

Health Service Executive

HR STAFF NEWS-LETTER

November 2015

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HR Accreditation

The HSE HR Division intends to pursue the National Standards Authority of Ireland (NSAI) HR accreditation, Excellence Through People.

The focus of Excellence Through People is to encourage organisations to look at their people as a key source of competitive advantage and help them improve by:

- Putting the right human resource systems in place to maximise employee contribution
- Aligning people practices with the goals of the organisation
- Maximising the investment in human resource management

The National HR team will act as a steering group during the accreditation process and employees from across the HR Division have been nominated onto a Working Group in order to progress this project.

Foreword

I am delighted to welcome you to the first edition of the HSE HR Newsletter

One of my first priorities in my role as Director of HR is to support more effective communication and engagement with all staff across the HR Division and the wider HSE services. Feedback and suggestions from all employees with ideas on how the HR services can be improved are very welcome and I will be working to ensure that we have the platforms necessary to facilitate effective two-way communications. It is essential that the right information is available to equip us to effectively support our service delivery units, as this is ultimately what we are all here to do.



I'd like to take this opportunity to thank you all for your warm reception, welcome and promises of support and to reiterate how important it is that we live our values of Care, Compassion, Trust and Learning in our interactions with each other, our clients and members of the public.

The purpose of a newsletter is to provide specialized information to a targeted audience.

R.C.S.I. Hospital Group HSE Succession Management Programme (Future Leaders)

22 Senior Managers from across the RCSI Hospital Group recently commenced their Future Leaders Programme.

This bespoke 12 month Succession Management Development Programme (SMDP) comprises of a cohort of multidisciplinary key personnel from both frontline and strategic service areas.

Assessment

The group participated in a robust Development Centre (MDC), which involves a series of assessments based on the HSE's top level competency framework. The amalgamation of the various assessments provides the platform for a detailed feedback report highlighting key strengths and opportunities for further development/assignments.

12 Month Journey (SMDP)

Both the Regional Chief and HR Group Director act as key sponsors for the 12 month cycle. The participant's line manager signs off agreed development tasks and acts as the key support person.

The programme is supported by facilitated Action Learning with Coaching and Mentoring. This approach provides a safe and challenging platform for managers to grow, develop and form positive networks of support. Other leadership supports include project management and e-finance programmes.



The programme provides the platform to support integration between the HSE hospital infrastructure and the RCSI as part of the National reform programme.

RCSI Future Leaders Participants

Writing for Peer Reviewed Journals

An e-learning programme to support nurses, midwives and Health and Social Care Professionals to publish articles in peer reviewed journals is now available on HSELand.ie .



The programme entitled "Working for Publication" can be accessed by clicking on 'My Learning' on the homepage and typing 'publication' into the search box. The programme is also listed in the Clinical Skills and the Allied Health and Social Care Professions catalogue. The programme should be particularly useful for those employees who have undertaken a piece of work for an evaluation, systematic review or audit.

"Very inspiring speaker - learnt a lot in a short amount of time."

"Really enjoyed the diverse group that I met - Refreshing to meet other services."

"Thoroughly enjoyed this masterclass. Very thought provoking and challenging"

"Thank you that was great. Good timing and short and sweet."

"Would have liked to learn a bit more on influencing skills."

"It would be great to bring this level of education to all staff. Maybe even include it in the induction for new staff. After all why have high performance thinking only in the leadership domain."

Smart Thinking for Peak Performance with Valerie Pierce, MA, MSc



In this excellent and thought provoking Masterclass, Valerie Pierce explained to us that clear thinking is difficult, particularly when your work environment is complex and ever changing.

And the task of delivering an excellent patient experience, while living the core corporate values of care, compassion, trust and learning is no easy task. Too often indecision and inaction may occur, leading to difficult communication and an inability to solve problems and make decisions.

A complex environment is indeed very difficult, but in this short article some simple techniques to assist you in problem solving and decision making are offered. With clear and critical thinking you can achieve the focus you need to get things done quickly, and on time.

