

## Absence Management in the Current Health Crisis

### Management of Sick Leave Absence

Absence management and sick leave absenteeism can be complex issues at the best of times. Add to that the additional considerations stemming from the current health crisis and management of this nature of absences should be treated with caution to balance government guidance, public health advice and importantly employee discontent.

While there may be an immediate focus on the operational challenges sick leave absences produce, Managers in the Community & Voluntary sector must ensure that they handle all such absences in a compliant manner.

### Considerations of Absence Management in the Current Health Crisis

#### **1. Covid-19 Response Plan & Suspected Case Response Plan**

In line with the Return to Work Safely Protocols employers must ensure they are addressing absence management in circumstances where an employee has contracted the virus or where it is suspected that a case may have arisen. While both response plans must be developed organisations should also amend existing sick leave policies in order to address absences arising out of these response plans. This means that organisations should adopt a tailored and effective absence management policy - one that is well defined, suits the organisation's current operational environment, and incorporates a number of key elements.

The policy should include up to date information on the symptoms of the virus, the measures that will be taken by the organisation in the event that an employee contracts the virus, the steps and notification procedures employees must follow when absent due to Covid-19 or a suspected case of Covid-19 and the protocols around certified/ self-certified sick leave procedures.

It is important that organisations ensure robust measures are in place in order to minimise the likelihood of employees experiencing workplace stress upon their return to work, especially in the context of a Covid related illness. The Protocols specify a requirement of addressing mental health and well-being therefore, Managers should ensure adequate resources are in place to support employees in this area through the provision of open-door policies, health and well-being initiatives and support through a dedicated team or Employee Assistance Programme.

Management support and promotion of such initiatives can provide real and considerable positive outcomes. Evidence would suggest that the availability of such arrangements assist in reducing both the costs and detrimental impact of sick leave, whilst leading to an increase in

overall levels of employee engagement, greater productivity levels, and greater levels of motivation and job satisfaction.

Examples of programmes or benefits which an organisation may consider include:

- Stress management workshops;
- Mental health and well-being seminars;
- Line management training;
- Workload management and prioritisation;
- Promotion of healthy eating;
- Raising awareness of availability of confidential counselling and other specialist information services under EAP;
- Focus on Health and Safety standards and regulations, including VDU and workstation ergonomics.

## **2. Sick Leave Payment Procedures**

There is no legal entitlement to sick pay while an employee is absent due to illness or injury, unless detailed in Sectoral Employment Order or Registered Employment Agreement. However, contractual sick pay entitlements are provided by a number of organisations throughout a variety of sectors. When considering sick leave pay procedures for absences relating to Covid-19, employers must ensure they are honouring pre-existing contractual or organisational arrangements.

The terms of eligibility to sick leave payment will ordinarily include reference to receipt of State illness benefit and a deduction from an organisations sick pay procedure therefore, employers must ensure any updated policy is reflective of the current State supports offered in this respect.

Covid-19 Enhanced Illness Benefit Payment provides for an enhanced payment of €350. The benefit of the enhanced scheme is that the ordinary requirement of a 6-day waiting period does not apply to those who are eligible for receipt, so organisational policies should reflect this. The parameters of this scheme should be set out for employees' information so that the below eligibility requirements are understood.

To be eligible for the enhanced payment an employee must be:

- self-isolating on the instruction of a doctor or the HSE due to being a probable source of infection or diagnosed with Covid-19, and,
- absent from work and confined to their home or a medical facility.

As periods of self-isolation must be certified by a Doctor or the HSE, employees would only be entitled to paid sick leave in accordance with normal sick leave pay procedures.

The introduction of the term 'restricted movement' may cause confusion as to the entitlement of sick leave pay and employers should consider the parameters of their own organisational policies and procedures to ensure that those impacted by restricted movement are clear on whether or not an entitlement to pay for this period of time exists. In light of this employers

should set clear guidelines that only where periods of restricted movement are certified by a Doctor that sick leave payments would be made.

### **3. Managers Role in Absence Management**

Line Managers have a critical role to play in supporting employees whilst out of the workplace and ensuring that appropriate steps are taken to facilitate a successful return. Ongoing training and support are vital in order to equip Line Managers with the necessary skills and knowledge to effectively deal with issues which arise in this area.

