



(additional HSE approved logos)

### HSE GUIDELINES ON TERMS AND CONDITIONS OF EMPLOYMENT

**NATIONAL:** Policy Procedure Protocol Guideline  Clinical Guideline

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<b>Document Owner (post holder title):</b>	Chief People Officer
<b>Document Owner name:</b>	Anne Marie Hoey
<b>Document Owner email contact:</b> <i>(Generic email addresses only for the Repository)</i>	nationalhr@hse.ie
<b>Document Commissioner(s): (Name and post holder title):</b>	Anne Marie Hoey Chief People Officer
<b>Document Approver(s): (Name and post holder title):</b>	Anne Marie Hoey Chief People Officer
<b>Lead responsibility for national implementation:</b>	Chief People Officer
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<b>Development Group Name:</b>	National Employee Relations
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# **GUIDELINES ON TERMS AND CONDITIONS OF EMPLOYMENT**

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**HSE National Employee Relations  
HR Directorate  
Health Service Executive  
63/64 Adelaide Road  
Dublin 02**

**Telephone: (01) 6626966  
Email: [info.t@hse.ie](mailto:info.t@hse.ie)**

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## Disclaimer

This guideline document is a compendium of the various terms and conditions of employment which currently apply in the HSE. The terms derive from circulars, national agreements and/or legislation and every effort should be made to ensure conformity and consistency of application of the terms and conditions which are set out in the document. In the event of dispute regarding the contents of this guideline, the relevant circular, policy, collective agreement or legislation on which the guideline is based will be the definitive source of reference and its provisions will take precedence.

HSE HR Circulars referred to in this document are available from the HSE website [here](#).

HSE HR Forms referred to in this document are available from the HSE website [here](#).

HSE HR Policies referred to in this document are available from the HSE website at <https://www.hse.ie/eng/staff/resources/hrppg/>

Copies of memoranda from National HR or National Employee Relations (formerly Corporate Employee Relations Services (CERS)) can be obtained from National Employee Relations, [info.t@hse.ie](mailto:info.t@hse.ie).

# SECTION 1 - LEAVE

This section sets out the leave types and payments for such leave and other working arrangements that apply in the Health Service Executive. Some leave types may not apply to all employee categories. The following types of leave and working arrangements are covered:

- Annual leave
- Public Holidays
- Sickness Absence
- Occupational Illness/Injuries Schemes
- Maternity Leave including Health & Safety Leave
- Adoptive Leave
- Paternity leave
- Parental Leave
- Force Majeure Leave
- Unpaid Leave for Medical Care purposes
- Parent's Leave
- Carer's leave
- Domestic Violence Leave
- Special Leave with Pay on Marriage
- Bereavement Leave
- Jury Service
- Attendance of HSE employees in Court as witnesses
- Career Breaks
- Study Leave
- Special Leave with Nominal Pay
- Leave for Deployment with the Rapid Response Corps
- Reserve Defence Forces
- Special Leave with Pay to Volunteers in Exceptional Circumstances
- Leave for Trade Union Representatives
- Leave for elected members of local authorities
- Special leave for sporting purposes
- Other Types of Leave
- Flexible Working Scheme
- Shorter Working Year Scheme
- Right to Request Flexible Working for Caring Purposes

## Annual Leave

The Organisation of Working Time Act, 1997 (“The 1997 Act”) sets out statutory entitlements for employees in respect of annual leave and public holidays. All health service employees are covered by the Act.

### Qualifying Conditions for the Accrual of Annual Leave

There is no qualifying period or hourly threshold for entitlement to annual leave. This means that all employees, regardless of the number of hours they work a week, start to accrue an entitlement to annual leave from the commencement date of their employment.

Entitlement to annual leave is based on the number of hours worked in the leave year. The Act defines ‘working time’ as any time an employee is:

- At the place of work or at the employer’s disposal, and
- Carrying on or performing the activities or duties of their work.

When calculating an employee’s annual leave entitlement, employers should include time spent on maternity leave, additional maternity leave, adoptive leave, additional adoptive leave, paternity leave, parental leave, parent’s leave and the first 13 weeks of carer’s leave, annual leave, certified sick leave<sup>5</sup> and public holidays taken during the calculation period.

### Calculating Annual Leave Entitlement

The Act sets out three mechanisms for earning a statutory entitlement to annual leave. Employees are entitled to whichever one of the following is the greater:

- Employees who work at least 1,365 hours in the leave year are entitled to the full statutory leave entitlement of four working weeks (unless it is a leave year in which s/he changes employment).
- If an employee does not work at least 1,365 hours in the leave year, they are entitled to one-third of a working week per calendar month in which they work at least 117 hours.
- If an employee works less than 117 hours, they are entitled to 8% of the hours worked in the leave year, subject to a maximum of four working weeks. (This is the mechanism normally used for calculating the statutory annual leave entitlement for part-time employees).

The ‘working week’ refers to the number of days or hours that the employee normally works in a week. For example, if an employee works four days a week (and exceeds the 1,365 hours threshold), then the holiday entitlement to four weeks’ leave is equivalent to 16 days’ leave i.e. (4x 4 days). If an

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<sup>5</sup> Accrual may be contractual or statutory (see section below on Accrual of Annual leave during Sick Leave).

employee works five days a week, then the entitlement to four weeks' leave is equivalent to 20 days' leave.

Where an employee commences employment or terminates their employment during the leave year, the annual leave entitlement is calculated on a pro rata basis.

### **Annual Leave in the HSE**

The majority of health service employees receive annual leave entitlements that are greater than the statutory minimum provided for under the Organisation of Working Time Act.

HSE HR Circulars 11/2012 (existing employees) and 006/2014 (new beneficiaries/promotees) provide for the following limits:

- A minimum annual leave allowance of 22 days annual leave and a maximum annual leave allowance of 32 days for existing employees and 30 days for new entrants and promotees<sup>6</sup>.
- The assimilation of privilege / closure days, where applicable, into the annual leave allowance of existing employees and new beneficiaries subject to the limits listed above.
- The abolition of festival days and race days.

Further detail is set out in the Circulars referenced above.

### **Computation of a Day's Annual Leave**

In the case of employees who have varying weekly hours of attendance or who work shifts of varying lengths, the standard practice in the health service is to convert their annual leave entitlement into hours. This is calculated by dividing the normal weekly working hours for the grade by 5, and multiplying this figure by the annual leave entitlement for the grade.

*e.g. an employee who works a 39 hour week is entitled to 187.2 hours per annum, i.e. 24 (days) × 7.8 (hours) = 187.2*

Each time an employee takes annual leave, the number of hours the employee would normally have been rostered to work on the day(s) taken should be aggregated to determine the amount of annual leave taken.

*e.g. an employee who takes annual leave on a day they would normally have been rostered to work a 12 hour shift should be deducted 12 hours from their annual leave entitlement.*

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<sup>6</sup> New entrant is defined in HSE HR Circular 6/2014 as new recruits and staff promoted to the HSE on or after 1 April 2012.

## Accrual of Annual Leave for Part-Time Employees

Part-time employees accrue an entitlement to annual leave on a pro rata basis to their whole-time-equivalent.

**Table 1**

<b>Formula for calculating pro rata annual leave entitlements of part-time employees who have fixed contractual hours</b>			
<b>Example:</b> Employee who works 20 hours per week where WTE works 35 hours per week and receives 24 days annual leave per annum			
<u>Hours worked by Part-Time Employee</u>	X	<u>Annual Leave of WTE in hours</u>	
Hours worked by WTE			
20	X	24 (AL days) x 7 (daily hours)	
35			
0.57	X	168 = 95.8 eligible for 96 hrs	
⇒ Employee is eligible for 96 hours annual leave per annum			

**Table 2**

<b>Formula for calculating pro rata Annual Leave Entitlements of part-time employees who work varying hours on an “if and when required” basis</b>		
<b>Example:</b> Part-time employee who works varying hours on an ‘if and when required’ basis where Whole Time Equivalent (WTE) works 39 hours per week and receives 24 days annual leave per annum, will receive pro-rata entitlement to the WTE based on a percentage figure which is calculated using the formula below		
<u>Number of Annual Leave Days of the WTE Expressed in Hours</u>	x 100	
Number of standard weekly working hours of the WTE x 52 weeks		
187.2 (24 AL days x 7.8 hours (1/5 of standard working week))	x 100	
2028 (39 (standard WTE weekly working hours) x 52 weeks		
.092	x 100	
= 9.2%		
⇒ Annual leave entitlement of part-time employee is 9.2% of the hours which s/he works.		

## Overtime

Hours worked on an overtime basis should not be reckoned in the calculation of the annual leave entitlement or the payment for annual leave<sup>7</sup> **except** in

<sup>7</sup> If regular and rostered, overtime payments may be factored into the payment for annual leave. Each case should be considered on its merits.

cases where the employee falls short of the **minimum entitlement** as set out by the Organisation of Working Time Act 1997.

In the health service part-time employees who work additional hours in excess of their contracted hours will be entitled to accrue annual leave in respect of the additional hours worked up to a maximum of the annual leave entitlement for the whole time equivalent grade (HSE HR Circular 001/2012). In situations where part-time employees are required to work beyond their contracted hours on a regular rostered basis over a significant period of time it may be more appropriate to review the employee's contracted hours if this requirement is likely to continue.

### **Timing of Annual Leave**

The time at which annual leave is taken is at the discretion of the employer, having regard to service requirements and subject to the employee's needs to reconcile work and family responsibilities, and their opportunities for rest and recreation.

An employee who has worked eight or more months in a leave year is entitled to an unbroken period of two weeks' leave, which may include one or more public holidays.

The onus is on the employer to ensure that employees avail of their annual leave entitlement in the leave year to which it relates. In exceptional circumstances, due to service requirements, annual leave may be carried forward into the first six months of the next annual leave year, provided the employee agrees to defer the leave.

### **Illness during Annual Leave**

Where an employee falls ill during a period of annual leave and submits a medical certificate from a registered medical practitioner, the period covered by the certificate is regarded as sick leave and the annual leave entitlement is restored.

### **Accrual of Annual Leave during Sick Leave**

HSE HR Circular 08/2012 sets out the arrangements for the accrual and carryover of contractual annual leave over a three year cycle during paid sick leave, at full or half rate of pay, under the public service sick leave scheme.

In addition to the arrangements set out in HSE HR Circular 08/2012, the statutory annual leave entitlements under the 1997 Act apply to periods of unpaid medically certified sick leave and periods during which the employee is in receipt of Temporary Rehabilitation Remuneration (TRR) and the Injury Allowance (subject to receipt of medical certification). This includes the amount of annual leave and the carryover provisions as set out in sections 19 and 20 of the 1997 Act.

The 1997 Act provides that employees can retain annual leave they could not take due to illness for **up to 15 months after the end of the leave year in which it is accrued**. Once the carryover period of 15 months has expired,

the employee no longer retains their statutory entitlement in respect of the leave year in question. Annual leave therefore does not accrue indefinitely during periods of certified sick leave due to the application of the 15 month carryover period. The “leave year” under the Act is the period from 1 April to 31 March.

The employee’s absence due to sick leave must end before the employee can receive a benefit in respect of their annual leave entitlement. This will occur when the employee is fit to resume work **or** the employment relationship is terminated (e.g. ill-health retirement). If the employee was on paid and unpaid sick leave / TRR /Injury allowance then two separate annual leave calculations will have to be carried out using the methodologies set out in HSE HR Circular 08/2012 and under Section 19 and 20 of the 1997 Act to calculate the employee’s annual leave entitlement.

### **Annual Leave and Termination of Employment**

The Organisation of Working Time Act, 1997 prohibits payment in lieu of annual leave except in circumstances where the employee’s contract of employment is being terminated.

### **Pay during Annual Leave**

Payment during annual leave includes any regular premium or allowance normally paid to the employee and includes *regular and rostered* overtime. Examples of payments currently included are: Saturday, Sunday, night duty, twilight payment, and public holidays.

### **Calculating Holiday Premium Pay**

In accordance with the Organisation of Working Time Act (Determination of Pay for Holidays) Regulations 1997, the general principle governing payment for annual leave is that it should reflect an employee’s normal weekly remuneration.

As set out in HSE National HR Memo *Payment of Holiday Premia – standardised formula* (18 April 2018), the arrangement which operates in the health service (following agreement with the unions) is intended to ensure equitable treatment of health service employees by calculating the holiday premium payment for the entire year and making the payment on an annual (or biannual) basis. Examples of such premium payments include: Saturday, Sunday, night duty, twilight payments, public holidays and standby/on call fees<sup>8</sup>. Overtime payments (with the exception of regular and rostered overtime payments) should not be included in the calculation of holiday pay. When applying the formula, organisations should ensure that there is no double benefit.

To calculate holiday premium pay, the total premium pay received by the employee in the relevant leave year should be divided by the number of

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<sup>8</sup> Organisations should continue to apply existing arrangements with regard to the payment types which are normally included in the holiday premium pay calculation

contracted hours worked by the employee in that year to establish average premium earnings per hour. This average hourly rate figure should be multiplied by the amount of annual leave (converted into hours) accrued by the employee in that same year. This figure will give the total premium pay element of holiday pay for that leave year.

Holiday premium pay formula<sup>9</sup> = (Total premium paid) / (number of contracted hours worked in the year) x (annual leave entitlement in hours)

In accordance with the Organisation of Working Time Act 1997, the leave year for which holiday pay is being granted should be the same leave year used for calculating the average premium pay element of holiday pay.

#### Example

A health care assistant who is contracted to work 39 hours per week and has an annual leave entitlement of 23 days would be entitled to the following:

Total premium earnings:	€7,500
Total annual contracted hours	2,028 (39 x 52)
Annual leave entitlement in hours (April 2015 to March 2016)	179.4(23 x 7.8)
$(7,500 / 2,028) * 179.4$	= €663.46
	premium paid in 2013

#### Holiday Premium payments for NCHDs

An exception to this arrangement is Non Consultant Hospital Doctors for whom payment of notional hours while on annual leave will be paid on the basis of average approved rostered hours over a reference period of 13 weeks (NCHD Contract 2010).

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<sup>9</sup> As per HSE HR Circular 01/2012 part time employees who work additional hours in excess of their contracted hours will be entitled to accrue annual leave in respect of the additional hours worked up to a maximum of the annual leave entitlement of the whole time equivalent grade. The additional hours worked up to the full time hours for the grade and the increased annual leave entitlement should be included in the holiday premium pay calculation.



## Public Holidays

There are ten statutory public holidays:

- The first of January
- Imbolc/St Brigid's day<sup>10</sup>
- St Patrick's Day
- Easter Monday
- The first Monday in May
- The first Monday in June
- The first Monday in August
- The last Monday in October
- Christmas Day
- St Stephen's Day

An employee's entitlement in respect of each public holiday is provided for under Section 21 of the Organisation of Working Time Act 1997 as follows:

- (a) a paid day off on the public holiday; or
- (b) a paid day off within a month; or
- (c) an extra day's annual leave; or
- (d) an extra day's pay

*As the employer may decide.*

### Payment and Compensation for Public Holidays

The following is an overview of the arrangements that generally apply in the public health service. Please refer to the employee's contractual arrangements.

#### **Employees who work a '5 over 7' roster**

Payment for public holidays is governed by the *Organisation of Working Time (Determination of Pay for Holidays) Regulations, 1997*. In addition, the nationally approved public holiday premium rates of pay will apply to eligible employees (including public holiday on-call rates and public holiday overtime rates<sup>11</sup> where applicable) if they are rostered to work on the day the public holiday falls.

#### *Nursing/Midwifery staff who work a '5 over 7' roster*

Nursing/midwifery staff who work a '5 over 7' roster have a contractual entitlement to an additional ten days' leave (pro-rated for part-time staff) in lieu of their liability to be rostered on public holidays. In addition, nursing/midwifery staff who are rostered to work on the public holiday are entitled to payment plus single time extra for each hour worked as per existing contractual arrangements.

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<sup>10</sup> This public holiday will be the first Monday in every February, except where the 1<sup>st</sup> day of February falls on a Friday, in which case Friday 1 February will be a public holiday.

<sup>11</sup> National overtime rates are set out in [HSE HR Circular 16/2023 \(Addendum to HSE HR Circular 31/2021\)](#)

#### *NCHDs who work a '5 over 7' roster*

NCHDs who work a '5 over 7' roster are entitled to a total of 10 working days (7.8 hours per day) in lieu of their liability to be rostered on a public holiday. In terms of the practical implementation of this entitlement, 5 days fall due in respect of the period from the second Monday in January to the second Monday in July and 5 days apply in respect of the period from the second Monday in July to the second Monday in January of the following year. An NCHD who is rostered for duty on the day on which a public holiday falls is entitled to single time extra remuneration in respect of hours worked on this day.

#### *Medical Laboratory Scientists, Radiographers and Radiotherapists*

Medical Laboratory Scientists, Radiographers and Radiotherapists who are required to provide on-call receive the public holiday on-call rate.

### **Employees who work a Monday to Friday attendance regime**

Employees who are required to work on the public holiday and are granted their public holiday entitlement under option (d) of section 21 ("an additional day's pay") are entitled to receive public health service premium rates of pay including public holiday overtime rates for eligible staff as set out in HSE Circular 16/2023 where applicable.

