

Ill health retirement and sickness absence management: new arrangements for the NHS

Key facts

- Following a three month consultation, new arrangements for ill health retirement and sickness absence management have been agreed.
- There will be two tiers of ill health retirement benefits, which will be awarded according to the likelihood of the individual being able to work again.
- Possible changes to the NHS injury Benefit Scheme are still being discussed by the review partners.
- It has been agreed that further exploration of the proposals for charging employers for ill health retirements is required before any new system can be introduced.
- Until new arrangements are agreed, the cost of ill health retirements will continue to be met by the NHS Pension Scheme.

Following a joint consultation carried out in partnership by NHS Employers and the NHS trade unions, proposals to manage staff sickness absence and ill health retirement benefits have now been agreed. The views of both staff and employers have played a key role in helping shape the final agreement, which is the result of two years of partnership working. The new arrangements will be implemented from 1 April 2008 alongside changes to the NHS Pension Scheme.

This *briefing* outlines the new arrangements for ill health retirement and managing sickness absence, implications and next steps for employers, and the future work of the review partners.

The new arrangements for ill health retirement benefits will form part of the overall main pension agreement and will be covered by the Scheme's governance arrangements. An enabling agreement identifying minimum standards for managing sickness absence has also been agreed and this will sit within the NHS terms and conditions handbook.

Ill health retirement benefit arrangements

Under the current arrangements, only one level of criteria is used to determine whether or not to award benefits, that is the

individual is judged to be unable to continue in their own job. Under the new arrangements there will be tiered arrangements for the determination of ill health retirement benefits, recognising

that the different levels of benefits for members should be dependent on the severity of their condition and the likelihood of them being able to work again.

The agreed structure to this tiered arrangement is described below, full details are available in the final agreement document *Partnership review of ill health retirement, injury benefit and sickness absence in the NHS: Final agreement*.

In tier 1 the individual is assessed as being unable to do their own job, as with the current arrangements. Staff are entitled to benefits where the NHS Pension Scheme administrators are satisfied that the member is suffering from mental or physical infirmity that makes them permanently incapable of doing the duties of that job. As this tier assumes they will still be able to carry out another job, they will be awarded a lower level of benefits.

In tier 2 the individual is assessed as being permanently unable to carry out any regular employment. This will include being unable to take on any substantial employment that is similar to their job as a Scheme member, either full or part time. They could not reasonably be expected to do work across a general field of employment, bearing in mind their physical

and mental capacity, and their training and experience to date. This aims to give a greater level of benefit to those who are permanently incapable of working again. It also recognises the need for some flexibility to allow for the possibility of therapeutic or voluntary employment within certain limits. Examples illustrating how the new arrangements will work in practice are available at www.nhsemployers.org/illhealthexamples

Movement between tiers

There is some scope for moving between the two tiers, a brief description is given below, full details are available in the final agreement.

Movement from tier 1 to tier 2

In a limited number of circumstances, where an individual meets the criteria for tier 1 benefits, the medical advisers will be able to defer a decision for up to three years on whether to award tier 2 benefits if the nature of the condition makes it difficult to assess the longer term outcome in terms of ability to permanently undertake any regular employment. It is expected that this will only apply to a minority of cases.

Movement from tier 2 to tier 1

Those in receipt of tier 2 benefits are permitted to undertake some employment provided they do not earn above the Lower Earnings Limit (LEL, £4680 for tax year 2008/09). If they earn over this amount they will be moved into tier 1 and would be subject to abatement. Two separate approaches have been agreed for movement from tier 2 to tier 1, dependent on whether the member returns to substantive employment within or outside the NHS. Full details are outlined in the final agreement.

Service enhancements

The rate at which benefits are built up (the accrual rate) within each of the tiers is outlined in the final agreement.

The minimum qualifying service for ill health retirement will remain at two years. The current minimum qualifying service of five years for ill health retirement enhancements has been removed.

