

## Industrial Injury Benefit Policy

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|-----------------------------------|-------------------------------|
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### Target Audience:

|   |  |
|---|--|
| <b>People who need to know about this document in detail</b>          | Author/Owners of this procedure.   |
| <b>People who need to have a broad understanding of this document</b> | Board Members, Management Board, Senior Leaders, Board Committees.                   |
| <b>People who need to know that this document exists</b>              | Employees of Cwm Taf Morgannwg University Health Board and its hosted organisations. |

### Integrated Impact Assessment:

|   |   |
|---|---|
| <b>Equality Impact Assessment Date &amp; Outcome</b>                        | <b>Date: 02/11/21</b><br><b>Outcome:</b> This policy has been screened for relevance to Equality. No potential negative impact has been identified. |
| <b>Welsh Language Standard</b>  | Yes - If Standard 82 applies you must ensure a Welsh version of this policy is maintained   |
| <b>Date of approval by Equality Team:</b>                                   | 02/11/21  |
| <b>Aligns to the following Wellbeing of Future Generation Act Objective</b> | Ensure sustainability in all that we do, economically, environmentally and socially   |



### Disclaimer:

If the review date of this Policy has passed, please ensure that the version you are using is the most up to date version either by contacting the author or email [CTM\\_Corporate\\_Governance@wales.nhs.uk](mailto:CTM_Corporate_Governance@wales.nhs.uk)

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## 1 Introduction

This policy applies to all Cwm Taf Morgannwg University Health Board (CTMUHB) employees, including Hosted Organisations, who are claiming that they have sustained an injury or have contracted a disease or other health condition that they believe is **wholly or mainly attributable to their NHS employment, and is not due to or aggravated by their own negligence or misconduct.**

Management will need to follow the NHS Wales Managing Attendance at Work Policy during any period of related sickness absence. Therefore, this guidance should be read in conjunction with the NHS Wales Managing Attendance at Work Policy.

Section 4.9 of the All Wales Managing Attendance at Work Policy states:

“When one or more of the absences are related to:

- an industrial injury, incident or accident at work (including psychological harm), which has been reported to the manager as close to the time it occurred as practicable and where an incident report has been completed.

Or

- a serious condition acquired at work and which has been notified to the manager.

Or

- Diarrhoea and vomiting (D&V) or similar infection, which is considered by Infection Control or Occupational Health to be associated with an outbreak in the working environment.

These periods of absence should normally be discounted when considering further action under the procedure for the management of frequent short term sickness absence.”

This document provides guidance on the process for submitting an industrial injury claim, where an independent Industrial Injury Review Panel will make the decision regarding the outcome, consisting of a Head of Department, a Workforce & OD Representative, a Health & Safety Manager and Trade Union Representative (not from the same union supporting the employee).

Employees who receive confirmation of a successful claim will subsequently be eligible to receive payments linked to working patterns or additional work commitments (e.g. unsocial hour's payments) during the sickness absence period associated with their claim.

Employees with successful claims may also be eligible for Injury Allowance, should they experience a reduction in salary during the sickness absence period (e.g. where they move from full sick pay entitlement to half sick pay).

**Please note:** Employees will receive basic pay only during a sickness absence episode until the outcome of the claim is known; after which, payments will be reimbursed retrospectively for successful claims.

*Confirmation of a successful industrial injury claim does not represent a legal admission of liability for the injury / illness.*

## **2 Background**

Employees who are absent from work due to sickness, which is the result of a confirmed industrial injury may be eligible to receive Injury Allowance once they have exhausted their full sick pay entitlement and reduce to half pay.

Injury Allowance tops up an employee's pay to 85% of earnings, for a maximum of 12 months during sickness absence. If agreed by the manager, any unused Injury Allowance can also be used to extend a phased return to work plan, as an alternative to using annual leave.

## **3 Eligibility**

Injury Allowance is payable to eligible employees who have injuries, diseases or other health conditions that are **wholly or mainly attributable** to their NHS employment.

### **3.1 What does 'wholly or mainly attributable to their NHS employment' mean?**

"Wholly" means "totally" and "mainly" means "for the most part".

"Attributable" is defined as a "contributory causal connection, it need not be the sole, dominant, direct or proximate cause and effect". However, the injury, disease or other health condition must have been sustained or contracted in the discharge of the employee's duties of employment, or an injury that is not sustained on duty, but is connected with, or arising from, the employee's employment.