5 Easy, thoughtful actions that Valarie left us to ensure success

1. Have a Clear Purpose

To achieve our goals we must be specific. The reason for this is that it is impossible to think towards a moving target. If we keep changing our goal, then we are also demanding of our brain to continually change its focus and so can lose our direction. Sit quietly for five minutes and write down all the aspects of your problem situation to decide where the real problem lies.

2. Be Present to your Need

This follows on from being clear about your specific goal. When you are aware of what you really need to achieve, at a particular time, in any situation, it will help you to prioritise what is the most important action to begin with and gives you a structure for your subsequent tasks.

3. Use Your Passion to control your Emotions

There is a simple reason why this is so: As you strive for your goal, your passion overcomes problems as it focuses on the pleasure of achieving the perfect goal. Your emotions, however, can be overwhelmed by problems as they feel the pain to the ego of a potential loss of the goal. To keep your focus, clearly look ahead to achieve what you want, use your passion to control your emotions.

4. Use your Negative Thinking to gain Positive Action

One of the most valuable assets we have is our Negative Thinking – for far from negative thinking leading to negativity, negative thinking is the stimulus that can free our imagination to achieve exactly what we want. Using the phrase **'Why not = How to'** you can stimulate your imagination to focus on how to achieve your goal. For if you look at all the reasons why you cannot do something, you will notice that you have a 'how to' plan to do it - as in overcoming each of the obstacles, you are getting closer to your goal.

5. Use Cool Logic in Hot Situations to reach your Goal

This skill is most important in problem solving and decision making, for so many of us can begin with a clear focus on our goals, but then be persuaded by the uncertainty or doubt of ourselves, or others, to lose that clear direction. Using 'Cool Logic in Hot Situations' means that you direct all conversations towards progressing the goal you want to reach in an objective and purposeful way

IMPORTANT DATE FOR YOUR DIARY!!
NEXT MASTERCLASS

Book early to avoid disappointment

2nd December, 2015





Clear Communication is essential

Overly complicated language used by medical professionals could be putting patients' lives at risk, according to an article published in the Irish Times on September 19, 2015.

The article, by journalist Conor Pope, was a report on the 10th International Plain Language Conference which was held in Dublin.

The Conference, which was hosted by the National Adult Literacy Agency in Ireland, promoted the use of clearer language amongst State organisations and businesses.

They also spoke about the ethical component to the matter and the right of people to understand what is being said to them.

Deborah Bosley, the President of the Plain Language Group and Dr Neil James of the Plain English Foundation in Australia addressed the Conference and

spoke about how communication in the health sector was frequently a matter of life and death, and fear of litigation rather than an attempt to communicate effectively with patients was the reason for the type of language used by the medical profession. They also spoke about the ethical component to the matter and the right of people to understand what is being said to them. Dr James stated that it was his view that governments throughout the world were beginning to recognise that clear communication is essential. Inez Bailey from the National Adult Literacy Agency suggested that the Irish State Bodies were some of the biggest offenders when it came to poor communication and called for these Organisations to give information to citizens in a way that they can understand.

Guide supports managers to implement workplace stress policy

A guide to support Managers with the implementation the HSE's Policy for the Prevention and Management of Workplace Stress has been produced which aims to help managers take a pro-active approach to handling workplace stress.

The guide was developed by the Organisational Psychology Unit in conjunction with a number of experienced HR practitioners from the HSE West. They produced the guide after it became clear that specific guidelines on the implementation of the Stress policy were required. The team said the guide was required due to the complexities involved in identifying and managing workplace stress.

The guide aims to ensure that managers are equipped and supported to carry out their responsibilities under the policy.

The guide aims to ensure that managers are equipped and supported to carry out their responsibilities under the policy. It includes a Risk Assessment Checklist, a Workplace Stress Flowchart and a Management Standards / Work Positive approach to Risk Assessment of Workplace Stress, all of which guide managers through the process of handling a report of employee stress.

The HSE believes that employees are the most important resource in the delivery of high quality health and social services, and are central to the delivery of its core values of "Care, Compassion, Trust and Learning". The management of safety, health and welfare is therefore of fundamental importance. The guide, which provides the support and guidance needed by managers in this complicated area, has been warmly welcomed and endorsed by the National Director of Human Resources, Rosarii Mannion. The document is available for download from the HSE website at www.hse.ie/europeansafetyweek and clicking on the resource pack link.



