

CA/56/13

Orig.: en

Munich, 07.06.2013

SUBJECT: HR Roadmap implementation: improving working conditions and well-being - proposed first set of measures including corresponding amendments to the Service Regulations

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for decision)

SUMMARY

One of the strategic orientations foreseen in the HR Roadmap (CA/110/11) is to promote a good place to work in through improved working conditions and well-being of staff. For the implementation, it was proposed to focus on three sets of measures. This document sets out proposed amendments to the EPO ServRegs which are necessary to proceed with the first set of measures in order to ensure a better interaction with, and support to employees who are on sick leave.

TABLE OF CONTENTS

Subject	Page
PART I	1
I. STRATEGIC/OPERATIONAL	1
II. RECOMMENDATION	1
III. MAJORITY NEEDED	1
IV. CONTEXT	1
V. ARGUMENTS	2
VI. FINANCIAL IMPLICATIONS	3
VII. LEGAL BASIS	4
VIII. DOCUMENTS CITED	4
IX. RECOMMENDATION FOR PUBLICATION	4
PART II	5
ANNEX 1 COMPARISON BETWEEN EXISTING AND NEW TEXT	8

PART I

I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Administrative Council is requested to approve the proposed amendments to the Service Regulations necessary to implement the strategic goal of promoting a good place to work in by ensuring a better interaction with, and support to employees who are on sick leave.

III. MAJORITY NEEDED

3. Three-quarters of the votes.

IV. CONTEXT

4. At its 130th meeting the Administrative Council gave a unanimous favourable opinion on the HR Roadmap. The further improvement of the working conditions and well-being of EPO staff constitutes one of the main priorities indicated in the HR Roadmap. It is also the reasoned follow-up to the general health policy adopted by the Council at its 110th meeting (CA/53/07, CA/53/07 + Corr. 1, Corr. 2 + Add. 1; see CA/D 23/07; CA/PV 110, point 21).
5. Indeed, the EPO has already implemented over the recent years a number of well-being measures which have already brought some positive results: health oriented trainings and workshops for managers and staff, optimized reintegration processes, reduced working hours instead of long sick leave, focus on ergonomics - to name but a few.
6. Nevertheless, the EPO still experiences high levels of short- and long-term absence, including on grounds of invalidity, as well as difficulties in carrying out a flexible yet efficient follow-up of related cases.
7. Therefore, it was proposed to the staff representatives to focus on three additional sets of measures to be discussed by a joint working group.

8. The first set of measures relates to the interaction with, and support to employees on sick leave. The second set of measures aims at improving the decision-making processes and case management. The third set of measures will address the need for further flexibility in the management of sickness and invalidity.
9. These measures should increase the motivation of staff by reinforcing the incentives to return to work and should help clarifying the roles, responsibilities and procedures in the management of sickness and invalidity cases.
10. They should also empower the line managers, by providing them with the necessary tools, support and training, to conduct a health-oriented management policy, including streamlined and facilitated sick leave monitoring, tracking and reporting.
11. The present document sets out the changes necessary to implement the first set of measures. It is the result of transversal discussions including the staff representatives and medical services (Medical Advisor and Occupational Health Services).

V. ARGUMENTS

12. An improved interaction between the employee on sick leave and the Office (line management, HR and medical services) encompasses two aspects: facilitated communication with the employee and monitoring of the appropriate use of the right to sick leave.
13. In keeping with the aim of a facilitated communication between the employee on sick leave and his line management, the HR department and Occupational Health Services (OHS), but also for an efficient crisis and business continuity management, it is essential for the Office to know the employee's contact details including both the address and phone number. The requirement for an employee to communicate those details could be derived from his general obligation to carry out his duties and to conduct himself solely with the interests of the EPO in mind (Article 14(1) ServRegs). However an explicit reference to such obligation in the Service Regulations provides an even more solid legal basis therefore. It is thus suggested to include it in Article 55(1) ServRegs, linked to the employee's obligation to be at the disposal of the Office. Also, for the more specific context of sick leave, it is proposed to add the reference to the phone number in Article 62(2) ServRegs which already refers to the address.