### **3.2 Situations where Injury Allowance may be considered**

Some examples but not exhaustive:

- physical or psychiatric injury sustained or disease contracted due to a specific incident or series of incidents;
- injury sustained or disease contracted that does not manifest itself for several years, for example, asbestosis or Hepatitis C following a needle stick injury;
- injury sustained while travelling on official duty, for example, road traffic accident (RTA), while travelling in an official car from one NHS premises to another;

- injury sustained off duty, for example, while providing professional treatment which required professional training or knowledge at the scene of a road traffic accident;
- injury inflicted off duty, the cause of which can be attributed to NHS employment (for example, being assaulted on the way home from work by an ex-patient);
- injury, disease or other health condition contracted due to a series of incidents relating to NHS employment (for example, exposure to noxious substances causing injury, condition or disease over a period).

3.3 **Are there any circumstances where Injury Allowance cannot be considered?**

**Injury Allowance cannot be considered in the following circumstances:**

- Where an employee is injured while on a normal journey to and from work, except where the journey is part of their NHS contractual duties of employment;
- Where an employee is on sickness absence as a result of disputes relating to employment matters such as investigations or disciplinary action, or as a result of a failed application for promotion, secondment or transfer;
- Where an employee sustains an injury or disease, which is aggravated by their own negligence or misconduct.

**Neither is it payable:**

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

3.4 **When is Injury Allowance unlikely to be payable?**

**Injury Allowance is unlikely to meet the wholly and mainly attribution test in the following circumstances:**

- where the injury or disease is attributable to some other cause, for example the natural progression of a pre-existing condition, normal wear and tear of a non-work related injury, condition or disease;
- 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.

Further guidance can be sought from [NHS Employers Injury Allowance – Guide for Employers](#).

## 4 Industrial Injury Claims

### 4.1 Employee Responsibilities

All incidents should be recorded using an electronic incident reporting form (DATIX Risk Management System) immediately or as soon as reasonably practicable following the incident.

Employees who subsequently wish to submit an industrial injury claim should do so by completing Part A of the Claim Form (**Appendix 1**), at the earliest opportunity and pass to their line manager to complete Part B. Incomplete applications may be returned, pending further information, which may delay the outcome.

Employees should continue to comply with their responsibilities under the All Wales Managing Absence at Work Policy during any period of absence.

Employees will be required to complete any forms sent to them by the Payroll Department to ensure any Injury Allowance payments for successful industrial injury claims can be processed in a timely manner.

Employees, who have exhausted full sick pay entitlement and remain on sickness absence, may also move to half sick pay until the outcome of the claim is known, after which Injury Allowance payments will be backdated retrospectively for successful claims.

Employees who have submitted an industrial injury claim should continue to submit their timesheets with the allowances or payments linked to working patterns or additional work commitments (e.g. unsocial hours payments) that they would have worked had they not been absent due to sickness. However, the manager **should not** submit these allowances or payments on their payroll returns until they have written confirmation from the Industrial Injury Review Panel, the industrial injury claim has been successful.

*Further information on supporting evidence etc can be found in the [NHS Employers Injury Allowance Guide for staff](#)*

### 4.2 Manager Responsibilities

Managers will need to follow the Managing Attendance at Work absence management procedures during any period of sickness absence where the employee is claiming that they have sustained an injury or have contracted a disease or other health condition that they believe is wholly or mainly attributable to their NHS employment.

Once the employee has completed **Part A** and provided their supporting documentation to their line manager, the line manager should complete **Part B** of the Industrial Injury Claim Form (**Appendix 2**) and forward all relevant documentation to the Workforce and OD contact for submission to the next appropriate Industrial Injury Review panel.

*For examples of what evidence should be included to corroborate that the person may have had an injury at work, see [NHS Employers Injury Allowance – Guide for Employers](#).*

On receipt of notification of a successful Industrial Injury Claim outcome, from the Review Panel, the manager will be required to confirm with the Payroll Department the allowances or payments linked to working patterns or additional work commitments (e.g. USH payments) both owed to the employee, and then on an ongoing basis for the length of the sickness absence period (where the reason for absence remains due to the industrial injury).