Lansdowne Road Agreement

The public services committee of ICTU has formally accepted the Lansdowne Road Agreement (LRA) negotiated earlier this year.

Under the terms of the LRA, a number of 'side' agreements have been made in respect of various staffing issues in the health service. Details of these are outlined below:

● **Nursing trade unions: Pay Rate for the 36 Week Placement and Incremental Credit**

Direct engagement between the nursing trade unions and the Department of Health and the HSE will take place on matters relating to pay and incremental credit during the fourth year clinical rostered placement which is part of the nursing qualification. This process is to be completed within a three month time frame.

● **IMPACT/SIPTU - Job Evaluation in the health sector**

The parties agreed in principle that a Job Evaluation scheme should apply in the health sector. Therefore, subject to the outcome of the current discussion between the Department of Public Expenditure and Reform and the Public Services Committee of ICTU on the unwinding of FEMPI (Financial Emergency Measures In the Public Interest) legislation, management and relevant staff representatives will meet to discuss the terms of a Job Evaluation scheme for the health sector.

● **INMO/IMO/SIPTU – Transfer of Tasks/Duties under the Haddington Road Agreement**

The relevant trade unions and the HSE have committed to a renewed engagement to address the provisions as set out in Appendix 7 of the HRA under Medical/Nursing interface and the transfer of tasks/duties. The parties have agreed to an independently chaired process to conclude within a three month period which will address such issues as whether further information is required to quantify the potential for savings and service impacts associated with the task transfers in question. An independent chair has been appointed and an initial meeting has taken place.

● **SIPTU - Support staff Interns**

It has been agreed that the current cohort of Intern Support Staff will be appointed to posts in the health service after 18 months. These interns will be appointed to the next favourable point of the appropriate salary scales. A process will commence between the management side and the staff representatives regarding the numbers, training and qualification issues that arise following the conclusion of the current pay talks, with these talks due to be completed within two months.

● **Nursing and Midwifery Board Ireland (NMBI) Registration Fee**

It has also been agreed that the NMBI registration fees for nurses will remain at €100 for the lifetime of the LRA. This agreement is made in the context of the Department of Health's work with the NMBI in ensuring its financial plans are realistic and cost effective. The policy objective that the costs of professional regulation by independent regulators should be fully recouped from relevant health care professionals following consultation with the bodies concerned with these professions, will be recommenced on a phased basis in the case of nurse and midwife registration after this period of development and the expiry of the agreement.

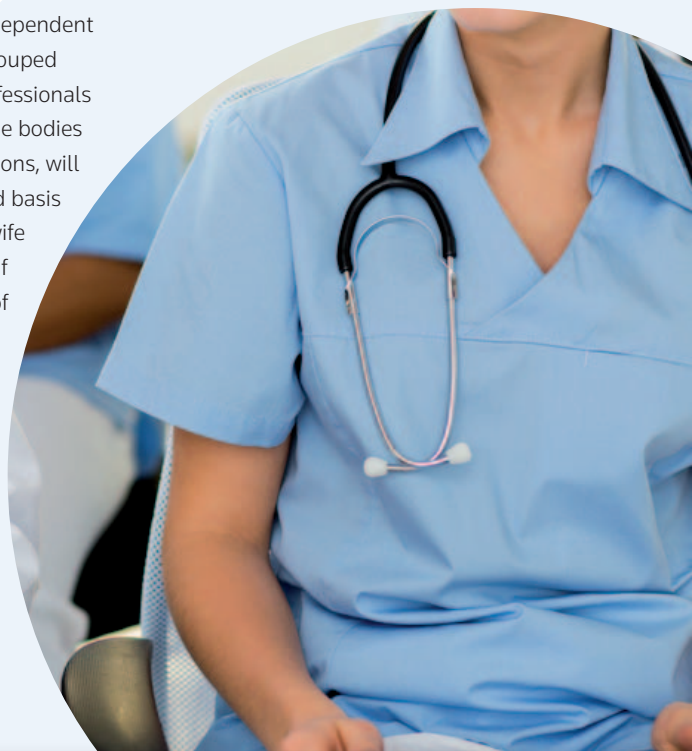
● **Section 39 Funded Organisations**

Agreement has been reached to establish a Working Group to examine a number of matters pertaining to Section 39 funded organisations in the health service: These include:

- How the HSE can reach full compliance with the commitments given in previous public service agreements that all contract/service level agreements contain a clause specifying that the service provider is expected to use the dispute resolution mechanisms of the State.
- Examination of the prevalence of zero hour contracts in the Section 39 sector and consideration of measures required to deal with this issue.
- Gratuity payments for home help staff.