14. As far as monitoring of sick leave is concerned, the following amendments are being proposed:
15. Firstly, it is proposed to amend Article 26(2) ServRegs concerning the obligation of employees to submit to medical examinations. Such obligation is general and not necessarily linked to the procedure foreseen for medical disputes on the genuineness of sick leave absences. The proposed new wording reflects this and empowers the President to lay down the terms and conditions for its proper implementation.
16. Secondly, it is proposed to introduce a new paragraph to Article 62 ServRegs to explicitly provide for the implementation of the general obligation laid down in the proposed new Article 26(2) ServRegs, in the field of verification of genuineness of sick leave absences. Indeed, employees must conduct themselves in a way conducive to their return to work, as this is the corollary to their right to sick leave. Also, the President's supervisory authority over staff and his responsibility for the sound management of the Office entitles him to verify whether sick leave has been rightfully claimed. This requires the possibility to perform such verifications at the employee's home. An explicit legal basis to do so was necessary at the level of the Service Regulations, although the President will lay down the corresponding conditions for its implementation.
17. Thirdly, it is proposed to amend current Article 62(14) ServRegs to reflect the proposed introduction of a new paragraph to Article 62 ServRegs. Also, the wording has been reviewed for clarification purposes.
18. Beyond the above, one further proposal is made:
19. It is proposed to replace the wording "the Office" by "the President of the Office" in the first sentence of current Article 62(13) ServRegs, to bring it in line with Article 62(3) ServRegs: it is indeed the President's authority pursuant to the EPC to both authorise the spending of sick leave elsewhere than at the place of residence, and verify the legitimacy of absence due to incapacity.
20. Finally, it is important to note that the proposed changes apply to both permanent and contractual employees. Although reference is only made to permanent employees in the wording of the relevant articles of the ServRegs, contractual employees are covered pursuant to Article 1 ServRegs.

VI. FINANCIAL IMPLICATIONS

21. The measures are expected to have a favourable impact on the Office's finances.

VII. LEGAL BASIS

22. Articles 10(2) and 33(2)(b) EPC

VIII. DOCUMENTS CITED

23. CA/53/07 + Corr. 1, Corr. 2 + Add. 1, CA/D 23/07, CA/PV 110
CA/110/11

IX. RECOMMENDATION FOR PUBLICATION

24. Yes.

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
amending Articles 26, 55 and 62 of the
Service Regulations for permanent employees
of the European Patent Office

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention and in particular Article 33(2)(b) thereof,

Having regard to the Service Regulations for permanent employees of the European Patent Office (hereinafter referred to as "ServRegs") and in particular Articles 26, 55 and 62 thereof,

On a proposal from the President of the European Patent Office, submitted after consulting the General Advisory Committee and the Central Occupational Health, Safety and Ergonomics Committee,

HAS DECIDED AS FOLLOWS:

Article 1

Article 26(2) ServRegs shall read as follows:

"(2) A permanent employee shall submit to any medical examination provided for in these Service Regulations or ordered by the President of the Office in the interests of the staff or of the service. The terms and conditions under which such medical examinations are performed shall be laid down by the President of the Office."

Article 2

Article 55(1) ServRegs shall read as follows:

"(1) Permanent employees in active employment shall at all times be at the disposal of the Office. They shall therefore notify their permanent address and telephone number to the Office in writing."

Article 3

Article 62(2) ServRegs shall read as follows:

"(2) The employee concerned shall notify the Office of his incapacity as soon as possible on the first day of absence and at the same time state his present address and telephone number. If he is incapacitated for more than three working days, he shall, on the fourth working day, send a medical certificate; however if the doctor whom he has consulted refuses to issue a medical certificate, the employee shall supply the Office with that doctor's name and address."

Article 4

(1) Article 62(13) ServRegs shall become Article 62(14) ServRegs.

(2) In the first sentence of the new paragraph 14, the term "the Office" shall be replaced by "the President of the Office", and the term "well founded" shall be replaced by "claimed for bona fide reasons".

(3) In view of the renumbering, references to Article 62(13) ServRegs shall be superseded by references to Article 62(14) ServRegs. This change shall apply to articles of the Service Regulations and other regulatory texts in which reference is made to Article 62(13) ServRegs.

Article 5

A new paragraph 13 shall be inserted in Article 62 ServRegs as follows:

"(13) The President of the Office may verify by means of medical examinations whether the absence on grounds of incapacity is claimed for bona fide reasons. These medical examinations may be conducted at the present address of the permanent employee. The terms and conditions for performing such verifications, which may also be conducted by external service providers, shall be laid down by the President of the Office."

Article 6

Article 62(14) ServRegs shall become Article 62(15) ServRegs and shall read as follows:

"(15) A permanent employee shall be considered to be on unauthorised absence within the meaning of Article 63 in the following cases:

- (a) if he fails to return to work, contrary to the opinion given by the medical practitioner appointed under Article 89, paragraph 3;
- (b) if he fails, without legitimate reason, to undergo a medical examination ordered by the President of the Office pursuant to paragraph 13 above;
- (c) if he fails, without legitimate reason, to undergo a medical examination by or ordered by this medical practitioner pursuant to paragraph 14 above."