In the case of employees who do not work on the public holiday, the following provisions generally apply<sup>12</sup>:

- *Employees who work or who are normally required to work on the day on which the public holiday falls*  
An employee who normally works on the day on which the public holiday falls but has the day off by virtue of the fact that it is a public holiday is entitled to their normal day's pay.
- *Employees not normally required to work on the day on which the public holiday falls*  
An employee who is not normally required to work on the day on which the public holiday falls, (e.g. part-time employees who are scheduled to work on particular days only), is entitled one-fifth of their normal weekly pay or an additional day's leave based on one-fifth of their standard working week, as the employer may decide.
- *Job-Sharers*  
Job-sharers who work Monday to Friday and do not work or are not normally required to work on the day on which the public holiday falls are entitled to receive one-tenth of the amount that is paid in respect of the last two weeks of normal working hours worked by the employee before that public holiday or an additional day's leave based on one-tenth of their fortnightly working hours, as the employer may decide.

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<sup>12</sup> Please refer to the employee's contractual arrangements.

### **Qualifying Conditions**

All permanent and temporary employees who work full-time have an immediate entitlement to public holiday benefits. Employees who work on a part-time basis must have worked at least 40 hours during the 5-week period ending on the day before the public holiday to qualify for the public holiday.

### **Employee Absent from Work Prior to a Public Holiday**

An employee is not entitled to a public holiday if they are absent from work immediately before the public holiday for one of the following reasons:

- Absence in excess of 52 consecutive weeks by reason of an occupational injury<sup>13</sup>
- Absence in excess of 26 consecutive weeks by reason of an illness or injury (not occupational)
- Absences in excess of 13 consecutive weeks caused by a reason not including injury or illness.
- Absence by reason of a strike
- Absences due to carer's leave (after the first 13 weeks of leave have elapsed)
- Absences due to health and safety leave under the Maternity Protection Act 1994 and 2004 i.e. an employee **will not** accrue an entitlement to the public holiday which occurred during the period of Health and Safety Leave.

### **Public Holidays and Sickness Absence**

Health service employees who work a Monday to Friday attendance regime and normally receive a paid day off on the public holiday are covered by the following arrangement: if the public holiday occurs during a period of medically certified sick leave - the employee will be entitled to a paid day off in lieu of the public holiday following their return to work. The public holiday should be recorded as sick leave and the normal sick pay arrangements will apply (HSE HR Circular 004/2012).

Health service employees who have a liability to work on public holidays (e.g. nurses who work a '5 over 7' roster) but who are ill on the day continue to receive an additional ten days' annual leave in lieu of this liability.

### **Public Holidays and certain Statutory Leave types**

- An employee who is absent on statutory maternity leave, additional maternity leave, adoptive leave, additional adoptive leave, paternity leave, parent's leave, parental leave, unpaid leave for medical care purposes and domestic violence leave continues to accrue an entitlement to public holidays.
- Payment is based on the number of hours the employee would normally have worked had the day not been a public holiday.

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<sup>13</sup> An Injury sustained by the employee in an occupational accident within the meaning of the Social Welfare (Consolidation) Act.

- Public holiday work is normally defined as any roster which commences between midnight on the eve of the public holiday and midnight on the public holiday.
- Payment in respect of a public holiday includes any regular premia or allowance normally paid to the employee but excludes payment for overtime.

### **Public Holidays and Termination of Employment**

Where the employment terminates during the week ending on the day before a public holiday and the employee has worked during the four weeks preceding that week, the employee is entitled to be paid in respect of that holiday.

e.g. if Christmas Day (25<sup>th</sup> December) falls on a Friday and the employee terminated their employment on the previous Friday (18<sup>th</sup> December), or any time within that period, then the employee would still be entitled to payment for the public holiday provided they also worked during the four weeks preceding the week commencing the 18<sup>th</sup> December.

## Sickness Absence

In the HSE the granting of sick pay is subject to employees' compliance with the HSE's Managing Attendance Policy (2023). Other relevant policies and procedures include the following:

- HSE Rehabilitation of Employees Back to Work after Illness or Injury (2020) (*updated version HSE Rehabilitation of Employees with Illness or Injury Policy & Procedure due to issue in September 2024*).
- Long Term Absence Benefit Scheme Guidelines (2012)
- HSE Policy on the prevention and management of work-related stress (2023).

### Public Service Sick Leave Scheme

HSE HR Circulars 020/2012, HSE HR Circular 005/2014<sup>14</sup>, HSE HR Circular 014/2018, Department of Health Circular 14/2023, HSE HR Circular 24/2023 and HSE HR Circular 19/2024 set out the provisions of the public sector sick leave scheme in the public health service.

### Transitional Arrangements

Employees who were absent on the date of commencement of the new sick leave Regulations (4 September 2023) will continue to have the pre existing sick pay arrangements applied (see Circular 05/2014) for the duration of that episode of sickness absence.

When the employee returns to work any future sick leave absence will be dealt with under the terms of the new sick leave Regulations.

### Self Certified Sick Leave

The self-certified sick leave arrangements are set out in HSE HR Circular 20/2012. Appendix 1 of HSE HR Circular 24/2023 contains a revised **Sample Form for Self-Certification of Sickness Absence**.

An employee may be granted up to a maximum of seven days' self-certified sick leave in a rolling 24 month period (pro rata for part time staff). Self-certified leave may not exceed two consecutive working days<sup>15</sup> and a certificate from a registered medical practitioner is required where the sickness absence is longer than two consecutive working days.

Paid sick leave for single or two day absences may be granted where an employee self certifies that they were unfit for duty due to illness. Any period of self-certified sick leave in excess of seven days in the relevant period will be an unpaid absence from duty.

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<sup>14</sup> Superseded by DoH circular 014/2023 but remains relevant to transitional arrangements including the 2023 NCHD Intern intake (see section 6.10).

<sup>15</sup> HSE HR Circular 20/2012.

## **Sick Leave Limits – Key Provisions**

### **Ordinary Sick Leave Limits**

The maximum length of time for which an individual may receive sick pay is as follows;

- 92 calendar days (3 months) on full pay in a rolling 1 year period followed by 91 calendar days (3 months) on half pay subject to
- A maximum of 183 calendar days in a rolling 4 year period

Any period of self-certified sick leave is taken into account for the purpose of calculating the employee's paid sick leave entitlement.

An employee's entitlement is established at the start of the absence period and is not recalculated throughout that period of absence.

For the purposes of determining access to payment during sick leave, all periods of full pay, half pay and Temporary Rehabilitation Remuneration (TRR) should be included in the look-back.

### **Critical Illness Protocol (CIP)**

When an employee becomes incapacitated as a result of critical illness or injury and has supporting medical evidence for an extended period of sick leave, the individual may, on an exceptional basis, be granted paid sick leave extended as follows:

- 183 calendar days on full pay in a rolling 1 year period followed by 182 days on half pay subject to
- A maximum of 365 calendar days in a rolling 4 year period.

An employee's entitlement is established at the start of the absence period and is not recalculated throughout that period of absence.

For the purposes of determining access to payment during sick leave, all periods of full pay, half pay and Temporary Rehabilitation Remuneration should be included in the look-back.

The granting of exceptional extended paid sick leave is a decision of management having considered the occupational medical advice and will be granted in accordance with the revised criteria in the Critical Illness Protocol (HSE HR Circular 14/2018 refers). Management Discretion Guidelines were introduced under Circular 14/2018 to assist decision-making in circumstances where the medical criteria may not be met. The relevant HSE form for application is HR 113.

### **Protective Year**

Employees on their return to work following a critical illness or injury absence who subsequently experience a non-critical illness/injury can continue to access the extended sick pay limits normally given for critical illness/injury

only (i.e. 365 days paid sick leave) for a period of 12 months. This period, known as the Protective Year, commences from the first day the employee returns to work following their critical illness/injury.

### **Temporary Rehabilitation Remuneration**

TRR is a payment to support the rehabilitation of employees who are absent on extended sick leave and who have exceeded the threshold of 183 days/365 days (CIP) in a rolling 4-year period. Management have the discretion to approve or refuse TRR on a case-by-case basis.

The conditions to be met before TRR can be paid are:

- i. The employee concerned must have accrued two years' service; **and**
- ii. There must be a reasonable prospect that the employee will return to work and deliver regular and effective service. Management should take on board the medical advice of occupational health when making such a determination.

#### *Rate and Conditions of Payment*

The rate of TRR is 37.5% of the employees' remuneration and is calculated on the basis of basic salary and pensionable allowances only. The TRR payment should be adjusted to take account of national pay increases/decreases. Incremental progression does not apply to TRR at 37.5%.

A waiting period of 3 calendar days at nil pay applies to each instance of absence to which TRR applies before payment can be made, except in the circumstances outlined below. This 3-day wait restarts with each new absence and is not cumulative. Saturdays, Sundays, and other rest days as well as days on which the place of employment is closed are included in the 3-day wait, as are days on which the employee was due to attend work.

The 3-day wait does not apply in the following instances:

- Where the employee transitions from full pay or half pay to TRR during an ongoing absence, including while on extended sick pay under Critical Illness Protocol, or
- Where employees return to work following Critical Illness related sick leave and subsequently exhaust the extended sick pay limits under CIP during the "protective year". The protective year is effective from the employee's date of return following CIP and applies to non-critical illnesses/injuries which occur within 12 months of the date of return.

The following limits apply for payment of TRR counting back from the day preceding the first day of the employee's current absence. Only periods of TRR should be included in the lookback when calculating an employee's access to TRR under the maximum limits:

Ordinary sick leave: 547 calendar days on TRR in a rolling 4 year period  
Critical illness provisions: 365 calendar days on TRR in a rolling 4 year period with a provision to extend for a further 2 years (730 calendar days) subject to 6 monthly reviews.

The **maximum period for which TRR can be paid is 547 days under ordinary sick leave.** There will be access to a maximum of 1095 days TRR under the CIP.

Time spent on TRR is not reckonable for pension purposes. Statutory annual leave is accrued while absent on TRR in accordance with Sections 19<sup>16</sup> and 20<sup>17</sup> of the Organisation of Working Time Act, 1997.

The HSE Long Term Absence Benefit Scheme Guidelines (2012) set out the review procedures which apply when an employee is paid TRR. Employees do not need to complete an application form for payment of TRR<sup>18</sup>, unless they are applying for a TRR Top Up Payment. Employees who are covered by the Transitional Arrangements under HSE HR Circular 024/2023 will continue to have to apply for TRR using the HR form 114.

### **TRR Top Up Payment**

As set out in DoH Circular 14/2023, a TRR “top up” model will operate for a transitional period of five years from the date of effect of the new sick leave arrangements, 4 September 2023. This arrangement will benefit employees who would have been entitled to a higher payment for TRR under the ill-health retirement methodology of their pension scheme. The TRR ‘top-up’ is the difference between the amount payable at the flat rate of 37.5% of basic salary plus pensionable allowances and the amount of the TRR payment under the relevant pension scheme rules. HSE HR Form 118 sets out the application and approval process in the HSE. In general, employees will need a minimum of 20 years’ full time service to be eligible for a top up payment.

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<sup>16</sup> Section 20(1) provides that an employee is entitled to paid annual leave equal to whichever of these periods is the greater —

- (a) 4 working weeks in a leave year in which he or she works at least 1,365 hours (unless it is a leave year in which he or she changes employment), **or**
- (b) one-third of a working week for each month in the leave year in which he or she works at least 117 hours, **or**
- (c) 8 per cent. of the hours he or she works in a leave year (but subject to a maximum of 4 working weeks):

<sup>17</sup> Section 21(1)(iii) provides that where the employee—

- (I) is, due to illness, unable to take all or any part of his or her annual leave during that leave year or, with the consent of the employee, within the period of 6 months after the end of that leave year, and
  - (II) has provided a certificate of a registered medical practitioner in respect of that illness to his or her employer,
- within the period of 15 months after the end of that leave year.

<sup>18</sup> Employees who were absent on 4 September 2023 when the amendments to the Public Service Sick Leave Scheme were introduced have the previous sick leave arrangements applied to them and will need to apply for TRR using the HR 114 form.



## Dual Look Back to Determine Level of Paid Sick Leave

To calculate the level of paid sick leave that can be granted, there should be a “Dual Look Back” of an employee’s sick leave record over the four years preceding the latest day of absence. This dual look back considers the employee’s sick leave record in the context of the sick leave limits for ordinary sick leave, CIP and TRR and determines (i) if the employee has access to paid sick leave and (ii) if they do, what rate of paid sick leave applies. For the purposes of determining access to payment during sick leave, all periods of full pay, half pay and Temporary Rehabilitation Remuneration should be included in the look-back. **An employee’s entitlement is established at the start of the absence period and is not recalculated throughout that period of absence.**

The Dual Look Back operates as follows:

Step 1: Determine whether the employee has access to paid sick leave

The employee’s sick leave is reviewed over a four year period from the current date of absence. If 183 days paid sick leave (counting full pay, half pay, and TRR) have not been exhausted over that 4 year period, or 365 days if the employee has been approved for extended sick pay under the CIP, access may be granted to paid sick leave.

Step 2: Determine whether full pay, half pay or TRR apply

If step 1 indicates that the employee has access to paid sick leave, their sick leave record is then reviewed over the 12 month period immediately preceding the current date of absence to determine the rate at which sick leave may be paid. If the initial **92 day limit at full pay** has not been exhausted, or 183 days full pay for CIP, full pay may be awarded until the limit of 92 days or 183 days is reached. Thereafter, any balance of leave outstanding will be paid at half pay until the overall limit of 183 days for ordinary sick leave, or 365 days for CIP is reached. If the employee is still unfit for work following exhaustion of the full pay and half pay limits, Temporary Rehabilitation Remuneration may then be paid up to the limits outlined above for the payment of TRR.

## Extension of Look Back Persion for Breaks in Service

In establishing entitlement to sick leave, the 4 year look back period is extended where there is a break in service of six months (convert to 183 calendar days) or greater and the following three criteria are satisfied:

The break(s) in service must:

- i. Be unpaid
- ii. Not reckon for pensions
- iii. Not accrue annual leave

It is important to note that if a break in service meets all these criteria, the entire period will be included in the extension, not just that portion that is 6 months or greater.

While the four year look back is extended if there is a break in service that meets the above criteria (e.g. career break), there is no extension of the 12 month look back for any breaks in service that might have occurred. That look back is done as normal reviewing the sick leave record over the 12 month calendar period immediately preceding the current date of absence to determine the rate at which sick leave may be paid.

### **Sick Pay for Part time and Fixed Term Employees**

Part-time employees will be granted sick pay on a pro-rata basis, based on their standard contracted hours of attendance<sup>19</sup>. Managers must adhere to the principle that all HSE employees should be treated equitably in relation to access to sick pay and therefore the method by which sick leave is recorded and calculated should not result in more preferential arrangements for employees who work atypical or part-time rostering arrangements.

Department of Finance Circular 31/2001 (Appendix III – “Work sharing and sick leave thresholds”) sets out a methodology for determining the pro rata entitlements of part time staff.

Fixed term employees (except in the case of probationary periods which may apply, or for those on training-related contracts, see below) are granted full access to the entitlements of the public service sick leave scheme from the date of effect of the new sick leave regulations, 4 September 2023.

### **Sick Pay for Employees on Periods of Probation or Training**

Permanent and fixed-term employees on a period of probation or training<sup>207</sup> (e.g. 4<sup>th</sup> year nursing Interns undertaking their 36 week rostered placement) have pro rata sick leave entitlements for the period of their probation or training and are subject to the normal provisions governing the granting of sick leave. For example, an employee who is serving a 12-month probationary period is entitled to 23 days at full pay and 23 days at half pay. This provision applies for a maximum of 12 months only to all employees (permanent or fixed-term) who are on a period of probation or training on or after 4 September 2023.

#### *NCHD grades*

NCHD Interns who were in contract at the date of effect of the revised sick leave arrangements on 4 September 2023 (the 2023 NCHD Intern intake) will continue to have the enhanced pro-rata limits set out in Section 5 of DoH Circular 5/2014 applied to them for the duration of their Internship. All other NCHD grades (Senior House Officer, Registrar, Senior Registrar, Specialist Registrar) will have access to the full sick leave limits with effect from 4 September 2023. With effect from 1 July 2024, NCHDs newly signing their

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<sup>19</sup> Contracts of employment should reflect the reality of the employee's weekly normal commitment.

<sup>20</sup> In general, “training” refers to individuals on training/intern/student type contracts.

NCHD contract (the 2024 NCHD Intern intake) will be subject to the standard pro-rata access in their Intern year, but will enjoy full access to the provisions of the Public Service Sick Leave Scheme thereafter. Upon satisfactory completion of any probationary/training period, an employee (permanent or fixed-term) will have access to the full sick leave limits.

### **Pregnancy Related Illness and Sick Pay**

Arrangements governing certified pregnancy-related illness and illness occurring following maternity leave are set out in DoH Circular 14/2023 (Section 6.9) which is appended to HSE HR Circular 024/2023.

### **Sick Pay (full pay, half pay and TRR) and Deduction of Department of Social Protection (DSP) Illness/Injury Benefit**

Payment under the sick leave scheme (full pay, half pay, TRR) is inclusive of any illness/injury benefit paid by the Department of Social Protection (DSP). In the HSE employees who are eligible to claim Illness Benefit from DSP receive a 'top-up' payment from their employer. Any DSP illness or occupational injury benefit which the employee is entitled to claim is deducted at source by payroll from the employee's sick pay<sup>21</sup>.