● **HSE/INMO – Group Directors of Nursing and Midwifery**

An arbitrator has recommended that a monthly payment of €600 be paid to the Group Directors of Nursing and Midwifery pending conclusion of the negotiations on the appropriate grade for this group. This interim supplement will be offset against any final resolution of the matter.



SIPTU/IMPACT – Sleepovers

Meetings of the National Implementation Group to address compliance with the European Working Time Directive (EWTD) in respect of sleepover shifts in the statutory childcare and intellectual disability setting are continuing under the auspices of the Labour Relations Commission. While HSE HR Circular 27/2014 gave effect to the payment provisions of the Labour Court's Recommendations (LCR20837, 18 September 2014) on matters pertaining to sleepovers, the Court also recommended

that the services in which sleepovers occur are restructured to ensure compliance with legal working time requirements.

Related to this matter, the HSE has recently met with the EU (Law Unit) in respect of a complaint of non-compliance with the EWTD lodged by IMPACT. The HSE has set out its plans for achieving compliance and meetings with the EU will be ongoing to review progress.

Irish Medical Organisation – Hospital consultants salary scales

Circular 13/2015 has issued giving effect to new salary scales and career structures for hospital consultants following agreement on an outstanding issue in dispute relating to incremental credit. The agreed rules on incremental credit are set out in the Framework for the Application of Incremental Credit to New Entrant Consultants to the Irish Public Health Service.

The development of the revised salary scales and career structures for Consultants derived from the Haddington Road Agreement's identification of the need to retain graduates of Irish Medical Schools

within the public health system, as well as attracting graduates back to Ireland. The work of the Strategic Review of Medical Training and Career Structure (the MacCraith Report) was established to make high level recommendations

addressing these matters. The implementation of this Report was delayed due to disagreement on the application of incremental credit for new entrants. However, the Labour

Relations Commission helped broker agreement on this issue between the IMO, the HSE and the Departments of Public Expenditure and Reform, and the Department of Health.

The agreed rules on incremental credit are set out in the Framework for the Application of Incremental Credit to New Entrant Consultants to the Irish Public Health Service.

Health sector trade unions: Appeals process Regularisation of Long Term Actors

The appeals process to deal with claims for regularisation in long term acting posts which were rejected has been agreed with the trade unions and is underway. The regularisation of long term actors was agreed under the Haddington Road Agreement and given effect in HSE Circular 17/2013.

Additionally, a number of conciliation conferences have taken place at the LRC on the terms and conditions attached to the reassignments of employees to higher grades on a temporary basis. The health service trade unions are seeking that pay on promotion rules should apply to these temporary reassignments, which is disputed by management.

IMPACT

– Payment of Twilight Premium in Intellectual Disability Sector

IMPACT has called off planned industrial action in the Brothers of Charity and Ability West intellectual disability services in Galway and Roscommon in a dispute about unpaid premium payments to social care staff. The twilight premium is time and one sixth between 8pm and midnight for social care workers and leaders in both employments.

The suspension of the industrial action follows confirmation from the HSE that the Department of Health is seeking funding to cover the arrears and ongoing payments. The dispute has been the subject of ongoing discussions within the LRC for the past year. The union will now ballot its members on the proposals

CJEU decision on Travel Time

The Court of Justice of the European Union (the "CJEU") issued a decision on September 10, 2015 regarding travel time which has the potential to have significant implications for employers including the public health service.

The Court in the Spanish "Tyco Case" has decided that certain categories of workers who travel from their homes to customers' premises are considered to be working while making those journeys for the purposes of the EU Working Time Directive (Directive 2003/88/EC). The decision applies to workers who do not have a fixed place of work and are required by their employers to travel to provide a service to clients.