## 5 Decision Process

On receipt of the completed Industrial Injury Claim form, the Workforce and OD representative will submit the documentation to be considered at the next Industrial Injury Review meeting, where an independent panel will review the claim and determine the outcome. All completed applications will be considered within 7 calendar days of the receipt of the application. The panel will consist of a:

- Head of Department (from outside the employee's department) – Chair the panel
- Workforce & OD Representative
- Health & Safety Manager
- Trade Union Representative (not from the same union supporting the employee)

It is important applications are completed in full and any supplementary information / evidence is provided to enable the panel to determine the validity of the claim. Any incomplete applications will be returned pending further information, which will delay the outcome. Employees are therefore encouraged to seek advice from their line manager, Occupational Health, Workforce & OD and / or their trade union representative when completing claim forms.

The panel will make their decision based on the **balance of probability** of whether the absence is **wholly or mainly due to NHS Employment**, which is defined as 'more likely than not'.

Based on the information provided in the application and supporting documentation, the Chair of the Panel will confirm the outcome of the claim to the employee, their line manager and the Workforce and OD representative, in writing within 7 calendar days of the Review Panel Meeting taking place. The Chair of the Panel will complete **Part C** of the Industrial Injury Claim Form (**Appendix 3**), setting out the reason(s) for approval or rejection of the claim.

If the claim is successful, the Payroll Department will be notified by the workforce & OD representative on the Review Panel, to issue a letter to the employee requesting authorisation for the Benefits Agency to provide details of any additional payments being made to them. Once the Benefits Agency have confirmed the amount and which

benefits are / will be received by the employee, this will enable Injury Allowance to be paid, to top up any reduced earnings to 85% of salary.

The employee should make the Payroll Department aware each time a change in benefits applies, as this could affect the amount of Injury Allowance due.

If a successful claim is received for an absence linked to a previous industrial injury, the Workforce & OD representative on the Review Panel will be required to notify the Payroll Department that the employee has a **recurring** industrial injury, providing details of the original injury (obtained from the claim form). The manager will again be required to provide payroll with information regarding any payments linked to working patterns or additional work commitments owed.

## **6 Appeal Process**

If an employee is dissatisfied with the outcome of a Review Panel decision, they may request an appeal to be heard in accordance with the Appeals Procedure when not Detailed in the Relevant HR Policy or Procedure.

The decision of the Appeal Panel will be final and there will be no further right of appeal.

## **7 Equality Impact Assessment Statement**

This policy has been screened for relevance to Equality. No potential negative impact has been identified.

## **8 Training and Awareness**

Advice and support will be provided by the Workforce department to support employees and managers in their understanding and application of this procedure.

## **9 References**

The details of the Injury Benefit provisions are set out in Section 22 of the NHS Terms and Conditions of Service Handbook.

**Industrial Injury Claim Form**

**PART A – TO BE COMPLETED BY EMPLOYEE\***

Please complete the application as fully as possible, as any incomplete applications will be returned, which will delay the decision process. If a question does not apply to your particular case, please record "Not Applicable" or "N/A" in the box.

| <b>CONTACT DETAILS</b>  |  |
|---|--|
| Name:   |  |
| Job Title:  |  |
| Payroll/ Employee Number:   |  |
| Department/ Base:   |  |
| Preferred Contact Address (Work or Home):                                     |  |
| Preferred Email Address:  |  |
| Preferred Tel. Number:  |  |
| Line Manager's Name, Job Title and Contact Details:                           |  |
| Trade Union Representative's Name, Union and Contact Details (If applicable): |  |

| <b>CLAIM DETAILS</b>   |          |
|--|----------|
| Date of Incident/s:  |          |
| Datix Incident Number/s (If applicable):                     |          |
| Date sickness absence commenced:                             |          |
| Date returned to work from sickness absence (if applicable): |          |
| Is this absence related to a previous industrial injury?     | Yes / No |

|  |  |
|--|--|
| <p><b>If yes,</b> please include details of <b>why</b> you feel this episode of sickness absence is linked to a previous <b>confirmed</b> industrial injury and provide details of the previous industrial injury.*</p> <p><b>Do not complete any further questions on this form and move to</b> Name and Signature section below.</p> |  |
| <p><b>If no,</b> please include details of the injury sustained or disease contracted and an explanation of why you feel it is wholly or mainly due to your NHS Employment*.</p>   |  |
| <p>If this incident is related to any manual handling duties, please indicate what equipment you utilised (if any) or any reasons for not using the appropriate equipment. *</p>   |  |
| <p>Please include details of how the injury or disease affects your ability to work or carry out normal daily activities. *</p> <p>Have these symptoms continued?<br/>If <b>yes</b>, for how long and has it been continuous or ad hoc?</p>  |  |
| <p>Was there a specific incident or trigger? If so, please give details such as time and date of onset as precisely as possible. *</p>   |  |
| <p>Are there any other factors that have contributed to the injury sustained or disease contracted? If so provide additional information.*</p>   |  |
| <p>Did you report this issue to your line manager? If <b>yes</b>, please include their name and the date you reported it.</p>  |  |

