



Circular Letter 0033/2010

**To: The Managerial Authorities of Recognised Primary, Secondary, Community, and Comprehensive Schools
and
The Chief Executive Officers of Vocational Education Committees**

Sick Leave Scheme for Special Needs Assistants in Recognised Primary and Post-Primary Schools

The Minister for Education and Skills directs you to implement the regulations and procedures regarding sick leave for special needs assistants whose posts are funded from monies provided by the Oireachtas.

The regulations and procedures are to be implemented with immediate effect and all special needs assistants 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 special needs assistants. The aim of this strategy is to promote the health of special needs assistants in their workplace, with a focus primarily on prevention rather than cure. The Occupational Health Strategy comprises of the Employee Assistance and Occupational Health Services for special needs assistants.

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.

Additional information on the Employee Assistance and Occupational Health Services, may be found on www.education.ie

This circular supersedes all previous circulars, memoranda, rules and regulations in relation to sick leave and leave arising as a result of an assault at work for special needs assistants, in recognised primary and post-primary schools. Please ensure that copies of this circular are provided to all members of the Board of Management/Vocational Education Committee and its contents are brought to the attention of all special needs assistants in your employment including those on leave of absence.

This Circular can be accessed on the Department's website under www.education.ie Home – Education Personnel – Special Needs Assistants.

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

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July 2010

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July 2010

Sick Leave Scheme for Special Needs Assistants (SNA's)

Definitions

For the purposes of this scheme the following terms shall have the meanings assigned to them here unless the context indicates otherwise:

The Department – means the Department of Education and Skills.

Employer – means a Vocational Education Committee (VEC) for vocational schools/community colleges and a Board of Management/Manager in the case of primary, voluntary secondary, community and comprehensive schools. 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.

Occupational Health Service (OHS) Providers – means the providers of independent medical advice on occupational health.

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

School Sector – means primary, voluntary secondary, community, comprehensive or vocational as appropriate.

1 Introduction

- 1.1 A period of illness is defined as any period in which an SNA is medically unfit to carry out his/her normal duties irrespective of whether the employing school is open for normal business or not.
- 1.2 The granting of leave of absence to an SNA who is ill is intended to provide an adequate opportunity for that SNA to recover from the illness and its effects so that he/she may make an early return to duty without a likelihood of a relapse into illness.
- 1.3 Leave of absence may be granted to an SNA 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 SNA's in respect of attendance on full duties.
- 2.2 For the purpose of the SNA paid sick leave scheme qualifying service includes all aggregated SNA service in primary, voluntary secondary, community and comprehensive schools and with Vocational Education Committees where the service was funded from monies provided by the Oireachtas.

- 2.3 Paid sick leave will not be allowed during the first three months service. Subsequently the following limits apply:
- a) After three months service, paid sick leave for up to six weeks in any period of twelve months service
 - b) after six months service, paid sick leave for up to nine weeks in any period of twelve months service
 - c) after twelve months service, paid sick leave for up to thirteen weeks in any period of twelve months service.

The sick leave period is calculated retrospectively and includes weekends, school closures and days on which an SNA is not timetabled for attendance, occurring within the period of absence.

- 2.4 An SNA's entitlement to sick leave, whether paid or unpaid, shall cease on the expiry of a contract, that contract not having been renewed.

- 2.5 An SNA who, having exhausted the maximum period of paid sick leave, is still medically unfit to resume duty and wishes to retain his/her position in the school must notify the employer of his/her intention to avail of a period of unpaid sick leave within which he/she may resume duty if certified as fit to do so. This period shall not normally exceed 2 years from the date of expiration of paid sick leave. (An SNA must exhaust his/her period of paid sick leave before he/she can apply for unpaid sick leave.) The granting of a period of unpaid sick leave is subject to

- There being a reasonable prospect of recovery and return to work and
- continued submission on a regular basis (max 1 month) of satisfactory medical certification to the employer.

- 2.6 In exceptional circumstances a second period of unpaid sick leave may be taken where

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

- 2.7 Prior to the expiration of two years unpaid sick leave, employers must seek the advice of the Occupational Health Service on the SNA's prospect of recovery and return to work. Where a return to duty is not deemed viable, the employer should take such timely action as it deems appropriate including but not limited to termination of the contract of employment.

- 2.8 Unpaid sick leave does not count as service qualifying for further paid sick leave.

3 Uncertified sick leave

- 3.1 The maximum number of uncertified sick leave days allowable in any period of 12 months, reckoning backwards from the start date of the latest absence, is 7.

- 3.2 An SNA who is absent from duty 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 SNA should, where possible, state the likely duration of the absence.
- 3.3 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.
- 3.4 An SNA may take a maximum of 2 consecutive days sick leave without providing a medical certificate.
- 3.5 An SNA shall not take a period of uncertified sick leave immediately after certified sick leave.

