave. Her entitlement to sick leave at half pay is extended by the length of time she was absent due to pregnancy-related illness and in receipt of sick leave at half pay under the normal sick leave rules i.e. a total of 61 calendar days.

Example 2 Officer Grades

An employee goes on sick leave due to pregnancy-related illness at half-pay from 1 January until 31 March (a total of 90 calendar days). At this stage, under normal sick leave rules, she would be due to go off pay on 1 April. However, she continues to receive sick leave at half-pay for the duration of her pregnancy-related illness until she goes on maternity leave on 1

June. Her sick leave entitlement at half-pay therefore is extended by a total of 61 calendar days.

Following maternity leave, the employee goes on sick leave. Her entitlement to sick leave at half-pay is extended by the length of time for which she received sick leave at half pay in accordance with the normal sick leave rules i.e. a total of 90 calendar days (at half pay) is restored to her sick leave entitlement in respect of the period from 1 January to 31 March.

2 This extension only applies to a pregnancy-related illness which arose prior to the employee's confinement.

Example 3 General Support Staff

An employee goes on sick leave due to pregnancy-related illness on 1st January. From 1st January to 19th February the employee receives sick leave at full pay in accordance with the sick pay scheme for general support staff. At this stage, under normal sick leave rules, the employee would be due to go off pay. However, as her sick leave is pregnancy-related, the employee remains on sick leave but at half-pay from 20th February until she goes on maternity leave on 1st April.

Following maternity leave, the employee goes on sick leave. If she has exhausted her sick pay entitlements under the normal sick leave rules, she is entitled to have the period of pregnancy-related absence for which she was in receipt of normal sick pay restored to her (i.e. the period from 1st January to 19th February) at the rate of half pay.