The organisation's policy should also outline clear rehabilitation processes. Employers should take measures to facilitate and promote employee wellbeing that could help reduce feelings of discontent or stress that could stem from a recovery of the illness. Where possible employers should employ the services of an Employee Assistance Programme to support employees who may be experiencing difficulties either during their absence or upon their return as well as promoting health and well-being in the workplace.

A further consideration is the involvement of occupational health professionals at certain stages of sick leave absences which is a particularly effective tool in sick leave absence management. One of their tasks is to examine sick employees and provide advice to the organisation on which clear decisions can be made in the event that an employee experiences a long-term period of absence due to Covid-19 or its impact.

### **4. Processing Personal Data**

Management of absences especially those related to Covid-19 may include steps which involves the processing of personal data, including in many cases sensitive, 'special category' personal data (such as data relating to health). Measures taken in response to the pandemic involving the use of personal data, including health data, should be necessary and proportionate. Organisations should have regard to a number of obligations such as the following:

#### **(a) Lawfulness**

There are a number of legal bases for the processing of personal data under Article 6 GDPR, and conditions permitting the processing of Special Categories of personal data, such as health data, under Article 9 that may be applicable in this context. Among these, the following may be relevant.

In circumstances where organisations are acting on the guidance or directions of public health authorities, or other relevant authorities, it is likely that Article 9(2)(i) GDPR and Section 53 of the Data Protection Act 2018 will permit the processing of personal data, including health data, once suitable safeguards are implemented. Safeguards may include limitation on access to the data, strict time limits for erasure, and other measures such as adequate staff training to protect the data protection rights of individuals.

Employers also have a legal obligation to protect their employees under the Safety, Health and Welfare at Work Act 2005 (Section 8). This obligation together with Article 9(2)(b) GDPR provides a legal basis to process personal data, including health data, where it is deemed necessary and proportionate to do so. Any data that is processed must be treated in

a confidential manner i.e. any communications to staff about the possible presence of Covid-19 in the workplace should not generally identify any individual employees.

It is also permissible to process personal data to protect the vital interests of an individual data subject or other persons where necessary. A person's health data may be processed in this regard where they are physically or legally incapable of giving their consent. This will typically apply only in emergency situations, where no other legal basis can be identified.

#### (b) Transparency

Organisations processing personal data must be transparent regarding the measures they implement in this context, including the purpose of collecting the personal data and how long it will be retained for. They must provide individuals with information regarding the processing of their personal data in a format that is concise, easily accessible, easy to understand, and in clear and plain language.

#### (c) Confidentiality

Any data processing in the context of preventing the spread of Covid-19 must be carried out in a manner that ensures security of the data, in particular where health data is concerned. The identity of affected individuals should not be disclosed to any third parties or to their colleagues without a clear justification.

#### (d) Data Minimisation

As with any data processing, only the minimum necessary amount of data should be processed to achieve the purpose of implementing measures to prevent or contain the spread of Covid-19.

#### (e) Accountability

Controllers should also ensure they document any decision-making process regarding measures implemented to manage Covid-19, which involve the processing of personal data.

## Conclusion

Effective absence management and the promotion of well-being initiatives should be on the agenda for all HR Practitioners and those in the Community and Voluntary sector, in particular where the current health crisis continues to evolve. Employers must ensure that clear policies, practices and procedures are in place to deal with Covid-19 absences. It is also important to ensure that recording and monitoring of attendance levels is completed in order to measure and evaluate the level and nature of sick leave absence within an organisation. Analysis of sick leave absence data absence can occur at an organisational level in order to gain an understanding of the overall rate of sick leave, and an individual level to allow identification of problem absence levels at an employee level. As the pandemic continues to manoeuvre through society these metrics will form an important part of strategic planning for HR Practitioners and employers alike ensuring an organisation is fit for future purpose.

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*per information published on the government websites at [www.gov.ie](http://www.gov.ie) and per information on [www.dataprotection.ie](http://www.dataprotection.ie). Professional advice should always be sought before making any such decisions.*

**For further information or advice, please contact the designated HR & Employment Helpdesk at [thewheelhrhelpdesk@adarehrm.ie](mailto:thewheelhrhelpdesk@adarehrm.ie) or via telephone on (01) 5394661  
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