Abatement of pension whilst in NHS employment

The review partners have agreed that earnings from NHS employment after ill health retirement up to normal pension age (NPA) will lead to abatement of pension,

consistent with the approach agreed as part of the new NHS Pension Scheme. Abatement is the method of restricting the amount of pension that NHS pensioners can secure if they return to NHS employment.

Terminal illness

Where a member becomes terminally ill and medical evidence is available they will be allowed access to a lump sum payment, calculated on tier 2 benefits. Under new Pension Scheme arrangements members will be able to commute (ie give up) their entire pension for a one off lump sum, calculated using their maximum retirement lump sum and five times their post-commutation retirement pension.

Death in service

Death in service survivor pension entitlements will use the tier 2 arrangements for calculating benefits. Benefits will be similarly calculated where death occurs within 12 months of deferment.

Treatment of deferred members

Deferred Pension Scheme members may apply for early payment of preserved benefits as with the current arrangements. The tier 2 definition will apply, but deferred members will be able to access the tier 1 benefits of

accrued service only, with no actuarial reduction.

Special classes status

Special classes status is restricted to current Scheme members only and has been removed from the new NHS Pension Scheme arrangements. Those with special classes status who transfer into the new Scheme will therefore lose their right to retire at age 55. Current ill health retirement arrangements will continue to apply for those members who have not had a break in Scheme membership of five years or more.

Managing sickness absence

A key aim of the review was to identify clear processes for handling sickness absence, rehabilitation, redeployment and ill health retirements, reflecting current good practice across NHS organisations. The review partners have agreed that these processes should be set out in an enabling agreement.

This agreement will identify minimum standards for all NHS employers and be set out in a collective agreement within the NHS terms and conditions handbook. The agreement will be put in place alongside the introduction of the new ill health retirement arrangements from 1 April 2008.

Below is a summary of what this enabling agreement will cover,

full details are available in the final agreement and the NHS terms and conditions handbook:

- **Legal responsibilities of employers towards staff**, setting out mutual responsibilities under health and safety, disability and discrimination legislation.
- **Key employer behaviours in the management of absences**, recognising that a healthy workforce is an essential factor in providing effective services.
- **Key employee behaviours in the management of absences**, recognising the need for staff to work with employers to manage absence and explore options for return.
- **Outline a framework for the management of absences**, recognising the need for employers to address ill health absences through the development of organisation wide policies and practices, with specific reference to the appropriate stress management and moving and handling standards.

The key elements of this framework are:

- *Structured review processes* – setting out that locally agreed procedures should have a series of reviews carried out to assess and monitor staff when they are off sick.

- *Rehabilitation* – identifying appropriate ways of supporting employees to remain in work or return to work at the earliest opportunity.
- *Phased return* – enabling staff to work towards fulfilling all their duties and responsibilities within an appropriate time period, through interim flexible working arrangements whilst remaining in pay.
- *Redeployment* – enabling the retention of staff unable to do their own job through ill health or injury as an alternative to ill health retirement or termination.
- *Sick pay entitlements* – requirement that all necessary review and decision dates should be set out in light of an individual's sick pay entitlements, ensuring staff are promptly reviewed before their sick pay ends. The review has also clarified the instances where sick pay can be reinstated once a no pay situation is reached.
- *Occupational health support* – recognising that occupational health represents both the individual and the organisation and the positive impact a well managed occupational health service can have.
- *Risk management* – setting out the need for integrated reporting arrangements for incidences and industrial

injuries at work, recognising the legal requirements set out under RIDDOR. Employers should recognise that high levels of sickness absence are a financial risk to their organisation as well and should be dealt with as such.

- *Data collection* – recognising the need to have appropriate systems in place to collect good quality data on sickness absence.
- *Monitoring and review of policies* – regular monitoring and review under local partnership working arrangements to identify where and how policies can be improved.