While it remains to be seen how the national courts will interpret this decision, it could result in employers having to pay such staff for time spent travelling, as well as having to adjust their working day to comply with the

48 hour maximum working week permitted under the Working Time Directive.

Further information and advice is available from the HSE Employee Relations Advisory Service (ERAS) (Tel: 01 6626966).



Christian Mueller / Shutterstock.com

DPER Review of Sick Leave Scheme

The Department of Public Expenditure and Reform (DPER) has commenced its planned review of the operation of the Public Service Sick Leave Scheme which was introduced in March 2014.

The Review seeks to evaluate the effectiveness of the Scheme and encompasses a focus on the Public Service Management (Sick Leave) Regulations

2014 (S.I. 124 of 2014) and the operational and implementation issues that have arisen since the Scheme's commencement.



Martin Good / Shutterstock.com

The DPER review will incorporate a number of meetings with the nominated management representatives from each sector as well as consultation

with the occupational health physicians, trade unions and other relevant parties; representatives from Employee Relations and Advisory Services and the Department of Health are representing the health sector at this forum. The comprehensive data request templates issued by DPER have been completed and returned to the Department and the information is currently being analysed. DPER intend to conclude this Review early in 2016 and publish revised Regulations at this time.

The DPER review will incorporate a number of meetings with the nominated management representatives from each sector as well as consultation with the occupational health physicians, trade unions and other relevant parties

Shorter Working Year Scheme

The Department of Health has confirmed approval to operate the Shorter Working Year Scheme in 2016 and HSE circular 23/2015 has issued to give effect to this decision. All categories of employees are encompassed by this Scheme and will be eligible to apply for leave in 2016. The previous terms and conditions continue to apply and the granting of applications will be subject to service needs of the particular Service.

Employee Relations Database

The Employee Relations Advisory Service maintains a database of health sector third party decisions and recommendations which contain a summary of third party findings from various fora including the Rights Commissioner, Equality Tribunal, Labour Court and the Employment Appeals Tribunal.

The database provides a useful resource for monitoring employee relations activity and claims as well as being a valuable resource in helping employers when preparing for third party hearings.

The reliability of the database is dependent upon the HSE and health sector employers forwarding copies of any decisions which issue under the various pieces of legislation to ERAS and employer representatives are asked to contact Mary Ruane (Email: Mary.Ruane@hse.ie) or call the ERAS Advisory Service on 016626966 in this regard.



Joint Information and Consultation Forum

The Joint Information and Consultation Forum (JICF) was established by health service management and trade unions in 2011 as a national level body whose main remit is to enable employers to consult and inform employee representatives.

The Forum provides a mechanism to allow health service employers to comply with the requirements of the Employees (Provision of Information and Consultation) Act, 2006. Its membership includes senior management of the HSE, representatives of the Department of Health and the Voluntary Sector. Employees are represented by the senior health spokesperson from each of the trade unions.

The JICF generally meets on a quarterly basis and provides updates on, inter alia, the HSE Service Plan, health service programmes and activities and the health service reform programme. The Forum enables health service employers and trade unions to work together in an innovative and consultative manner and plays a complementary role to the National Joint Council, which is primarily an industrial relations forum.



Further information on the JICF and the Health Services Information and Consultation Agreement can be found here <http://www.hse.ie/eng/staff/safetywellbeing/ic/>.

HSE National HR Mediation Service

The internal HSE National HR Mediation Service provides a professional and confidential service within the public health system. The success of the process has been demonstrated across our services, working with individuals and teams to assist them in addressing and resolving conflict by reaching mutually acceptable solutions and getting working relationships back on track. Our statistics reflect a success rate averaging 80% of cases.

Mediation is a voluntary process of conflict prevention and resolution that allows the parties an opportunity to address their issues in a confidential, private, and safe environment. Mediators are trained in conflict resolution skills and techniques and have the expertise needed to give people the best possible opportunity to resolve their disputes.

Our internal mediators are accredited by the Mediators Institute of Ireland, the professional association whose mission is to promote the use of quality mediation by ensuring the highest standards of education, training, professional practice and regulation.

