



Guidance and FAQs for Public Service Employers during COVID-19

In relation to Special Leave with Pay
for COVID-19

8 May 2023

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Background

This guidance document for Civil and Public Service employers supersedes previous guidance and FAQs issued relating to Civil and Public Service working arrangements and temporary assignments during COVID-19. These arrangements apply to all Civil and Public Service employees.¹

Everything that has been managed and achieved during the COVID-19 pandemic restrictions has involved an unprecedented collaboration and cooperation across the entire civil and public service, operating to provide a single integrated response.

The FAQs have been prepared to assist employees and management in the Civil and Public Service to understand the process, rules and expectations associated with Special Leave with Pay during COVID-19 across the public service.

These arrangements apply during the time that COVID-19 pandemic restrictions remain in place.

These FAQs will be updated in response to queries that are received centrally. The most up-to-date version of these FAQs will be available at [Gov.ie](https://www.gov.ie).

The Civil and Public Service need to ensure that our services have the potential to be flexible and responsive to any changes that may be needed based on public health advice. The guidance is reviewed in line with public health guidance, and employers will be advised of any changes.

Subject to expert public health advice in light of developing circumstances on COVID-19, the general principles or FAQ material may be subject to updating or other amendment. Employers retain the right to withdraw or amend provisions in light of developing circumstances.

¹ Individual employers will need to identify which employees fall into the category of public service employees.

Principles

The general principles to apply to the working arrangements during COVID-19 in the Civil and Public Service include:

Public health	Business need	One Public Service
Safeguarding the health of both the public in their interaction with the public service, and employees, is central to how we organise work. Public service employers and employees must comply with measures for safeguarding public health and safety of the workplace, including related legislation and Government advice.	We must deliver the services that the public need and expect in a changing delivery environment. Openness, transparency and consistency will underpin service delivery and decision-making. The employer determines the criteria for return to the workplace according to business needs.	Throughout the COVID-19 pandemic we have operated as a unified, One Public Service and accordingly these FAQs are developed in order to ensure transparency of decision making and agree on the overriding principles which apply, while recognising individual needs of certain sectors.

1. COVID-19 special leave with pay arrangements

UPDATED 1.1 When does special leave with pay apply during COVID-19?

Special leave with pay is currently used in lieu of sick leave for COVID-19 to assist in the prevention of the possible onward spread of COVID-19 in the work premises.

[Circular 2/1976, which covers special leave with pay](#) should only apply in lieu of sick leave for COVID-19 when an employee has had a positive test for COVID-19. The HSE sets out the latest guidance following a positive COVID-19 test result at this [link](#). **In order to avail of special leave with pay, evidence of a positive test result is required alongside a declaration form by the employee.** Special leave with pay for COVID-19 in all sectors **does not** apply in any other scenario.

Special leave with pay only applies to employees who were rostered or due to be working. Special leave with pay cannot be substituted for other forms of leave, for example annual leave. If employees are on annual leave and have valid certification they can opt to apply for sick leave as per the normal rules of sick leave.

The general principles applying to the management of sick leave, for example the requirement of employees to contact managers, and for ongoing contact with employees who are on special leave for this purpose, will apply.

Any special leave with pay granted following a positive COVID-19 test result will not be counted as part of the employee's sick leave record.

Note that at any stage if an employee states that they feel well enough to work, but have tested positive for COVID-19, the employer may facilitate working from home instead of special leave with pay, if this is feasible and agreeable to both parties. They must not attend the work premises and must also follow medical and HSE [advice](#).

SLWP applies for the duration of the HSE recommended 'stay at home period' following a positive COVID-19 test result (whatever duration is in place at the time of the absence, currently 5 calendar days). Any periods of COVID-19 related illness which extend beyond the HSE guidance to 'stay at home' (currently five calendar days) following a positive COVID-19 test, will be treated as ordinary sick leave.

Employees are not entitled to days in lieu of bank holidays whilst in receipt of special leave with pay.

In the event of non-compliance with the provisions of special leave with pay (including the requirement to provide bona fide² confirmation of a positive COVID-19 test) existing procedures, including disciplinary measures may be invoked.

The arrangements relating to the application of special leave with pay for COVID-19 is temporary, and will be kept under review.

1.2 What arrangements are in place for employees to attend a COVID-19 vaccination appointment?

Where an employee in the public service has an appointment to attend a COVID-19 vaccination during working hours, they will be facilitated to attend based on the health/medical appointment arrangements which apply in each sector.

1.3 What arrangements are in place where an employee may have a reaction to a COVID-19 vaccination?

Where there may be a reaction to a COVID-19 vaccination and the employee is unfit for work, the absence will be recorded as ordinary certified sick leave and the usual rules governing [sick leave](#) will apply.