|   |  |
|---|--|
| What support were you offered?<br>Was this support timely?<br>Has it been on going?   |  |
| If you did not report your concerns to your line manager, can you provide the reason for not doing so?  |  |
| Are you aware of the following Health Board policies and services?<br><ul style="list-style-type: none"> <li>• Respect and Resolution Policy</li> <li>• Raising Concerns Policy</li> <li>• Wellbeing Service</li> <li>• Occupational Health Service</li> <li>• Employee Assistance Programme (Vivup)</li> </ul> | Yes / No<br>Yes / No<br>Yes / No<br>Yes / No<br>Yes / No |
| Have you accessed any of the support mechanisms available to staff, such as the policies referenced above, and/or services?   |  |
| <b>If yes,</b> What advice was provided?<br>Did you feel that the support was adequate?<br>What did you feel could have been done differently?  |  |
| <b>If no,</b> please provide the reason(s) for not accessing the policy / service.  |  |
| Did you discuss your situation with any other member of staff, including a trade union representative?<br><br>If no, please provide the reason(s).  |  |
| Please include any other information which you feel is relevant evidence to support your application*   |  |
| Name  |  |
| Signature   |  |
| Date  |  |

\*Please continue on a separate sheet if required.

### Checklist of Documents to Attach to Part A of Claim Form

Please note some information may be available from your line manager. Please number each attached document (if applicable) and submit with the claim form

| Number | Description  | Tick |
|--------|--|------|
|        | <i>A statement giving details of the injury sustained or the disease contracted i.e. your medical condition) and how it is connected to your NHS employment (i.e. what caused it).</i> |      |
|        | <i>Copy of the accident report e.g. DATIX Form.</i>  |      |
|        | <i>Witness Statements (If applicable)</i>  |      |
|        | <i>DWP benefit statements (If applicable)</i>  |      |
|        | <i>Relevant medical advice e.g. GP/ Hospital etc. (If applicable).</i>   |      |
|        | <i>Use the section below to list any other documents attached to your claim form</i>   |      |
|        |  |      |

**Please forward the form along with your supporting documentation to your line manager to complete Part B**

## Appendix 2

### PART B – TO BE COMPLETED BY LINE MANAGER\*

Please complete the application as fully as possible as any incomplete applications will be returned, which will delay the decision process. If a question does not apply to this particular case, please record "Not Applicable" or "N/A" in the box.

| CONTACT DETAILS FOR LINE MANAGER |  |
|----------------------------------|--|
| Name:                            |  |
| Job Title:                       |  |
| Department/ Base:                |  |
| Email Address:                   |  |
| Telephone Number:                |  |
| HR Business Partner's Name:      |  |

| CLAIM DETAILS (from line manager's records)  |          |
|--|----------|
| Date of Incident/s:  |          |
| Date sickness absence commenced:   |          |
| Date returned to work from sickness absence (if applicable):   |          |
| Is the employee advising this absence is related to a previous industrial injury?  | Yes / No |
| <p><b>If yes,</b> please include details of the previous episode(s) of sickness absence including start date and end date of the original absence and your view on whether the new episode is likely to be related or not supported by relevant information / evidence e.g. Occupational Health report.</p> <p><b>Do not complete any further questions on this form and move to</b> Name and Signature section below.</p> |          |
| <p><b>If no,</b> please include details of the new injury sustained or disease contracted and your view on whether it is wholly or mainly due to their NHS Employment. Please</p>  |          |

|  |  |
|--|--|
| <i>support your view with relevant information / evidence e.g. Occupational Health report.</i>   |  |
| Please include details of how the injury or disease affects the employee's ability to work and / or carry out normal contractual duties and activities:  |  |
| Was there a specific incident or trigger? If <b>yes</b> please give details such as time and date of onset as accurately as possible:  |  |
| Are you aware of any other factors that have contributed to the injury sustained or disease contracted? If <b>yes</b> please provide details here (without breaching confidentiality of any third parties, if applicable):   |  |
| Did the employee report the incident to you previously? If so, please include when and the details of what was reported:   |  |
| <p>What support did you offer?</p> <ul style="list-style-type: none"> <li>• Respect and Resolution Policy</li> <li>• Raising Concerns Policy</li> <li>• Wellbeing Service</li> <li>• Occupational Health Service</li> <li>• Employee Assistance Programme (Vivup)</li> </ul> <p>Was this support timely? Has it been on going?</p> |  |
| Was the support offered by you accepted to your knowledge? Provide details where applicable:   |  |
| Please provide any other relevant information*   |  |
| <b>Name:</b>   |  |
| <b>Signature:</b>  |  |
| <b>Date:</b>   |  |

\*Please continue on a separate sheet if required.

