



Circular Letter 0099/2008

**To: BOARDS OF MANAGEMENT/MANAGERS of ALL PRIMARY AND POST-
PRIMARY SCHOOLS
AND TO CEOS OF VOCATIONAL EDUCATION COMMITTEES**

Sick Leave Scheme for Registered Teachers in Primary and Post Primary Schools

The Minister for Education and Science directs your attention to the agreed regulations and procedures regarding sick leave for registered teachers who are serving in primary, voluntary secondary, community and comprehensive schools and with vocational education committees. These agreed procedures apply to teachers who are in receipt of incremental salary under a permanent whole-time (PWT), contract of indefinite duration (CID), temporary whole-time (TWT) regular part-time (RPT) or Fixed-term contract as defined in the Protection of Employees (Fixed-Term Work) Act 2003 Final Implementation Agreement.

The regulations and procedures are to be implemented by each employer with immediate effect and all teachers must adhere to the terms of the attached sick leave scheme.

An Occupational Health Strategy has been put in place as a supportive resource for teachers. The aim of this strategy is to promote the health of teachers in their workplace, with a focus primarily on prevention rather than cure. This strategy has been progressed in consultation with teachers unions and management bodies. The Occupational Health Strategy comprises of the Employee Assistance and Occupational Health Services for teachers.

The Employee Assistance Service incorporates confidential counselling on issues such as health, relationships, bereavement, stress, conflict, critical incident and trauma. The Occupational Health Service incorporates pre-employment health assessments, sickness absence referrals, medical assessments of fitness for work and ill health retirement assessments.

For additional information on the Employee Assistance and Occupational Health Services, log on to the Department of Education and Science Website, www.education.ie and follow the links provided.

This circular supersedes all previous circulars, memoranda, rules and regulations in relation to sick leave for teachers in primary and post-primary schools. You are requested to ensure that copies of this circular are provided to all members of the Board of Management/Vocational Education Committee and to bring its contents to the attention of all teachers in their employment including those on leave of absence (including career break).

This Circular can be accessed on the Department's website under www.education.ie Home – Education Personnel – Post-Primary/Primary – Circulars and Information Booklets – Leave of Absence.

All Post-Primary enquiries regarding this circular should be e-mailed to pptpersonnelpolicy@education.gov.ie

All Primary enquiries regarding this circular should be e-mailed to primary_payments@education.gov.ie

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December 2008

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December 2008

Sick Leave Scheme for Registered Primary and Post Primary School Teachers

Definitions

The Department – means The Department of Education and Science.

Employer – means a Vocational Education Committee and in the case of primary, voluntary secondary, community and comprehensive schools, a Board of Management/Manager. The Vocational Education Committee or Board of Management/Manager may delegate responsibility for matters set out in this circular to the Principal of the school.

School sector - means primary, voluntary secondary, community, comprehensive or vocational as appropriate.

Occupational Health Service – refers to the providers of independent medical advice on occupational health.

On Line Claims System (OLCS) – currently operating in primary, voluntary secondary, community and comprehensive schools.

1. Introduction

- 1.1 A period of illness is defined as any period in which a teacher is medically unfit to carry out his/her normal teaching duties irrespective of whether the employing school is open for normal business or not.
- 1.2 The granting of leave of absence to a teacher who is ill is intended to provide an adequate opportunity for that teacher to recover from the illness and its effects so that s/he may make an early return to duty without a likelihood of a relapse into illness.
- 1.3 Leave of absence may be granted to a teacher who is unable to perform his/her duties
 - because of illness, injury or medical conditions related to pregnancy/childbirth or
 - when absent for the purpose of obtaining health-related services (e.g. Doctor/Dentist) provided such appointments could not have been arranged outside of regular working hours or working days.

2. Entitlement to Paid and Unpaid Sick Leave

- 2.1 Incremental salary is normally payable to eligible teachers in respect of attendance on full teaching duties.
- 2.2 A teacher who is absent from duty because of personal illness, may retain eligibility for incremental salary in respect of a maximum of 365 days of absence in any period of four consecutive years of teaching service. The sick leave period is calculated retrospectively and includes weekends and school closures occurring within the period of absence.

Special conditions apply for teachers with tuberculosis and these are set out at Appendix A of this circular.

The teacher's entitlement to sick leave, whether paid or unpaid, shall cease on the expiry of the contract and that contract not having been renewed.