Under the Dignity at Work policy, mediation is the preferred method for the resolution of complaints of bullying and harassment which are not capable of being resolved by local management. Mediation is also increasingly being used to facilitate the resolution of workplace disputes and conflicts, including interpersonal disputes, manager/staff difficulties and any breakdown of a working relationship.

when parties are willing but stuck

- As a preventative intervention early in a conflict
- As an alternative to avoid further costly and lengthy procedures of investigations and adjudications

Impartiality

All cases are dealt with in accordance with the principles of impartiality, integrity, fairness and confidentiality, with respect for all parties to the dispute and in accordance with the Code of Ethics of the Mediators' Institute of Ireland, contributing to and promoting a positive work environment where:

- Working relationships are back on line with employees

Under the Dignity at Work policy, mediation is the preferred method for the resolution of complaints of bullying and harassment which are not capable of being resolved by local management.

refocused on the core task of their role, helping to cut the human costs of stress related illnesses and subsequent absences from work

- Staff are allowed to resolve interpersonal issues in an informal, private setting away from the glare of third parties
- Time spent by managers dealing with difficulties and conflict issues is reduced as well as eliminating management time normally required for preparation for and participation in formal procedures.

For further information contact the National HR Mediation Service:

- A full time professional mediator is employed within the HR Division, Joan Smith, who can be contacted at joan.smith@hse.ie
- Seosamh O'Maolalai, Mediator and Co-Ordinator of the service can be contacted at seosamh.omaolalai@hse.ie

Mediation is effective:

- In single-issue and multi-issue disputes
- In two-person and multi-party conflicts
- In developing innovative and sustainable solutions

Further information on Mediation and the HR Guide to Creating a Positive Work Environment in our Health Services is available on line, click on the following link: http://hse.ie/eng/staff/Benefits_Services/

Update on Workplace Relations Act 2015

The Workplace Relations Act, 2015 came into operation on October 1, 2015. This Act provides for two bodies to deal with complaints and disputes in relation to industrial relations and employment law – a new body called the Workplace Relations Commission (WRC) and the Labour Court.

The Act creates a new single framework for the resolution of employment and equality disputes. This streamlining of dispute resolution procedures is welcomed by health service employers and should ensure that employers are no longer required to appear before a number of different fora to deal with the same claim. The Act also promotes mediation and the early resolution of disputes without the need for parties to have to resort to formal adjudication.

The following is a brief summary of the salient provisions of the Act:

- The WRC amalgamates the functions of the Labour Relations Commission (LRC), the Equality Tribunal and the first instance functions of the Labour Court and the Employment Appeals Tribunal. The appellate functions of the Employment Appeals Tribunal have been incorporated into an expanded and reconfigured Labour Court.

It is intended that the new format will improve the transparency of the decision-making and access to these decisions will provide an important resource to health service employers.

- Disputes are referred to a single adjudicator at the WRC who will investigate the complaint in a private hearing. All decisions will be produced in a standardised format and there is now a requirement to give reasons for any awards made. All decisions of adjudicators will be published on the website (on an anonymous basis). It is intended that the new format will improve the transparency of the decision-making and access to these decisions will provide an important resource to health service employers. The Labour Court will act as a court of final appeal in relation to decisions made by WRC Adjudicators.

Appeals may be made to the High Court on a point of law.

- The Act provides for a number of changes to a range of employment laws and for new compliance measures. It provides for the standardisation of limitation periods for the referral of a dispute under employment legislation to six months, extendable to twelve months where “reasonable cause” is shown.

In the meantime transitional arrangements will apply to cases that were already in the system.

We will be reviewing the implications of the new legislation, a workplace relations structure for the HSE and the training/supports required for managing employment disputes in the new regime.

Accrual of Annual Leave during Sick Leave

On August 1, 2015 the amendments to Sections 19, 20 and 23 of the Organisation of Working Time Act 1997 (OWT Act) to bring the Act into line with the rulings of the European Court of Justice (ECJ) on the issue of accrual of annual leave during sick leave were enacted.