4 Certified sick leave

- 4.1 Where an SNA is absent on sick leave for more than 2 consecutive days a medical certificate is required.
- 4.2 To be acceptable, a medical certificate **must**
- state the nature of the illness,
 - cover a period not exceeding one week.
 - be signed by a duly qualified medical practitioner registered with the Irish Medical Council,
 - be furnished not later than the third day of absence

Should an SNA fail to provide a medical certificate to the employer in respect of an absence on sick leave in accordance with the terms outlined above, the employer should contact the SNA to advise that if he/she fails to submit the required medical certification, the employer, following due process, shall record the leave as a period of unapproved leave and payment to the SNA will be withdrawn and the matter may be dealt with under disciplinary procedures.

- 4.3 In the case of Class A PRSI contributors in all school sectors, 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 Protection. This is required for compliance with PRSI regulations.
- 4.4 Employers must safeguard the confidentiality of all information relating to the sick leave records of individual SNAs and this applies in particular to medical certificates.
- 4.5 Where in exceptional circumstances, an SNA 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 The employer shall submit details of all sick leave absences to the Department(via the OLCS)/VEC regardless of whether or not a substitute SNA was employed.
- 5.2 An SNA may request a detailed breakdown of absences owing to illness from their employer. This breakdown is available on the OLCS or from the VEC.

6 Resumption of duty following paid/unpaid sick leave

- 6.1 It is expected that an SNA would be deemed medically fit before duty is resumed after a period of absence owing to illness so that 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 an SNA to the Occupational Health Service, for the purpose of an independent medical assessment where reasonable concerns exist as to the capacity of an SNA to undertake his/her duties in a manner that is safe for both the SNA and pupils.
- 6.3 The employer, in making a referral to the Occupational Health Service, should follow the Standard Operating Procedures manual available on the Department’s website - www.education.ie.
- 6.4 An SNA will be required to co-operate with the Occupational Health Service for the purpose of providing appropriate advice to the employer. Co-operation may involve an SNA 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 SNA’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 an SNA may be required to attend for medical assessment. Failure without reasonable cause, of an SNA 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 An SNA 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 An SNA may resume duty following a period of paid sick leave of 8 or more consecutive weeks, 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 SNA and
 - the employer is satisfied, having obtained the advice of the Occupational Health Service by means of a medical referral (see 6.3 – 6.5 above), as to the SNA’s physical and mental fitness to resume.
- 6.8 An SNA 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 SNA and
 - the employer is satisfied, having obtained the advice of the Occupational Health Service by means of a medical referral (see 6.3 – 6.5 above), as to the SNA’s physical and mental fitness to resume.

- 6.9 Where an SNA is absent on sick leave and has not returned to duty for a reasonable period before and after a period of school closure, the SNA will be deemed to be on sick leave for the whole duration unless
- the SNA provides a medical certificate of fitness to resume duty prior to or during a period of school closure and
 - the advice of the Occupational Health Service as to the SNA'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 circumstance 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, an SNA, 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 SNA must agree the date of termination of additional unpaid maternity leave. The SNA 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 SNA 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 SNA, who is on unpaid leave following the death of the mother of his child while on maternity leave and who becomes ill, may opt not to continue with this period of unpaid leave and may instead apply for sick leave.

The employer and the SNA must agree the date of termination of the unpaid leave. The SNA 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 SNA will not be entitled subsequently to take any additional unpaid leave or any part of such leave not taken at the time of commencement of sick leave.

8. Salary Adjustment

- 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 an SNA fit to resume full duties. This is conditional on an SNA actually resuming full duties on the first possible day following the Occupational Health Service certification.
- 8.2 Any action which necessitates an adjustment to an SNA's salary should be notified to the Department/VEC immediately.

9 Sick Leave and other Leave of Absence:

- 9.1 If an SNA wishes to take another form of leave, other than statutory leave or brief absence, immediately after being absent from duty on sick leave, a medical certificate of fitness to resume full duties must be provided to the employer. This includes where an SNA was absent owing to illness up to a school closure and wishes to take another form of leave immediately after the school closure.

10 Retirement on grounds of ill health

- 10.1 An SNA deemed medically unfit in the longer term to continue in his/her role may be entitled on cessation of salary, to certain pension benefits under the pension scheme for SNA's and should consult with the Pensions Section of the Department/VEC to establish any entitlements he/she may have in this regard.

11 Organisation of Working Time Act, 1997 – Public Holiday Entitlements

- 11.1 An SNA 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.

12 Other

- 12.1 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 sick leave.
 - any activity which in the opinion of the Occupational Health Service would adversely impact on an SNA's state of health and/or his/her capacity to make an early recovery.
- 12.2 In the case of unpaid sick leave, an SNA must be in receipt of formal approval from the employer before he/she may engage in any gainful employment. An application for such approval must be accompanied by a report from the SNA'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.
- 12.3 SNA's should note that it would be contrary to the express purpose of this any activity (including travel abroad) which in the opinion of the Occupational Health Service could reasonably be regarded as impeding that SNA's progress to recovery. The approval of the employer must be sought prior to an SNA engaging in any such activity and the employer must seek the advice of the Occupational Health Service before deciding on the matter.