

Dispute Update - Interpretation of Sick Leave under the Award

Members have brought to the PSA's attention that the Department of Communities and Justice (Courts & Tribunals) has sought to clamp down on requirements for evidence of illness in regard to sick leave applications.

In response, the PSA filed a dispute in the NSW Industrial Relation Commission (IRC) against the Department as the PSA understood that members were being denied sick leave because they were not providing the 'nature of illness' on their doctor's certificates. The dispute was before the IRC on 8 December 2020.

The PSA put on record at the IRC that there should not be a blanket rule whereby members have to provide the nature of illness for every occasion of sick leave. Rather the Requirements for Evidence of Illness under clause 80 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 should be interpreted as a whole. Particularly, members should be aware of the following 2 provisions:

80.1 A staff member absent from duty for more than 2 consecutive working days because of illness must furnish evidence of illness to the Department Head in respect of the absence.

80.2 In addition to the requirements under subclause 79.2 of clause 79, Sick Leave of this award, a staff member may absent themselves for a total of 5 working days due to illness without the provision of evidence of illness to the Department Head. Staff members who absent themselves in excess of 5 working days in a calendar year may be required to furnish evidence of illness to the

Department Head for each occasion absent for the balance of the calendar year.

Unless you have taken more than 5 days of sick leave in a calendar year, you do not have to provide a doctor's certificate. However, if a period of sick leave is for more than 2 consecutive working days, a certificate should be provided. Further per clause 80.6, when medical evidence is required, from the Award, if a staff member is concerned about disclosing the nature of the illness to their manager they may elect to have the application for sick leave dealt with confidentially by an alternate manager or the human resources section of the Department.

At the IRC, the PSA raised that the 'nature of illness' was required regardless of whether clause 80.1 and 80.2 applied to an individual member's situation. In response, the Department claimed that this should not be occurring. The Department advised it was applying the evidence requirements for sick leave correctly. As such, to hold the Department to account, we ask members for specific instances where they have been asked to provide medical evidence when they are not required to, contrary to the Award. The PSA is back in the IRC with the Department next year, depending on whether the issue has been resolved with local managers.

Members can contact the Member Support Centre on 1300 772 679 or via email on membersupport@psa.asn.au.

