

**An Roinn Oideachais
agus Scileanna**
Department of
Education and Skills



Critical Illness Provisions (CIP)

Managerial Discretion Guidelines

October 2019

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 SNA 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 SNA; and
- That those exceptional circumstances warrant the granting of CIP.

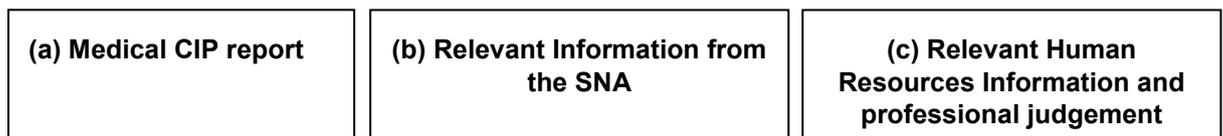
5. What should the employer consider?

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

When making a decision on an SNA’s application for CIP, the employer should consider the OHS “Medical CIP Report to Employer” which will advise whether the SNA’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 SNA which they are aware of and consider relevant. Examples include:

- Standard recovery times for the condition where these exist having regard to the nature of the work (e.g. elective surgical procedures);
- Presence of additional medical conditions where relevant;
- Presence of medical complications;
- 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 SNA 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 SNA’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 SNA.

(b) Relevant Information from the SNA

The employer should consider whether further information may be required and may wish to contact the SNA 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 SNA:

- 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 SNA’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 SNA is a close friend/relative or, alternatively, whether the SNA has raised a grievance or some other form of complaint against them.

6. Inform the SNA of the decision

- 6.1 The employer should communicate their decision to the SNA 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 SNA’s CIP application, the employer should inform the SNA 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 titled “CIP Appeal”) of the Employers Procedures Manual.