2.3 A **job-sharing teacher** who is absent from duty because of personal illness, may retain eligibility for incremental salary in respect of a maximum of 365 days absence in any period of four consecutive years of teaching service subject to the conditions listed hereunder:

2.3.1 where timetabled for attendance for 167 days at post primary, each working day's absence on grounds of ill-health shall count as one day's sick leave.

2.3.2 where time-tabled otherwise at primary and post-primary, each day's absence on grounds of ill-health on which the teacher is scheduled to be in attendance shall count as two days sick leave in any week subject to a maximum of five days sick leave being reckoned for five school days in the same week.

2.3.3 Where sick leave absences span weekends, each intervening weekend shall count as two days.

2.4 A teacher who, on having exhausted the maximum period of paid sick leave, is medically unfit to resume duty and wishes to have their post held open must apply to his/her employer for a further period of unpaid sick leave within which s/he may resume teaching if certified as fit to do so. This period shall not normally exceed 2 years from the date of expiration of paid sick leave. The granting of a period of unpaid sick leave is subject to continued submission on a regular basis (max 3 months) of acceptable medical certification (see par 4.3) to the employer.

2.5 In exceptional circumstances a second period of unpaid leave may be taken where

- the first period of unpaid leave is less than 2 years and
- the advice of the Occupational Health Service has been obtained and
- the aggregate of both periods does not normally exceed the maximum of 2 years

2.6 Where a return to duty is not deemed viable, the employer shall take such timely action as it deems appropriate including but not limited to termination of the contract of employment.

3. **Uncertified sick leave**

3.1 The limits for uncertified sick leave in each sector are set out at Appendix B of this circular.

3.2 The payment for uncertified sick leave may be modified or withdrawn, following due process, in cases where absences are unduly frequent or the maximum number of days is regularly approached or taken year after year.

3.3 A teacher shall not take a period of uncertified sick leave immediately after certified sick leave.

4. Certified sick leave

- 4.1 Where a teacher is absent on sick leave for more than the authorised number of days set out in Appendix B of this circular, a medical certificate is required.

Should a teacher fail to provide a medical certificate to the employer in respect of an absence on sick leave in accordance with the terms set out in Appendix B of this scheme, the employer should contact the teacher to advise that if s/he fails to submit the required medical certification by the third working day, the employer, following due process, shall record the leave as a period of unapproved sick leave and payment to the teacher will be withdrawn pending a return to duty or compliance with the scheme.

- 4.2 In the case of Class A PRSI contributors, please note the procedure set out in Appendix B of this circular, in relation to the submission of Social Welfare certificates.

- 4.3 To be acceptable, a medical certificate **must**

- state the nature of the illness,
- cover the full period of the absence from the date of last attendance (first day of absence from school) or from the expiry date of the last medical certificate,
- be signed by a duly qualified medical practitioner registered with the Irish Medical Council,
- be submitted in accordance with the terms outlined at Appendix B of this circular
- cover a period of no more than one month

- 4.4 Employers must safeguard the confidentiality of all information relating to the sick leave records of individual teachers and this applies in particular to medical certificates.

- 4.5 Where in exceptional circumstances a teacher does not wish to disclose the nature of his/her illness to the employer, the employer should seek the advice of the Occupational Health Service in this regard.

5. Notification of sick leave

- 5.1 Any teacher who is absent due to illness must notify, or make suitable arrangements to notify, the employer as early as possible on the first day of the absence. The teacher should, where possible, indicate the likely duration of the absence.

- 5.2 The employer shall submit notice of all sick leave absences to the Department (via the On Line Claims System)/VEC regardless of whether or not a substitute teacher was employed.

- 5.3 A teacher may request a detailed statement of absences owing to illness from their employer. This breakdown is available on the On Line Claims System.

