Absence – Industrial Injury Guidance

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| Version Control | Changes Made | Author |
| Version 1 – April 2023 |  | HR/OD |

Introduction

This guidance to support managers and employees on the implementation and management of industrial injuries and associated entitlement. You should read this in conjunction with the [**Absence Procedure**](https://legacy.westmorlandandfurness.gov.uk/elibrary/Content/Internet/536/5901/6049/45113101856.docx). It applies to all employees of the Council covered by Green Book conditions of service.

Other provisions exist for employees on Grey Book and Burgundy Book terms and conditions. Please refer to the relevant books for further information.

This guidance has been developed to clarify the Council’s interpretation of paragraph 10.2 in the NJC Green Book national agreement on pay and conditions of service which states:

“Absence in respect of normal sickness is entirely separate from absence through industrial disease, accident or assault arising out of or in the course of employment with a local authority. Periods of absence in respect of one shall not be set off against the other for the purpose of calculating entitlements under the scheme”.

The following principles support this guidance:

* Accidents and near misses at work must be reported by employees and managers
* Accidents at work must be investigated in line with Health and Safety procedures
* Health and safety advice must be sought in cases of industrial injury
* Occupational Health advice must be where an industrial injury has potentially occurred
* HR advice must be sought in cases where a sickness absence is potentially an industrial injury
* Industrial injury can impact individuals in a number of ways; managers are to bear the employee’s experience in mind and provide them with appropriate support throughout all stages of the process

What is an industrial injury?

An industrial injury is an injury, disease or other health condition that is more likely than not attributable to an individual’s employment with the council, which has resulted in an authorised sickness absence. A person-centred and evidence-based approach should be taken when making a decision about whether an illness or injury would be deemed as an industrial injury and therefore qualify for the relevant entitlements.

The following are some examples of situations that may lead to entitlement to industrial injury pay:

* physical or psychiatric injury sustained, or disease contracted due to a specific incident or series of incidents whilst undertaking official duties as part of employment
* injury sustained whilst travelling on official duty, for example, road traffic accident (RTA), whilst travelling in an official car from one WMF premises to another. This would include travel between locations where work is carried out, in work time.
* injury inflicted off duty, the cause of which can be attributed to WMF employment (for example, being assaulted on the way home from work by a service user)
* Where the Injury, disease or other health condition is RIDDOR reportable (i.e. over 7 days in length).

Industrial injury pay may not be considered if an employee:

* is injured whilst on a normal journey travelling to and from work, except where the journey is part of their duties of employment
* whose absence is deemed likely to be because of employment related matters such as an investigation, capability proceedings or disciplinary action, or as a result of a failed application for promotion, secondment or transfer
* sustains an injury or disease at work which is due to or aggravated by their own negligence or misconduct
* Sustains a sporting injury outside of work
* Where the employment contract ends

**As a manager, if an employee is experiencing stress, how do I understand this and what can I do to support?**

People can often suffer from stress for a variety of reasons, both personally and in employment. Stress is often a phrase used to encapsulate the mental and emotional strain on a person due to their circumstances; it may also result in physical or mental health conditions. Stress alone is not a RIDDOR reportable incident and is therefore not an industrial injury. However, where there are concerns about stress resulting in illness, injury or health condition which may be determined as an industrial injury.

You may wish to refer to the [**Managing and Wellbeing Guidance**](https://legacy.cumberland.gov.uk/employeeinformation/wellbeing/support.asp) and [**Health & Safety Stress Management Procedure**](https://cumbria.gov.uk/elibrary/Content/Internet/535/615/984/37708144353.pdf). If you require further advice and guidance, please contact HR/HR Provider/Occupational Health/Health & Safety Team.

What is the process?

You are encouraged to discuss the process and entitlements to employees at the outset of an industrial injury absence and keep them up to date with progress; using tools in the **Absence Process** to provide the employee with the necessary support. The aim of this is to understand the employee’s experience of the incident and its impact on them as an individual.

Health & Safety processes have to be followed for every instance where Industrial Injury pay is paid. Payment will not be made to employees where Health & Safety processes have not been adhered too. The incident causing the injury/illness or condition has to be reported and investigated according to the relevant corporate health and safety procedure: <https://www.intouch.ccc/healthsafety/incidentreport.asp>

You are responsible for determining if the employee is entitled to Industrial Injury pay in accordance with the definition above. A person-centred and evidence-based approach should be taken when making this decision.

