



**Circular Letter
0078/2015**

To: The Chief Executives of Education and Training Boards

CARER'S LEAVE FOR ALL STAFF OTHER THAN PERSONS EMPLOYED AS TEACHERS/SPECIAL NEEDS ASSISTANTS EMPLOYED IN EDUCATION AND TRAINING BOARDS

The Minister for Education and Skills directs you to implement the regulations and procedures regarding Carer's leave for all eligible staff other than persons employed as teachers/special needs assistants (SNAs) employed in ETBs whose posts are wholly funded by monies provided by the Oireachtas.

The regulations and procedures outlined in this circular are to be implemented by each employer with immediate effect and staff other than persons employed as teachers/SNAs must adhere to the terms of this circular.

This circular supersedes all previous circulars, memoranda, rules, regulations and arrangements in relation to carer's leave for all staff other than persons employed as teachers/SNAs in ETBs.

Please ensure copies of this circular are provided to all staff other than persons employed as teachers/SNAs in your employment including those on leave of absence.

Queries should be sent in the first instance to hr@etbi.ie for collation and forwarding to Department of Education and Skills where appropriate.

This Circular can be accessed on the Department's website under www.education.ie

Hubert Loftus
ETB Financial & Administrative Personnel Section
21st December 2015

**Carer's leave entitlements for staff other than persons
employed as teachers/SNAs in ETBs.**

Definitions

For the purposes of this scheme the following terms shall have the meanings assigned to them here unless the context indicates otherwise:

DSP – means the Department of Social Protection

Employer – means an Education and Training Board (ETB)

Employee – means a member of staff of an ETB other than persons employed as a teacher/SNA, who are in receipt of incremental salary under a permanent contract, contract of indefinite duration (CID), or fixed-term contract as defined in the Protection of Employees (Fixed Term Work) Act 2003.

Carer's leave – Unpaid leave from employment to care for a 'relevant person'

Carer's Benefit - means a payment made by the DSP to employees who are absent from work on carer's leave and who meet the qualifying criteria for the benefit.

1. Introduction:

1.1 The Carer's Leave Act 2001 and the arrangements applying to all staff other than staff employed as teachers/SNA in ETBs in relation to Carer's Leave are, in general, as specified in that Act. This Circular provides a summary of the main provisions of the Carer's Leave Act 2001. It does not purport to be a legal interpretation of the Act.

1.2 The Carer's Leave Act 2001 came into operation on 2 July 2001. Carer's Leave is the term used to describe temporary **unpaid** leave from work to personally provide full-time care and attention for a person who is medically certified as being in need of such care.

2. Entitlement and eligibility to Carer's Leave:

2.1 To be eligible for Carer's Leave an employee must have worked for a period of one continuous year with the ETB. Continuous employment means working for the same employer without a break.

3. Relevant person:

3.1 The person for whom the Carer's Leave is being applied for, (referred to as the "relevant person") must first be deemed to be in need of full-time care and attention by the Department of Social Protection. Therefore the employee must first make an application on the prescribed Department of Social Protection forms which can be received from the Carer's Benefit Section of the Department of Social Protection, Government Buildings, Ballinalee Rd., Longford, Co. Longford (Tel 043 45211 or 01 8748444).

3.2 According to DSP, "Full-time care and attention" means that a person being cared for must be so disabled as to require
"Continuous supervision and frequent assistance throughout the day in connection with his/her normal personal needs" eg. Help to walk and get about, eat or drink, bathe, dress etc;

or

"Continuous supervision in order to avoid danger to him/herself".

4. Period of Carer's leave available:

4.1 The maximum period of Carer's Leave allowable to care for one "relevant person" shall be 104 weeks unpaid leave.

4.2 An employee is not permitted to be on Carer's Leave in respect of more than one person at any one time. However, on one occasion only, an employee may commence leave in respect of a person, while already on leave in respect of another person, where the two persons reside together, providing approval is received from the Department of Social Protection for the second person. In such circumstances, an overall total amount of Carer's Leave of 208 weeks can be taken together (104 weeks for each relevant person). This can only be done once.

4.3 An employee will not be entitled to Carer's Leave where another person is on Carer's Leave for the purpose of providing full-time care and attention for the same relevant person.

- 4.4 Before an employee can commence Carer's Leave, he/she must provide the ETB with a copy of the decision of a deciding officer of the Department of Social Protection, that the relevant person has been medically certified as being in need of full-time care and attention.
- 4.5 Employees shall have the option of either taking the Carer's Leave as
- (a) one continuous period of 104 weeks
 - or
 - (b) one or more periods, the total duration of which amounts to not more than 104 weeks

The minimum statutory entitlement that may be taken in one period is 13 weeks. However, applications for Carer's Leave for periods of less than 13 weeks will be considered on their merit and approved where possible, having regard to the capacity of the organisation to meet the organisation's needs and the number of periods of Carer's Leave already taken by the employee in that year.