6. Resumption of duty following paid/unpaid sick leave

- 6.1 It is expected that a teacher would be medically fit to teach before duty is resumed after a period of absence owing to illness so that a resumption of duty would not induce a relapse into illness.
- 6.2 The employer has a duty under Section 8 of the Safety, Health and Welfare at Work Act 2005 to “ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees”. The Occupational Health Service is in place to assist the employer in carrying out this duty. The employer may therefore refer a teacher to the Occupational Health Service, for the purpose of an independent medical assessment, where reasonable concerns exist as to the capacity of the teacher to undertake his/her duties in a manner that is safe for both the teacher and students.
- 6.3 The employer, in making a referral to the Occupational Health Service, should follow the Standard Operating Procedures manual attached to the Occupational Health Service Guide for employers.
- 6.4 The teacher will be required to cooperate with the Occupational Health Service for the purpose of providing appropriate advice to the employer. Cooperation may involve the teacher attending in person for a medical examination (arranged by the Occupational Health Service) and/or arranging for the transmission to the Occupational Health Service (by the teacher’s attending doctor) of a comprehensive doctor-to-doctor report.
- 6.5 It is a matter for the Occupational Health Service to decide in what circumstances a teacher may be required to attend for medical assessment. Failure, without reasonable cause, of a teacher to cooperate with the Occupational Health Service on the basis of a referral by the employer may result in cessation/withholding of salary following due process.
- 6.6 A teacher intending to resume duty prior to the date specified on her/his medical certificate, must provide a medical certificate of fitness from his/her attending doctor not later than the date of resumption. In the absence of such a certificate, the full period as recorded on the medical certificate(s) of illness will be counted as sick leave. Certificates of fitness furnished at a later date will not be accepted as evidence of fitness for duty.
- 6.7 A teacher may resume duty following a period of paid sick leave of more than three consecutive months, or at a shorter period where reasonable concerns exist, in circumstances where, prior to resumption
- satisfactory medical certification of fitness for duty is submitted by the teacher and
 - the employer is satisfied, having first obtained the advice of the Occupational Health Service by means of a medical referral (see 6.3 – 6.5 above), as to the teacher’s physical and mental fitness to resume
- 6.8 A teacher may resume duty following a period of unpaid sick leave where, prior to resumption,
- satisfactory medical certification of fitness for duty is submitted by the teacher and

- the employer is satisfied, having first obtained the advice of the Occupational Health Service by means of a medical referral (see 6.3 – 6.5 above), as to the teacher's physical and mental fitness to resume.

6.9 Where a teacher is absent on sick leave and has not returned to duty for a reasonable period before and after a period of school closure, the teacher will be deemed to be on sick leave for the whole duration unless

- the teacher provides a medical certificate of fitness to resume teaching prior to or during a period of school closure and
- the advice of the Occupational Health Service as to the teacher's fitness for duty has been obtained as to whether the school closure period or any part thereof might be discounted and
- the Occupational Health Service has deemed the period of return to duty to be reasonable taking into account the medical circumstances in individual cases.

7. Sick leave while on additional unpaid maternity leave (Statutory 16 weeks leave)

7.1 Under the provisions of the Maternity Protection Amendment Act 2004, a teacher, who has made an application for or has commenced additional statutory unpaid maternity leave and who subsequently becomes ill, may cancel the application or opt not to continue the additional unpaid maternity leave and may instead apply for sick leave.

The employer and the teacher must agree the date of termination of additional unpaid maternity leave. The teacher will be deemed to be on sick leave from the date of certification by her attending doctor and the procedures in relation to sick leave will apply thereafter. The teacher will not be entitled subsequently to take the additional unpaid maternity leave or any part of it not taken at the time of commencement of sick leave.

7.2 Under the Maternity Protection Amendment Act 2004, a male teacher, who is on unpaid leave following the death while on maternity leave of the mother of his child and who becomes ill, may opt not to continue with this period of unpaid leave and may instead apply for sick leave. (There is no provision under this Act for a teacher to cancel paid leave approved in the event of the death of the mother of his child and to apply for sick leave).

The employer and the teacher must agree the date of termination of the unpaid leave. The teacher will be deemed to be on sick leave from the date of certification by his attending doctor and the procedures in relation to sick leave will apply. The teacher will not be entitled subsequently to take any additional unpaid leave as a result of the death of the mother of his child or any part of such leave not taken at the time of commencement of sick leave.

8. Restoration of Incremental Salary

- 8.1 In cases where, prior to resumption of duty, entitlement to salary has been exhausted, salary may be restored only from the date that the Occupational Health Service deems the teacher fit to resume full teaching duties. This is also conditional on the teacher actually resuming duty on the first possible day following the Occupational Health Service certification.
- 8.2 Any action which necessitates an adjustment to a teacher's salary should be notified to the Department/VEC immediately.

9. Sick Leave and other Leave of Absence:

- 9.1 The various schemes by which teachers may avail of leave of absence, whether paid or unpaid, may not be used in such a manner as to maximise the amount of time a teacher may be absent from duty due to illness beyond the limit of the sick leave scheme.
- 9.2 If a teacher wishes to take another form of leave, other than a statutory leave or brief absence, immediately after being absent from duty on sick leave, a medical certificate of fitness to resume full teaching duties must be provided to the employer. This includes where a teacher was absent owing to illness up to a school closure and wishes to take another form of leave immediately after that school closure.

