



Circular Letter 0080/2015

To: The Chief Executives of Education and Training Boards

**MATERNITY PROTECTION ENTITLEMENTS FOR ALL STAFF OTHER THAN PERSONS
EMPLOYED AS TEACHERS/SPECIAL NEEDS ASSISTANTS
IN EDUCATION AND TRAINING BOARDS**

The Minister for Education and Skills directs you to implement the regulations and procedures regarding Maternity Protection Entitlements 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 all staff other than teachers/SNAs must adhere to the terms of this circular.

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

Please ensure that copies of this circular are brought to the attention of all staff other than those 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

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Principal Officer
ETB Financial & Administrative Personnel Section
21st December 2015

**Maternity Protection entitlements for all 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:

‘Back to Back’ contract – means a contract which follows immediately from the previous contract with no break in service.

Breastfeeding Employee – means at any time an employee whose date of confinement was not more than twenty-six weeks earlier, who is breastfeeding and who has so informed the employer.

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.

Health and Safety Authority (HSA) – the national body in Ireland with responsibility for securing health and safety at work. It is a state-sponsored body, established under the Safety, Health and Welfare at Work Act 2005.

Maternity Benefit - means a payment made by the DSP to women who are absent from work on maternity leave and who meet the qualifying criteria for the benefit.

MB10 Form – means the DSP Maternity Benefit Form.

Independent Occupational Health Service (IOHS) – means the providers of independent medical advice on occupational health matters

1. Maternity Leave:

- 1.1 All pregnant employees, who give birth to a live child, or who reach their 24th week of pregnancy, are entitled to 26 weeks maternity leave and 16 weeks additional unpaid maternity leave.
- 1.2 Maternity leave will ordinarily begin on such day as the pregnant employee selects, unless medically certified that the leave should commence on a particular date. However, the commencement date must not be later than 2 weeks before the end of the week of the baby's expected birth and four weeks must be taken after the end of the week of the baby's birth. For these purposes, Saturday is regarded as the end of a week. Employees may also take cognisance of the DSP rules whereby eligibility for maternity benefit does not normally commence until the 24th week of pregnancy and ends when maternity leave ceases. Further details on the DSP regulations are available directly from that Department.
- 1.3 If the birth occurs before the employee has commenced her maternity leave then the maternity leave must commence immediately and the employer must be informed.
- 1.4 If the birth occurs after the expected date and there are less than 4 weeks of maternity leave remaining, then the employer must be informed and the maternity leave will be extended to ensure that 4 weeks maternity leave are taken following the birth.

2. Statutory Additional Unpaid Leave:

- 2.1. Commencing on the day immediately following completion of statutory maternity leave, the employee has the option to take a maximum of 16 consecutive weeks statutory additional unpaid maternity leave.
- 2.2 An employee who avails of statutory additional unpaid maternity leave may be entitled to receive PRSI credits. Please complete the application for Maternity Leave Credits which is available from the DSP and request your employer to complete and return the employer's section to the DSP.

3. Application Procedures for Employees:

- 3.1 Application for maternity leave both paid and unpaid should be made by employees to their employer at least 6 weeks in advance of commencement of the leave on the prescribed application form which is attached at Appendix A of this circular.
- 3.2 The applicant is responsible for completion of the MB10 Form and should ensure that the ETB completes the employer's portion before forwarding to the DSP at least 6 weeks prior to the start date.

4. Correspondence Address:

- 4.1 The employer will address all necessary correspondence to the employee at the address last notified by the employee and no fault shall lie with the employer in the event that the employee does not receive such correspondence.

5. Statutory Annual Leave/Public Holiday Entitlement:

- 5.1 Any entitlements in respect of public holidays occurring while on maternity leave will be addressed by additional leave immediately following statutory maternity leave and where availed of, statutory additional Unpaid Leave.
- 5.2 These annual leave entitlements are to be taken at a time outside of the period of maternity leave.
- 5.3 Employees who resign/retire or their employment ceases may be entitled to additional payment in lieu of their accrued leave.