## Checklist of Documents to Attach to Part B of Claim Form

Please only submit new documentation not already provided in Part A. Please number the documents as follows:

| Number | Description   | Tick |
|--------|---|------|
|        | <i>Internal investigation report including details of the injury sustained or the disease contracted by the employee and how it is connected to their NHS Employment (i.e. what caused it?):</i>                      |      |
|        | <i>Accident report e.g. DATIX Form:</i>   |      |
|        | <i>Occupational Health Department advice / copies of GP Fit Notes / other medical advice / reports received (please ensure that the employee has provided consent for these to be shared to support their claim):</i> |      |
|        | <i>Job description and person specification, including details of the location of work, duties of employment and statutory and mandatory training records, etc.:</i>  |      |
|        | <i>A full statement of events from the employee explaining what injury / disease they are claiming for and the circumstances leading to the claim:</i>  |      |
|        | <i>Documents that may be helpful by way of corroboration: (see section 3 of guidance notes and list here) e.g. witness statements</i>   |      |

**Please forward both parts of the form and all supporting documentation to your relevant ILG HR team who will arrange an Industrial Injury Review Panel:**

**Corporate Services** [CTM.CorporateILG.HRTeam@wales.nhs.uk](mailto:CTM.CorporateILG.HRTeam@wales.nhs.uk)  
**Merthyr and Cynon** [CTM.MerthyrILG.HRTeam@wales.nhs.uk](mailto:CTM.MerthyrILG.HRTeam@wales.nhs.uk)  
**Rhondda and Taff** [CTM.RhonddaILG.HRTeam@wales.nhs.uk](mailto:CTM.RhonddaILG.HRTeam@wales.nhs.uk)  
**Bridgend** [CTM.BridgendILG.HRTeam@wales.nhs.uk](mailto:CTM.BridgendILG.HRTeam@wales.nhs.uk)

### Appendix 3

#### PART C – TO BE COMPLETED BY THE INDUSTRIAL INJURY REVIEW PANEL

|  |  |       |
|--|--|-------|
| <b>Review Panel Members</b>                                |  |       |
| (Chair of Panel) Head of Department Representative's Name: |  |       |
| Workforce & OD Representative's Name:                      |  |       |
| Health & Safety Manager's Name:                            |  |       |
| Trade Union Representative's Name:                         |  |       |
| Employee's Name:   |  |       |
| Payroll Number:  |  |       |
| Industrial Injury Claim Outcome Successful:                |  | YES   |
| NO   |  |       |
| [*delete as applicable]                                    |  |       |
| Claim linked to a previous industrial injury claim:        |  | YES   |
| NO   |  |       |
| [*delete as applicable]                                    |  |       |
| Reason(s) for the Decision                                 |  |       |
|  |  |       |
| To be signed by all members of the review panel            |  | Date: |
| Head of Department Representative:                         |  |       |
| Workforce & OD Representative:                             |  |       |
| Health & Safety Manager:                                   |  |       |
| Trade Union Representative:                                |  |       |

\*Please continue on a separate sheet if required.

**For successful claims:**

- The Chair of the Panel notifies employee and line manager in writing within 7 days of review panel meeting.
- The Workforce and OD Representative on the Review Panel will notify the Payroll Department;
- The line manager will notify the Payroll Department of any monies owed (e.g. USH payments);
- The Payroll Department will send the employee forms to complete to determine eligibility for Injury Allowance, should the employee move to half sick pay during their sickness absence (where the reason for absence remains due to the confirmed industrial injury).

**For unsuccessful claims:**

- The Chair of the Panel notifies employee and line manager in writing within 7 days of review panel meeting.
- Employee may appeal in writing within 14 days of the date on which the decision was communicated to them in writing.
- Follow the Appeals Procedure When Not Detailed in the Relevant HR Policy or Procedure.
- The appeal must be sent to the Workforce Assistant Director of Policy, Governance and Compliance.
- The Appeal is the final stage of the process and there is no further right of appeal against the outcome.