All HSE employees are required to notify the HSE of the amount of Illness Benefit/Occupational Injury Benefit that they are eligible to receive from DSP during periods of medically certified absences to avoid overpayments or underpayments. This information is available online or directly from DSP offices. For further information see HSE HR Circular 005/2018, and HSE HR Circular 019/2024.

HSE HR Circular 019/2024 sets out DSP changes to when Illness/Injury Benefit are paid.

Employees are required to claim the DSP illness/injury benefit within the required time limits and comply with all the eligibility conditions laid down by DSP.

DSP Illness Benefit and Occupational Injury Benefit are not payable to employees who are also in receipt of certain types of social welfare payments (e.g. Widow's/Widower's and Surviving Civil Partners Pensions, which includes Occupational Widow's/Widower's Pension, One-Parent Family Payment, which includes Deserted Wives Benefit, Deserted Wives Allowance and Prisoner's Wives Allowance)) at the full rate. If an employee is getting a reduced rate of any of these payments they may also get a reduced rate of illness or injury benefit, so that the combined amount of both payments is not greater than the rate of illness or injury benefit to which they are entitled. Employees who are in receipt of any of these social welfare payments at the full rate or a reduced rate and are therefore entitled to no illness or injury benefit or a reduced rate of illness/injury benefit should notify their

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<sup>21</sup> This also applies to payments under the HSE's occupational illness/injuries schemes – see next section..

manager/local HR department so that their sick pay from the HSE can be calculated accordingly.

See the following DSP links for further information:

<https://www.gov.ie/en/publication/fde95f-operational-guidelines-illness-benefit/#payments-to-persons-in-receipt-of-certain-social-welfare-payments>

<https://www.gov.ie/en/publication/dfb66f-operational-guidelines-injury-benefit/>

Where an employee does not meet the eligibility requirements for claiming illness or injury benefit from DSP, they may receive full payment from their employer during the period of sick leave. This provision does not apply however to any employee who satisfies the eligibility criteria for illness/injury benefit but fails to comply with any of the conditions laid down by DSP for payment of the benefit to which they would otherwise be entitled.

### **Sickness Absence Recording**

The following arrangements apply in the HSE: Rest periods/weekends are only counted for sickness absence purposes when the absence spans the rest period/weekend (i.e. the employee must be absent on sick leave both before and after the rest period/weekend). Ref: ERAS (Employee Relations Advisory Services) memorandum 002/2015.

## **Occupational Illness/Injuries Schemes**

### **Nurses who are absent due to MRSA**

Nurses who are required to remain absent from work due to MRSA or exposure to MRSA (based on infection control advice) may be granted sick pay as follows:

- Full pay for the first six months of absence
- Three quarters of full pay for the second six months
- Half of full pay for the third six months

C.f. [HSE-EA letter dated 30<sup>th</sup> November 2006](#)

### **Prevention of transmission of Blood Borne Diseases in the health care setting**

All employees taking up a post in the public health service that might involve exposure prone procedures (EPPs) must provide evidence to the occupational health service that they are not infectious for Hepatitis B. In the absence of such evidence the employee will not be employed in a post where the duties involve EPPs.

In circumstances where an employee is identified as being infectious with a blood borne disease the following arrangements may apply:

### **Payment to Affected Employees**

Following an initial screening and diagnosis of Hep B, Hep C or HIV and on foot of medical advice being produced that the employee needs to curtail clinical practice and is consequently unable to work, the following pay arrangements may apply:

- Full payment, inclusive of payments accruing for premiums and allowances for a period of six months.
- Salary paid in this circumstance will not affect an individual's entitlement under the sick pay scheme.
- During this six month period the employees must comply with the relevant provisions set out above and in HSE HR Circular 012/2009.

### **First Special Extension**

If it transpires before the end of the six month period as outlined above, that the employee is unlikely to be able to return to work at the end of the sixth month period or immediately thereafter, but there remains a reasonable expectation that the employee may return to work, a first special extension of pay under this scheme may be granted. The arrangements that apply during this period will be the same as outlined above and will be approved by the Head of HR following recommendation from the Occupational Health Department and will not exceed a period of three months.

### **Second Special Extension**

Notwithstanding the above, if it transpires, after medical evidence that a return to work is unlikely during the three month period or immediately thereafter, but there still remains a reasonable expectation that the employee will return to work, a final extension may be granted. This special extension will provide for basic pay only and this special extension will not exceed a period of three months, subject to approval by the Head of HR following recommendation from the Occupational Health Department.

### **Application of Injury Allowance Scheme**

In exceptional circumstances, at the expiry of the special pay arrangements outlined, the injury allowance scheme may be invoked for such period as the employer may consider reasonable following occupational health advice. Any decision to apply the injury allowance scheme for such period will be dependent on the employee agreeing to undergo regular medical assessment as may be deemed appropriate.

Further details are contained in **HSE HR Circular 012/2009**.

## Serious Physical Assault Scheme

Employees who are absent from work as a result of a serious physical assault by a patient/client incurred in the course of their duties are covered by the Serious Physical Assault Scheme (Long Term Absence Benefit Scheme Guidelines (2012)). Payment is conditional on the assault occurring in the actual discharge of the employee's duties, without their own default and by some injury attributable solely to the nature of their duty.

Further to HSE HR Circular 20/2023, the scheme provides for full pay (including allowances and premium earnings) for a period of up to 6 months for all public health service employees.

In addition to the above, special extensions to the scheme may apply to nurses and midwives (3 months at basic pay plus allowances and premium pay and 3 months at basic pay only) (see next section).

Employees who are eligible to claim Department of Social Protection (DSP) benefits in respect of their injury are required to comply with the conditions laid down by DSP. DSP benefits to which the employee is entitled will be deducted at source in the same manner as ordinary sick pay.

Where an employee does not meet the eligibility requirements for claiming a DSP benefit, they may receive full payment from their employer during this period on the Serious Physical Assault Scheme. This provision does not apply however to any employee who satisfies the eligibility criteria for DSP benefit but fails to comply with any of the conditions laid down by DSP for payment of the benefit to which they would otherwise be entitled.

Payment under the Serious Physical Assault Scheme does not affect an employee's entitlement under the sick pay scheme.

In order to be eligible for the scheme the employee must be seriously physically assaulted in the workplace in the course of their duty. A serious physical assault is defined in the Long Term Absence Benefit Scheme Guidelines 2012 as:

*“The intentional or reckless application of force against the person by another without lawful justification, or causing another to believe on reasonable grounds that s/he is likely immediately to be subjected to such force without lawful justification, resulting in physical injury.”<sup>22</sup>*

The Long Term Absence Benefit Scheme Guidelines sets out the details relating to the operation of the Scheme. In addition CERS memorandum 26/2016 highlights that medical evidence if available can be used by

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<sup>22</sup> At the time of print the health service trade unions are disputing the HSE's interpretation of this definition.

managers to determine if the employee satisfies the eligibility criteria without having to await the outcome of an Occupational Health Assessment.

### **Special Extensions for Nurses and Midwives**

Nurses and midwives who are eligible may be granted two further extensions to the scheme. If the nurse does not resume duty during the six month period the line manager/appropriate manager should arrange another appointment with Occupational Health for six weeks prior to the expiration of the six month period. If the outcome of this assessment is that the nurse is not yet fit to resume duty but there remains a reasonable expectation that they will return to work then the line manager/appropriate manager may seek a special extension of the pay arrangements outlined above for a period not exceeding three months. The application must be approved by the relevant senior / General Manager and if approved the HR/Employee Relations Department must notify the employee. Payroll must also be informed so that the extension to the pay arrangements can be implemented.

In line with the provisions of the Serious Physical Assault Scheme the line manager/ appropriate manager must arrange a further appointment with Occupational Health for six weeks prior to the expiration of the first extension period. If Occupational Health assess the employee is still not fit to return to work but there still remains a reasonable expectation that the nurse will return to work than a final extension may be granted. The process for authorising this extension is through the original application channels and if approved the line manager/appropriate manager must notify the nurse and the HR and payroll department. The second extension is for basic pay only and may be granted for a period not exceeding three months.

Nurses may appeal a decision in relation to eligibility for the benefits of the scheme to an independent Appeals Board under the Revised Serious Physical Assault Scheme. The Appeals Board is composed of two adjudicators – a management and union nominee. Applications for appeal must be submitted in writing to the secretariat for the scheme, HSE National Employee Relations, 63 – 64 Adelaide Road, Dublin 2 (email: [info.t@hse.ie](mailto:info.t@hse.ie) for appropriate contact details). All other staff categories can appeal a decision through the Grievance Procedure.

Refer to the Long Term Absence Benefit Scheme Guidelines (2012) which includes relevant circulars and further details on the operation of the scheme.

### **Hospital Expenses**

Expenses incurred in respect of hospital/medical charges will be recouped as follows:

- a) A refund of expenditure incurred in respect of treatment provided by the Irish Public Health Service.
- b) General Practitioner, Casualty and Consultant visits.

c) Prescription charges.

Employees must claim under medical insurance where appropriate (e.g. VHI, Drug Refund Schemes etc) in the first instance. Payment will be made solely in respect of any excess expenditure by the employee. Payments under this scheme do not confer any admission of liability on the part of the employer.

In exceptional circumstances an employee may be refunded in respect of expenditure for private treatment (for example, where there are long waiting times for treatment or where treatment is not available in the public health service).

### **Employee's Entitlements following Expiry of Payment under the Serious Physical Assault Scheme**

Employees who have exhausted the pay provisions under the Serious Physical Assault Scheme (including the extensions for nurses) may be granted the injury allowance in accordance with the provisions of the relevant superannuation schemes (see below).

There is no requirement that the employee must have exhausted their sick pay entitlements under the Public Service Sick Pay Scheme prior to accessing the Injury Allowance. However, employees should be informed that any period in which they are paid the Injury Allowance is not reckonable for superannuation purposes. Employees should also be given the option of availing of the normal sick leave provisions as this period will be reckonable for superannuation purposes (excluding any period while paid Temporary Rehabilitation Remuneration).

The employee should be advised that payment of the Injury Allowance is subject to review and conditional on the employee cooperating with the organisation's HR policies and procedures governing sickness absence and rehabilitation. These include HSE Managing Attendance Policy; HSE Rehabilitation of Employees back to work after illness or injury policy; and the HSE Long Term Absence Benefit Scheme Guidelines.

(CERS Memorandum 031/2016).

## **Injury Allowance**

The injury allowance is provided for under section 12 of the HSE Employee Superannuation Scheme 2010 and applies to members who are injured:

- (a) in the actual discharge of his or her duty, **and**
- (b) without his or her own default, **and**
- (c) by some injury attributable solely to the nature of his or her duty



Please refer to HSE HR Circular 13a/2017 for further details.

The gross amount of the allowance may not exceed five-sixths of the remuneration (inclusive of emoluments) of the position in which the employee received the injury and is subject to certain deductions such as any social welfare benefits. Injury allowance should be adjusted to take account of national pay increases/decreases. It is established practice in the HSE not to give incremental credit to employees who are in receipt of the injury allowance.

The injury allowance is a payment for which application must be made and can be paid for life or for a limited period as the employer may consider reasonable (each case must be considered on its merits). Periods spent on the injury allowance are not reckonable for superannuation purposes. The payment of the allowance is subject to periodic review and employees are required to comply with the requirements of the Managing Attendance and Rehabilitation of Employees Back to Work after Illness or Injury policies. Further information is contained in the Long Term Absence Benefit Scheme Guidelines (2012).

### **Insurance based compensation schemes for nurses in mental health and emergency department/related areas**

The insurance based schemes for nurses employed in mental health services and in emergency departments and emergency department assessment areas provide for a scheme of personal injury cover for nurses who are assaulted in the course of their duties.

For further information refer to HSE HR Circular 29/2008 (Insurance based mechanism to address significant trauma for mental health nurses); HSE HR Circular 04A/2008 (Insurance based scheme for mental health nurses); and HSE HR Circular 002/2017 (insurance based scheme and mechanism for nurses employed in Emergency Departments and related areas).

# Maternity Leave

## Introduction

The Maternity Protection Acts 1994 and 2004 provides protection for all pregnant employees, employees who have recently given birth and/or who are breastfeeding. There are no service qualifications.

Transgender men who have given birth can access statutory maternity leave.

## Maternity Leave

Employees are entitled to 26 weeks' paid maternity leave subject to compliance with the statutory notification requirements.

A pregnant employee may begin and end their maternity leave on any day they select but must take:

- a minimum of two weeks' leave before the end of the expected week of confinement
- 4 weeks' leave after the end of the expected week of confinement.

In summary:

- An employee must start their maternity leave before their baby is due.
- An employee must start their leave at least two weeks before the end of the week in which their baby is due.
- An employee must not start their leave earlier than sixteen weeks before the end of the week in which their baby is due.
- At a minimum, an employee must begin their maternity leave on the Monday before the week their baby is due. For example, if their due date is Wednesday 16 October 2024, the latest date for the start of their maternity leave is Monday 7 October 2024.

## Additional Maternity Leave

An employee is entitled to take 16 weeks' (unpaid) additional maternity leave immediately after the end of ordinary maternity leave.

## Early Confinement / Premature Births

Where an employee's date of confinement occurs more than 2 weeks before the expected week of confinement the employee is entitled to commence their 26 weeks' statutory maternity leave from the date of confinement. A further period of maternity leave (and DSP maternity benefit if eligible) will also apply after the initial 26 weeks' maternity leave and is equal to the 'premature birth period'. The 'premature birth period' means a period which commences on the date of confinement and expires two weeks before the end of the expected week of confinement.

The maternity pay scheme for public health service employees, as provided for under Department of Health Circular 8/1998, applies to this further period of maternity leave. Please refer to HSE HR Circular 13/2019.

Where a pregnant employee had not submitted their written notification of intention to take 26 weeks' maternity leave and their date of confinement occurs in a week that is four weeks or more before the expected week of confinement, the employee can give the required notification within 14 days from the date of confinement.

### **Payment while on Maternity Leave**

In accordance with the maternity pay scheme for public health service employees (Department of Health Circular 8/1998), employees on maternity leave are entitled to basic pay plus normal fixed allowances less any Department of Social Protection (DSP) maternity benefit to which they may be entitled on foot of their social welfare contributions. This does not include additional amounts due to night work, overtime, shift work, working unsociable hours, and standby or on-call allowances.

Where an employee does not meet the eligibility requirements for claiming maternity benefit from the DSP, they may receive full remuneration from the employer during the standard 26 weeks of maternity leave and any additional period due to a premature birth. This provision does not apply, however, to any employee who satisfies the eligibility criteria for maternity benefit but fails to comply with any of the conditions laid down by the DSP for payment of maternity benefit to which they would otherwise be entitled.

Part-time employees with regular weekly hours of attendance are entitled to normal basic pay (exclusive of unsocial hours' premium payments, overtime, on-call/standby allowances).

Part-time employees with varying weekly hours of attendance ("if and when required") are entitled to their average weekly pay (exclusive of unsocial hours' premium payments, overtime, on-call/standby allowances), calculated over the previous 13 weeks.

### **Falling ill during paid or unpaid Maternity Leave**

Employees who become ill during the last four weeks of maternity leave and who have applied for additional maternity leave or who are already on additional maternity leave may, if they becomes sick, request the employer to terminate the additional maternity leave and to take sick leave instead. If the employer agrees the employee may be entitled to avail of the sick leave scheme. However, the employee will not be entitled to resume their additional maternity leave after this period of sick leave.

### ***Fixed-term Contracts***

Employees on fixed term contracts are covered by the Maternity Protection Act for the duration of their contract and are entitled to receive maternity pay. However should the fixed term contract expire before the end of maternity leave the employee's contract of employment will have come to an end and the employee will no longer be covered by the maternity protection legislation or be eligible for maternity pay.

The exception to this rule are NCHDs who are entitled to receive maternity pay from their employer for the full 26 week period, even if their contract expires prior to the end of their maternity leave. Refer to the current NCHD contract for further details.

### **Undergraduate Nursing/Midwifery Students Undertaking the Continuous Thirty Six week Internship (HSE Circular No. 28/2008)**

Students who are pregnant during the course of a paid internship may avail of maternity leave in accordance with the Maternity Protection Acts 1994 and 2004. Students on maternity leave may continue to receive payment up until the date the internship was due to expire.

The student will be entitled to return to complete the internship with pay at the end of the maternity leave and complete the outstanding clinical hours in order to fulfil the mandatory requirements of registration.

### ***Still Births, Miscarriages and Live Births at any stage of pregnancy<sup>23</sup>***

An employee who experiences a stillbirth or miscarriage any time after the 24th week of pregnancy (that is, from the beginning of the 25th week) or where their child has a birth weight of at least 500 grammes or where labour results in the birth of a living child at any stage of pregnancy is entitled to maternity leave and additional maternity leave.

### ***Late Births***

If the baby's late birth means that an employee has less than four weeks' maternity leave remaining after the week in which the baby was born, then the employee may extend the maternity leave to ensure a full four weeks' off following the week of the birth. The maternity pay scheme for public health service employees will apply for the four week period.

### **Maternity Leave – Notification Requirements**

An employee must notify their employer in writing of the intention to take maternity leave at least four weeks before the leave is due to commence. HSE employees must complete **Application Form – HR 108 (i)**.

Application for additional maternity leave should be made either at the time of the initial application or in writing not later than four weeks before the end of the maternity leave.