6. Pay Arrangements and Maternity Benefit:

- 6.1 Continuation of salary during maternity leave is not a statutory entitlement and is contingent upon compliance with the agreed terms and conditions of this circular.
- 6.2 Any action which necessitates an adjustment to an employee's pay should be notified to the ETB immediately.
- 6.3 Under the DSP regulations, PRSI contributors at the modified rate (Class D) have no entitlement to Maternity Benefit. Therefore no deduction is applied to their salary and they remain on their ordinary rate of pay.
- 6.4 Under the DSP regulations any Maternity Benefit payable by the DSP to PRSI contributors at the full rate (Class A), will issue directly to the employee in question. A deduction from salary equivalent to the maximum weekly rate of Maternity Benefit payable to the employee will initially be applied by the ETB.
- 6.5 If the amount of benefit payable to the employee is less than the maximum, or if a person is not entitled to any Maternity Benefit, they should notify their payroll section immediately to ensure that the salary adjustments are correct. Changes to the automatic deduction can be made provided the employee furnishes a copy of the DSP's written notice of the actual benefit rate applicable, if any, to the relevant payroll. Deductions, where appropriate, will be made during the period of paid leave up to a maximum of 26 weeks for maternity leave. If the absences are recorded late any arrears due will have to be deducted from salary after the date of notification.
- 6.6 With effect from 1 July 2013 Maternity Benefit payment will be treated as taxable income.

7. Time off for ante-natal care appointments, post natal care appointments and attendance at ante-natal classes:

- 7.1 Pregnant employees are entitled to time off work, without loss of pay, to:
 - (a) attend medical appointments related to ante-natal care,
 - (b) attend one set of ante-natal classes in a working career, other than the last 3 classes in such a set, and

(c) attend medical appointments related to post-natal care within 14 weeks of the birth

- 7.2 If a pregnant employee misses particular ante-natal classes in a set then it is permitted that during a subsequent pregnancy, or pregnancies, she may attend classes equivalent to those missed.
- 7.3 An expectant father is entitled to time off work, without loss of pay, to attend the last two ante-natal classes in a set attended by the pregnant mother.
- 7.4 Two weeks notice should be given for each absence referred to in this section and appropriate certification provided.

8. Health and Safety of pregnant, post natal, and breastfeeding employees:

- 8.1 The Safety, Health, and Welfare at Work Act 2005 and the Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007) place an obligation on the employer, as soon as it is notified by the employee that she is pregnant, to assess any specific risk in the workplace to that employee and to ensure that the pregnant, post natal, or breastfeeding employee is not exposed to any agents, processes or working conditions that will damage either the safety or health of the pregnant employee and/or that of the developing child.
- 8.2 The employee should be informed of the results of the risk assessment and the measures to be taken. The detailed arrangement regarding the respective responsibilities of the employer and the employee in relation to health and safety leave are contained in Sections 17 – 20 of The Maternity Protection Act 1994.
- 8.3 Where a risk has been identified and it is not possible to remove it, protective and preventive measures should be taken to safeguard the health of any employee to whom the provisions apply, such as:
 - (a) a temporary adjustment in the working environment of the employee concerned so that exposure to the risk is avoided, or
 - (b) in the event that such adjustment is not possible, by moving the employee to suitable alternative work which does not entail the risk, or
 - (c) in the event that such alternative work is not available, and having consulted with and received certification from the IOHS, by granting the employee health and safety leave. The employee is entitled to receive, on request, a certificate stating the reasons why she has been granted leave. The certificate must also state the start date and expected end date of the leave. Maternity Related Health & Safety Leave can be granted in respect of more than one period, provided the conditions outlined in 8.1 and 8.2 above are fulfilled for each such period concerned.

- 8.4 A sample certificate of risk form is supplied in the schedule to the Maternity Protection (Health and Safety Leave Certification) Regulations 1995 (SI No. 19 of 1995).
- 8.5 Health and Safety Leave will cease when:
- (a) the employee concerned commences maternity leave, or
 - (b) the employee is no longer an employee to whom Part III of the Maternity Protection Act, 1994 applies (i.e. she notifies the employer that she is not pregnant, has not given birth within the last fourteen weeks or is not within 26 weeks of the birth and breastfeeding, as defined in the Act); or
 - (c) the risk ceases
- 8.6 Specific questions on health and safety issues should be addressed to the Health and Safety Authority (HSA), www.hsa.ie, which can provide advice, assistance and encouragement aimed at the prevention of work related accidents and the promotion of occupational safety, health and wellbeing.
- 8.7 An employee who makes PRSI contributions at the modified rate (Class D), and has no entitlement to Health and Safety benefit from the DSP, will be entitled to full pay while on health and safety leave. An employee who makes PRSI contributions at the full rate (Class A) and who is entitled to Health and Safety Benefit from the DSP will be paid full salary by the ETB for the first 21 days and thereafter will be paid full salary less any benefit paid by DSP.
- 9. Father's Leave: Entitlement of male employees to leave in the event of the death of the mother while on maternity leave:**
- 9.1 In the event of the death of the mother within 40 weeks of the birth of a living child, a male employee who is the father of the child is entitled to leave as follows:
- (a) if the mother dies before the end of the 24th week following the week of the birth of her child, the father is entitled to paid leave up to the 24th week. At the end of this period he is entitled to apply for a further 16 consecutive weeks additional unpaid leave commencing immediately
 - or**
 - (b) if the mother dies after the 24th week following the week of the birth of her child, the father is entitled to unpaid leave up to the 40th week following the week of the birth of the child.
- 9.2 The leave should normally commence within 7 days of the event which has created the father's entitlement to the leave but the employer should exercise discretion appropriate to the individual circumstances. To avail of his leave entitlement the father in this circumstance may simply apply in writing to his employer. As soon as is reasonably practicable, the employer should be provided with a copy of the death certificate of the mother and a copy of the birth certificate of the child.