For the purpose of this circular, a week is defined as a period of seven days i.e. an employee who takes 13 weeks of Carer's Leave will be removed from the payroll for 91 days.

Note 1: Where the Carer's Leave is not taken in one continuous period of 104 weeks there must be a gap of at least 6 weeks between periods of Carer's Leave in respect of the same person.

Note 2: If an employee wishes to avail of Carer's Leave for another person a period of 6 months must elapse from the date of termination of the leave in respect of the previous Carer's Leave even if the employee has not taken the maximum period of 104 weeks for the other person. This provision does not apply where two persons to be cared for reside together.

- 4.6 The first thirteen weeks only of Carer's Leave entitlement in respect of any one care recipient will qualify for public holiday entitlements. The right to annual leave is restricted to the period comprising the first 13 weeks only of the Carer's Leave entitlement in respect of any one relevant person.
- 4.7 Deductions for a day of unpaid absence should be calculated at a rate of one-fifth of weekly pay.

5. Notification required to avail of Carer's Leave:

- 5.1 Granting Carer's Leave is conditional on the employee notifying her/his HR Unit in writing as soon as is reasonably practicable **but not later than six weeks** prior to the proposed commencement date of Carer's Leave. In exceptional circumstances, an application may be made later than six weeks prior to the proposed commencement date.
- 5.2 A standard Application Form has been prepared and must be used when applying for Carer's Leave (see appendix 1). This must contain a statement that an application for a decision that the person to be cared for is in need of full-time care and attention has been made to the DSP (See Section 3).

- 5.3 The employee must give a copy of the decision of the deciding officer (or appeals officer) of the DSP to the ETB immediately on receipt of certification from that Department.
- 5.4 An ETB must process an application for Carer's Leave under the terms of the Act, no later than 2 weeks prior to the proposed commencement of the Carer's Leave. To facilitate adjustments to the payroll the employee should process the application as early as possible. The Employer can only process the application provided they have certification from the DSP (see 5.3 above). If the DSP refuse an application for Carer's Leave then the Employer cannot approve the application. Once the Employer has approved the Application Form, it becomes a Confirmation Document.
- 5.5 Once agreed, the proposed absence on Carer's Leave cannot be amended save with the agreement of all parties concerned.
- 5.6 A copy of the Confirmation Document must be given to the employee and the original retained by the HR Unit no later than 2 weeks before the proposed start date of the leave.
- 6. Maintenance of employment rights during carer's leave:**
- 6.1 In the case of an employee who is on probation at the start of Carer's Leave, the period of probation will stand suspended for the duration of the absence on Carer's Leave.
- 6.2 Except as outlined in paragraph 6.1 above, and other than the right to remuneration and superannuation benefits, an employee on Carer's Leave is deemed for all purposes to be in employment. The absence is therefore fully reckonable for the determination of seniority.
- 6.3 An employee on Carer's Leave is entitled to receive notification regarding vacant posts which are to be filled in the ETB, such notification to be sent by the ETB to the last known address.
- 6.4 Absences from employment while on Carer's Leave cannot be treated as part of any other leave to which the employee is entitled eg. sick leave, adoptive leave, maternity leave, parental leave or force majeure leave.
- 6.5 An employee absent on sick leave prior to the start of Carer's Leave must produce a certificate of fitness to resume duty before commencing Carer's Leave.
- 7. Termination of Carer's Leave:**
- 7.1 Generally a period of Carer's Leave shall terminate on the date specified on the confirmation document, or where the person being cared for ceases to require full-time care and attention or where the person being cared for dies during a period of Carer's Leave. In the latter instance the employee may return on the date specified in the confirmation document or a date which occurs 6 weeks after the date of death which ever is the earlier.
- 7.2 Where an ETB is of the opinion that any of the following circumstances exists:
- That the person in respect of whom the employee proposes to take

Carer's Leave is not or is no longer a relevant person.

- That the person in respect of whom Carer's Leave has been granted, and in respect of whom the employee is on Carer's Leave is not or is no longer a relevant person.
- That an employee who proposes to take or is on Carer's Leave does not satisfy the conditions for providing full-time care and attention to the relevant person.
- That an employee who proposes to take or is on Carer's Leave is engaging or has engaged in employment or self-employment other than as provided for in regulations made by the Minister for Social Protection.

the ETB shall notify the Department of Social Protection of such opinion together with the grounds for that opinion.

On receipt of such a notification from the ETB, the Department of Social Protection shall refer it to a deciding officer for a decision under the Social Welfare (Consolidation) Act, 1993 i.e. as to whether the afore-mentioned conditions are satisfied.

