

Injury Allowance Protocol

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Belfast Health and Social Care Trust

Injury Allowance Protocol

Introduction

Background

Injury Allowance¹ is a provision, brought in under Section 22 of the NHS Terms and Conditions of Service, to replace Temporary Injury Allowance (TIA), and is applicable to injuries, illnesses or conditions sustained in the course of employment after 31 March 2013.

What is Injury Allowance?

Injury allowance is a payment made to eligible staff that tops up sick pay, or earnings on a phased return to work, up to 85% of pay.

Any Injury Allowance paid to an employee may be recoverable from damages/compensation awarded from a claim made in respect of an employee's injury or condition.

Who is eligible for Injury Allowance?

Where appropriate, Injury Allowances are available for all HSC Employees. Staff will have access to Injury Allowance either because they are covered by the NHS Terms and Conditions of Service where the allowance is described in Section 22, or by reference within other national or local NHS employment contracts, such as those which cover salaried doctors and dentists and very senior managers. GP practice staff are not covered by this allowance.

When is Injury Allowance Payable?

Injury allowance is payable when an employee is on authorised sickness absence or on a phased return to work, with reduced pay or no pay due to an injury, disease or other health condition that is wholly or mainly attributable to their NHS employment.

The Allowance is limited to the period of the Employment Contract only and restricted to a period of 12 months per episode.

Scope

Injury Allowances are available for all eligible Trust Employees including:

- Whether the employee is pensionable, non-pensionable; full time or part time
- A General Medical Dental Assistant or Trainee.

¹ Injury Allowance is paid without prejudice and with no admission of any liability on the part of the employer with respect to any claim for damages arising out of the circumstances upon which the application for Allowance is based.

Purpose

The purpose of the Injury Allowance Scheme is to protect loss of earnings or loss of earnings ability attributable to HSC employment. The Allowance can be made to top up an applicant's income to 85% of the average pay received immediately prior to the reduction in payment.

When can Injury Allowance be Considered?

The injury, illness or condition must be wholly or mainly attributable to NHS employment i.e. be sustained:

- Whilst at work,
- Whilst a volunteer at an accident or emergency providing health remedies required by their professional training and code of conduct,
- Whilst off duty but in the general area of work, in a hospital, or office grounds or car park.
- Whilst off duty but assaulted in connection with Trust duties,
- Whilst travelling with the Trust's permission to or from work as a passenger in a vehicle provided by, on behalf of or in arrangement with the Trust. (There need be no obligation to travel in the vehicle),
- Travelling from one HSC premises to another, to see patients or, in a patient's home.

Situations where entitlement to Injury Allowance may be considered:

- Physical or psychiatric injury sustained or disease contracted due to a specific incident or series of incidents (e.g. falling off a ladder; injury due to a malfunction of equipment; attack by a patient, overwork).
- Injury sustained or disease contracted that does not manifest itself for several years (e.g. asbestosis; Hepatitis C following a needlestick injury)
- Injury, disease or other health condition contracted due to a series of incidents relating to HSC employment (e.g. exposure to noxious substances causing injury, condition or disease over a period).

When can Injury Allowance not be considered?

There is normally no cover for the following:

- Journeys between home and normal place of employment, except where the journey is part of your HSC duties of employment
- Journeys in a vehicle providing an ordinary public transport service other than whilst on Trust duties.
- An injury or disease due to or seriously aggravated by culpable negligence or misconduct.

Injury allowance is not payable in the following circumstances:

- Where there is no reduction in pay below 85%
- Where the employment contract ends

Injury Allowance is unlikely to be payable in the following circumstances:

- Stress related sick leave wholly or mainly due to investigations or disciplinary action.
- Stress related sick leave wholly or mainly due to a failed application for promotion or transfer.
- Sick leave following an incident at work where it is concluded that employees were guilty of culpable negligence or gross misconduct.
- Sick leave as a result of a road traffic incident on a normal journey to and from work.
- Sick leave as a result of an injury sustained whilst acting as a reservist for the armed forces
- Where the injury, disease or condition is attributable to some other cause, for example, the natural progression of a pre-existing condition, normal wear and tear or a non-work related injury
- Where a person suffers from a pre-existing or non-work related condition (injury or disease) unless there is some new work related cause and effect over and above the original problem.
- If different factors both work – related and non work-related appear to be involved it will be necessary to consider their relative importance. In such cases the regulations will only apply if the panel is satisfied that the HSC (Trust) employment was the principle reason for the applicant's condition.
- Injury Allowance is not payable if the condition is mainly due to, or seriously aggravated by the claimant's culpable negligence. Culpable action is normally conduct that would lead to disciplinary action and possible dismissal. This should not be confused with contributory negligence, which does not affect entitlement.

