



# Sick Leave and Attendance Management

## Purpose of this document

The purpose of this guide is to provide an overview of sick leave and attendance management and to assist members who may find themselves subject to the NSWFB Attendance Management Permanent Firefighters' Policy (AMP).

Where members are unsure or require further information, they should contact the Union Office on the details below.

## What is the purpose of sick leave?

Sick leave entitlements are first and foremost to enable members to continue being paid while they are not in a capacity to work due to ordinary illness or off-duty injury.

It must be noted that the use of the term "illness" in this sense is not limited to the physical capacity of members but includes mental health and wellbeing. Furthermore, it extends to include those who are unable to attend work because they provide primary care and support (also known as carer's leave) for a person who is incapacitated due to illness or injury (Clause 22.1 of the Award).

Sick leave should be used in times of genuine illness or off-duty injury and firefighters do have a responsibility to maintain their personal health and fitness. However, it must also be recognised that illness and injury are often unforeseen and therefore attendance is sometimes beyond the control of members.

## What to do when sick

### 1. Reporting absences

Where a member is unable to report for duty due to incapacity caused by ordinary illness or

injury, or because they are required to provide primary care and support for a dependent person as defined in the Award, they should as soon as practicably possible inform their supervisor in charge of the work location to which they are attached, or to which they are due to report, that they will be unable to report for duty. Preferably, this should occur before the commencement of shift, however, given that there may be certain circumstances where this is not possible, it should occur as soon as a member realises that they will be unable report for duty.

### 2. When do I need a medical certificate?

Members are currently entitled to take three days per calendar year of sick leave without the requirement to provide a medical certificate (NMC days) provided that such absences may not be taken on consecutive days or on public holidays.

This entitlement is less generous than the public sector provision, which allows employees to take five unsupported occasions of sick leave and up to two of those occasions on consecutive days. The Union will continue to fight for improved sick leave provisions for firefighters, but in the interim for sick leave beyond those NMC days a medical certificate must be provided. The medical certificate should indicate the estimated duration of the incapacity or illness.

### 3. Medical certificates – your rights to privacy and doctor-patient confidentiality

At present, where members are required to provide a medical certificate such certificates must contain a medical diagnosis. The Union understands there are several contentious issues here and is seeking to have that requirement removed from the Award.



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This is because the Union believes the knowledge of medical diagnosis by the Department is unwarranted. Such requirements are out of step with comparable emergency service award provisions where there is no requirement to divulge details of medical illnesses in medical certificates. In fact, both of the Awards that cover police and ambulance officers respectively do not require a medical certificate for short term absences.

Furthermore, the medical community - doctors in particular - continue to support the position that patient confidentiality is paramount and that employers should be satisfied that a doctor's diagnosis is sufficient as supporting documentation for the provision of sick leave. The Union also recognises that some doctors refuse to provide medical diagnosis on their medical certificates. In these instances, the Department expects you to write your own illness and symptoms. It is quite onerous to expect you to "self-diagnose" and submit this information - you are not a medical practitioner. Members are advised to provide descriptions of their illness and symptoms in suitably general terms on an attached note – not on the fax cover sheet or envelope.

**Remember: the Department has the power to dispense with the requirement of a medical diagnosis, as well as the provision of a medical certificate altogether, as supporting documentation for sick leave absences.**

As the situation stands, you are still entitled to the right to your illness or injury remaining confidential. Medical certificates are to be faxed or sent directly to Health Services. The Union has consistently been reassured by the Department that no one other than the BMO will have access to your medical certificates or medical records. Certainly, no one at a station or even zone level should have access to your medical certificates or medical records.

## 4. If you are unable to get to a doctor

The Union and Department recognise that it may not always be possible or preferable to see

a local doctor for short illnesses. This is particularly true in rural and regional areas where waiting lists for local general practitioners can be several days and is compounded by the inaccessibility of doctors who may be several hours away.

Furthermore, the Union recognises that the primary form of recuperation for many short term illnesses is rest, where excessive time spent attending doctors for the sole purpose of obtaining a medical certificate will exacerbate the condition, rather than aid recovery.

## 5. Recognising the cost of seeing a doctor

In addition, the Union understands that there is an ever increasing cost of seeing local medical practitioners. The number of GPs that bulk bill is steadily declining, and this means that part of the cost of seeing a doctor is borne by members.

## 6. Alternatives to medical certificates – Statutory Declarations

In cases where it has not been possible to obtain a medical certificate from a registered medical practitioner, members are advised to provide a Statutory Declaration as supporting sick leave documentation. In the case of personal/carer's leave statutory declarations are the only documentation required – you do not need to supply medical certificates of the person in your care.

### KEEP COPIES OF ALL RELEVANT DOCUMENTATION

It is important that you retain the original copies of all relevant documentation including:

- medical certificates
- statutory declarations
- any correspondence between you and the Department

You should also keep good records of your absences in case you are subject to the AMP.



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## The Operation of the AMP

### How does the AMP work?

The Department has developed a system to record and analyse sick leave data called SLaNT. Management is able to generate reports on member absenteeism through various triggers and patterns.

