

Appendix B – CIP Managerial Discretion Guidelines

Critical Illness Provisions (CIP)
Managerial Discretion Guidelines

February 2024

CIP Managerial Discretion Guidelines

1. The purpose of the Managerial Discretion Guidelines is to assist employers in making a decision regarding the granting of CIP on the basis of managerial discretion where “exceptional circumstances” exist.
2. The decision on whether any “exceptional circumstances” warrant CIP is a matter to be determined by the employer after consideration of all the relevant circumstances. The guidelines aim to assist employers in making a fair and reasonable decision.
3. **Circumstances for the granting of CIP**
 - 3.1 CIP for a critical, physical or psychiatric illness, serious injury or serious medical condition may be granted in two circumstances:
 - CIP on the basis of medical criteria
 - CIP on the basis of managerial discretion

a) CIP on the basis of medical criteria

CIP on the basis of medical certification may be granted by the employer in cases where the OHS has advised that the teacher is suffering from a critical illness, serious injury or serious medical condition based on the medical criteria detailed in the Sick Leave Scheme. While the decision to grant CIP is still made by the employer, it is based upon the OHS Medical CIP Report.

b) CIP on the basis of managerial discretion

There will be cases which involve serious illnesses, injuries or conditions, but do not fall within the medical criteria for granting of CIP.

In such cases, employers have discretion as to whether to grant CIP following an analysis of the information provided and the circumstances of the case. This is to encompass cases that involve what would generally be considered a significant illness, injury or condition but do not fulfil the medical criteria. For example, a serious operation, with an extended recovery time, which does not involve a hospital stay of the length required under the medical criteria.

It is intended that the granting of CIP on the basis of managerial discretion will only be warranted in serious and/or exceptional cases. The employer can seek guidance from the OHS on medical issues within the boundaries of medical confidentiality.

4. What must the employer establish?

4.1 The “Regulations” provide that in order to grant CIP on the basis of “exceptional circumstances” the following must be established by the employer:

- That there are “exceptional circumstances”; and
- That those exceptional circumstances relate to the illness, injury or condition of the teacher; and
- That those exceptional circumstances warrant the granting of CIP.

5. What should the employer consider?

5.1 The employer should consider the normal meaning of the word “exceptional”, meaning “unusual” or “not typical”. It should be considered whether the condition is a normal and typical illness, injury or condition or whether it is an unusual and/or not typical illness, injury or condition although not necessarily rare.

5.2 Three sources of Information

5.2.1 When determining if there are “exceptional circumstances” which would warrant the granting of CIP on the basis of managerial discretion, the employer should consider the following three sources of information during the decision-making process.

Employer’s Decision

(a) Medical CIP report	(b) Relevant Information from the teacher	(c) Relevant Human Resources Information and professional judgement
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(a) Medical CIP report

When making a decision on a teacher’s application for CIP, the employer should consider the OHS “Medical CIP Report to Employer” which will advise whether the teacher’s medical condition fulfils the medical criteria for CIP.

If the illness, injury or condition does not meet the medical criteria for CIP eligibility, the OHS will provide additional medical information to the teacher which they are aware of and consider relevant. Examples include:

- a) Standard recovery times for the condition where these exist having regard to the nature of the work (e.g. elective surgical procedures);
- b) Presence of additional medical conditions where relevant;
- c) Presence of medical complications;
- d) Any other information they consider relevant to assisting the employer in making a decision to grant CIP under management discretion (e.g. a hospital inpatient stay is close to the 10-day threshold).

This additional information can be provided by the teacher to the employer, if they so wish, within 10 days of receipt of the ‘Medical CIP Report to Employee’ which may assist the employer in making a decision

on the CIP application. The employer should therefore allow 10 days from the date of receipt of the 'Medical CIP Report' for submission of the additional information before making a decision on the teacher's application.

If the illness, injury or condition does not meet the medical criteria for CIP eligibility, the employer should consider if this additional information amounts to "exceptional circumstances" related to the relevant illness, injury or condition of the teacher.