Please seek advice from HR/HR Provider/Occupational Health/Health & Safety Team in the first instance. This may include gaining additional medical information from GP/Consultant if the medical condition has not been previously disclosed to Occupational Health. You may also find it helpful to obtain additional supporting and corroborating evidence, for example witness statements and other benefits, copies of any relevant letters and correspondence relating to any other medical advice received. This would require consent and agreement from the employee.

Employees should provide all relevant information in line with current Absence Procedure. This includes medical evidence, that is in their possession or can be reasonably obtained. This enables the employer to determine if their absence is due to an industrial injury. Employees are also required to reasonably cooperate and engage with Occupational Health and Health & Safety.

If an employee disagrees with the outcome of a decision about injury allowance, it should be handled under the appeals procedure below:

Appeal Process

• Employees have the right to appeal against any decision of the employer not to apply industrial injury entitlement

• An appeal must be lodged by submitting reasons for the appeal in writing to their senior manager (or the next level of manager)

• If the employee lodges an appeal, they will be invited to attend an appeal meeting with the senior manager to discuss their appeal. The hearing manager should not have been previously involved in the decision-making process. The senior manager will ensure all relevant details are considered.

In a school setting the appeal would be to the appeals committee of the governing body.

• The manager who dealt with the original application may be asked to attend to outline why the original decision was made.

• After the appeal hearing, the employee will be informed in writing of the employer’s decision within 5 calendar days. Any decision made at the appeal meeting will be final.

Industrial Injury Pay Entitlement

Industrial injury pay entitlement mirrors sick pay entitlements:

During 1st year of service 1 month’s full pay and, after completing 4 months’ service, 2 months’ half pay

During 2nd year of service 2 months’ full pay and 2 months’ half pay

During 3rd year of service 4 months’ full pay and 4 months’ half pay

During 4th and 5th year of service 5 months’ full pay and 5 months’ half pay

After 5 years’ service 6 months’ full pay and 6 months’ half pay

Entitlement to industrial injury allowance is entirely separate to sickness allowance. An employee on industrial injury pay should not be in a better financial position that an individual on sickness absence. Injury Allowance is a separate pay pot; the purpose of this is to protect sickness absence payments for employees who may suffer a further, unrelated, period of absence due to sickness in the future. Therefore, industrial injury cannot run into a sick pay provision for the purposes of protecting the sick pay pot for the future. Where an absence due to industrial injury extends beyond the entitlement period above, the employee may utilise the extension application process to apply for a discretionary extension to industrial injury pay.

Being unable to work due to industrial injury can have a debilitating effect on employees. For some, an industrial injury can negatively impact on various aspects of their life, not just their employment. This could include their finances, and you are encouraged to have a discussion about industrial injury pay entitlements with employees at an early stage in the process if appropriate. This could include a discussion about whether the employee envisages making an application for a discretionary extension to their entitlement. Please contact HR/HR Provider for further clarification.

If the employee has submitted a Personal Injury claim in relation to the injury, disease or other health condition and it is successful and the employee is in receipt of workplace injury allowance, then these payments would be recovered.

As the manager, how do I manage an absence due to an industrial injury?

Authorised absence as a result of an industrial injury as defined above should be managed under the Absence Procedure in accordance with the five guiding principles, as follows:

1. Person Centred
2. Prioritising Wellbeing
3. Proactive
4. Flexible and Creative
5. ***Consistent***

The purpose of using the Absence Procedure is due to the long-term lasting effects of industrial injury absence, including the potential impact on service delivery and teams. Industrial injuries can have a significant impact on employees, and you should utilise the tools available to provide them with effective support through what could be a lengthy and difficult process.

How will the injury allowance apply to employees with more than one contract of employment?

Where an employee has more than one contract of employment/hold multiple positions, it is recognised if an employee suffers an industrial injury under one contract of employment, this may/or may not result in a period of absence in another. Therefore, you will need to consider the interaction between the various contracts/roles where an employee meets the eligibility criteria for industrial injury pay, seeking HR advice as necessary.

Should further clarification be required in relation to the consultation and / or implementation process please contact HR/HR Provider/ Diocesan Officer for further advice and guidance.