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<sup>23</sup> The Maternity Protection Acts 1994 & 2004 grant maternity leave to a "pregnant employee" or "employee who has recently given birth" based on the following definition of 'confinement' -

- (i) labour resulting in the issue of a living child,
- (ii) labour, after 24 weeks of pregnancy, resulting in the issue of a child whether alive or dead, or
- (iii) labour resulting in the issue of a child who, at birth, weighs not less than 500 grammes, whether alive or dead,

If an employee changes their mind about taking maternity leave they may revoke the notice by sending a further written notice to the employer.

### **Death of Mother – Father’s Entitlement**

If an employee who has been delivered of a living child dies at any time before the expiry of the 40<sup>th</sup> week following the week of their confinement, the father of the child shall be entitled to paid leave from their employment for a period ending as follows:

- (a) if the mother dies before the expiry of the 24<sup>th</sup> week following the birth, the father is entitled to the remainder of the maternity leave (paid leave),
- (b) If the mother dies at any time after the expiry of that 24<sup>th</sup> week following the birth, then the father is entitled to leave up to the end of the 40<sup>th</sup> week.

Additionally a father who has taken leave as outlined in (a) above shall, if they so wish be entitled to further unpaid leave from their employment for a maximum period of 16 consecutive weeks.

The leave may be postponed in the event of hospitalisation of the child or terminated in the event of the sickness of the father in line with similar provisions for the mother as outlined.

Leave to which the father is entitled must commence within seven days of the mother’s death.

*c.f. S.I. No 51 of 2006 Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006.*

### **Ante-Natal and Post-Natal Medical Care**

An employee is entitled to time off work without loss of pay to attend ante-natal and post-natal **medical** visits. Time off includes the time required to travel to and from the appointment. The employee must notify their employer in writing of the date and time of the appointment as soon as is practicable and in any event not later than two weeks before the date of the appointment.

### **Time off for Ante-Natal Classes**

A pregnant employee is entitled to time off work without loss of pay to attend one set of ante-natal classes (except for the last three classes as these normally occur after maternity leave has started.). This right to attend only one set of antenatal classes covers all pregnancies of an employee while in employment. If, for any reason, the employee is unable to attend some classes due to circumstances beyond their control including:

- miscarriage
- stillbirth
- premature birth
- illness of the employee

then the employee can carry over their entitlement to paid time off work to attend any untaken classes (excluding the last three classes) to their next pregnancy.

Expectant fathers have a once-off entitlement to paid time off work to attend the last two ante-natal classes immediately prior to the birth.

### **Ante-Natal Classes – Notification Requirements**

The employee must notify their employer in writing of the dates and times of these classes as soon as is practicable and in any event not later than two weeks before the first class. If the employer wishes the employee may be required to provide the appropriate documentation outlining the dates and time of classes.

### **Health and Safety Leave**

Pregnant employees, employees who have recently given birth and/or employees who are breast-feeding may be entitled to take health and safety leave in certain circumstances (see below).

### **Risk Assessment**

The Safety, Health and Welfare at Work (General Application) Regulations 2007 requires employers to assess the workplace for risks to safety or health of any pregnant employees, employees who have recently given birth or who are breastfeeding. If a risk is identified and it is not practicable to take protective or preventative measures, the employee's working conditions or working hours must be temporarily adjusted. If this is not possible, the employee must be given suitable alternative work. If no such work is available, the employee should be granted health and safety leave.

Where an employee has a medical certificate stating that for health and safety reasons they are not required to perform night work during the pregnancy or for 14 weeks immediately following childbirth, the employer must remove the employee from night work by either transferring the employee to day time duties or, if this is not feasible, granting the employee health and safety leave. "Night Work" is defined as work during the period between 11.00 p.m. and 6.00 a.m. where (a) the employee works at least three hours (not necessarily consecutive) in that period as a normal course, or (b) where at least 25% of the employee's working time is performed between those times.

### **Payment during Health and Safety Leave**

An employee on health and safety leave is entitled to full basic pay plus any allowance normally paid from the employer for the first 21 calendar days of leave. Pay does not include additional amounts an employee would receive for night-work, shift-work, overtime, working unsociable hours, stand by or on-call allowances.

An employee whose health and safety leave extends beyond 21 days may be entitled to health and safety benefit from the Department of Social Protection, subject to the employee having the required number of P.R.S.I. contributions.

### **Postponement of Leave Due to Hospitalisation of Child**

An employee may postpone the period of maternity leave / additional maternity leave (subject to the agreement of their employer) in the event of the hospitalisation of the newborn child. Leave may only be postponed after 14 weeks' maternity leave has been taken. These provisions apply to the

father of the child, where the father is taking maternity leave in the place of the mother.

The decision to postpone the maternity leave or additional maternity leave is subject to the agreement of the employer. If the employer does agree to postpone the leave, then the employee concerned must return to work on the date agreed between both parties. The remaining leave is postponed and the employee will be entitled to take “resumed leave” not later than seven days after the discharge of the child from hospital. The remaining leave must be taken in one block.

The maximum period of postponement of leave will be six months from the return to work date. The employer may require an employee to provide a letter from the hospital in which the child is hospitalised, confirming the hospitalisation. The employer may also require a letter, or other appropriate documentation, from the hospital or the child’s GP confirming that the child has been discharged from the hospital in order to allow the employee to commence their postponed leave.

## **Protection of Employment Rights**

### **Maternity Leave and Additional Maternity Leave**

During maternity leave and additional maternity leave, an employee is treated as if they are still at work and therefore continues to accrue all rights (except the right to remuneration<sup>24</sup> and superannuation) during this period. This includes the right to annual leave and public holidays, incremental credit, seniority, etc. In the event of the death of the mother, the same conditions apply to the father’s leave.

- ***Health and Safety Leave***

During health and safety leave, an employee is treated as if they were still at work and continues to accrue entitlements based on actual service. However, the employee has no entitlement to any public holidays that may occur during this period.

- ***Sick Leave and Annual Leave***

Absence from work on maternity leave may not be treated as part of any other leave, including sick leave or annual leave, to which an employee is entitled.

- ***Public Holidays***

An employee’s maternity leave is extended by the number of public holidays which fall during the period of such leave (with the exception of health and safety leave).

- ***Probation, training and apprenticeships***

All periods of probation, training and apprenticeship that are interrupted by maternity leave are suspended until the end of the leave.

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<sup>24</sup> Whilst the maternity protection legislation does not provide an entitlement to remuneration during maternity leave the health service operates a maternity pay scheme.

▪ **Return to Work**

An employee who has been absent on maternity leave is entitled to return to the same job as previously held, under the same contract of employment.

Where it is not reasonably practicable to permit an employee to return to their previous job, the employee is entitled to 'suitable alternative work' which should not be substantially less favourable in terms of pay, responsibility, etc.

The employee's right to return to work is conditional on giving written notification of intention to return to work.

**Breastfeeding Facilities**

A member of staff who is breastfeeding is entitled to time off from their work, without loss of pay, for breastfeeding breaks for the purpose of breastfeeding / expressing breast milk in the workplace, up until their child's 2nd birthday.

Breastfeeding breaks may be taken in the form of:

- One break of 60 minutes, or
- Two breaks of 30 minutes each, or
- Three breaks of 20 minutes each, or
- in such other manner as agreed by the employee and their manager

This allocation is per normal working day, and may be given on a pro rata basis to staff working shorter or longer shifts. Breastfeeding breaks are taken on a daily basis and cannot be accumulated

If no breastfeeding facilities exist, the employee may reduce their working day by one hour without loss of pay, in accordance with service need and that reduction may comprise of:

- One period of 60 minutes,
- Or two periods of 30 minutes each,
- Or three periods of 20 minutes
- Or in such other manner as agreed between the employee and their employer

This allocation is per normal working day (may be given on a pro rata basis to staff working shorter or longer shifts).

Further details are set out in HSE HR Circular 006/2021 Breastfeeding Policy for Public Health Service Staff.



## **Adoptive Leave**

### **Introduction**

The Adoptive Leave Acts 1995 and 2005, which provide a range of entitlements for adopting parents, applies to health service employees who come within its scope.

Qualifying adopters can take adoptive leave. A qualified adopter is either:

- The sole adopter, in the case of a parent who is adopting a child on their own, or
- The nominated parent in the case of an adopting couple.

The adopting couple can choose who should take the adoptive leave – that is who will be the nominated parent. An adopting couple means a married couple, a couple who are civil partners or a cohabiting couple adopting a child.

**The parent who does not avail of adoptive leave is entitled to paternity leave.**

Further information on qualifying adopters and related issues is available in HSE HR Circular 018/2021.

### **Adoptive Leave Entitlements**

An employee is entitled to 24 consecutive weeks' (paid) adoptive leave and 16 consecutive weeks' additional (unpaid) adoptive leave subject to compliance with the notification requirements.

In the case of a foreign adoption, some or all of the 16 weeks' additional adoptive leave may be taken immediately before the date of placement.

The adopting mother / father and employer may agree to terminate unpaid additional adoptive leave in the event of their illness thereby allowing the employee to transfer onto paid sick leave. However, the employee will not be entitled to resume their additional adoptive leave after this period of sick leave.

### **Additional Adoptive Leave**

An employee is entitled to take 16 weeks' (unpaid) additional adoptive leave immediately after the end of ordinary adoptive leave.

### **Notification Requirements**

The entitlement to adoptive leave and additional adoptive leave is subject to the notification requirements and evidence of placement requirements.

An employee must give at least four weeks' notice, before the expected day of placement of the child, of their intention to take adoptive leave. If the day of

placement is postponed the leave may be postponed until the new day of placement.

Applications for additional adoptive leave should be made not later than four weeks before the end of the paid adoptive leave.

An adopting parent who is taking adoptive leave must give their employer a certificate of placement. The certificate must be given as soon as reasonably practicable but no later than four weeks after the day of placement. The certificate may be obtained by the employee from the General Register Office.

In the case of foreign adoptions an eligible employee must give their employer a copy of the Declaration of Suitability from the Adoption Authority of Ireland. They must give the employer details of the placement as soon as is reasonably practicable.

### **Payment while on Adoptive Leave**

While the adoptive leave legislation does not protect the employee's entitlement to remuneration, the health service operates an adoptive pay scheme as follows:

All employees on adoptive leave are entitled to their basic pay plus normal fixed allowances less any adoptive benefit to which they may be entitled on foot of their social welfare contributions. This does not include additional amounts due to nightwork, overtime, shiftwork, working unsociable hours, standby or on-call allowances.

Where an employee does not meet the eligibility requirements for claiming adoptive benefit from the Department of Social Protection (DSP), the employee may receive full remuneration from their employer during the standard 24 weeks of adoptive leave. This provision does not apply, however, to any employee who satisfies the eligibility criteria for adoptive benefit but fails to comply with any of the conditions laid down by the DSP for payment of adoptive benefit to which they would otherwise be entitled.

Part-time employees with regular weekly hours of attendance are entitled to their normal basic pay (exclusive of unsocial hours premium payments, overtime, on-call/standby allowances).

Part-time employees with varying weekly hours of attendance ("if and when required") are entitled to their average weekly pay, (exclusive of unsocial hours' premium payments, overtime, on-call/standby allowances), calculated over the previous 13 weeks.

No payment is made in respect of additional adoptive leave.

### **Protection of Employment Rights**

#### **Adoptive Leave and Additional Adoptive Leave**

During adoptive leave and additional adoptive leave, the employee is treated as if they were still at work and therefore continues to accrue all rights (except

the right to remuneration<sup>25</sup> and superannuation) during this period. This includes the right to annual leave and public holidays, incremental credit, seniority, etc.

### **Sick leave and Annual leave**

Absence from work on adoptive leave or additional adoptive leave may not be treated as part of sick leave, annual leave or any other leave to which an employee is entitled.

### **Public holidays**

An employee's adoptive leave is extended by the number of public holidays which fall during the period of such leave.

### **Probation, training and apprenticeships**

All periods of probation, training and apprenticeship that are interrupted by adoptive leave are suspended until the end of the leave.

### **Attendance at Pre-adoption Classes and Meetings**

Adopting parents are entitled to time off during work hours without loss of pay to attend preparation classes and pre-adoption meetings required during the adoption process with social workers/ Health Service Executive officials.<sup>26</sup> Written notification of dates and times of classes must be supplied to the employer not later than two weeks before the dates of the classes concerned.

### **Return to Work**

An employee who has been absent on adoptive leave is entitled to return to the same job as previously held, under the same contract of employment.

Where it is not reasonably practicable to permit an employee to return to their previous job, the employee is entitled to 'suitable alternative work' which should not be substantially less favourable in terms of pay, responsibility, etc.

An employee must inform their employer, in writing, at least four weeks beforehand of the date on which they intend to return to work after adoptive leave or additional adoptive leave. The employee's right to return to work is conditional on giving written notification of intention to return to work.

### **Postponement of Adoptive Leave or Additional Adoptive Leave in Event of Hospitalisation of Child**

Under the Act an employee may, if the adopted child is in hospital and the employee is entitled to or is on adoptive leave or additional adoptive leave, apply to the employer to postpone:

- part of the adoptive leave
  - part of the adoptive leave not taken and the additional adoptive leave
- or

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<sup>25</sup> Whilst the adoptive leave legislation does not provide an entitlement to remuneration during adoptive leave the health service operates a scheme of paid adoptive leave.

<sup>26</sup> This applies only to pre-adoption classes and meetings within the State.

- the additional adoptive leave or part of it not taken.

The decision to postpone the adoptive leave or additional adoptive leave is subject to the agreement of the employer. If the employer does agree to postpone the leave, then the employee concerned must return to work on the date agreed between both parties. The remaining leave is postponed and the employee will be entitled to take “resumed leave” not later than seven days after the discharge of the child from hospital or such other date as may be agreed between the employee and the employer. The remaining leave must be taken in one block.

The maximum period of postponement of leave will be six months from the return to work date. The employer may require an employee to provide a letter from the hospital in which the child is hospitalised, confirming the hospitalisation. The employer may also require a letter, or other appropriate documentation, from the hospital or the child’s GP confirming that the child has been discharged from the hospital in order to allow the employee to commence their postponed leave.

If an employee who postpones their adoptive leave becomes ill after returning to work and before taking “resumed leave” they may be considered to have started the resumed leave on the first day of absence because of illness. Alternatively, the employee may choose to forfeit the right to resumed leave and have the leave treated in the normal manner under the sick pay scheme.

### **Death of Adopting Mother – Adopting Father’s Entitlement**

Adopting fathers (under a contract of employment), where the adopting mother dies before the date of placement, are entitled to the 24 weeks of paid adoptive leave.

Where the adopting mother dies on or after the day of placement, adopting fathers are entitled to 24 weeks’ paid adoptive leave less the period beginning on the day of placement and ending on the date of the mother’s death i.e. the balance of the leave.

Where the adopting mother dies before the expiration of the 24th week following the date of placement, an adopting father has an overall entitlement to 16 weeks’ unpaid leave.

If an adopting mother dies on or after the expiration of 24 weeks from the date of placement, the adopting father has an overall entitlement to 16 weeks’ unpaid leave less the period between the date of that expiration and the date of the mother’s death.

# Paternity Leave

## Entitlement to Paternity Leave

The Paternity Leave and Benefit Act 2016 came into effect on the 1 **September 2016**. The Act provides that an employee who is a relevant parent in relation to a child shall be entitled to “*two weeks’ leave*”<sup>27</sup> from his or her employment to enable him or her to provide, or assist in the provision of, care to the child or to provide support to the relevant adopting parent or mother of the child, as the case may be, or both. The leave can be taken at any time **within the first six months** following the birth of the child or the placement of the relevant child with their adoptive parents.

- Paternity Leave shall comprise a single period of two weeks except in situations where the child is hospitalised.
- Only one person who is a relevant parent in relation to a child shall be entitled to paternity leave in respect of that child<sup>28</sup>.
- An employee is only entitled to **one period** of paternity leave in respect of multiple births or where they adopt two or more children at the same time.

HSE HR Circular 003/2017 sets out the main conditions governing statutory paternity leave and the pay arrangements for health service employees. The following is an overview:

## Payment While on Paternity Leave

Employees on paternity leave may be eligible for Paternity Benefit paid by the Department of Social Protection (DSP). Paternity Benefit will be paid at the same rate as Maternity Benefit and will be based on the same PRSI contribution requirements. All employees applying for Paternity Benefit must have their paternity leave certified by their employer. A form **PB 2: Employer Certificate** is available for this purpose. Further information on the arrangements relating to Paternity Benefit and frequently asked questions are set on the DSP website - <https://www.welfare.ie/en/Pages/Paternity-Benefit-FAQ.aspx>

While the legislation does not provide an entitlement to remuneration during paternity leave (apart from the provisions relating to Paternity Benefit) health service employees who take paternity leave under the 2016 Act are entitled to receive the following from their employer:

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<sup>27</sup> The Act does not define what is meant by “two weeks’ leave” but it may be interpreted as a block of two continuous calendar weeks from the date chosen by the employee as the commencement date of paternity leave.

<sup>28</sup> The only exception is in the case of adoptions where paternity leave was taken prior to the adoption of the child by a person other than the relevant parent (section 6(4)).

- Their normal basic remuneration plus normal fixed allowances **less** Paternity Benefit to which they may be entitled from the Department of Social Protection (subject to PRSI contributions).
- This payment does not include additional amounts due to nightwork, overtime, shiftwork, working unsociable hours, standby or on-call allowances.

