

Sick Leave Absence Management – Frequently Asked Questions

Management of Sick Leave Absence

The ongoing and changing landscape of the current health crisis has, without a doubt, led to additional complexities of the employment relationship. Under these conditions, absence management and sick leave absenteeism has and will lead to additional considerations for employers to ensure compliance and adherence to government guidance and public health advice. To assist employers manoeuvring this terrain we have compiled a number of frequently asked questions to ensure operational disruption can be managed in a practical way.

Return to Work Safely Protocols

1. *What employer obligations exist under the Return to Work Safely Protocols when it comes to sick leave absence?*

Employers must ensure they are compliant with the Protocols by updating existing sick leave policies and procedures to capture the key elements of health crisis. This means that existing policies 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.

2. *How can an employer assist with mental health and well-being of employees?*

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 (EAP).

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

- Onsite health clinics and screening programmes;
- 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;

Sick Leave Payment Procedures

3. Is an employer obliged to pay for sick leave absences when an employee has been diagnosed with Covid-19?

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, existing contractual sick pay entitlements should be provided for absences relating to Covid-19 when ordinary procedures apply - such as certified sick leave absences.

4. Where an employer does not ordinarily provide payment for sick leave absences what is an employee entitled to following a diagnosis of Covid-19?

A State benefit will be available to employees should they satisfy the eligibility criteria of the Covid-19 Enhanced Illness Benefit Payment, which provides for an enhanced payment of €350 per week.

5. What are the eligibility criteria for the enhanced Covid-19 Illness Benefit Payment?

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.

6. Where illness benefit payment from the Department of Employment Affairs and Social Protection is not made until the sixth date of absence are employers obliged to pay sick leave for those initial days?

Where an employee has been certified for a period of self-isolation on the instruction of a doctor or the HSE and are absent from work and confined to their home or a medical facility then they will satisfy the criteria for the enhanced illness benefit payment. 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. However, all organisational sick pay procedures should apply to any absence in accordance with contractual entitlements.

7. Is an employee entitled to sick pay for a period of restricted movement?

It is only where an employee has been certified by a doctor for an absence, including those who may have to restrict their movements, that sick leave payment could be considered where the absence is certified. In applying the ordinary organisational procedures of sick leave absence and payment an employee would have to provide a medical certificate of absence to be paid for a period of 14 days, insofar as the organisation provides paid sick leave. Where the period of restricted movement is not certified by a medical practitioner then the absence must be addressed through another form of leave, paid or unpaid.

Managers Role in Absence Management

8. What is a Managers role where an employee is absent on sick leave due to a diagnosis of Covid-19?

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. This would

include, ensuring the Employee is fit to return to work on the advice of a doctor and upon their return, ensuring sufficient supports are in place to transition the Employee back to normal day to day functions.

9. How should Management support employees who are absent on sick leave?

Employers and Line Managers should take measures to facilitate and promote employee wellbeing that could help reduce feelings of discontent or stress that could stem from the 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.

Data Protection and the processing of Special Category Data

10. Can an employer require all staff and visitors to the building to fill out a questionnaire requesting information on their recent travel history concerning countries affected by the virus, and medical info such as; symptoms of fever, high temperature, etc?

As employers have a legal obligation to protect the health of their employees and maintain a safe place of work, they would in these circumstances be justified in asking employees and visitors to inform them if they have visited an affected area and/or are experiencing symptoms.

11. Can an employer request more specific details of their employee's illness on medical certificates in consideration of Covid-19?

While employers have a legal obligation to protect the health of their employees, employees also have a duty to take reasonable care to protect their health and the health of any other person in the workplace. In this regard, employers would be justified in requiring employees to inform them if they have a medical diagnosis of Covid-19 in order to allow necessary steps to be taken. However, it is important to keep in mind that the recording of any health information must be justified and factual and must be limited to what is necessary in order to allow an employer to implement health and safety measures.

Employers should follow the advice and directions of the public health authorities, which may require the disclosure of personal data in the public interest to protect against serious threats to public health. Employees should follow the advice of their healthcare practitioners and the public health authorities in these circumstances, who will instruct them as to what they need to do if they present symptoms of Covid-19.

12. Can an employer send employees home from work if they are confirmed to have the virus?

Employers have a duty of care to employees to provide a safe place of work, which may require them to exercise discretion regarding access to premises. In a situation where an employee has confirmed that they have Covid-19, advice should be sought as a matter of urgency from the public health authorities as to what steps should be taken. The decision to send employees home from work is not a data protection matter and may have other consequences for employers relating to employment law e.g. entitlement to sick pay.

13. Can an employer disclose that an employee has the virus to their colleagues?

In the interests of maintaining the confidentiality of the employee's personal data, this should be avoided. For example, an employer would be justified in informing staff that there has been

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a case, or suspected case, of Covid-19 in the organisation and requesting them to work from home. This communication should not name the affected individual.

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**For further information or advice, please contact the designated HR & Employment Helpdesk at thewheelhrhelpdesk@adarehrm.ie or via telephone on (01) 5394661
Monday – Friday 9.00am- 5.00pm**