10. Withdrawal of recognition on medical grounds

- 10.1 Medical fitness for admission to, removal, or suspension from the Register of Teachers is a matter for the Teaching Council.

11. Retirement on disability grounds

- 11.1 A teacher deemed medically unfit to continue teaching in the longer term may be entitled, on cessation of salary, to certain pension benefits under the superannuation scheme for teachers and should consult with the Pensions Section of the Department/VEC to establish any entitlements they may have in this regard.

12. Teachers on leave of absence in excess of two full school years

- 12.1 A teacher who has been on long term leave of absence of any kind in excess of two full school years will be required, **prior to return**, to undergo a medical assessment through the Occupational Health Service for teachers.

13. Organisation of Working Time Act, 1997 - Public Holiday Entitlements

- 13.1 A teacher who is absent from work on certified sick leave on a public holiday within the first 26 weeks of a sick leave period is entitled to leave in lieu in respect of the public holiday. The leave in lieu should be taken directly after the period of sick leave, or, as an exceptional measure, at a subsequent date with the agreement of the employer.

14. Other

- 14.1 Teachers should note that it would be contrary to the express purpose of this scheme, as stated in paragraph 1.2, for a teacher while on sick leave to engage in any activity (including travel abroad) which in the opinion of the Occupational Health Service could reasonably be regarded as impeding that teacher's progress to recovery. The approval of the employer must be sought prior to the teacher engaging in any such activity and the employer must seek the advice of the Occupational Health Service before deciding on the matter.
- 14.2 Engagement in the following while on paid sick leave will lead to the immediate cessation of salary and may be dealt with under disciplinary procedures:
- gainful (i.e. for reward) employment including self employment while on paid leave or
 - any activity which in the opinion of the Occupational Health Service would adversely impact on the teacher's state of health and/or his/her capacity to make an early recovery.
- 14.3 In the case of unpaid leave, the teacher must be in receipt of formal approval from the employer before the teacher may engage in any gainful employment. An application for such approval must be accompanied by a report from the teacher's examining Doctor as to the therapeutic value of the proposal. The employer must refer it to the Occupational Health Service for advice before deciding on the merits of the application.

Department of Education and Science

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Appendix A

Teachers certified as having tuberculosis

A registered teacher who is medically certified as having tuberculosis may be granted continuous paid sick leave for a period not exceeding eighteen months from the date of the first medical certificate diagnosing the ailment. The paid sick leave for tuberculosis is granted subject to the following conditions:

- there is a reasonable prospect of recovery and return to teaching
- medical evidence detailing diagnosis, treatment and prognosis is submitted from a recognised hospital Consultant
- the advice of the Occupational Health Service is obtained as to whether the medical complaint renders the teacher physically or mentally unfit to carry out their teaching duties
- in the consecutive four year period, the period of sick leave due to tuberculosis and other sick leave when added together will not exceed 24 months
- the eighteen month period of paid sick leave will only be allowed once to a teacher during his/her teaching career.

A teacher who has tuberculosis shall not be permitted to resume teaching duty until s/he submits a certificate of fitness to resume teaching duty and is medically certified by the Occupational Health Service as fit to resume full teaching duties.

Appendix B

Medical certification is required where the following limits are exceeded

Primary

The Maximum number of uncertified sick leave days allowable in a school year is 31.

Eligible teachers may take a maximum of 3 consecutive school days sick leave without providing a medical certificate.

Vocational Education Committee

The Maximum number of uncertified sick leave days allowable in a school year is 7.

Eligible teachers may take a maximum of 3 consecutive school days sick leave without providing a medical certificate

Secondary, Community and Comprehensive

The Maximum number of uncertified sick leave days allowable in a school year is 30.

Eligible teachers may take a maximum of 4 consecutive school days sick leave without providing a medical certificate.

Job Sharing – All Sectors

The maximum number of uncertified sick leave days allowable in a school year is

- as for full time teachers in the case of teachers timetabled for 167 days at post-primary .
- pro rata the full-time allowance where time-tabled otherwise at primary and post-primary.

The period of sick leave after which the production of a medical certificate is required is

- as for full time teachers where the teacher is timetabled for attendance for 167 days at post-primary annually
- where otherwise time-tabled at primary and post-primary, 2 or more consecutive days on which s/he is scheduled to be in attendance.

Class A PRSI Contributors – All Sectors

In the case of Class A PRSI Contributors, the MC1 Social Welfare Certificate must be submitted to this Department/VEC after 3 days of sick leave for referral to the Department of Social and Family Affairs. This is required for compliance with PRSI regulations.