10. Postponement of leave entitlements in the event of the hospitalisation of the child:

10.1 In the event of the hospitalisation of the child, a request may be made to the employer for postponement of
(a) maternity leave

(b) statutory additional unpaid maternity leave

(c) father's leave

10.2 Maternity leave can only be postponed after at least 14 weeks of the leave has expired, 4 weeks of which must have been taken after the week of the child's birth. Postponement of the leave will require the absent employee to resume duties during the period of postponement.

10.3 An application for postponement must be made in writing to the employer, accompanied by certification from the hospital in which the child is hospitalised. The employer must notify the employee in writing as soon as possible of its decision. If the leave is postponed, the employer and the employee must agree the date of return to work.

10.4 The ETB, and the DSP must be notified immediately if the employee is to return to work to facilitate pay adjustment and cease any benefit from the DSP and the finalisation of payment to the replacement employee.

10.5 The postponed maternity leave must be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital. The maximum period for postponement of the leave is 6 months.

10.6 The employee must provide the employer with a letter or other appropriate documentation from the hospital, or the child's doctor, confirming the child's discharge date.

10.7 If the employee becomes ill having returned to work and before s/he has taken the postponed leave, s/he will be considered to have started the postponed leave on the first day of absence due to illness unless the employee notifies the employer that s/he does not wish to begin the postponed leave. If this happens s/he will forfeit the postponed leave and the absence will be treated as sick leave. The normal procedures in relation to sick leave should then be followed, including the furnishing of a medical certificate where appropriate.

11. Termination of statutory additional unpaid maternity/father's leave in the event of sickness of the mother/father:

11.1 If an employee has made an application for statutory additional unpaid maternity leave, or statutory additional unpaid father's leave, and subsequently becomes ill, s/he is entitled to cancel that application in writing, not later than 4 weeks before such leave is due to commence. If the 4 week deadline has passed the entitlement to cancel

the leave has been lost. However, a formal request can still be made to cancel such leave in favour of a certified sick leave absence.

- 11.2 Approval of such a request to terminate the leave is at the discretion of the employer. If approved, the employer and the employee must agree the date for any such termination of the leave. The date agreed can not be earlier than the first day of certified illness and not later than when the terminated leave would otherwise have ended. The normal procedures in relation to sick leave will then apply. The employee will not be entitled subsequently to take the additional unpaid maternity leave or any part of it not taken at the time of commencement of sick leave.

- 11.3 To facilitate necessary pay adjustment (*if appropriate*) the ETB must be notified immediately that the employee is now on sick leave.

12. Provision for breastfeeding:

- 12.1 Within a twenty six week period after the birth of the child, an employee who has returned to work is entitled to one hour per day for the purpose of breastfeeding. The time off, without loss of pay, may be taken as follows:

(a) one break of 60 minutes, or

(b) two breaks of 30 minutes each, or

(c) three breaks of 20 minutes each

- 12.2 An employee who qualifies for this provision must notify the employer in writing of her intention to avail of such breaks. Notice should be given 4 weeks prior to the return to work following maternity related leave under the terms of this circular. A copy of the birth certificate of the child must be submitted with the application for breastfeeding breaks. It is a matter for the employer to make the necessary arrangements with the employee to facilitate the taking of the breastfeeding breaks.