Where the Department of Social and Protection makes a decision that:

- A person in respect of whom an employee proposed to take or has taken Carer's Leave was not or is no longer a relevant person;
- The employee does not satisfy the conditions for providing full-time care and attention or;
- The employee is engaging or has engaged in employment or self-employment other than as prescribed (eg. working more than the 10 hours allowed per week as outlined below at 8.1);

then the period of Carer's Leave, if commenced, shall terminate on the date of that decision and the employee shall return to work.

In a situation where Carer's Leave terminates on foot of a decision of a deciding officer/appeals officer, then the notice of return to work will come from the ETB.

8. Working while on Carer's Leave:

8.1 During Carer's Leave an employee may engage in limited employment provided the hours of employment do not exceed 15 hours per week and the net earnings from that employment do not exceed the upper income limit set out in regulations by the Minister for Social Protection.

8.2 The employee can work the 15 hours per week with the existing employer if it meets the needs of the Employer and Employee.

9. Compliance:

9.1 All employees must adhere to the regulations and procedures set out in this circular. Failure to abide with the regulations and procedures will be dealt with under the agreed disciplinary procedures and may lead to the cessation of salary.

- 9.2 All documentation relating to career breaks must be retained by the employer with the relevant personnel records.

10. Disputes and appeals:

- 10.1 Disputes about entitlement to Carer's Leave may, in general, be referred to Work Place Relations Customer Service Department:
Department of Jobs, Enterprise and Innovation
O'Brien Road
Carlow
Ireland
Opening Hours: Mon. to Fri. 9.30am to 5pm
Tel: (059) 917 8990
Locall: 1890 80 80 90
Homepage: <http://www.workplacerelations.ie/en/>

- 10.2 Notice in relation to a dispute must be given no later than 6 months after the occurrence of the dispute.

11. PRSI matters:

- 11.1 Employees who avail of Carer's Leave and who pay full rate Pay Related Social Insurance contributions are required to contact the DSP to ensure that any entitlement to PRSI credits are maintained.

12. Carer's benefit:

- 12.1 The two schemes, Carer's Leave and Carer's Benefit, are administered in tandem as regards conditions relating to (i) the provision of full time care and attention, and (ii) the requirement for a decision to be made by a deciding officer (or appeals officer) of the Department of Social Protection that the relevant person is medically certified as being in need of full-time care and attention.
- 12.2 It should be noted that the entitlement to Carer's Leave is not conditional on entitlement to Carer's Benefit and vice versa. Please note that PRSI contribution classes A,B,C,D,H and E count for the purposes of meeting the PRSI contribution requirements for Carer's Benefit.

13. Review:

- 13.1 The operation of the scheme may be reviewed after two years.

14. Further information:

- 14.1 Copies of this Circular should be given to all members of staff.
- 14.2 **This Circular may also be accessed on the Department of Education & Skills website at www.education.ie.**
- 14.3 Further information regarding the Carer's Leave Act may be obtained from:

Department of Social Protection

Carer's Benefit Section
Social Welfare Services Office
Government Buildings

Ballinalee Road
Longford
Ireland
Tel: (043) 334 0000
Lo-call: 1890 92 77 70

Homepage: <http://www.welfare.ie>

PRSI Records

Department of Social Protection
McCarter's Road
Ardaravan
Buncrana
Donegal
Ireland
Tel: (01) 471 5898
Lo-call: 1890 690 690
Homepage: <http://www.welfare.ie>

APPLICATION FORM FOR CARER'S LEAVE
(TO BE COMPLETED BY THE EMPLOYEE)

SECTION A – PERSONAL DETAILS (BLOCK CAPITALS)

Surname: _____ First Name(s): _____

Employment Centre: _____ Employee Number: _____

Home Address: _____

Contact Tel. No.: _____ PPS No. _____

Name of Relevant Person for whom you wish to apply for carer's leave:

Have you previously availed of carer's leave? Yes: __ No: __ (*Tick as appropriate*)

Have you previously availed of carer's leave in respect of the Relevant Person named above? Yes: __ No: __ (*Tick as appropriate*)

If "Yes" state: From _____ to _____ Total No. _____ of Weeks

From _____ to _____ Total No. of Weeks

From _____ to _____ Total No. of Weeks

From _____ to _____ Total No. of Weeks

OVERALL TOTAL

SECTION B – PROPOSED PERIOD OF CARER'S LEAVE

1. Proposed start date of carer's leave: _____

2. Proposed end date of carer's leave: _____

3. State the number of weeks in total _____

SECTION C – CERTIFICATION:

I certify that the information which I have given in this application form is true and complete. I have read the Carer's Leave Circular xxxxxx, and I agree to abide by the requirements of this Circular. I wish to confirm that an application for a decision that the relevant person is in need of full-time care and attention has been made to the Department of Social Protection.

I understand that any incorrect or inaccurate information supplied by me in this form shall render my application null and void.

Signature: _____ Date: _____