The relevant amendments are contained in Section 86(1) of the Workplace Relations Act 2015. The new legislation provides as follows:

- Statutory annual leave entitlement accrues during a period of certified sick leave i.e. the employee must submit a certificate from a registered medical practitioner in respect of the absence from work due to illness/injury
- An annual leave carryover period of 15 months after a leave year will apply to those employees who could not, due to illness, take annual leave during

the relevant leave year or during the normal carryover period of six months.

- On termination of employment, payment in lieu of untaken accrued annual leave will apply to leave which was untaken as a result of illness in circumstances where the employee leaves the employment within a period of 15 months following the end of the leave year during which the statutory leave entitlement accrued.

HSE HR Circular 08/2012 is currently under review in light of these statutory

amendments. The HSE will be entering into formal discussions with the trade unions shortly on revised arrangements for the accrual and carryover of annual leave in the health sector.

Pending the outcome of these discussions with the staff side, the legal position is that health service employees accumulate annual leave during all periods of certified sick leave. The annual leave accrued is based on the statutory entitlement of four working weeks in a leave year. In addition to the existing arrangements set out in HSE HR Circular 08/2012, the statutory annual leave entitlement applies to periods of unpaid sick leave and periods during which the employee is in receipt of Temporary Rehabilitation Remuneration (TRR) and the injury grant.



Labour Court Determination on Agency Nurses: Payment of Specialist Qualification and Location Allowances

The Labour Court recently issued an important determination under the Protection of Employees (Temporary Agency Work) Act, 2012 which deals with the issue of what constitutes “basic pay” for agency workers.

The claimants in this case were employed as agency nurses by an Employment Agency, Nurse-On-Call, and were assigned to work in the HSE in Specialist Units (either the Renal Unit or the Oncology Unit). Directly employed nurses who work in these units are entitled to either the specialist qualification allowance (if they hold the relevant qualification) or the location allowance. The INMO contended on behalf of the agency nurses that they were also entitled to the location allowance or the specialist qualification allowance.

Background to the *Protection of Employees (Temporary Agency Work) Act, 2012*

The purpose of the 2012 Act is to ensure that an agency worker is entitled to the same basic working and employment conditions as he

or she would be entitled to if he or she were directly employed by the hirer to carry out the same or similar work. A person seeking to rely on the protections of this Act must be able to establish that a contractual term, collective agreement, or some other entitlement or agreement is in place which they have been denied by virtue of their status as an agency worker.

The obligation to provide agency workers with equal treatment in

hirer in relation to the “basic working and employment conditions” which would apply to the agency worker if he or she was directly recruited as an employee of the hirer. The Act therefore places an obligation on the HSE to provide employment agencies, with which it has Service Level Agreements, with the necessary information to ensure that the employment agencies can comply with their obligations.

In its decision, the Court distinguished between the location allowance and specialist qualification allowance.

respect of “basic working and employment conditions” falls on the employment agencies. However, in order to comply with this obligation, employment agencies must be provided with information from the

Background to the Case

The complaint in this case arose due to the differing interpretations as to what constitutes “pay” for the purposes of the 2012 Act. Under the Act pay is narrowly defined and does not include

all elements of pay which would apply to direct recruits.

“Pay” is defined as (a) basic pay and any (b) any pay in excess of basic pay in respect of the following:

- Shift work
- Piece work
- Overtime
- Unsocial hours worked
- Sunday hours worked

Prior to this determination, the definition of “basic pay” was deemed to exclude fixed allowances such as the specialist qualification and location allowances for nurses.

The claimants contended that they were entitled to receive either the specialist qualification allowance (where they held the specialist qualification) or the location allowance (where they do not hold the qualification). Their complaint to the Rights Commissioner Service

Department of Public Expenditure and Reform’s Circular (DPE/71/12/13) which deals with pay adjustments in accordance with the Financial Emergency Measures in the Public Interest Act, 2013 and the Haddington Road Agreement which contains the following statement:

“.....reference to salary or salaries in the Circular is to be taken to mean salary or salaries inclusive of allowances in the nature of pay which are fixed periodic pensionable allowances, where a fixed periodic pensionable allowance is an allowance of a fixed amount, which is taxable and pensionable, is not paid in respect of an expense incurred and is not reliant on the type or amount of the work performed at for example, weekend or nights..”