1.4 What is the legal basis for processing employee data in relation to COVID-19?

Civil and Public Service employers are obliged to provide a safe workplace, which may include the processing of health data in order to ensure that safety. Articles 6(1)(c), 9(2)(b) and (g) of GDPR, along with section 53 of the Data Protection Act, 2018 (which permits the processing of special categories of personal data for purposes of public interest in the area of public health) will likely be the most appropriate legal bases for processing this data.

For further information please visit the [Data Protection Commission website](#).

1.5 Do employers have a right to know if an employee has been vaccinated or had COVID-19?

As noted in the Work Safely Protocol the decision to get a vaccination against COVID-19 is voluntary and workers will therefore make their own individual decisions in this regard. The Data Protection Commission has produced a

² Bona fide in relation to a representation or communication means in good faith and well founded in fact. The employer reserves the right to request further confirmation.

guidance note on [Processing COVID-19 Vaccination Data in the context of Employment](#). The guidance notes that “[a]s a general position, the DPC considers that, in the absence of clear advice from public health authorities in Ireland that it is necessary for all employers and managers of workplaces to establish vaccination status of employees and workers, the processing of vaccine data is likely to represent unnecessary and excessive data collection for which no clear legal basis exists”. However, the note does provide for specific employment contexts where collection of information may be lawful and each sector may issue its own guidance.

Employers may ask employees for information in relation to their COVID-19 special category data in certain circumstances, for example where an employee who requests to avail of special leave with pay will be required to provide details of the results of positive COVID-19 test result. At all times the data collection and processing must be necessary, proportionate and safeguarded.

Appendix 1: Procedure for SLWP absence

1 (a) Procedure for employees

1. Telephone your manager³ before 10am on the first day following the positive COVID-19 test result as would normally be the case for sick leave. You will be required to provide a completed self declaration form and satisfactory evidence of a positive test for COVID-19.
2. Your manager will record your absence as special leave with pay on the commencement date.
3. By applying for special leave with pay, you agree that in the event of non-compliance with the provisions of special leave with pay (including the requirement to provide bona fide⁴ confirmation of a positive COVID-19 test result) existing procedures, including disciplinary measures may be invoked.

1 (b) Procedure for managers

1. Employees who are required to stay at home following a positive COVID-19 test result must inform their manager as per sick leave requirements.
2. Managers should record the absence as special leave with pay and ask the employee to provide a completed self declaration form and satisfactory evidence of a positive COVID-19 test including the date of the test. The arrangements for the recording of this will vary based on each organisation's payroll/HR facilities.
3. Managers should make employees aware of the need to stay in regular contact and advise them of any employee assistance programme available to them.
4. Managers should alert the employee to any follow up actions that are required, including the need to provide documentation and actions on their return to work.
5. Should the employee absence continue beyond the SLWP limit (currently 5 calendar days), the manager should process any additional calendar days as ordinary sick leave.

³ If your manager is not available, please contact another manager in your area or your HR team. In rare situations where that is not possible, make a note of the date and times of call made and continue to try to contact your managers until contact is made.

⁴ Bona fide in relation to a representation or communication means in good faith and well founded in fact. The employer reserves the right to request further confirmation.

Appendix 2: Sample SLWP for COVID-19 self-declaration

Employee Details

Name	
Grade	
Department	

Dates of Special Leave with Pay for COVID-19

Dates	From DD/MM/YYYY to DD/MM/YYYY
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Declaration for Special Leave with Pay

I confirm I have read and understand the provisions of Special Leave with Pay as set out in Part IX of Circular 02/1976	Yes	<input type="checkbox"/>
I understand that in the event of non-compliance with the provisions of special leave with pay (including the requirement to provide bona fide ⁵ confirmation of a positive COVID-19 test result) existing procedures, including disciplinary measures may be invoked.	Yes	<input type="checkbox"/>
I understand that any overpayment of salary which may arise from non-compliance with the provisions of special leave with pay will be repaid.	Yes	<input type="checkbox"/>
I have attached relevant documentation ⁶	Yes	<input type="checkbox"/>
Employee signature		
Date		

Manager Approval

Manager signature	
Date	

Data Protection The data requested in this form will be used to process your application for Special Leave with Pay (COVID-19 related) and will be retained as part of your personnel record for the appropriate period of time. The employer will treat all information and personal data you give according to the law.

⁵ Bona fide in relation to a representation or communication means in good faith and well founded in fact. The employer reserves the right to request further confirmation.

⁶ Bona fide in relation to a representation or communication means in good faith and well founded in fact. The employer reserves the right to request further confirmation.



An Roinn Caiteachais
Phoiblí agus Athchóirithe
Department of Public
Expenditure and Reform