Article 7

This decision shall enter into force on 1 September 2013.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Jesper KONGSTAD

ANNEX 1 COMPARISON BETWEEN EXISTING AND NEW TEXT

Existing text	New text
<p>Article 26 - Medical examination</p> <p>(2) Subject to the provisions governing the settlement of disputes relating to medical opinions, a permanent employee shall submit to any medical examination ordered by the President of the Office in the interests of the staff or of the service.</p>	<p>Article 26 - Medical examination</p> <p>(2) Subject to the provisions governing the settlement of disputes relating to medical opinions, A permanent employee shall submit to any medical examination provided for in these Service Regulations or ordered by the President of the Office in the interests of the staff or of the service. The terms and conditions under which such medical examinations are performed shall be laid down by the President of the Office.</p>
<p>Article 55 - Working hours</p> <p>(1) Permanent employees in active employment shall at all times be at the disposal of the Office.</p>	<p>Article 55 - Working hours</p> <p>(1) Permanent employees in active employment shall at all times be at the disposal of the Office. They shall therefore notify their permanent address and telephone number to the Office in writing.</p>
<p>Article 62 - Sick leave</p> <p>(2) The employee concerned shall notify the Office of his incapacity as soon as possible and at the same time state his present address. If he is incapacitated for more than three working days, he shall, on the fourth working day, send a medical certificate; however if the doctor whom he has consulted refuses to issue a medical certificate, the employee shall supply the Office with that doctor's name and address.</p>	<p>Article 62 - Sick leave</p> <p>(2) The employee concerned shall notify the Office of his incapacity as soon as possible on the first day of absence and at the same time state his present address and telephone number. If he is incapacitated for more than three working days, he shall, on the fourth working day, send a medical certificate; however if the doctor whom he has consulted refuses to issue a medical certificate, the employee shall supply the Office with that doctor's name and address.</p>

(13) If the Office contests whether the absence on grounds of incapacity is well founded, or the permanent employee, without legitimate reason, fails to undergo a medical examination ordered for the purpose of deciding whether or not he is incapacitated, the medical question in dispute shall be referred to a medical practitioner appointed under the procedure described in Article 89, paragraph 3. This medical practitioner's opinion, which shall be given after consultation of the permanent employee's medical practitioner and of the Office's medical adviser, shall be binding. This procedure also applies for a permanent employee on extended sick leave, but for whom it has been decided that he must resume his duties pursuant to Article 62, paragraph 9.

(13) The President of the Office may verify by means of medical examinations whether the absence on grounds of incapacity is claimed for bona fide reasons. These medical examinations may be conducted at the present address of the permanent employee. The terms and conditions for performing such verifications, which may also be conducted by external service providers, shall be laid down by the President of the Office.

~~(13)~~ (14) If the President of the Office contests whether the absence on grounds of incapacity is ~~well founded~~ claimed for bona fide reasons, or the permanent employee, without legitimate reason, fails to undergo a medical examination ordered for the purpose of deciding whether or not he is incapacitated, the medical question in dispute shall be referred to a medical practitioner appointed under the procedure described in Article 89, paragraph 3. This medical practitioner's opinion, which shall be given after consultation of the permanent employee's medical practitioner and of the Office's medical adviser, shall be binding. This procedure also applies for a permanent employee on extended sick leave, but for whom it has been decided that he must resume his duties pursuant to Article 62, paragraph 9.

(14) If the permanent employee fails to return to work, contrary to the opinion given by the medical practitioner appointed under Article 89, paragraph 3, or if the permanent employee fails, without legitimate reason, to undergo a medical examination by or ordered by this medical practitioner for the purpose of deciding whether or not he is incapacitated, this shall be considered as unauthorised absence.

(14) (15) If the A permanent employee shall be considered as to be on unauthorised absence within the meaning of Article 63 in the following cases:

(a) if he fails to return to work, contrary to the opinion given by the medical practitioner appointed under Article 89, paragraph 3;

(b) if he fails, without legitimate reason, to undergo a medical examination ordered by the President of the Office pursuant to paragraph 13 above;

(c) , or if the permanent employee if he fails, without legitimate reason, to undergo a medical examination by or ordered by this medical practitioner for the purpose of deciding whether or not he is incapacitated, this pursuant to paragraph 14 above.