Where an employee does not meet the eligibility requirements for claiming paternity benefit from the DSP, they may receive full remuneration from their employer during the two week period of paternity leave. This provision does not apply however to any employee who satisfies the eligibility criteria for paternity benefit but fails to comply with any of the conditions laid down by the DSP for payment of paternity benefit to which they would otherwise be entitled.

### Scope of the Act

Relevant parents can take paternity leave. This includes:

- the father of the child,
- the spouse, civil partner or cohabitant of the mother of the child (regardless of gender),
- a parent of the child under section 5 of the Children and Family Relationships Act 2015 where the child is a donor-conceived child within the meaning of that Act.
- For an adopted child, the relevant parent is the parent who is not the qualifying adopter for adoptive leave (the parent nominated by the couple to take the adoptive leave). A person adopting alone can avail of paternity leave where they are not availing of adoptive leave.

HSE HR Circular 018/2021 sets out additional information on the definition of relevant parent for the purpose of paternity leave.

### Notification Requirements

The employee is required to give written notification of their intention to take paternity leave as soon as reasonably practicable but not later than **four weeks before the expected week of confinement** of the expectant mother concerned.

In the case of a child who is, or is to be, adopted the employee is required to give written notification as soon as reasonably practicable but not later than **four weeks before the expected day of placement**.

HSE Form HR 108(k) is the relevant form for completion in the HSE. A guidance note accompanying the form is attached and sets out the additional conditions applying to the notification process.

### **Allocation of Paternity Leave**

The employee may decide on the commencement date for the paternity leave and this date should be specified in the employee's written notification of intention to take leave. The period of paternity leave will commence on the date the employee has set out in their written notice but it cannot commence earlier than the date of confinement of the expectant mother, or day of placement for adoption, and cannot be later than 26 weeks after that date or day.

### **Commencement of Paternity Leave (Early Confinement)**

In the case of early births where the date of confinement occurs in a week that is four weeks or more before the expected date of confinement, the employee shall be deemed to have complied with the notification requirements if they give the notification required within seven days of the date of confinement.

### **Employees on Fixed Term or Specified Purpose Contracts**

Where an employee who is a relevant parent is employed under a fixed term contract and the fixed term contract will expire before the end of the period of paternity leave then the employee's paternity leave entitlement will cease on the date of expiry of their contract of employment and the employee will no longer be covered by the paternity leave legislation. In the case of an employee on a specified purpose contract, the paternity leave entitlement will cease when the contract of employment is terminated (i.e. upon the cesser of the purpose for which the employee was employed).

### **Postponement of Paternity Leave**

Where the day of placement is postponed or the date of confinement occurs after the date selected by the employee in their written notification, the employee shall be entitled to select another commencement date for the paternity leave.

### **Postponement of Paternity Leave in event of sickness of the relevant parent**

Where an employee becomes sick prior to the commencement of their paternity leave and wishes to postpone the paternity leave, they may do so by giving notice in writing as soon as reasonably practicable after becoming sick and providing the relevant evidence in respect of the sickness (i.e. medical certificate). The employee may postpone the taking of paternity leave to such time as they are no longer sick. The entitlement to avail of postponed leave is subject to the employee giving written notification as soon as reasonably practicable but not later than the day on which the postponed leave begins of their intention to commence such leave.

### **Postponement of Paternity Leave in event of hospitalisation of child**

An employee who is entitled to, or is on, paternity leave may, if the child concerned is hospitalised, request their employer to postpone the leave or part of it as may be appropriate. The employee must submit this request in writing. The postponement of leave is subject to the employer's agreement. The employer shall notify the employee in writing of the decision in relation to

the request to postpone leave as soon as reasonably practicable following receipt of it.

### **Employment Protection**

While an employee is on paternity leave the employee shall be considered to be in the employment of the employer and shall be treated as if they had not been absent. Paternity leave will not affect any rights related to the employee's employment other than their right to remuneration during paternity leave<sup>29</sup>.

### **Return to Work**

An employee is entitled to return to work at the expiry of the period of paternity leave:

- To the same job as previously held
- On the date specified in the written notice of application for leave.

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<sup>29</sup> Health service employees who take paternity leave under the 2016 Act are entitled to their normal basic remuneration plus normal fixed allowances less DSP Paternity Benefit to which they may be entitled (subject to PRSI contributions).



## Parental Leave

The Parental Leave Act, 1998 (as amended by the Parental Leave (Amendment) Act 2006 and the Parental Leave (Amendment) Act 2019) provides an entitlement for parents to avail of unpaid leave from employment to enable them to take care of young children.

### Amount of Parental Leave

Employees who are the natural or adoptive parents of a child or who are acting in *loco parentis* in respect of a child are entitled to parental leave of 26 weeks per child to enable them to take care of the child (**HSE HR Circular 17/2019**) if they satisfy the conditions under the Parental Leave Act. Where an employee has more than one child, parental leave is limited to 26 weeks in a 12 month period.

In the case of multiple births, an employee is entitled to 26 weeks' leave for each child of the multiple birth and the 12 month restriction on the taking of the leave does not apply.

Part time employees are entitled to parental leave on a pro rata basis.

### Age of Child

An employee can take parental leave until the child's 16<sup>th</sup> birthday in all cases, including for parents of children with a disability or long-term illness and in the case of adoption (HSE HR Circular 023/2023).

A maximum of 14 of the 26 weeks' parental leave may be transferred from one parent to another if both parents are employed by the same employer, subject to the employer's agreement (HSE HR Circular 006/2013).

Generally the employee must have at least one year's continuous service with the employer before they are entitled to take parental leave<sup>30</sup>. However, where the child is approaching the maximum age threshold and the employee has more than three months but less than one year's service with the employer, they shall be entitled to *pro rata* parental leave. In such a case the employee will be entitled to one week's leave for every month of continuous employment completed with the employer when the leave begins.

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<sup>30</sup> Arrangements for NCHDs are that the 12 months service includes continuous aggregate service in the health service provided it is not broken by a break in service of six or more weeks. This includes service in the HSE; in any Section 38 hospital or agency; in an agency funded by and under the aegis of the Department of Health; or in an approved training post in a private hospital setting.

### **Notification of Parental Leave**

An employee must give written notice to the employer of their intention to take parental leave, not later than six weeks before the employee proposes to commence the leave. HSE employees are required to complete HSE HR form 108 (j) if they wish to apply for parental leave.

### **Confirmation of Parental Leave**

Once the employee has notified their employer that they want to take parental leave, the employee and the employer must prepare a 'confirmation document'. This document must be prepared no later than four weeks before the leave is due to begin.

The document must include the following details:

- the date on which the leave will begin;
- the length of time that the employee will be on parental leave;
- the manner in which the leave will be taken;
- signatures of the manager and the employee.

### **Revocation of Notice**

The employee may change their mind and decide not to take parental leave at any time before the confirmation document is signed. The employee must notify the employer in writing that they have decided not to take parental leave.

### **Manner in which Parental Leave May be Taken**

The manner in which parental leave may be taken is as follows:

- (a) One continuous period of 26 weeks
- (b) Two separate periods, each consisting of not less than 6 weeks, and not exceeding 26 weeks in total. An employee is not entitled to take the second period of parental leave unless not less than 10 weeks have elapsed since the first period of parental leave ended.
- (c) *Subject to the agreement of the employer*, a number of periods, each of which comprises:
  - (i) one or more days,
  - (ii) one or more hours, or
  - (iii) any combination of periods broken into working days and/or working hours.

An employee who has taken parental leave under any one of the three arrangements outlined above may take their unused parental leave entitlement in blocks of a week or more.

***The total number of hours due to the employee for parental leave purposes is calculated as follows:***

Where an employee takes parental leave in separate blocks or by working reduced hours, parental leave is such that the number of hours which, but for the leave, the employee would be working equals:

the number of hours worked by the employee in a continuous period of 26 weeks before the commencement of leave (as may be determined by the employer and the employee),

**or**

if the employee and employer fail to determine a 26 week period, 26 times the average number of hours per week worked by the employee in each of the periods of 26 weeks ending immediately before the beginning of each week in which the employee takes any of the leave.

In determining a period of 26 weeks, holidays (including public holidays) to which the employee is entitled or days on which the employee is absent from work on sick leave, maternity leave, adoptive leave or *force majeure* leave are excluded, and a corresponding number of days immediately before the commencement of the period of parental leave is included. Time spent on parental leave itself is deemed to be time worked.

Part-time employees are entitled to parental leave on a pro rata basis.

### **Salary Deductions**

In the HSE salary deductions may be calculated as follows:

- i) Establish net weekly working hours, i.e. working day less unpaid meal breaks, e.g. 8.30am to 5pm Monday to Thursday and 9am to 5pm Friday with one hour lunch break = 7.5 hours per day Monday to Thursday and 7 hours on Friday. Net weekly working hours = 37 hours.
- (ii) Reduce basic salary by number of working hours taken as parental leave
- (iii) The employee continues to receive payment in full for unsocial hours actually worked in the pay period.

### **Illness of parent**

If an employee becomes ill while on parental leave and is unable to care for the child the leave can be suspended for the duration of the illness. In order to suspend the parental leave the employee must give written notice and relevant evidence of the illness to the employer as soon as is reasonably practicable. The parental leave resumes after the illness. During the illness the parent is treated as an employee who is sick.

### **Protection of Employment Rights**

An employee on parental leave is entitled to be treated as if they had not been absent, so that all their employment rights, except the right to remuneration and superannuation benefits, will be unaffected during the leave.

Employees retain an entitlement to any public holidays which fall during a period of parental leave. The Act provides that a corresponding number of days *in lieu* of public holidays shall be added to the end of the period of leave.

Absence from work on parental leave must not be treated as part of any other leave to which the employee is entitled (e.g. annual leave, sick leave, adoptive leave, maternity leave and *force majeure* leave).

Periods of probation, training or apprenticeship may be suspended during the period of parental leave.

### **Postponement of Parental Leave**

Parental leave may be postponed where the granting of leave for the period requested would create operational difficulties owing to the unavailability of a person to carry out the employee's duties, the nature of those duties or the number of employees who are availing of leave during that period. Postponement of parental leave is subject to the employee being permitted to take the leave not later than six months after the date on which they had proposed to take leave. *The employer must consult with the employee before postponing the leave.* Parental leave in respect of a particular child may not be postponed more than *once*.

### **Note**

*An employer cannot postpone parental leave once the confirmation document has been signed by both parties.*

The employee must receive written notification of the postponement at least four weeks before the date on which the employee had intended to commence leave. The notice should also specify the reasons for the postponement and the new date of commencement.

The provision requiring parental leave to be taken before the child exceeds the age limit is waived in the event that postponed parental leave would breach these restrictions.

### **Right to Request changes to working hours or patterns (or both)**

As set out in HSE HR Circular 006/2013 an employee returning to work from parental leave may request changes to their working hours (HR Form 111 Flexible Working) or work patterns (or both) for a set period of time. The employer is obliged to consider and respond to such requests, taking into account both the employer's and employee's needs. However, there is no obligation on the employer to grant the change requested.

Employees should submit their request in writing as soon as reasonably practicable, but not later than six weeks before the proposed commencement of the set period of time concerned, specifying the nature of the changes requested and the date of commencement and duration of the set period requested.

Employees should be informed in writing if the request is being granted or refused as soon as reasonably practicable but not later than four weeks after receiving the employee's application.

If the employer agrees to amend the employee's working hours and/or work pattern, the new arrangements should be set out in writing and signed by both parties. The agreement should specify:

- The changes to the employee's working hours or patterns, or both, as the case may be, and
- The date of the commencement and duration of the set period.

The employer should retain the agreement and give a copy to the employee.

Prior to the signing of an agreement, an employee may revoke the request by giving notice in writing to the employer.

### **Abuse of Parental Leave**

The entitlement to parental leave is subject to the condition that it is used by the employee to take care of the child concerned. Where an employer has reasonable grounds for believing that an employee is not using their parental leave for this purpose, the employer may terminate the leave subject to the statutory notification provisions. The employer must give notice in writing to the employee of the proposed termination and the grounds for termination of the leave. The employee must be advised of their right to respond to the proposed termination within seven days of receipt of the notice. Any representations provided by the employee will be considered by the employer before a final decision is made.

Parental leave is to be used only to take care of the child concerned. If an employee takes parental leave and uses it for another purpose their employer is entitled to cancel the leave.

## Force Majeure Leave

The Parental Leave Act provides that an employee is entitled to leave with pay from work, known as “*force majeure* leave”, where, for urgent family reasons, owing to an injury to or the illness of a person specified below, the immediate presence of the employee at the place where the person is, whether at their home or elsewhere, is indispensable.

Force majeure leave may be granted in respect of the following persons:

- a person of whom the employee is the parent or adoptive parent;
- the spouse of the employee or a person with whom the employee is living as husband and wife;
- a person to whom the employee is in *loco parentis*;
- a brother or sister of the employee; and
- a parent or grandparent of the employee
- a person, other than one specified above, who resides with the employee in a relationship of domestic dependency. A person who resides with an employee is taken to be in a relationship of domestic dependency with the employee if, in the event of illness or injury, one reasonably relies on the other to make arrangements for the provision of care, regardless of the sexual orientation of the persons concerned.

### Entitlement

The maximum force majeure leave that may be availed of is three working days in 12 consecutive months or five working days in 36 consecutive months.

There is no minimum service requirement for entitlement to force majeure leave.

Force majeure leave may consist of one or more working days subject to the maximum set out above. Where an employee is absent from work for only part of the day, this should still be counted as one day of force majeure leave.

A force majeure leave day is normally based on the length of the day/shift that the employee is rostered to work on the day. For example, if a person is rostered to work nine hours on the day that they had to take force majeure leave, this would be considered one day’s force majeure leave. The same would also apply if the person was rostered to work for four hours on the day.

When an employee takes force majeure leave, they are required to give written notice to their employer as soon as reasonably practicable. The written notice must specify the dates on which force majeure leave was taken and a statement of the facts entitling the employee to force majeure leave.

HSE employees are required to complete HSE HR Form 108(f).

### **Protection of Employment Rights**

An employee on *force majeure* leave is entitled to be treated as if they had not been absent so that all their employment rights will be unaffected during the leave. The employee receives the pay which would have applied on that day.

Absence from work on *force majeure* leave must not be treated as part of any other leave to which the employee is entitled including sick leave, annual leave, adoptive leave, maternity leave, parental leave, paternity leave and parent's leave.

## Unpaid Leave for Medical Care Purposes

Unpaid Leave for Medical Care Purposes was introduced under the Work Life Balance and Miscellaneous Provisions Act 2023 through HSE HR Circular 017/2023.

This provides for a new entitlement<sup>31</sup> for employees to up to 5 days' leave without pay for the purposes of providing personal care or support to one of the following specified persons who are *in need of significant care or support for a serious medical reason*:

- (i) A person of whom the employee is the relevant parent
- (ii) The spouse or civil partner of the employee
- (iii) The cohabitant of the employee
- (iv) A parent or grandparent of the employee
- (v) A brother or sister of the employee
- (vi) A person, other than one specified above, who resides in the same household as the employee.

There is no service requirement needed to avail of this leave.

Leave for medical care purposes consists of one or more days on which, but for the leave, the employee would be working. An employee may be granted up to a maximum of **5 days** in any period of 12 consecutive months. The leave cannot be taken in a period of less than one day.

A day on which an employee is absent from work on leave for medical care purposes for part only of the period during which they are required to work on that day will be counted as one day of leave.

When an employee takes or intends to take leave for medical care purposes, they are required, as soon as reasonably practicable, to complete a confirmation form which contains the following details:

- The date of commencement of the leave and its duration
- A statement of the facts entitling the employee to the leave
- Employee's signature

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<sup>31</sup> This new leave entitlement is entirely separate to "force majeure leave" under the Parental Leave Act 1998.



The HSE HR Form HR 108(u) should be used by HSE employees.

On receipt of the confirmation form, an employer will retain the form and provide the employee with a written acknowledgement of receipt.

An employer can request an employee who has submitted a confirmation document to provide such information as the employer may reasonably require in relation to:

- (i) the employee's relationship with the person in respect of whom the leave for medical care purposes is proposed to be taken or was taken, as the case may be,
- (ii) the nature of the personal care or support required to be given by the employee to the person concerned, and
- (iii) relevant evidence relating to the need of the person for the significant care or support concerned.

'Relevant evidence', in relation to the person for whom the care or support is or is proposed to be provided, means-

- (a) A medical certificate
  - (i) stating that the person named in the certificate is (or where the leave has already been taken) was in need of significant care or support for a serious medical reason, and
  - (ii) signed by a registered medical practitioner<sup>32</sup>

**or**

- (b) if the employee does not have a medical certificate, such evidence as the employer may reasonably require in order to show that the person concerned is or was in need of significant care or support for a serious medical reason.

An employee who avails of leave for medical care purposes continues to accrue an entitlement to annual leave and public holidays during this period.

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<sup>32</sup> This refers to a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007.

## Parent's Leave

Arising from the Parent's Leave and Benefit Act 2019, parent's leave is granted to employees for the purposes of enabling them to provide, or assist in the provision of, care to the child. This leave is a stand-alone entitlement with no sharing permitted and does not affect any existing entitlements to statutory leave i.e. maternity, adoptive, paternity and parental leave.