(b) Relevant Information from the teacher

The employer should consider whether further information may be required and may wish to contact the teacher so they are aware of all of the circumstances that may amount to any "exceptional circumstances". The employer should consider the following, having contacted the teacher:

- a) Whether the medical criteria set out in the Sick Leave Scheme are close to being met, or whether there are any other factors related to the illness, injury or medical condition that should be viewed as "exceptional";
- b) The severity of the illness, injury or medical condition.

The employer should not consider the teacher's financial position or their performance at work.

(c) Relevant Human Resources Information and professional judgement

The employer should consider any relevant HR information or other sources of professional judgement. Examples include:

- i. The length of any absence to date related to this illness, injury or condition. It should be noted that this information cannot be used to treat an application any less favourably;
- ii. The approach taken by the employer in other cases and the need for consistency of approach; and
- iii. Whether granting or refusal of CIP would be reasonable, taking into account any information provided that could be viewed as exceptional circumstances.

The employer should ensure that there is no conflict of interest when considering the CIP application. They should consider whether the teacher is a close friend/relative or, alternatively, whether the teacher has raised a grievance or some other form of complaint against them.

6. Inform the teacher of the decision

- 6.1 The employer should communicate their decision to the teacher in writing, briefly summarising the matters that were considered. The employer's decision should demonstrate that all relevant information has been considered and that they have not been influenced by irrelevant information. If the employer's decision is to refuse the teacher's CIP

application, the employer should inform the teacher about their right to appeal.

- 6.2 More detailed information on the process for appeal of both the Medical and Managerial decisions can be found at Chapter 3 (part 3.3 titled “CIP Appeal”) of the Employers Procedures Manual.

Appendix C – Dual Look Back Sample Calculations

Scenario 1 – Ordinary Illness with no extension to look back period

Mary's Leave Record

Commencement Date	End Date	No. of Days	Leave Category
4 th December 2018	7 th December 2018	4 days	Certified Illness Full Pay
11 th January 2021	23 rd February 2021	44 days	Certified Illness Full Pay
01 st March 2022	15 th March 2022	15 days	Certified Illness Full Pay
28 th February 2023	06 th April 2023	38 days	Certified Illness Full Pay
01 st May 2023	23 rd June 2023	54 days	Certified Illness Full Pay
24 th June 2023	30 th June 2023	7 days	Certified Illness Half Pay
	Total Sick Leave	162 Days	

Mary's current Sick Leave absence is from 2nd to 31st October 2023 (30 days).

• **Step 1 - Four Year Look Back to establish Mary's access to paid Sick Leave:**
Prior to the start date of her current absence, Mary had 158 days Sick Leave in the previous 4-year period (02/10/19-01/10/23).

1. Mary does not require the look-back period of 4 years to be extended as she has only availed of Sick Leave in the previous 4-year period.
2. Mary has not yet reached the 183-day limit of paid Sick Leave, permitted under the Sick Leave Scheme. She has access to paid Sick Leave for part of her current absence, as she will reach the 183-day limit on 26th October 2023.

• **Step 2 - One Year Look Back to establish Mary's rate of Sick pay:**
Prior to the start date of her current absence, Mary had 99 days Sick Leave in the previous 12-month period (02/10/22-01/10/23) of which 92 days were on full pay. Therefore, as Mary has reached the 92-day limit at full pay, permitted under the Sick Leave Scheme, the rate of pay for her current Sick Leave absence, is as follows:

→ 2nd to 26th October 2023: 25 days on Certified Illness Half Pay.

→ 27th to 31st October 2023: 5 days on TRR (subject to TRR eligibility criteria, as detailed in the Sick Leave Scheme).

Scenario 2 – Ordinary Illness with an extension to look-back period

Mary's Leave Record

Commencement Date	End Date	No. of Days	Leave Category
4 th December 2018	7 th December 2018	4 days	Certified Illness Full Pay
1 st September 2019	31 st August 2020	365 days	Career Break
11 th January 2021	23 rd February 2021	44 days	Certified Illness Full Pay
01 st March 2022	15 th March 2022	15 days	Certified Illness Full Pay
28 th February 2023	06 th April 2023	38 days	Certified Illness Full Pay
01 st May 2023	23 rd June 2023	54 days	Certified Illness Full Pay
24 th June 2023	30 th June 2023	7 days	Certified Illness Half Pay
	Total Sick Leave	162 Days	

Mary's current Sick Leave absence is from 2nd to 31st October 2023 (30 days).