13. Maternity Related Illness Provisions:

- 13.1 The Public Service Management (Sick Leave) Regulations 2014, SI 124 of 2014, set out the provisions which relate to the interaction of pregnancy related illness with sick leave limits. The Regulations set out how the time on half pay due to pregnancy related illness is protected.

If a pregnant employee is medically unfit for work due to a pregnancy related illness and has exhausted sick leave at half pay she will continue to receive sick leave at half pay for the duration of her pregnancy-related illness, prior to going on maternity leave. This is regardless of whether she has reached the maximum limit for half pay due to prior sick leave.

If an employee is unfit for work following maternity leave, her access to sick leave at half-pay will be extended by the period of absence on sick leave at half pay due to pregnancy-related illness, which occurred before she went on maternity leave.

14. Fixed Term/Fixed Purpose Appointments:

- 14.1 An employee who is on a fixed term/fixed purpose contract of employment shall have full maternity leave entitlements during the term of the contract. The granting or taking of maternity leave entitlements should not affect a fixed term/fixed purpose appointment or the renewing of such an appointment.
- 14.2 Maternity related entitlements shall cease on expiry of the contract unless that contract is followed directly by a 'back to back' contract in an approved post funded by monies provided by the Oireachtas.

15. Replacement Contracts:

- 15.1 In the event of the employee on maternity leave being replaced, contracts awarded to cover absences outlined in this circular should make clear reference to the fact that there are circumstances where the replacement appointment may have to be terminated in the event of the absent employee returning to duties earlier than initially expected. (e.g. an absent employee postpones part of the maternity leave due to the hospitalisation of the new-born baby).

16. Status during Leave:

- 16.1 An employee absent on any of the leave types referred to in this circular, is deemed to have been in employment at that time. Paid absences are fully reckonable for all purposes including seniority. Statutory additional unpaid maternity leave is reckonable for all purposes, with the exception of superannuation.

17. Vacant Posts:

- 17.1 An employee absent on any of the leave types covered by the terms of this circular should be notified regarding vacant posts which are to be filled in an ETB.

18. Employment during Maternity Leave:

- 18.1 Employees are not permitted to engage in any paid employment during the course of their maternity leave. Under the DSP regulations Maternity Benefit may be terminated in the event that paid employment is taken up while on maternity leave. Any salary payment from the ETB may have to be reviewed in the event of termination of Maternity Benefit arising from non compliance with the terms of the DSP scheme.

19. Resumption of Duties:

- 19.1 The employer should provide the absent employee with a written statement of their absence and expected date of resumption of duties. Four weeks before the employee is due to return to the workplace written notice should be given to the employer confirming the intention to resume duties from that date.

20. Compliance:

- 20.1 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.
- 20.2 All documentation relating to maternity leave arrangements must be retained by the

employer with the relevant personnel records. These records may be selected for inspection.

21. Further Information:

- 21.1 In accordance with the introductory paragraph the regulations in this circular are to be implemented by the employer. Thus all queries should initially be brought to the attention of the HR Department of the ETB in the first instance.

Appendix A

Application Form for Maternity Leave Entitlements

This application must be fully completed and retained for record and audit purposes. It can be used to apply for maternity and/or statutory unpaid maternity leave. It should be completed and submitted at least 6 weeks before the leave is due to commence.

This application is to be submitted to the ETB HR Department.

If the applicant pays Class A PRSI contributions a completed MB10 Form should be submitted to the DSP. This Form is available from the DSP or online at: www.welfare.ie

APPLICATION IN RESPECT OF:

☐ **Maternity Leave** ☐ **Statutory Unpaid Maternity Leave**

Please tick as appropriate

Name: _____ Location: _____

ETB: _____ Payroll Number: _____

Contact No: _____ PPSN: _____

Expected date of birth (EDB) ____/____/____

(Medical certificate must be enclosed confirming expected date of birth)

I wish to commence my maternity leave on ____/____/____

State the number of days statutory additional unpaid maternity leave that are to be taken (if any): _____ (Consecutive days and to include weekends)

I wish to apply for the above leave in accordance with the terms of Circular XXXX

Signature of employee: _____ ***Date:*** _____

APPROVAL AND VERIFICATION BY EMPLOYER

I certify that I have approved the above leave in accordance with the terms of Circular XXXXX and I have retained on file the following documents for audit purposes:

- 1) All applications for maternity leave entitlements.
- 2) Certificate showing expected date of birth.
- 3) A copy of the completed MB10 form.

Signature: _____ ***Date:*** _____

(On behalf of Employer)