Employees who are "relevant parents" are entitled to leave from work for the purposes of enabling them to provide, or assist in the provision of, care to the child within two years following the birth or adoption placement of the child. This parent's leave applies to births or adoptions which occur on or after 1 November 2019. Since 1 August 2024, the current entitlement for parent's leave is nine weeks.

The Act also provides for the payment of parent's benefit from the Department of Social Protection to eligible employees who satisfy the PRSI contribution conditions. Public health service employees are not entitled to payment from their employer during parent's leave.

The additional two weeks of parent's leave and benefit since 1 August 2024 applies to children who were under the age of 2 in August 2024, or adoptive children who had been placed with their parents for less than two years in August 2024. Parents who had already availed of the existing seven weeks at that point can avail of the additional two weeks from that date. For further information see HSE HR Circular 13/2024.

### Entitlement to Parent's Leave

An employee must meet the definition of a "relevant parent" in order to avail of parent's leave. The definition of "relevant parent" is broad and covers the following:

*(a) In the case of an adoption*

- (i) the qualifying adopter of the child, and
- (ii) the spouse, civil partner or cohabitant, as the case may be, of the qualifying adopter of the child

The term "qualifying adopter", in relation to a child who is, or is to be adopted, means the qualifying adopter, within the meaning of the 1995 Act of the child and includes, for the purposes of the 2019 Act, a person who would be a qualifying adopter but for the fact that they are not an employee<sup>33</sup>.

*(b) In any other case*

- (i) a parent of the child,

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<sup>33</sup> This is relevant where one member of an adoptive couple is not an employee and the member of the couple who is an employee does not avail of adoptive leave.

- (ii) the spouse, civil partner or cohabitant of the parent of the child, or
- (iii) a parent of a donor-conceived child as provided for under section 5 of the Children and Family Relationships Act 2015.<sup>34</sup>

In addition to being a “relevant parent”, an employee’s entitlement is conditional on the parent’s leave being used to provide, or assist in the provision of, care to the child.

An employee who is a relevant parent in more than one capacity in respect of a child is entitled to nine weeks’ parent’s leave in total. Where the birth of a child is part of a multiple birth or a person adopts two or more children at the same time, the employee is entitled to nine weeks’ parent’s leave in total.

### **Allocation of Parent’s Leave**

Parent’s leave must generally be taken as follows:

- in the case of a child who is, or is to be, adopted, not later than two years from the day of placement, or
- in any other case, not later than the day on which the child attains the age of two years.

The entitlement to parent’s leave is non-transferable and sharing between employees is not permitted.

### **Manner in which leave can be taken**

The nine weeks’ leave can be taken as:

- (a) a continuous period of nine weeks, or
- (b) separate blocks of not less than one week each.

Employees who are/will be availing of maternity leave or adoptive leave are required to take this leave before taking parent’s leave. Employees who are entitled to paternity leave and parent’s leave can take these leave entitlements in whichever order they wish (subject to the statutory time limits).

### **Notification Requirements**

The entitlement to parent’s leave is subject to an employee having notified the employer in writing of their intention to take parent’s leave and, where applicable, supplying a copy of relevant documentation in relation to the child. An employee is required to give written notification not later than six weeks before the intended commencement of the parent’s leave and specify the expected date of commencement and duration of the parent’s leave. The notification should indicate the manner in which the employee wishes to take parent’s leave i.e. nine consecutive weeks or separate blocks of a minimum of one week.

The documents that may be required to support an application for parent’s leave are as follows:

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<sup>34</sup> The provision in respect of the relevant parent of a donor-conceived child will be commenced on a future date.

In the case of a birth:

- a copy of the medical certification as provided by the mother to the employer or other appropriate certificate from a registered medical practitioner confirming the pregnancy and specifying the expected date of birth of the child concerned, or
- a copy of the birth certificate where notification is given after the birth.

In the case of an adoption:

- a copy of the placement certificate where notification is given after the day of placement,
- in the case of an intercountry / foreign adoption, a declaration of suitability and eligibility prior to the day of placement followed by written confirmation of the placement.

Managers are required to review all written notifications from employees who wish to avail of parent's leave in a timely manner and establish the employee's eligibility to take parent's leave in accordance with the legislation.

### **Payment while on Parent's Leave**

The parent's leave legislation provides for the payment of parent's benefit from the Department of Social Protection (DSP) to employees who have the required number of PRSI contributions and satisfy the eligibility criteria for payment. Further information on parent's benefit is available from the DSP website. Employees may qualify for parent's leave and not qualify for parent's benefit, for example, if they do not satisfy the PRSI contribution conditions.

An employee who is also applying for parent's benefit from DSP must declare that their parent's leave dates have been approved by their employer. The DSP may contact the person's employer asking them to confirm the dates of the parent's leave for which benefit is being claimed. Managers must therefore be in a position to respond to such requests from DSP.

Health service employees are not entitled to payment from their employer during parent's leave.

### **Employees on fixed term or specified purpose contracts**

Where a relevant parent is employed under a contract of employment for a fixed-term or specified purpose, the contract of employment will terminate in the normal manner and the entitlement to parent's leave will cease to apply with effect from the date of termination of the contract of employment.

### **Commencement of Parent's Leave (early confinement)**

Where the date of confinement occurs in a week that is four weeks or more before the expected date of confinement, the relevant parent shall be deemed to have complied with the notification requirements if the notification is submitted within seven days commencing on the date of confinement.

### **Commencement of parent's leave (change in day of placement or date of confinement)**

Where the day of placement is postponed or the date of confinement occurs after the date selected by a relevant parent in their notification, the relevant parent is entitled to select another date of commencement within the timeframes specified in the Act

- in the case of a child who is, or is to be, adopted, not later than two years from the day of placement, or
- in any other case, not later than the day on which the child attains the age of two years.

### **Postponement of Parent's Leave by employer**

Parent's leave may be postponed once by an employer where the granting of the leave would have a substantial adverse effect on the operation of the business, profession or occupation by reason of-

- seasonal variations in the volume of work concerned,
- the unavailability of a person to carry out the duties of the employee in the employment during the period of the leave,
- the nature of the employee's duties,
- the number of employees in the employment or the number of such employees whose parent's leave will fall within the period specified in the employee's notification, or
- any other relevant matters,

An employer must consult with the employee in advance and provide the reason for the postponement.

An employer is required to give written notice of postponement to the employee not later than four weeks before the requested date for beginning the period of parent's leave. The postponement cannot go beyond 12 weeks after the date of commencement specified in the employee's notification and the new date should be agreed between the employer and the employee.

### **Postponement of parent's leave in event of hospitalisation of child**

Where the child is hospitalised, an employee may submit a request in writing to their employer to postpone the leave or part of it as may be appropriate. An employer may agree to the request to postpone the parent's leave and, if the employer does so -

- the relevant parent must continue to work or, as the case may be, return to work on a date agreed with the employer that is not later than the date on which the parent's leave is due to end in accordance with the written notification,
- the parent's leave will be postponed with effect from the agreed date,
- the postponed leave is to be taken not later than seven days after the discharge of the child from hospital or such other date as may be agreed between the employee and the employer.

Where, following the postponement of parent's leave, an employee returns to work and during the period of the postponement goes absent from work due to sickness, the employee will be deemed to have commenced postponed leave on the first day of the absence unless they notify the employer in writing

as soon as reasonably practicable that they do not wish to be on parent's leave. Following receipt of this notification, the employee's absence should be treated as sick leave in the normal manner and the employee forfeits the entitlement to the postponed parent's leave.

Entitlement to postponed parent's leave is subject to the employee having notified the employer in writing as soon as reasonably practicable but not later than the day on which the leave begins of their intention to commence such leave and the duration of such leave. An employer may waive the right to receive such notification. A notification may be revoked by a further notification in writing given by or on behalf of the employee within the specified period.

### **Protection of Employment Rights while on Parent's Leave**

During the period of parent's leave, the employee's employment rights are protected (except for the employee's right to remuneration).

Employees continue to accrue an entitlement to annual leave and public holidays while on parent's leave.

A period of absence on parent's leave cannot be treated as part of any other leave to which the employee is entitled such as sick leave and annual leave.

Employees are entitled to return to work in their normal job and under terms and conditions not less favourable.

An employer is prohibited from penalising, or threatening penalisation of, an employee for proposing to exercise or having exercised their entitlement to parent's leave.

### **Employees on probation**

Where an employee who is on probation takes parent's leave, an employer may suspend the probation during the parent's leave until the employee returns to work.

Further information on parent's leave is outlined in HSE HR Circular 035/2019, HSE HR Circular 018/2021 and HSE HR Circular 020/2022.

## Carer's Leave

The Carer's Leave Act 2001 entitles employees to avail of temporary unpaid leave from their employment to enable them to personally provide full-time care and attention for a person who is need of such care, ("the relevant person"). The period of leave to which an employee is entitled is subject to a maximum of 104 weeks in respect of any one care recipient. An employee may work up to a maximum of 18.5 hours per week during carer's leave<sup>35</sup> or may attend an educational or training course or take up voluntary or community work for up to 18.5 hours per week.

### "Relevant Person"

The relevant person is a person who is deemed to be in need of "full-time care and attention" by the Department of Social Protection (DSP). This means that the person being cared for must be so disabled as to require:

- Continuous supervision and frequent assistance throughout the day in connection with their normal personal needs, e.g. help to walk and get about, eat, drink, wash, bathe, dress etc.
- Continuous supervision in order to avoid danger to themselves.

The employee is required to apply to the DSP which will determine whether they are eligible for carer's leave.

### Entitlement to Carer's Leave

An employee must fulfil the following criteria before they are eligible to apply for carer's leave:

- They must have completed at least 12 months' continuous service with their current employer before the commencement of the leave. There is no weekly working hours threshold.
- The employee must intend to take the leave for the purpose of personally providing full-time care and attention for a person who is in need of such care for the duration of the leave.
- The person receiving full time care and attention must be objectively assessed and deemed to be in need of full time care by a deciding officer from the DSP.
- Only one employee may be on carer's leave in respect of any one relevant person, at any one time.
- An employee will generally not be permitted to be on carer's leave in respect of more than one relevant person at any one time. However, *on one occasion only*, an employee may commence leave in respect of a relevant person, while already on leave in respect of another relevant person, where the ***two relevant persons reside together***.

### Notification Requirements

An employee is required to give at least six weeks' notice in writing of their intention to avail of carer's leave, except in emergency circumstances where it is not reasonably practicable to do so.

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<sup>35</sup> This is subject to an upper income limit as set out in regulations made by the Minister for Social Protection.

A statement of notice must contain the following information:

- The date on which the employee intends to commence the leave
- The duration of the leave
- The manner in which the employee proposes to take the leave
- A copy of the decision of the deciding officer (or appeals officer) from the DSP, confirming that the relevant person has been medically certified as being in need of full time care.
- The employee's signature and date.

HSE employees must complete and submit HR Form 108(c) to their Department Head which contains the Application Form for carer's leave.

### **Manner in which Carer's Leave may be Taken**

The Act provides that the leave should be taken in one of the following ways:

- One continuous period of 104 weeks; or
- One or more periods, the total duration of which amounts to not more than 104 weeks.

Where the employee wishes to take carer's leave over a number of broken periods the following conditions apply:

- The minimum period of leave which can be taken is 13 weeks. If an employee applies for a period of less than 13 weeks, an employer may refuse, on reasonable grounds, and the reasons must be given to the employee in writing.
- There must be a gap of at least six weeks between periods of carer's leave taken in respect of the same relevant person.
- An employer and employee may agree arrangements for carer's leave on terms more favourable to the employee.
- The Act requires an employee to notify their employer of any change of circumstances that affect their entitlement to carer's leave.

### **Taking Carer's Leave for Another Relevant Person**

An employee who wishes to avail of carer's leave for another relevant person must generally wait for a period of six months after the date of termination of the leave in respect of the previous relevant person.

### **Confirmation of Carer's Leave**

A "confirmation document", (which outlines the date on which the leave period will commence and the duration of the leave period) must be prepared and signed by the employer and employee not less than two weeks before the leave is due to commence (For HSE employees, HR Form 108c Carers Leave).

### **Revocation of Notice**

An employee who wishes to revoke the notice of their intention to take carer's leave must do so in writing prior to the date of the confirmation document.



### **Alterations to the Confirmation Document**

An employer and an employee may agree, after the date of the confirmation document, to postpone or curtail the leave, or vary the form in which it will be taken. Where this occurs the confirmation document should be amended to reflect the changes.

### **Protection of Employment Rights**

During an absence on carer's leave, an employee is regarded as still working for all purposes relating to their employment, and all of their employment rights will be unaffected during the leave, with the following exceptions:

- There is no right to remuneration and superannuation benefits.
- Annual leave and public holiday entitlements will be accrued for the first 13 weeks of the leave only.
- A period of probation or an apprenticeship may be suspended during carer's leave.
- Periods of carer's leave cannot be treated as any other type of leave, e.g. sick leave, annual leave, adoptive leave, maternity leave, parental leave, parent's leave, unpaid leave for medical care purposes, domestic violence leave or *force majeure* leave.

Employers are precluded from penalising an employee for exercising their rights under the Act, which includes dismissal of the employee, unfair treatment of the employee (including selection for redundancy), and an unfavourable change in the conditions of employment of the employee.

### **Working during Carer's Leave**

Employees on carer's leave can work for up to 18.5 hours per week. This is subject to an upper income limit as set out in regulations made by the Minister for Social Protection. Alternatively the employee may attend an educational or training course, or take up voluntary or community work for 18.5 hours per week.

Employees who opt to work up to 18.5 hours per week while on carer's leave will have their annual leave and public holiday entitlement calculated based on their reduced working hours after the first 13 weeks of carer's leave.

If an employee is absent due to sick leave, they may be granted sick pay on a pro rata basis in line with their reduced weekly working hours during carer's leave.

### **Termination of Carer's Leave**

The Act provides that a period of carer's leave shall terminate as follows:

- On the date specified in the confirmation document.
- On a date agreed between the employer and the employee.
- Where the person being cared for ceases to require full-time care and attention, e.g. where their condition improves sufficiently as to no longer render them to be in need of full time care and attention.
- Where an employee no longer satisfies the requirements for the provision of full time care and attention for the purposes of the Act.

- Where a deciding officer from the DSP makes a decision against an employee.
- Where the relevant person dies during a period of carer's leave, the employee will return to work either six weeks after the death or on the date specified on the confirmation document (whichever is earlier).

### **Return to Work**

An employee who is on carer's leave must notify their employer of their intention to return to work not less than four weeks before the date on which that employee is due to return to work.

An employee is entitled to return to work at the end of the carer's leave to the job that they had held immediately prior to the leave, under the same terms and conditions of employment. If it is not reasonably practicable for an employer to allow an employee to return to the job held immediately prior to the leave, the employer must offer the employee suitable alternative employment under a new contract of employment, the terms of which cannot be substantially less favourable to the employee.

### **Carer's Benefit**

An employee may be entitled to receive Carer's Benefit during carer's leave. Further details may be obtained by the employee from the Department of Social Protection.

## Domestic Violence Leave

Domestic Violence Paid Leave (including fixed allowances and premia if applicable) is available to all employees in the public health sector as provided for in Section 7 of the Work life Balance and Miscellaneous Provisions Act 2023. The leave was introduced in the health sector through Department of Health Circular 13/2023, and HSE HR Circular 2/2024.

Employees who meet the eligibility criteria may avail of Domestic Violence Leave up to a maximum of five days in any period of 12 consecutive months. This can be taken as individual days or a block/blocks of days. An absence for part of a day is counted as one day for the purposes of domestic violence leave.

As well as being availed of by an employee who is a victim of domestic violence, the leave can be availed of by an employee who is supporting a 'relevant person' who has experienced in the past, or is currently experiencing domestic violence. As defined in the Work life Balance and Miscellaneous Provisions Act 2023 a relevant person includes:

- the spouse or civil partner of the employee;
- the cohabitant of the employee;
- a person with whom the employee is in an intimate relationship;
- a child of the employee who has not attained full age; or
- a person who, in relation to the employee, is a dependent person.

As outlined in the legislation, the purpose of the leave is to enable the employee who is a victim of domestic violence or an employee who is assisting a relevant person to do any of the following:

- seek medical attention;
- obtain services from a victim services organisation;
- obtain psychological or other professional counselling;
- relocate residence temporarily or permanently;
- obtain an order from a court under the Domestic Violence Act 2018;
- seek advice or assistance from a legal practitioner; or
- seek assistance from the Garda Síochána.

During an absence on domestic violence leave, an employee is deemed for all purposes to be in employment.

An employee who takes domestic violence leave should, as soon as reasonably practicable thereafter, confirm that they have taken such leave and the dates on which it was taken.

## **Special Leave with Pay on Marriage**

All employees may be allowed up to a maximum of five days' special leave with pay when they marry, provided the amount of special leave granted for this purpose together with the annual leave allowance in respect of the leave year in which the marriage takes place does not exceed a total of 24 days or hourly equivalent, (or where appropriate a pro-rata entitlement) excluding any annual leave carried over from the previous year.

The terms of the scheme for granting marriage leave include health service employees on the occasion of civil partnership registration i.e. at the time of the civil partnership a maximum of five days' paid leave may be granted subject to an overall total, between annual leave and civil partnership registration of 24 days. See HSE HR Circular 007/2011.