Putting the right financial incentives in place tackle absences and improve employee health at work

A key aim of the review was to develop a mechanism for employers to meet some of the cost of ill health retirement, costs which are currently met in full by the NHS Pension Scheme, and to incentivise employers to put in place a robust set of standards to support the effective management of ill health. The review partners support the principle of recharging, however, no clear preferred option was identified through the consultation process.

Having listened to employers' concerns, it has been agreed that further exploration of the financial impact of the proposals will need to be undertaken before a final decision on the way forward is taken. The review partners recognise that an exploration of all the options is necessary before any new arrangements are agreed and implemented. The review partners have agreed that this work will be progressed through the NHS Pension Scheme Governance Group, which is made up of management and staff side representatives and has been set up to consider the emerging valuation work. The group has access to expert actuarial advice. It is expected that any new arrangements will be implemented from April 2009. This means that employers will not be expected to meet the costs from 1 April 2008 when the new tiered arrangements come in to effect.

The review partners explored a range of approaches that provide financial incentives for employers to improve the management of sickness absence, the starting point for all subsequent ill health retirement applications.

The set of options for recharging the cost of ill health retirements back to NHS organisations, as detailed during the consultation exercise, are

outlined below. Each approach will be on a cost neutral basis, set across the whole NHS, at the time of implementation. Each option ensures that employers recognise the cost impact of ill health retirements, to varying degrees, and is intended to instigate a change in behaviour that recognises the cost benefits of proactive interventions. Those employers who mitigate their risks by putting in place robust policies and practices could see costs reduce. It is expected that smaller organisations such as GPs and Direction status bodies would pay the average contribution under each option.

- **Option 1** – Remove the excess cost of ill health retirements from the Pension Scheme and pass the responsibilities and costs to employers via a reduction in the employer contribution rate. The Pension Scheme would then recharge employers for each ill health retirement under a similar approach to redundancy. Risk would be transferred from the Pension Scheme to employers under this arrangement.
- **Option 2** – Differential rates of employer contributions depending on use of the ill health retirement scheme and type of organisation.
- **Option 3** – Retain broadly the current funding regime, but with the addition of a capital charge to employers for each

early retirement. This would involve a reduction in the employer contribution rate which would then be recycled to pay for any subsequent capital charges.

NHS Injury Benefit Scheme review

Negotiations on the NHS Injury Benefit Scheme have yet to be concluded. The review partners propose to detail the arrangements for reaching agreement on a set of recommendations for change once the ill health retirement benefit and sickness absence arrangements have been implemented.

Next steps

The new arrangements for ill health retirement come into effect on 1 April 2008. The NHS BSA Pensions Division is the Scheme administrator and is responsible for implementing the changes. They will be publishing comprehensive information about the Scheme changes and how to administer them over the coming weeks, to guide employers through the process.

The enabling agreement and framework for managing sickness absence will be incorporated into the NHS terms and conditions handbook from 1 April. An updated version will be published on

NHS Employers website.

Employers will need to consider the new arrangements set out in the terms and conditions handbook and form a view as to whether or not any immediate action is necessary (particularly in respect of the new arrangements set out in section 14.9), and consider reviewing policies and procedures, for example around sickness absence management and stress, in light of this enabling agreement.

NHS Employers will keep employers up to date via our website and Workforce Bulletin on developments with the recharging arrangements and the review of the NHS Injury Benefit Scheme.

Further information

The final agreement *Partnership review of ill health retirement, injury benefit and sickness absence in the NHS: Final agreement*, The NHS terms and conditions handbook, and frequently asked questions are available on NHS Employers' website:

www.nhsemployers.org/illhealthreview

If you have any questions about the new arrangements or ongoing review work, please email illhealthretirementreview@nhsemployers.org

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NHS Employers represents trusts in England on workforce issues and helps employers to ensure the NHS is a place where people want to work. The NHS workforce is at the heart of quality patient care and we believe that employers must drive the workforce agenda. We work with employers to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- recruitment and planning the workforce
- healthy and productive workplaces
- employment policy and practice.

NHS Employers is part of the NHS Confederation.

Contact us

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