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General Secretary: Seamus Cody

25th November, 2013.

To: Branch Secretaries

Cc: CEC, DEC, seconded officers, all staff.

Dear Colleague

Forthcoming changes to certified sick leave arrangements in the Public Service.

As you are aware, new public service arrangements for certified sick leave are due to come into force on 1st January 2014*. We reported on developments in the IMPACT members' ebulletin of 15th November 2013. The changes arise from a 2012 binding Labour Court recommendation, which was issued in the context of commitments in the Croke Park agreement.

From 1st January 2014, certified sick leave for non-critical illnesses will be halved to three months on full pay, followed by three months on half pay in any four-year period.

IMPACT and other unions successfully argued in the Labour Court that current arrangements (six months paid sick leave, followed by six months on half pay) should remain in cases of critical illness. The Labour Court said unions and employers should agree a protocol on critical illness to govern how this would be applied.

Discussions on this protocol have been underway for some months and they are now heading towards a conclusion. Management has taken a robust position on a number of issues and it has not been possible to reach agreement all of them. It is likely that some outstanding issues may be referred back to the Labour Court.

It is our intention to keep members abreast of developments as they happen over the coming weeks. We will publish all the details, together with an FAQ document, on the IMPACT website once an official circular emerges from the process.

Key issues currently under discussion include:

- Ensuring that schemes for occupational illnesses or injuries remain unchanged.
- Establishing a broad definition of 'critical' illness which, under the new arrangements, will attract paid leave for longer than 'non-critical' illnesses.
- Minimising the amount of sick leave taken prior to 2014 that will be considered when calculating an individual's new certified sick leave entitlements.
- Establishing that a consultant will not be required to certify that an illness is 'critical' in all situations.

It is unlikely that the outcome will produce a list of illnesses considered to be critical. Rather, there is likely to be a set of requirements that will need to be met for an illness to be defined as 'critical.' These may include a person being under the care of a medical consultant (or, in some cases, another medical professional), furnishing the required evidence, being medically unfit to return to work, and having at least one of the following: an acute life threatening illness, a chronic progressive illness with well-established potential to reduce life expectancy if there is no medical intervention, a major physical trauma requiring acute operative surgical treatment, or in-patient care of at least two weeks.

IMPACT and other unions are endeavouring to ensure that the criteria take account of the particular circumstances of mental health, disability and pregnancy-related illness. No agreement has yet been reached on these matters, which will likely be referred to the Labour Court for a binding determination.

Crucially, managers will have the discretion to award 'extended' paid sick leave (beyond the new entitlement for 'non-critical' illnesses) in exceptional circumstances, even in cases where the medical criteria are not met. In doing so, they will have to consider the individual's previous sick leave record and the potential impact on the workplace of an early return to work. It will be possible to appeal management decisions on medical grounds, if extended leave is refused on medical grounds. It will also be possible to appeal a management decision not to use their discretion to allow extended leave in a particular case.

The implementation date of 1st January 2014 was a compromise by the Labour Court. Management had sought immediate implementation of the new arrangements from 2012, which could have meant an individual's entitlement was calculated on the basis of their sick leave record back to 2008. (This is because sick leave entitlements are calculated on the basis of a four-year 'rolling' look-back.) Unions argued that the change should not take place until 2016.

While the new arrangements, therefore, will take account of sick leave since 2010, the existing arrangements also provide for a second look-back, in which sick leave over the 12-months prior to the date of illness is taken into account in a manner that is advantageous to the worker concerned. This will be retained and it will work as follows:

- There will be a maximum of 183 days paid sick leave at either full or half pay in four years.
- However, in a case where a worker has had less than 183 days sick leave in that period, a second look-back over the previous 12 months from the date of illness will be undertaken to determine at the rate at which the worker should be paid
- For example, a worker who had 123 days sick leave prior to 2013, but had taken no sick leave in 2013, would be entitled up to a 60 days sick leave at full pay in 2014 if they required sick leave in that year. This is because the overall limit of 183 days in four years is qualified to provide for up to 92 days at full pay in a 12-month period looking back from the date of illness.

Following the exhaustion of the maximum of 183 days paid sick leave in four years, a worker would be eligible to be paid at the rate of pension to which they are entitled at that point. This will be known as 'temporary rehabilitation pay,' which will normally be payable for only 18 months. A decision about whether the worker can return to work would be made within this 18-month time period.

A concern among pre-1995 recruits was addressed in the unions' submission to the Labour Court, which ruled that 'temporary rehabilitation pay' should not, in any case, be less than the illness benefit paid by the Department of Social Protection to Class A insured persons, including public servants recruited since 1995.

Please note that I have sent this letter for information only. It is not the definitive document on this matter and branches should await the issue of IMPACT information based on the final management circular when it issues.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Seamus Cody', is written over a horizontal line.

Seamus Cody
General Secretary

*The effective date in schools and colleges will be 1st September 2014, to coincide with the school and college year.