*c.f. [Department of Health Circular No. S116/48](#)  
& [Department of Health and Children Circular dated 11 July 1997](#)  
[HSE HR Circular 007/2011](#)*

## Bereavement Leave

Bereavement Leave may be granted to an employee in the event of the death of a relative up to a limit of:

- a) Twenty<sup>36</sup> working days in the case of a spouse (including a cohabiting partner), child (including adopted children and children being cared for on the basis of 'in loco parentis') or any person in a relationship of domestic dependency, including same sex partners;
- b) Five<sup>37</sup> working days in the case of other immediate relatives as follows: father, mother, brother, sister, father-in-law, mother-in-law.<sup>38</sup>

In exceptional circumstances (e.g. where the employee concerned has lived in the same house as the deceased or has to take charge of funeral arrangements) an employee may be granted up to three working days' special leave on the death of a more distant relative.

In a case where an employee has to travel abroad to make funeral arrangements in respect of a relative specified in (a) or (b) above, special leave with pay in excess of the limits prescribed above may be granted at the discretion of the employer.

The granting of bereavement leave and the amount granted will depend on whether or not the employee was scheduled/rostered to work for the period in question. Bereavement leave is granted only at the time of the bereavement to facilitate the employee with time off from work and is not granted retrospectively where it occurs during days/shifts when an employee is not normally scheduled/rostered to work.

For further information see HSE HR Circular 029/2019.

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<sup>36</sup> 28 calendar days

<sup>37</sup> 7 calendar days

<sup>38</sup> Includes a similar immediate relative of a cohabiting partner

## Jury Service

The Juries Act, 1976 provides that every citizen aged between 18 and 70 years who is entered in the Dail Electoral Register may be called for jury service, with the following exceptions:

Certain professional categories are excused as of right, including:

- Nurses;
- Dentists;
- Pharmacists; and
- Medical Practitioners

An employee who has served (or attended to serve) on a jury in the previous three years may be excused by the county registrar. A judge may also excuse a juror from service for a period of time.

Employers have a duty to allow employees to attend for jury service. However, if it is not possible due to service requirements to allow the employee to attend, the employee may be granted a certificate from the appropriate manager, stating that it would be contrary to the public interest for them to serve as a juror because they perform essential and urgent services of public importance that cannot reasonably be performed by another or postponed.

An employee is treated as employed during any period they are complying with a jury summons. An employee is therefore entitled to full pay inclusive of fixed allowances/unsocial hours premium payments and continues to accrue entitlements to annual leave, incremental credit etc while on jury service.

## **Attendance of HSE Employees in Court as Witnesses<sup>39</sup>**

### **Part A: Employees called as witnesses on behalf of the State**

1 A HSE employee required to attend Court as a witness on behalf of the State in criminal or civil proceedings must attend as directed. The employee's attendance may be required by means of a sub poena or may be arranged through their official duties.

2. The employee's attendance in Court should be regarded as part of their official duties and the employee should accordingly be paid their:

(i) Normal salary for the period of the necessary absence, and

(ii) Travel and subsistence subject to the usual regulations.

3. The employee should request the prosecuting authority to claim any expenses the employee may be entitled to as a witness. In civil proceedings where the State is successful, the Chief State Solicitor or Local State Solicitor should claim the amount of the travel and subsistence expenses payable to the employee by their HSE department.

4. A claim for recovery of salary or loss of service should not be made.

### **Part B: Employees called as witnesses on behalf of parties other than the State**

5. An employee called as a witness on behalf of a party other than the State, should, provided they have been served with a summons or sub poena, be granted special leave with pay for the period of necessary absence.

6. If called as a witness in connection with a matter in their official capacity they should also be paid travel and subsistence subject to the usual regulations. The employee should request the prosecuting authority to claim any expenses the employee may be entitled to as a witness from the party requesting attendance. If possible, the party requesting attendance should be given preliminary notice that the claim will be made. A claim for recovery of salary or loss of service should not be made.

7. Where an employee is called as a witness on matters not connected with their official duty, travelling and subsistence expenses should not be paid by the HSE but the employee may keep amounts paid to them by the party

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<sup>39</sup> These provisions are based on Department of Finance Circular 031/2007

requesting attendance by way of witness expenses. A claim for recovery of salary or loss of service should not be made.

### **Part C: Other Issues**

8. Where an employee is required to attend Court as a witness during a period of annual leave, the amount of annual leave taken may be suitably adjusted.

9. Where an employee on annual leave is required to attend Court as a witness on behalf of the State or on behalf of a Party other than the State, in connection with a matter coming before them in their official capacity, they may be paid travelling expenses, if appropriate, provided conditions set out in Department of Finance Circular 11/82, relating to recall from annual leave, are fulfilled (see below).

*Circular 11/1982 – Travelling and Subsistence Regulations (extract)*

*Travelling Expenses in respect of Recall From Leave*

*30. Travelling expenses in respect of recall from leave will be paid only on the condition that the officer was not informed of the probability of recall or that the recall could not have been foreseen when he went on leave.*

*31. Subsistence allowance will not be paid in respect of recall from leave unless the officer's usual place of residence at headquarters is not available.*

10. The provisions set out above on Attendance of HSE employees in Court as Witnesses do not apply where special arrangements are in force for furnishing expert evidence in Court by professional or technical officers at the request of parties other than the State.



## **Career Breaks**

Department of Health Circular S146/99 (16/3/84, 27/11/84, 26/8/87, 30/3/89, 7/11/90) and HSE HR Circular 010/2013 set out the provisions of the career break scheme in the health service.

An employee can be granted a career break for any of the following reasons:

- domestic reasons, e.g. child-rearing;
- educational purposes, e.g. to attain a post-graduate qualification;
- foreign travel.

All employees who have completed their probation period are eligible to apply for a career break. Employees who are still on probation may be granted a career break in exceptional circumstances, e.g. to cope with unusual domestic difficulties.

An employee's application may be refused where it is considered that the granting of a career break would have a detrimental effect on the service. Replacement cover if required is subject to current approval procedures.

### **General Conditions**

The minimum period for a career break is one year (except where leave is required to cope with unusual domestic difficulties) and the maximum period is five years. An employee may take a career break immediately following a period of special leave with nominal pay provided the combined leave does not exceed five years.

HSE HR Circular 010/2013 revised the limits which apply to career breaks. An employee may be granted a maximum period of three career breaks which, when aggregated, do not exceed eight years. On the date of the commencement of the second or third career breaks the employee must have served since their return from the earlier career break for a period equal to the duration of that career break. In exceptional circumstances this period of service requirement between career breaks may be waived.

Employees are not permitted to work for another employer during the career break with the exception of employees who take up employment during travel abroad.

### **Granting a Career Break**

Employees may apply for a career break by completing and submitting the Career Break Application Form HR 105 to their Department Head. Applicants will be advised of the decision to approve/defer or refuse their application in writing.

### **Notice to Return to Work**

An employee is obliged to give at least three months' notice of their intention to return to work. An employee's right to return to work upon expiry of the career break is conditional on their compliance with this notification requirement.

Employees returning from career break are guaranteed re-employment in their substantive grade within 12 months of the expiry of the career break.

Every reasonable effort should be made to find a suitable vacancy in the employee's substantive grade and to minimise the delay in facilitating the employee's return to work. If upon expiry of the career break a vacancy does not exist in the substantive grade, the employee may be offered a post at a lower grade as an interim arrangement. During this period the employee will receive the salary applicable to that post.

### **Career breaks for NCHDS**

The following arrangements apply to NCHDs with more than two years' service. NCHDs who meet this service requirement may apply for a career break to facilitate further training abroad prior to return to employment as a Specialist in the Irish public healthcare system. The NCHD must meet the following conditions:

- have commenced employment in the Public Service prior to 1 January 2013;
- have been continuously employed in the Public Service since that date and have a minimum of two years' service; and
- wish to go abroad to take up training posts or to take up positions to provide them with the necessary skill sets to enable them to compete for Consultant posts.

NCHDs wishing to avail of a career break under this arrangement must apply to their employer in sufficient time before the expiry of their current contract. Further details setting out the arrangements to apply are set out in HSE HR Circular 010/2014.

NCHDs may also apply for a career break if they have to rotate into private hospitals / agencies for a period of 26 weeks or more as part of a recognised training scheme. The NCHD must meet the following conditions:

- have commenced employment in the Public Service prior to 1 January 2013;
- have been continuously employed in the Public Service since that date;
- the career break is for training purposes only and not to take up other private sector employment; and
- must return to a post in the HSE or HSE-funded agency when the training period has expired.

Further information is set out in HSE HR Circular 011/2014.

HSE HR Circular 15/2023 introduced provisions for NCHDs/consultants to apply for career breaks retrospectively in circumstances where they had studied or worked abroad, or worked in Ireland within private hospitals/facilities with a view to having their pre existing superannuation

status restored. Circular 15/2023 sets out eligibility criteria and other relevant provisions including the application process.

## Study Leave

Paid study leave may be granted to employees in respect of third level courses and examinations, subject to the standard arrangements governing the grant of leave generally and provided the costs can be accommodated by the employee's line manager within their approved financial allocation.

The grant of study leave may be considered for Bachelor, Master, Diploma and other third level courses in subjects relevant to the employee's area of work, as agreed with and approved by the line manager.

Employees pursuing primary degree courses in their own time may be allowed up to ten days' study leave with pay, over the full duration of the course. Employees should be given as much freedom as possible as regards spreading the leave over the various course examinations, subject to the condition that a **maximum limit of five days' study leave with pay** will apply to any academic year.

This arrangement will also apply to other third level courses of education that last for three years or longer. For shorter third level courses, **three days' study leave with pay** may be allowed for each year of the course, repeat years being excluded.

Staff working less than full time will have study leave calculated on a pro-rata basis, subject to a minimum entitlement of **one day's study leave** per individual per course.

Attendance at the course must be agreed locally between the line manager and the employee prior to commencement on the course and will be subject to ongoing service requirements.

## Educational Leave NCHDs

The employer may, taking account of the NCHD's medical education and training status, grant up to a maximum of 18 working days educational leave per six month period to facilitate:

- (1) Attendance at courses, conferences, and educational events determined to be appropriate by the HSE, the recognised postgraduate training bodies and the Universities;
- (2) Study leave prior to an examination or repeat examination for higher degrees or diplomas determined to be appropriate by the HSE, the recognised postgraduate training bodies and the Universities;
- (3) Attendance at examinations determined to be appropriate by the HSE, the recognised postgraduate training bodies and the Universities;

(4) Attendance at interviews within the Irish public health service appropriate to the NCHD's training / career pathway;

All educational leave must:

- (1) be relevant,
- (2) take account of service and rota needs,
- (3) be recommended by the supervising Consultant / Clinical Director and
- (4) be approved by the Employer in advance in line with the Employer's leave policy and with cognisance of the requirements of any specialist training / professional competence scheme the NCHD is participating in and related medical education and training requirements.

Educational leave will be accommodated and granted as follows:

- NCHDs undertaking Gateway Exams/Mandatory Courses will be granted a calendar week (which will account for 5 days of the study leave entitlement) of leave, not including the day of the exam, the week prior to Gateway Exams, or failing this, within two weeks before the exam. In exceptional circumstances, where multiple NCHDs are undertaking the same exam, the study leave will be granted within one of the 3 weeks before the exam.

- NCHDs undertaking Gateway Exams/Mandatory Courses will be granted Study Leave for the 24-hr period of the day of Gateway Exams/Mandatory Course and where required the preceding 24 hours to facilitate travel to an in-person exam/course. This must be booked more than 6 weeks in advance, or it cannot be guaranteed.

- All NCHDs will be guaranteed 10 study days per 6 months, while remaining entitled to up to 18 days. Educational leave will be allocated in the first instance to NCHDs sitting Gateway Exams/Mandatory courses as per Appendix 1, subject to the NCHD having booked the leave at least 6 weeks in advance as outlined above.

- Study Leave for mandatory course relevant to Training Scheme completion and to maintain clinical practice (e.g. ACLS). NCHDs will use 1 day of study leave – at a time suitable for rostering – to complete all outstanding mandatory courses and upload details of same to National Employment Record. Mandatory Training to be completed within 2 months of July Changeover and this is to be facilitated by the employer.

HSE applications for study leave should be made using HR Application Form HR108(p).

## **Special Leave with Nominal Pay**

Employees with professional qualifications are entitled to apply for special leave to work with a recognised agency in any of the following:

- a recognised underdeveloped country;
- a disaster/emergency region; and
- a developing country where the public health service is underdeveloped.

Approval may be granted to absences of one year duration. Leave may be extended for a maximum period of three years under this scheme. Short-term absences may be considered in the case of disaster relief. An employee may take a career break immediately following a period of special leave with nominal pay provided the combined leave does not exceed five years. No approvals should be made without the express prior approval of the relevant senior HR manager.

On completion of service abroad, individuals will be entitled to return to an equivalent post with the employing authority.

### **Superannuation**

During special leave, employees are paid a nominal amount per week to protect their superannuation rights.

Contributions are based on pensionable remuneration immediately prior to the commencement of special leave and are adjusted in line with general pay increases.

### **Incremental Credit**

Incremental credit will be allowed where the duties of the foreign assignment are broadly similar in nature to the usual duties in this country. One increment will be allowed in respect of each year covered by the period of special leave, subject to a maximum of three increments.

HSE employees should apply for this leave using HSE HR form 110.

For further information on this Scheme see Department of Health Circular 7/92/S500/29, 16 March 1992, and Department of Environment Circular S.539/6 Circular letter S.14/95, 26 October 1995.

## **Leave for Deployment with the Rapid Response Corps (RCC)**

Employees who are members of Irish Aid's Rapid Response Corps may be granted special leave with pay for deployment to humanitarian emergencies.

The Rapid Response Corps is a roster of skilled and experienced volunteers who have been selected and trained by Irish Aid directorate of the Department of Foreign Affairs, and who are available at short notice for deployment to humanitarian emergencies.

Health service employees who wish to join the Rapid Response Corps must first seek approval from their employer to be available at short notice and for periods of up to 3 months to support Irish Aid's emergency relief operations.

Employees must seek approval from their employer to be released from their work before they can be deployed. If approval is granted employees may be released for a maximum of three months on full basic pay plus normal fixed allowances. This does not include additional amounts due to night-work, overtime, shift-work, working unsociable hours, standby or on call allowances. These payments will be fully reimbursed to the HSE from the Rapid Response Initiative budget, Department of Foreign Affairs, as an element of overseas development aid.

*c.f. [HSE HR Circular No. 17/2008](#)*

## Reserve Defence Forces

Employees who wish to attend training courses with the Reserve Defence Forces should be facilitated as far as possible consistent with the exigencies of the service in the following manner:

Attending annual or basic training:

For a course of annual training lasting 7 days – 3 working days

For a course of annual training lasting 14 days – 7 working days

For a course of annual training lasting 21 days – 10 working days

For a course of basic training lasting 14 to 30 days – special leave with pay for 5 working days

Attending special training (in addition to the above):

For a course of special training lasting 7 days – 3 working days

For a course of special training lasting 14 days – 6 working days

For a course of special training lasting 21 days – 9 working days

Special leave with pay in addition to the above may also be granted in respect of any time necessarily spent in travelling to and from a course of training.

If further leave is required to complete the training the employee may avail of special leave without pay or annual leave.

Staff are eligible for the paid leave granted under this circular only once in any leave year. *c.f. Department of Health & Children Circular No. S146/44*

## **Special Leave with Pay to Volunteer in Exceptional Humanitarian Crisis**

HSE employees may be granted special leave with pay in response to a designated exceptional humanitarian crisis.

The terms of this scheme are as follows:

- The CEO of the HSE will declare when the HSE response to exceptional humanitarian crisis applies.
- An Emergency Management Team (EMT) will be convened that will oversee arrangements including the selection of suitable organisations (e.g. World Health Organisation or other specified NGO), deciding on the skills and expertise and the number of staff required and the selection of staff for deployment.
- Employees who wish to avail of the scheme must be approved for release by their line manager and the relevant Assistant National Director of Human Resources/Head of Human Resources and selected by the EMT.
- Employees who are selected to participate in the scheme may be released for a maximum period of three months with pay (basic pay plus fixed allowances). All other employment terms and conditions will continue to apply during the approved deployment period (i.e. annual leave, incremental credit etc).
- Training and support during deployment will be provided by the selected organisation.

For further information see HSE HR circular 020/2015.



## Leave for Trade Union Representatives

### Time off During Work

Employee representatives of recognised staff associations and unions may be granted time off with basic pay to undertake routine duties arising from their position.

Time off to attend union duties is at the discretion of the relevant line manager and is contingent upon service needs being met. Requests for such leave will not be unreasonably withheld. The Labour Relations Commission's Code of Practice should be used for guidance.

### Special Leave with Pay

Special leave with pay may be granted to non full-time representatives to attend conferences/meetings who are duly authorised to attend such meetings.

The following time limits apply:

#### **Association / Union Meetings**

Annual delegate conferences	2 days per annum
Special delegate conferences	1 day per annum
<sup>40</sup> Executive meetings	20 days per annum

#### **Conference of the Irish Congress of Trade Unions**

Annual conferences and special delegate conferences	No Limit
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The granting of time off during work and special leave as outlined above should be extended to time necessarily spent travelling to and from the meeting in question. The granting of such leave is also subject to the representative's Department / Office's ability to release the representative, having regard to the exigencies of official work.