In relation to the specialist qualification allowance, the Court noted that payment is contingent upon the nurse in question both working in the relevant unit and holding a relevant professional qualification and therefore it can be distinguished from the location allowance. The Court found that payment of a specialist qualification allowance is inserted into the contract of employment of directly employed nurses by way of a collective agreement and governed by a Department of Health Circular. The Court held that the specialist qualification allowance is part of the basic pay of directly employed nurses and, by extension, comes within the definition of basic pay within the meaning of the Act.

The Court determined overall that both the specialist qualification allowance and location allowance for nurses come within the definition of “basic pay”.

under the Act of 2012 was upheld and Nurse-On-Call appealed this decision to the Labour Court.

Labour Court’s Decision

In its decision the Court considered the issue of whether the definition of “basic pay” encompassed both of these nursing allowances. The Court noted that the allowances moved in line with increases in basic pay and are included for pension purposes. The Court referred to Departmental Circulars and found that allowances of this nature appeared to be treated by the parties (the Government Departments and unions) as an integral part of basic pay. It referred to the

The Court held that the allowances at issue in this case were of a type that comes within this definition.

In its decision, the Court distinguished between the location allowance and specialist qualification allowance. It held firstly that the location allowance is treated as part of basic pay for all other purposes by the HSE, it applies generally within the HSE to nurses assigned to work in the relevant hospital units, it has its origins in a collective agreement between the unions and health service employers and was sanctioned by a Department of Health Circular.

The Court determined overall that both the specialist qualification allowance and location allowance for nurses come within the definition of “basic pay”.

The HSE is currently collating information on the numbers of agency nurses who may be eligible for payment of the specialist qualification allowance or the location allowance on the basis that these allowances are now encompassed by the definition of “basic pay”. Following receipt of this information, the HSE (as the hirer) will inform the relevant Employment Agencies of any action to be taken on foot of this Labour Court decision.

Update on Protected Disclosures Act 2014

The Protected Disclosures Act 2014 came into force on 15 July 2014. This legislation aims to facilitate workers to make disclosures where they have reasonable grounds for believing that possible wrongdoing has occurred.

The legislation also provides statutory protection for workers from penalisation as a result of making a disclosure provided the disclosure was based on a reasonable belief (the term “reasonable belief” means that the belief is based on reasonable grounds).

The protections under the 2014 Act apply to a wide range of “workers”. The concept of “worker” encompasses employees, contractors, trainees, agency staff, former employees and interns.

The 2014 Act provides for a tiered disclosure regime with a number of avenues open to workers. The vast majority of disclosures should be made to the employer in the first instance. However, other options are available where this is considered to be inappropriate.

Under the 2014 Act, “protected disclosure” means disclosure of relevant information, which in the reasonable belief of the worker, tends to show one or more relevant wrongdoings and came to the attention of the worker in connection with their employment. The following matters are relevant wrongdoings for the purposes of this Act:

- (a) That an offence has been, is being or is likely to be committed,
 - (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
 - (c) That a miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) That the health or safety of any individual has been, is being or is likely to be endangered,
 - (e) That the environment has been, is being or is likely to be damaged,
 - (f) That an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
 - (g) That an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
 - (h) That information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.
- Disclosures of employment-specific or profession-specific obligations;
 - What constitutes a reasonable belief;
 - How to make a disclosure under the Act;
 - Protecting the identity of the discloser;
 - Anonymous disclosures;
 - Personal complaints vs protected disclosures;
 - Motivation;
 - Assessment and investigation; and
 - Protection of the rights of Respondents.

The HSE is currently reviewing the arrangements for making protected disclosures in light of the new legislation and guidance document.

The existing Procedure for Protected Disclosures, which was established under Part 14 of the Health Act 2004, is still in operation and employees may submit disclosures to the HSE Authorised Person by completing the Protected Disclosures Form, which is available on the HSE website.

The Department of Public Expenditure and Reform has published draft Guidance to assist public bodies to establish and maintain procedures for the making of protected disclosures by workers who are and were employed by public bodies and for dealing with such disclosures. The guidance document addresses significant issues, such as:

- Where should responsibility for the Procedures lie within a public body;
- To whom should the Procedures apply;