Conditions for Eligibility

- An employee must have been absent on certified sick leave because of an accident, disease or a condition wholly or mainly attributable to their employment duties of the Trust.
- The injury or disease must have occurred on or after 31 March 2013.
- As a consequence of absence, earnings must have reduced i.e. when an employee has gone on to half pay/no pay.

The Allowance ceases to be paid when one of the following conditions is satisfied:

- 12 month maximum payment period is reached
- Pay is no longer reduced below 85 per cent
- Employee returns to substantive employment
- Employee is redeployed
- Contract of employment is terminated

Application Process

The process for making an Injury Allowance application is as follows:

- An application for Injury Allowance can be requested from the Workforce Equality and Governance Team, Human Resources Directorate, 4th Floor, McKinney House, Musgrave Park Hospital; or email on HRequality@belfasttrust.hscni.net.
- On receipt of a completed application the Workforce Equality and Governance Team will advise the employee that either the application will be processed or, that the application does not fall within the scope of the Injury Allowance Scheme. (See Conditions for Eligibility above.)
- In conjunction with the application and in preparation for a panel, the following information will be sought by Human Resources where appropriate.
 - A full statement of the injury sustained or the disease contracted by the employee; and how it is connected to their HSC employment
 - Accident/ incident form
 - Witness statements (in relation to the above).
 - Sickness record.
 - Salaries and wages details.
 - Reports from line manager/ HR/ Occupational Health/ Specialist/ GP/ Social Security Agency Information on Allowances paid and any other information relevant to the application.

The Occupational Health Department will complete part C of the Injury Allowance Application Form. Further medical evidence may be sought (with employee consent) from the applicant's GP or any other consultant/specialist the applicant may have attended.

A closed panel hearing will be arranged to consider the application against the scheme criteria i.e. neither the applicant nor any witnesses will be present.

Panel Guidelines

The Panel will consist of:

- Senior Manager - Human Resources (Band 7* or above)
- Senior Manager - (From the applicant's Directorate, but not the same department, Band 7* or above)

The Human Resources Directorate is responsible for administering this Scheme and will provide the Panel with the relevant documentation and information.

The Panel should consider whether the applicant is eligible for Injury Allowance. It should be noted that the injury/disease must have occurred in the last three years effective from the date of their application.

In deciding the above it may be necessary to consider the following evidence:-

* The panel members must be a higher band than the applicant

- Relevant Management Report including Accident Report/ Risk assessment Reports, incident report, witness statements, chronology of events.
- Medical evidence – including Trust’s Occupational Health reports
- Salaries and Wages Information
- Any other relevant information.

There will be no witnesses at the hearing, however, in the event that the panel decides that they require further clarification, they will adjourn and write to the appropriate person and/or Occupational Health, or others as appropriate.

The applicant should be informed of the outcome of the hearing, in writing, within 14 working days.

If the outcome is unsuccessful the applicant will be given reasons and advised of their right to appeal.

If successful, the applicant’s Social Security benefit details will be forwarded to Payroll Shared Services Centre, with instruction to make payment.

Injury Allowance Appeals Process

Submitting An Appeal

In the event of an unsuccessful outcome, the applicant has the right to appeal the Panel’s decision.

Applicants wishing to appeal should respond in writing within 14 working days of receipt of the letter containing the Injury Allowance panel’s decision to:

Workforce Equality and Governance Team
 Human Resources
 4th Floor McKinney House
 Musgrave Park Hospital
 Stockmans Lane
 Belfast
 BT9 7JB

HRequality@belfasttrust.hscni.net

In their response the applicant should ensure that the following information is included:

- Full name.
- Employee number
- Full address (and email address if applicable) to which correspondence in connection with the appeal should be sent.
- Daytime telephone number.

The appeal will be heard in accordance with Stage 2 of the Trust’s Grievance Procedure.

The appeal should be based on medical evidence supporting the reasons for appeal and demonstrating clearly that the injury, disease or condition is wholly or mainly attributable to

the employee's HSC employment. If possible, the employee should provide new medical evidence in support of the appeal.

The employee has the right to attend the appeal hearing if they so wish and will be entitled to representation and to call witnesses.

Once the appeal has been reviewed, the appeal panel will write to the employee within 14 days informing them of their decision. The decision of the Injury Allowance Appeal Panel is final.

Review

This protocol will be reviewed periodically by Human Resources in order to ensure its continuing relevance and effectiveness.