- **Step 1 - Four Year Look Back to establish Mary's access to paid Sick Leave:**

Prior to the start date of her current absence, Mary had 158 days Sick Leave and a career break on record in the previous 4-year period (02/10/19-01/10/23).

1. Mary's look-back period needs to be extended to account of the career break. Her revised lookback period is (02/10/2018 – 01/10/2023).
2. As a result of the revised lookback period, Mary now has 162 days Sick Leave in the rolling 4-year period.
3. Mary has not yet reached the 183-day limit of paid Sick Leave, permitted under the Sick Leave Scheme. She has access to paid Sick Leave for part of her current absence, as she will reach the 183-day limit on 22nd October 2023.

- **Step 2 - One Year Look Back to establish Mary's rate of Sick pay:**

Prior to the start date of her current absence, Mary had 99 days Sick Leave in the previous 12-month period (02/10/22-01/10/23) of which 92 days were on full pay. Therefore, as Mary has reached the 92-day limit at full pay, permitted under the Sick Leave Scheme, the rate of pay for her current Sick Leave absence, is as follows:

→ 2nd to 22nd October 2023: 21 days on Certified Illness Half Pay.

→ 23rd to 31st October 2023: 9 days on TRR (subject to TRR eligibility criteria, as detailed in the Sick Leave Scheme).

Scenario 3 – Critical Illness Provisions (CIP)

John's Leave Record

Commencement Date	End Date	No. of Days	Leave Category
12 th May 2019	23 rd June 2019	43 days	Certified Illness Full Pay
1 st December 2019	15 th December 2019	15 days	Certified Illness Full Pay
1 st March 2020	20 th March 2020	20 days	Certified Illness Full Pay
4 th April 2021	20 th June 2021	78 days	Certified Illness Full Pay
	Total	156 Days	

John's current absence on certified Sick Leave is from 2nd October 2022 to 26th May 2023 (237 days). John submits an application for CIP, which is approved by his employer.

- **Step 1 - Four Year Look Back to establish John's access to paid Sick Leave:**
 1. John does not require the look-back period of 4 years to be extended as he has only availed of Sick Leave in the previous 4-year period.
 2. Prior to the start date of his current absence, John had 156 days Sick Leave in the previous rolling 4-year period (02/10/18-01/10/22). John has not yet reached the 365-day limit of paid Sick Leave, permitted under the Sick Leave Scheme. He will reach the 365-day limit on 28th April 2023, so will have access to paid Sick Leave for part of his current absence.
- **Step 2 - One Year Look Back to establish John's rate of Sick pay:**

Prior to the start date of his current absence, John had zero days Sick Leave in the previous 12-month period (02/10/21-01/10/22). Therefore, as John has not exceeded the 183-day limit at full pay, permitted under the Sick Leave Scheme the rate of pay for his current Sick Leave absence, is as follows:

- 2nd October 2022 to 2nd April 2023: 183 days on Certified Critical Illness Full Pay
- 3rd April 2023 to 28th April 2023: 26 days on Certified Critical Illness Half Pay.
- 29th April 2023 to 26th May 2023: 28 days on TRR (subject to TRR eligibility criteria, as detailed in the Sick Leave Scheme).

Scenario 4 – Temporary Rehabilitation Remuneration (TRR)

Kate's Leave Record

Commencement Date	End Date	No. of Days	Leave Category
14 th February 2023	16 th May 2023	92 days	Certified Illness Full Pay
17 th May 2023	15 th August 2023	91 days	Certified Illness Half Pay
16 th August 2023	20 th September 2023	36 days	TRR
17 th October 2023	18 th October 2023	2 days	Nil pay (3 day wait for TRR applies)
8 th December 2023	19 th December 2023	12 days	Nil pay for the first 3 days and TRR from 11 th December
	Total in 4 year look back	228 Days	(Note: Nil pay days not included in lookback)

Kate's current Sick Leave absence is on 17th May 2024 (1 day).

