

The Labour Court
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CD/25/53

RECOMMENDATION NO. LCR23154
INDUSTRIAL RELATIONS ACTS 1946 TO 2015
SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES:

DEPARTMENT OF HEALTH & HSE
AND
HEALTH CARE WORKERS
(REPRESENTED BY SIPTU, FORSA, IMO, INMO)

DIVISION

Chairman: Ms O'Donnell
Employer Member: Mr O'Brien
Worker Member: Mr Bell

SUBJECT

Referral under section 26 (1) of the Industrial Relations Act.1990 .

BACKGROUND

This dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Workplace Relations Commission. As agreement was not reached, the dispute was referred to the Labour Court on 27 February 2025 in accordance with Section 26(1) of the Industrial Relations Act, 1990.

A Labour Court hearing took place on 11 June 2025.

RECOMMENDATION

The dispute between the parties is in relation to the Unions claim for an Occupational Illness Scheme for sufferers of Long Covid similar to Blood Borne Disease Scheme and the establishment of a scheme for Long Covid sufferers who were excluded from the Special Leave with Pay Scheme.

The Unions submitted that this claim was initially presented to the Labour Court in 2023 following conciliation under the auspices of the Workplace Relations Commission and the Court recommended that the parties re-engage. During the re-engagement process the Employer maintained a stance that it was not open to claims related to Long Covid and that the Public Service Sick Pay Scheme provisions should apply.

In 2024 the Unions wanted to refer the issue back to the Court, but the Employers were not agreeable prompting the Unions to send the issue back to the WRC where further conciliation took place. Arising from a lack of clarity as to whether the Employer would attend the Labour Court the Unions referred the issue to the Joint Implementation Group of the PSA that group held that the issue should be sent to the Labour Court.

The Unions submitted that as of January this year there are 159 employees in receipt of the Temporary Scheme of Paid Leave which equates to less than 0.01% of Health employees. Covid 19 is the disease caused by the SARS-CoV-2 coronavirus. The European Commission has classified Covid 19 as a risk group 3 biological agent. A risk group 3 biological agent 'means one that can cause severe human disease and presents a serious hazard to employees.' S.I. 539 Safety Health and Welfare at Work (Biological Agents) (Amendment) Regulations 2020 updated the 2013 regulations to include Covid 19 giving effect to EU Directive 2020/739. The World Health Organisation (WHO) defines Long Covid as the "*continuation or development of new symptoms three months after the initial SARS-CoV-2 infection, with these symptoms lasting for at least two months with no other explanation,*"

In March 2020 the Department of Public Expenditure and Reform (DPER) sanctioned the granting of special leave with pay (SLWP) to civil and public servants for leave related to Covid 19. This arrangement was separate to normal sick leave and did not impact on sick leave record.

In December 2020 updated guidance from DPER issued stating that from 1 January 2021 a new 28-day limit for SLWP was being introduced and after that period ordinary sick leave would apply. The Circular set out four criteria that had to be met in order for SLWP to be extended beyond 28 days.

In 2022 DPER announced that SLWP would only apply for 10 days from 7 February 2022, after that normal sick pay would apply. In June 2022, it was announced that from 1 July 2022 all employees who could not attend because of Long Covid would default to the normal sick leave arrangements. The Health Unions objected to this change, but HSE advised that they had no mandate to enter into discussions. On 19 July 2022 a further circular issued confirming the implementation of a temporary scheme of paid leave for eligible public service employees who ceased to be entitled to SLWP from 1 July 2022 there were three criteria to be met.

- *Worked in Covid 19 exposed healthcare environment prior to contracting Covid 19*
- *In receipt of SLWP for at least 84 days prior to 7 February 2022 and were still eligible on 30 June 2022.*
- *Eligible for the special extension for payment of SLWP (beyond 28 days) after 7 February.*

The scheme provided for six months basic pay, fixed allowances and premium payments then a first special extension for three months and a second special extension for three months of basic pay and fixed allowances. The scheme was due to expire July 2023, but there have been numerous extensions with the latest extension from 1 July 2024 to 30 June 2025.

In its latest HSE HR circular on this matter the HSE has advised that those remaining unwell after 30 June 2025 will move onto the Public Service Sick Leave scheme. Ireland is one of only two Member States of the EU that does not specify if Covid can be considered an accident at work or occupational disease, 16 member states recognise it as an occupational disease, three recognise it as an accident at work, and six recognise it as either an accident at work or an occupational disease.

The current scheme is due to end on 30 June 2025, yet the 159 Workers covered by the scheme are not currently fit to return to work. This has been medically confirmed by occupational health. The imposition of an end date will not change that. There is also a second cohort of Workers who contacted Covid after 7 February 2022 or 84 days prior to that date who have been excluded from the temporary scheme even though they have been medically confirmed as suffering with Long Covid which they contracted in the workplace.

The Unions position is that a specific scheme is necessary to support health care workers who faced the highest risk during the different phases of the pandemic and faced exposure to this infectious disease on an ongoing basis in the course of their work to keep vital services running.

This scheme should be developed in conjunction with the Unions similar to the long-term absence schemes already in existence in the public health service. The Unions are also seeking that the anomalous situation that workers who were excluded from the scheme find themselves in should be addressed.