#### Triggers in the SLaNT system

The sick leave management reports on members who have triggered the monitoring system in the following ways:

- Threshold levels of sick leave absence (50 hours in any 13 week period, or 96 hours in any 26 weeks)
- Threshold number of occurrences (4 separate occurrences in any 13 week period)
- Failure to provide required supporting documentation (for non-NMC absences)

#### Patterns in the SLaNT system

The system is also designed to report on members whom the Department alleges have developed “patterns” of sick leave absences. These include, but are not limited to:

- same day of the week absences
- weekends
- pre or post annual leave rosters
- pre or post public holidays

It should be noted that a “pattern” does not consist of a single or double occurrence of any of the above, nor a combination of the above absences. For example, if you were sick on a Saturday and again prior to a public holiday, this in and of itself would not be considered a pattern. A pattern must consist of more than two repeat occurrences of the same type of absence.

#### Failure to provide documentation

The system also identifies those with repeat occurrences of failures to provide supporting documentation.

## Recognition of genuine illness

The SLaNT system automatically generates reports on members who have activated the system by meeting the criteria for a trigger or pattern.

These reports are run and administered by Zone Commanders. It is the responsibility of Zone Commanders to confirm with their Inspectors that they have removed all genuine cases of misadventure, illness and injury thus eliminating erroneous interviewing. Failure to do so contravenes the ethos of the AMP.

## A Guide to the Attendance Management Policy

### What do I do if I’m called in for an interview?

As long as you have sufficient documentation for the absences in question, you should not be alarmed by the interview process. Remember: you can still be called for an interview even if you have provided sufficient documentation of your absences because some of the triggers are based on hours and patterns.

First, make sure that the Department has followed the correct procedure:

- Your request for an interview must be in the form of a letter, signed by your Zone Commander or higher
- Included in the letter should be the reason (i.e. the particular trigger or pattern) for which you have allegedly breached the AMP
- the absences for which you are being interviewed should at most be for the 26 week period prior to the date of the letter
- Included in the letter should be attached documentation (including the SLaNT printout) of the dates and reasons for each alleged occurrence
- You must be given at least 7 days notice of the interview date
- Any material that is to be used in the interview should be provided to you at least 48 hours prior to the interview (see: *what can I be asked about in my interview* below)



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Once you have received a letter, you should fax it through to the Union on 9218 3488. This way, the Union is able to track the number of letters that have been sent and interviews conducted. Remember, the Union is your representative in these matters and as such, it is important that the Union has a record of your letter and interview taking place.

In some cases, an interview may not be required. For example, if your letter states that you are being called for an interview solely because the Department believes you have not provided supporting documentation, then resending the required medical certificates and/or statutory declarations to the BMO will negate the need for an interview. Once you have done so, let your supervisor know that you have resent the documentation to the BMO.

If your letter relates to other triggers and patterns, you should then arrange to have a support person present during your interview. A support person is essential - as an observer, they are able to verify what is said in the interview if the matter proceeds further. This support person can be your Union delegate or another fellow firefighter.

## Who conducts the interview?

The interview is to be attended by your supervisor, and conducted by your supervisor's supervisor. For firefighters the interview is to be conducted by your Inspector and your SO is to attend as a non-participant observer. The interview is NOT to be conducted by your SO.

## What should I take to the interview?

Besides your support person, remember to take all supporting documentation (medical certificates, statutory declarations and other correspondence) and your records of absences along to the interview. You should not show your medical certificates or any other information regarding your medical history or conditions to your interviewer, but taking them along will expedite the process if anything needs to be re-sent to the Health Services.

## What can I be asked about in my interview?

This is a very good question. The interviewing officer must not request or discuss any medical information, whether specific to a particular absence in question or in regard to a member's medical history or general health and wellbeing.

In your interview, you can only be asked about the absences in question that have been raised in the letter in terms of your documentation. This cannot extend beyond determining whether proper documentation has been provided.

Clause 38.1 of the Award states that a member must be given any material 48 hours prior to the commencement of it being used in an interview. Therefore, it is important to be aware of the attached information that you have been provided in your interview request letter. You have the right to refuse to answer any questions that refer to new material that may be used by the interviewer.

## Ask for it in writing

If the interviewer makes a request of you, or gives you a directive, ask for this in writing. It is always safer to have a written account of everything. You should also fax a copy through to the Union Office for our records.

## If unsure, do not sign anything

If you are unsure of any reports you are being asked to sign, it is better to refuse to sign them. Refusing to sign reports that may arise from your AMP interview will invoke Clause 38.4 of the Award and will mean the Union has the opportunity to respond to the allegations by the Department and act as your representative.

## Can I appeal a decision under the AMP?

The Union can appeal to the Industrial Relations Commission on your behalf in the event of a dispute regarding any disciplinary action under the AMP. This is why the Union stresses the importance of members keeping good records and all documentation relating to sick leave absences so that in the event of a dispute, relevant material is readily available.