



4<sup>th</sup> July 2024. Private & Confidential (Members Only)

External Memo: Legal Opinion

## **Employment Advice Re: Sick leave / Sick Certificates**

We write in reply to a request to provide an opinion to members of Irish Steel currently encountering issues arising from receipt of “questionable” medical certificates, entitling the employees to avail of statutory sick leave (“SSL”), which the employees appear to be obtaining without being required to meet a GP. This practice is having a knock-on impact on members businesses.

### **Background**

It appears from the helpful overview that Members and Non-Members provided and from your experience at the ease at which these sick certificates can be obtained, that employees can obtain a medical certificate, entitling them to then avail of SSP, by simply filling in a questionnaire online and paying a nominal fee. No evidence or detail regarding the alleged illness they are suffering from is required to be provided.

We note that in the information shared on the WhatsApp Group that members have suggested various solutions to address this problem, which we have sought to deal with below, together with outlining some options for your members to consider trying to address this issue. The below has been prepared on the assumption that the majority of members do not operate company sick pay schemes and it is the introduction of statutory sick pay, which has led to an increase in absenteeism.

### **Statutory Sick Pay (“SSP”)**

As you are likely already aware, SSP was introduced in Ireland, in January 2023, entitling employees to pay at a rate of 70% of gross earnings, capped at €110.00, for three (3) days of sickness absence per annum. It is expected that this maximum cap may change and be amended over time to take account of changes in income and inflation. This leave entitlement increased to 5 days since 1 January 2024 and is intended to increase to 7 days in 2025 and ultimately to 10 days in 2026. There has been some discussion around suspending the increase of this leave entitlement from 5 to 7 or 10 days, but it remains to be seen if that will happen and for now, members must proceed on the basis that it will ultimately increase to 10 days sick leave by 2026, which is not far off.

To avail of SSP, all employees must have completed 13 weeks continuous service, and the employee is required to provide their employer with a certificate from a “registered medical practitioner” on the first date of illness, covering each day of absence and stating that the employee is unable to work. The SSP can be taken on consecutive days or non-consecutive days.



It is important to note that the legislation expressly provides that the sick certificate provided must be signed by a registered medical practitioner and must state that the employee named in the certificate is unable to work.

The medical practitioner must also be a registered medical practitioner within the meaning of the Medical Practitioners Act 2007 (which means, amongst other things, that the practitioner should appear on the Register of Medical Practitioners).

Accordingly for the purposes of paying SSP, employers only need accept medical certificates where the following conditions are met:-

1. The certificate is provided on the first date of illness
2. The certificate is from a registered medical practitioner, i.e. a GP who appears on the Register of Medical Practitioners
3. The certificate is signed by the practitioner ( where a GP provides all certificates electronically, following an in person or virtual consultation, an electronic signature is likely to suffice)
4. The certificate must expressly state that the employee is unfit or unable to work.

#### **Circumstances under consideration – sick leave**

A If members are presented with a medical certificate that complies with the four conditions set out above, refusing to pay SSL is not without significant risk and could potentially expose an employer to a complaint before the Workplace Relations Commission where the employee can be awarded four weeks' pay, in addition to their sick leave entitlement.

B. Where there are concerns around the legitimacy of the certificates being provided, it is likely that one or more of the above conditions may not be met, the employer can in those circumstances refuse payment pending the conditions being met. This may involve making enquiries with named GP practice to enquire if they are on the register of medical practitioners.

C. Where the medical cert received appears to comply with the four conditions above, it is difficult for members to avoid payment under the SSL scheme, without risk of claims being pursued, however, where there are genuine concerns that the certificates have been obtained on line and without any discussion/meeting with a GP, a possible way of avoiding having to accept such certificates would be to introduce a company sick leave policy (if none already exists) or amend existing policies, to provide as follows:-

- That employees must meet with the registered medical practitioner in person or virtually in advance of submitting a sick leave certificate. As it is not uncommon now for GPs to meet patients virtually, it would be difficult to avoid accepting a medical certificate that has been obtained in this way.



- That the Company may, if it deems it appropriate, contact the GP to confirm that sick certificates are only provided following a virtual consultation or an in-person consultation (such enquiries can only be made in general terms as the GP cannot release data in relation to a specific patient as to do so would be in breach of GDPR).

Including provisions such as the above in a sick leave policy could at a minimum act as a deterrent for employees seeking to rely on “questionable” medical certificates.

## **Company Doctor**

Another option to consider would be to implement a sick leave policy that requires all employees, who wish to avail of SSP, to attend a company doctor on the first date of illness. This could be an occupational health specialist in the area where the business is located or a local GP that the employer retains as the company doctor ( perhaps on some reduced rate for appointments depending on volume). While it is permissible to mandate in a sick leave policy that employees must attend a particular occupational health specialist or a company doctor, it is not common practise and could be open to challenge for various reasons ( such as distance, wanting to attend GP who knows the individual etc), unless the company agrees to pay the cost of the medical appointment. We would only recommend considering this option where the employer is willing to pay the medical fee incurred. While this option would undoubtedly increase costs for your members in the short term perhaps, in the long term, it could significantly reduce the level of absenteeism in the workplace.

To implement this option, a sick leave policy clearly documenting the necessary steps to take when an employee is on sick leave would need to be implemented. We could assist you in preparing such sick leave policy, which could be tailored to each individual member's needs, or we could provide a general sick leave policy that each individual member could tailor to their business. Any such policy would also need to take account of existing sick leave policies or any relevant provisions in a contract of employment that may refer to sick leave.

In general, employers are entitled to change work practices and policies without employee consent, but it is always advisable to keep employees informed of such changes and to get their buy in where possible. At a minimum it is necessary to ensure that changes to policies or the introduction of new policies are clearly documented and brought to the employees' attention.

Finally, where employer members become aware ( inadvertently, through social media, word of mouth etc) that an employee who is claiming SSP is not in fact sick, this then becomes a disciplinary matter and should be handled through members disciplinary policy. It is mandatory for all Irish business to have a disciplinary policy in place, and we would strongly recommend that all business have a disciplinary policy. We can advise separately in relation to how to handle such matters if that would assist.



**IRISH STEEL**  
IRELAND'S ASSOCIATION FOR METAL FABRICATORS & MANUFACTURERS

Separately, we would encourage members to raise their concerns around obtaining medical certificates online with the medical council [foi@mcirl.ie](mailto:foi@mcirl.ie) / **01 4988436** / [www.medicalcouncil.ie](http://www.medicalcouncil.ie) so that they can make enquiries in relation to this practice. The intention of requiring employees to certify their first day's leave of absence was an attempt to deter employees claiming sick leave that was not genuine which will clearly not work where certificates can be obtained online for a nominal fee.

We hope the above assists and if we can be of further assistance, once you have had an opportunity to consider same, please do not hesitate to contact me.

If you have any questions, please email [pat@irishsteel.ie](mailto:pat@irishsteel.ie) directly.

Kind Regards

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Technical & Compliance

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