- **Step 1 - Four Year Look Back to establish Kate's access to paid Sick Leave:**

Prior to the start date of her current absence, Kate had 233 days Sick Leave in the previous 4-year period (17/05/20-16/05/24), 5 days of which were at nil pay and therefore not included in the lookback.

1. Kate does not require the look-back period of 4 years to be extended as she has only availed of Sick Leave in the previous 4-year period.
2. Kate has reached the 183-day limit of paid Sick Leave, permitted under the Sick Leave Scheme. She has no access to paid Sick Leave for her current absence so there is no need to proceed to Step 2 in this case.

Therefore, Kate's current Sick Leave absence is categorised as follows:

→ 17th May 2024: Nil pay (3-day wait applies prior to TRR)

Appendix D – Pregnancy-Related Sick Leave (PRSL) Sample Calculation

Under the Public Service Management (Sick Leave) Regulation 19: -

A pregnant teacher who is certified as medically unfit for work, due to PRSL prior to Maternity Leave, will receive not less than half pay for the duration of this absence, where they have exhausted the Sick Leave limits.

Example - Ann's Sick Leave Record

Commencement Date	End Date	No. of Days	Sick Pay Category
8 th March 2021	7 th April 2021	31	Certified Illness Full Pay
27 th April 2021	27 th May 2021	31	Certified Illness Full Pay
4 th October 2021	2 nd November 2021	30	Pregnancy Related Sick Leave Full Pay
On 2 nd November 2021, Ann reached the 92-day limit of Sick Leave at full pay in the previous 12-month period. She will progress onto half pay from 3 rd November 2021.			
3 rd November 2021	1 st February 2022	91	Pregnancy Related Sick Leave Half Pay
On 1 st February 2022, Ann has reached the 183-day limit of paid Sick Leave in the previous rolling four-year period. However, as Ann is medically unfit for work due to PRSL, she will receive half pay for the duration of her PRSL from 30 th May to 21 st June 2022.			
30 th May 2022	21 st June 2022	23	Pregnancy Related Sick Leave Half Pay
Total		206	

Ann commenced Maternity Leave on 22nd June 2022.

Under the Public Service Management (Sick Leave) Regulation 20: -

A teacher may have access to additional non-PRSL at half pay, where they have: -

- a subsequent non-PRSL absence, following a period of PRSL in the previous 4 years and;
- exhausted their entitlement to paid Sick Leave, within the normal Sick Leave limits, (PRSL and non-PRSL included).

The maximum number of additional days allowed at half pay for this subsequent non-PRSL absence:

- (a) will be equivalent to the number of PRSL days taken in the previous 4 years and;

(b) must not exceed normal Sick Leave limits (i.e. 183 days for ordinary illness or 365 days for CIP) for non-PRSL, when counted with other non-PRSL in the previous 4 years.

Ann is currently absent on certified Sick Leave (non-PRSL) from 9th January to 24th March 2023 (75 days).

• **Four Year Look Back to establish Ann's access to paid Sick Leave:**

Prior to the start date of Ann's current absence, she had 206 days Sick Leave (both PRSL and non-PRSL) in the previous 4-year period (09/01/19-08/01/23). Ann has exceeded the 183-day limit of paid Sick Leave, permitted under the Sick Leave Scheme. However, Ann is entitled to half pay for the equivalent number of PRSL days taken in the previous 4-year period, subject to the overall normal Sick Leave limits (i.e. 183 days for ordinary illness or 365 days for CIP).

In this example, the calculation for the four-year period 09/01/19-08/01/23, is as follows: -

• Number of days Sick Leave (PRSL and non-PRSL):	206 days
Less	
• Number of PRSL days:	<u>144 days</u>
• Total non-PRSL days:	62 days

Therefore, the rate of pay for Ann's current Sick Leave absence, is as follows:

→ 9th January 2023 to 24th March 2023: 75 days on Certified Illness
(Regulation 20) Half Pay