The Employer submitted that the Special Scheme was always intended to be temporary. The rationale for using 7 February 2022 as the date for the lookback for eligibility was that it indicated a change to SLWP, which would be limited to a maximum of 10 consecutive calendar days across the public service after that date. The change to SLWP was aligned to the reopening of society on 24 January 2022 and the cessation of the “work from home unless required to attend in person” guidance.

The 84-day stipulation was in reference to the common understanding that Long Covid is where someone is still experiencing symptoms beyond an initial 12-week period (84 days). No public servant has been on SLWP for longer than 10 days since 7 February 2022 and SLWP has reduced in line with public health guidance changes since that date (currently 5 calendar days.)

A number of extensions have been granted but from 30 June 2025 all staff on the scheme subject to eligibility, will move to the standard sick leave scheme which provides for payment of 92 calendar days on full pay in a rolling one-year period followed by 91 calendar days on half pay subject to an overall maximum of 183 calendar days paid sick leave in a rolling four-year period. There is also potential for access to additional sick leave benefits in the form of extended sick pay under the critical illness protocol (CIP) and or temporary Rehabilitation Remuneration (TRR). CIP can extend paid sick leave up to a maximum of double that available under ordinary sick leave (up to 12 months), subject to the normal CIP medical criteria and management approval on a case-by-case basis. Under CIP TRR limit is extended and the payment may apply for a total period of three years at the amended rate of 37.5% subject to six monthly reviews.

SLWP and the Health Sector specific Special Scheme are separate from the standard Public Service Sick Leave Scheme and as such access to sick leave benefits for those employees remains unaffected by the duration they have been on the other scheme. All staff on long term sickness absence have access to Occupational Health Support and support from their employers Employee Assistance services.

While the EU made a recommendation in 2022 regarding the prescription of Covid 19 as an occupational illness. However, no such prescription has been made in respect of long Covid.

The Employer has an Injury Allowance scheme which is paid to employees physically injured in the actual discharge of their duties or by some injury attributable solely to the nature of their duties. Due to the highly transmissible nature of Covid 19 it cannot be determined with 100% accuracy that an employee contracted Covid 19 during the course of their work.

A payment analogous to payment of injury grant is therefore not relevant to employees who have long Covid. In respect of blood borne diseases these schemes tend to be time bound but in exceptional circumstances an employee may be granted access to the injury allowance for such periods as the employer considers reasonable.

The Labour Court in Recommendation LCR22859 recommended that parties engage to explore the matter of persons with long-Covid in the health service, taking account of the availability of the range of supports already in place including normal sick pay arrangements, CIP and TRR which together are contended to provide support across a period of years to workers affected by Long -Covid. Management have engaged with the Unions and have confirmed that the entire suite of provisions encompassed by the Public Service Sick Leave Scheme are available to impacted employees.

These available supports were confirmed in a letter issued by the department of Health to the HSE for onward distribution to impacted employees ahead of the close of the special scheme on 31 March 2024. In respect of those denied access to the scheme the Employer met with the Unions on a number of occasions to develop a shared understanding of the matter. This cohort of staff did not qualify for the Special scheme as they did not meet the criteria for same.

The Special Scheme was always intended to be temporary and at this point has provided support for a total of five years for those who have been absent since early in the pandemic. In Ireland the minister for social protection has the right to prescribe occupational illnesses under the Occupational Illness Benefits scheme. No such prescription has been made in respect of Covid-19.

The Court has given very careful consideration to the written and oral submissions of the parties. The Court notes that a final extension to the current scheme is due to expire on 30 June 2025.

The Unions are seeking an Occupational Illness Scheme for sufferers of Long Covid similar to Blood Borne Disease Scheme. The Court in November 2023 sent the parties back to discuss such a scheme but unfortunately no agreement was reached. The Court notes that the Special Scheme in its many manifestations has run for five years, which is longer than what is provided for in the main in the Blood Borne Disease Scheme, with the exception being that under the Blood Borne Disease Scheme a Worker can move into the Injury Allowance scheme.

It appears to the Court that the main point of contention between the parties is that the Unions are seeking to have Covid-19 defined as an occupational illness and Long Covid defined as an injury at work, thereby providing access to the Injury Allowance scheme. The Employer's position is that the Government has chosen not to define Covid -19 or Long Covid as an occupational illness and /or an injury at work and therefore it is not open to the Employer to do so.

Any recommendation that the Court makes has to be based on the fact, that at this point in time, Covid -19 and Long Covid are not considered occupational illnesses or an injury at work in this jurisdiction. It is not within the gift of the Labour Court to determine otherwise. On that basis the Court recommends a final extension of the current scheme from 1 July 2025 to 31 December 2025, at which point anyone remaining on the scheme should transition to the Public Service Sick Leave Scheme. The various elements of that scheme and the support services identified by the Employer in their submission should be applied on a consistent basis to this cohort of staff with effect from 1 January 2026.

The second cohort of staff as identified by the Union were excluded from the scheme based on either the date of 7 February 2022 and/ or the 84 days.

In circumstances where it is not possible to measure the impact of a change to either of those requirements the Court does not believe it would be responsible or reasonable to make a recommendation to change that structure. Where no change to the structure is being recommended, the Court sees no benefit in recommending an independent process to review these individuals' eligibility.

The Court so recommends

Signed on behalf of the Labour Court

Louise O'Donnell

Deputy Chairman

AL

26 June 2025

NOTE

Enquiries concerning this Recommendation should be in writing and addressed to Ms Amy Leonard, Court Secretary.