In relation to special leave with pay, a representative will have to submit a written application for the leave to the appropriate manager, giving details of the purpose for which the leave is sought and other relevant information at least **two weeks** (except in exceptional circumstances) before the date on which the leave is due to commence.

***c.f. Department of Health & Children Circular No. S146/11***

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<sup>40</sup> This excludes Branch Executive / Committee Meetings, and it also excludes meetings of sub-committees etc of the National Executive.

## **Leave for Elected Representatives of Local Authorities**

Employees who are members of local authorities may be granted up to a maximum of 12 days' special leave per annum without pay to attend ordinary meetings of the authority where the meetings are held during working hours.

In addition, employees who are members of local authorities may be granted up to a maximum of five days' special leave per annum without pay to attend further local authority activities, other than ordinary meetings of the authority, that take place during working hours.

Applications for leave of this type must be made in the normal manner to the immediate line manager for approval. Each application will be considered on its merits and in accordance with the exigencies of the service.

Leave may only be granted subject to no additional cost to the HSE being incurred as a result. Cover within the HSE for the absence of the employee while on leave may be arranged in accordance with the HSE's Employment Control Framework and any other relevant policies, procedures, directives or regulations in force during the period.

For further details please refer to the Policy and Procedure regarding Leave for Elected Representatives of Local Authorities (2011).

## Special Leave for Sporting Purposes

Special leave with pay may be granted to employees representing Ireland at:

- The Olympic Games
- World Championship events
- European championship events
- Pre Olympic qualifying competitions which applies to sports in which there are specific pre Olympic qualifying events

Employees who wish to apply for this leave should complete the relevant form (SLS 1). This form will verify the status of the competition for which the leave is sought through the section for completion by the National Governing Body of the sport as well as seeking other information for completion by the employee. Paid leave should not be granted without the prior authority of the Department of Health in cases where there is financial sponsorship of the competitors beyond reasonable travelling costs, subsistence expenses or equipment costs.

The completed form should be submitted on the employee's behalf by their local HR department to the Department of Health at [national\\_hr\\_unit@health.gov.ie](mailto:national_hr_unit@health.gov.ie) for approval and sanction.

For further information refer to Department of Public Service Circular E103/3/83.

## Other Types of Leave

### ***Candidate for Interview***

An employee is granted a maximum of six days' pay in any one year, to enable the employee to appear before selection boards for posts advertised by the Public Appointments Service, a government department, the Health Service Executive, or a local authority.

***c.f. [Department of Health Circular No. 10/71](#)***

Candidate for Interview	Paid <b>Maximum of 6 days per year</b>
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### ***Ministerial Appointment***

When appointed by a Minister to be a member of any commission, committee or statutory board or a director of a company, an employee will be granted special leave with pay to enable the employee to attend meetings of the body in question.

***c.f. [Department of Health Circular No. 10/71](#)***

<b><i>Ministerial Appointment</i></b>	
Commission / Committee / Director	Paid

### ***Selection Board***

An employee who is invited by the Public Appointments Service, a government department, the Health Service Executive or a local authority, to act on a selection board, will be granted special leave with pay to enable them to give service on the board.

***c.f. [Department of Health Circular No. 10/71](#)***

<b><i>Selection Board</i></b>	
Panel of Assessors	Paid

## **Flexible Working Scheme**

A scheme of flexible working which allows employees to work less than whole time hours and receive entitlements on a pro rata basis applies in the health service and is set out in the Agreement on Flexible Working in the Health Service (2001).

This scheme is subject to the overriding requirement that there should be no adverse impact on service delivery. When considering applications for working reduced hours, managers must assess whether the applicant can be facilitated having regard to patterns of work and an assessment of the capacity of the service to maintain required operational levels having regard to overall service requirements.

As the employee's terms and conditions are based on their contractual hours as set out in their contract of employment, it is important to ensure that the weekly hours specified in the contract reflect the actual patterns of attendance. Where this is not the case, contracts should be reviewed and amended accordingly.

For clarity of reference, part time and atypical working is referred to as part time working throughout this document.

## **Shorter Working Year Scheme**

The purpose of the Shorter Working Year Scheme is to permit public health sector employees to balance their working arrangements with outside commitments, including the school holiday periods of their children.

Under the terms of the scheme special leave is available as a period of two, four, six, eight, 10 or 13 consecutive weeks. The leave may be taken as one continuous period, or as a maximum of three separate periods, each consisting of not less than two weeks and not exceeding 13 weeks in total. While the period of leave is unpaid special leave, those participating in the scheme may apply for special administrative arrangements for the payment of part of the basic salary during the period of special leave. The period of special leave under the Shorter Working Year scheme will not reckon for pension purposes.

The granting of leave under this Scheme is subject to service exigencies. Management should give due consideration to applications from employees but are responsible for ensuring that the operating requirements of the organisation will not be adversely affected.

It is important to note that it is not possible to withdraw or to alter an application for the Shorter Working Year scheme once that undertaking has been given if the employee in question has applied for special salary arrangements.

For further information see HSE HR Circular 023/2015.

## Right to Request Flexible Working Arrangement for Caring Purposes

### 1. Types of Flexible Working

Employees have a statutory right to request a flexible working arrangement for caring purposes. Flexible working (FW) is defined as a working arrangement where an employee's working hours or working patterns are adjusted, including through the use of remote working arrangements, flexible working schedules or reduced working hours. The following national HR policies/schemes provide for flexible working and will continue to operate in the normal manner:

Types of Flexible Working	Description
Part-time work	Where an employee works fewer hours than full-time employees Please refer to the <i>Agreement on Flexible Working</i> <a href="#">here</a> .
Shorter Working Year	Where an employee can take unpaid leave for a certain period(s) of the year. Please refer to the Shorter Working Year Scheme <a href="#">here</a> .
Working from home (WFH)	The <i>HSE Blended Working Policy for the Public Health Service</i> provides for the right to request remote working (WFH) and is available <a href="#">here</a> . The term 'blended working' refers to a combination of working from the employer's work premises and working remotely.

Employees should contact their manager for specific information on the types of flexible working arrangements that may be available as this may depend on the job and/or work location (e.g. flexitime).

### 2. Eligibility Criteria

To make a request for flexible working (FW) for caring purposes an employee must be:

(i) the parent or acting in loco parentis to a child under 12 years of age or under 16 years if the child has a disability or illness and who is or will be providing care to the child, or

(ii) providing or will provide personal care or support to a specified person who –

(a) is one of the following:

- the employee's child,
- spouse or civil partner,
- cohabitant,
- parent or grandparent,
- sibling or
- a person other than one in the categories already specified who lives in the same household as the employee.

and

(b) is in need of significant care or support for a serious medical reason.

Section 3 gives details of any additional information that employees may be required to give about the person in need of care.

An employee can request FW from their first day at a new job, but they must complete a minimum of 6 months' continuous service with their employer before an approved arrangement can start.

### **3. Making a Flexible Working Request for Caring Purposes**

An employee must submit their request for FW to their employer as soon as is reasonably practicable but not later than 8 weeks before the proposed starting date. A request for FW must be in writing (this includes an online application) and signed by the employee.

HSE employees should complete the application form for the relevant scheme. See links below:

<https://healthservice.hse.ie/staff/benefits-and-services/hr-forms/>

An employer can ask an employee for any additional information that they may reasonably require about the person in need of care.

For further information refer to HSE HR Circular 010/2024.

## **Section 2 – Pay Arrangements for Unsocial Hours Attendance**

This section deals with the unsocial hours' attendance arrangements and payments for such which generally apply in the public health service. The following are included:

- Overtime
- On call/stand by
- Planned Essential Services
- Sleepover
- Saturday work
- Sunday work
- Public holiday
- Night duty
- Shift work
- Twilight Payment



## **Overtime**

### **General Principle governing overtime arrangements**

Employees may be paid overtime rates for hours worked in excess of the whole time hours for the category / grade. With the exception of ambulance personnel overtime is calculated on basic pay only.

### **Overtime for Part-time Employees**

Participants in the Flexible Working Scheme / part-time employees are entitled to earn overtime payments once they have worked over and above the standard weekly working hours of the whole time equivalent in the given week.

Part-time employees who work additional hours, i.e. hours over and above their contracted hours on a pre-arranged basis, will be paid at their normal rates until the standard weekly working hours for the grade have been worked.

In certain circumstances such as where an employee works beyond the span of their shift in emergency or in unforeseen circumstances (i.e. it is not pre-arranged) the employee may earn overtime payments, even if the employee has not worked the hours of the whole time equivalent in their grade.

### **Overtime Rates**

Overtime rates may vary depending on the category or grade of employee involved. HSE HR Circular 16/2023 (Addendum to HSE HR Circular 31/2021) sets out overtime rates currently for various health sector grades.

### ***Nursing***

The following are the normal overtime rates applying to nursing:

#### **Monday to Friday**

Time + ½ for additional hours worked between finish of normal day duty and midnight.

Double time for additional hours worked between midnight and the start of normal day duty.

#### **Saturday**

Time + ½ for the first four additional hours worked and double time for the remainder.

#### **Sunday & Public Holidays**

Double time for all additional hours worked.

The divisor for the purposes of calculating overtime is 37.5 hours.

NER Memo 19/2023 sets out guidance in relation to the application of overtime rates to nursing and midwifery grades.

### ***Support Staff***

#### **Monday to Friday**

Time plus ½ for additional hours worked between finish of normal day duty and midnight.

Double time for additional hours worked between midnight and the start of normal day duty.

#### **Saturday**

Time plus ½ from normal starting time to 12 midday/first 4 hours and double time for the remainder.

#### **Sunday & Public Holidays**

Double time for all additional hours worked.

The divisor for the purposes of calculating overtime is 39 hours.

### ***Non-Consultant Hospital Doctors***

Overtime refers to work on-call on-site as required by the Employer in excess of the average 39 hours worked in each week of the roster period.

Overtime is therefore paid when the doctor has worked in excess of 39 hours per week on average, over the averaging period of 2 weeks (with the exception of those on a 6 week or equivalent shift cycle for which a shift premium is payable). This means that overtime is paid for those hours worked in excess of 78 hours over a 2 week period.<sup>41</sup>

If an NCHD is not rostered for a public holiday and opts not to use a day's annual leave but instead opts for an unpaid day's leave, core pay for that week must not be deducted but overtime will not apply until after 39 hours have been worked in that week.

All hours worked in excess of the averaged 39 hours each week are liable for payment at overtime rates as specified in Department of Health salary scales.

Where the NCHD is rostered to work in excess of 39 hours in any week as part of a roster covering a number of weeks, payment may be calculated in such a manner as to provide for payment of:

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<sup>41</sup> See HSE HR Memo of 23 December 2022, Agreement between HSE and IMO in relation to NCHDs, December 2022, and NER Memo 2/2023.

- no more than 39 hours for each week worked during the roster period at the standard hourly rate;
- all additional hours in excess of above at the overtime rate.

The payment arrangement above should apply in the case of all NCHDs providing services within the public health system, irrespective of where they are employed. Such public health system service will be treated as cumulative for premium payment purposes. Arrangements covered by a separate, medical agency contract will not be affected.

All overtime hours worked on a Sunday or public holiday are paid the rate of single time extra.

Unrostered overtime approved by the relevant Consultant / Clinical Director will be paid to the NCHD. The Employer may query such unrostered overtime or approval of same. Should a query be made, the NCHD will be notified of same. Payment will be made subsequent to any queries regarding such unrostered overtime being resolved

**Overtime Rates (subject to the above)**

<u>Day</u>	<u>Rate</u>
Monday – Saturday	Time plus ½
Sunday	Double time (T x 2)
Public Holidays	Double time (T x 2)

***Clerical/Administrative Grades***

The following overtime payment arrangements apply to clerical / administrative and analogous grades up to and including Grade VII. No overtime rates apply to grades above Grade VII.

**(a) Grades whose maximum salary does not exceed that of Grade V (including Environmental Health Officers)**

Monday to Friday Attendance

First 3 hours in week	Time plus ¼
Next 5 hours	Time plus ½
Thereafter	Double time

Saturday attendance:

- Rate payable when aggregate of hours worked in excess of the normal working week and hours worked on Saturday of the same week is less than 10 hours: Time plus ½

- Rate payable when aggregate of hours worked in excess of the normal working week and hours worked on Saturday of the same week is more than 10 hours: Double time
- Sunday and public holiday attendance: Double time

b) Grades whose maximum salary does not exceed that of Grade VII

Monday to Friday Attendance

First hour of week in excess of gross working hours	Free
Next 2 hours	Time plus $\frac{1}{4}$
Next 5 hours	Time plus $\frac{1}{2}$
Thereafter	Double time

Saturday attendance

- Rate payable when aggregate of hours worked in any continuous period of two weeks and hours worked on Saturday is less than 20 hours:  
Time plus  $\frac{1}{2}$ .
- Rate payable when aggregate of hours worked in any continuous period of two weeks and hours worked on Saturday is more than 20 hours:  
Double time
- Sunday and public holiday attendance: Double time

Calculating hourly overtime rates:

- The hourly rate for grades III, IV and analogous grades should be calculated by reference to the employee's actual salary on the basis of a 35 hour week.
- The hourly rate for grade V and analogous grades should be calculated by reference to the employee's actual salary on the basis of a 38 hour week.
- In the case of employees whose salary equals or exceeds the second long service increment of the grade V scale, the hourly rate should be calculated by reference to the second long service increment of the grade V scale on the basis of a 38 hour week.
- The hourly rate for grades VI, VII and analogous grades should be calculated by reference to whichever is the lesser of individual's salary or the second long service increment of the grade V salary scale and is based on a 38 hour week.

***Craftworkers and Craftsmen's Mates***

The following overtime payments apply to craftworkers and craftsmen's mates as per the 1997 Productivity Agreement:

Monday to Friday

Time and  $\frac{1}{2}$  for additional hours worked between finish of normal day duty and midnight.  
Double time for additional hours worked between midnight and the start of normal day duty.

Saturday

Time +  $\frac{1}{2}$  for first four hours and double time for the remainder.

### **Sunday and Public Holidays**

Double time to 12 o'clock midnight on Sunday and on public holidays (midnight to midnight).

### ***Ambulance Personnel***

The general overtime payment arrangements as set out in national agreements apply to ambulance personnel. The following provisions apply to Paramedics/Advanced Paramedics (*Grade codes 6463, 6464, 3195 and 3190*) and *Emergency Control dispatchers/Controllers/Call Takers (grade Codes 6450,6455,6457)*:

- Those required to work on a rostered day off will receive double time for all hours worked.
- Staff employed prior to February 2012 who are in receipt of a Cardiac Allowance shall have the Cardiac Allowance included in the calculation of the hourly overtime rate. The inclusion of this allowance does not apply to new entrants/recipients from February 2012.

Where appropriate the hourly rate may include the ambulance specific shift allowance.

### ***Environmental Health Officers (EHOs)***

The overtime arrangements and rates correspond to those of the clerical/administrative Grade V as set out below as per Department of Health and Children Circular No. 20/2004:

First 3 hrs in the week	Time plus ¼
Next 5 hrs	Time plus 1/2
Thereafter	Double Time
Saturday (less than 10 hours)	Time plus 1/2
Saturday (more than 10 hours)	Double Time
Sunday/Public Holiday	Double Time

### ***Phlebotomists***

Where overtime arises at weekends for staff working a 5 over 5 attendance regime, it should be paid at time and a half for the first four hours (on a Saturday) and double time for the remainder (NER memo 005/2022).

### **Time off in Lieu**

Where time off in lieu (TOIL) is granted it applies at standard time, i.e. hour for hour. Any TOIL accumulated must be taken within a three month period. If required to work additional hours, management should ensure compliance with the rest and working time provisions of the Organisation of Working Time Act 1997. Further guidance is available in Appendix 1 of HSE HR Circular 21/2021 [here](#).

Standardised time back arrangements for Radiography grades are outlined in HSE HR Circular 006/2012.

## On-Call / Standby Allowance and Call-Out Payments

On-call / Stand-by is defined as a period when an employee is scheduled for a designated period to be available for emergency work. An employee on stand-by makes a specific commitment to be available immediately to return to work if requested.

### On-Call Stand-By Payment

A fixed payment is made for the designated period(s) for which the employees make themselves available, e.g. a weekly standby payment.

Call-out arises when employees are required to work after their normal working hours.

### NCHDs

<i>Description</i>	<i>On-call Payment Off Site</i>	<i>On call Payment On site</i>				
<p>NCHDs provide on-call on a rostered basis both off site (at home) and on site (in the hospital).</p> <p>On call off site is defined as a period when the NCHD is scheduled for a designated period to be off site but available for emergency work.</p>	<p>As per the NCHD Contract:  <b>On call off-site call rates</b></p> <table data-bbox="699 949 1139 1151"> <tr> <td data-bbox="699 987 874 1048">Monday – Sunday</td> <td data-bbox="877 949 1139 1084">Half of all hours, up to a maximum of 10 hours spent on call – T + ¼</td> </tr> <tr> <td data-bbox="699 1088 874 1151">Balance of Hours</td> <td data-bbox="877 1088 1139 1151">½ T</td> </tr> </table> <p>In addition NCHDs who are rostered for on-call off-site on a Sunday are paid - for the first 8 hours worked between the hours of midnight on Saturday and midnight on Sunday - at the rate of 0.75 time and at the rate of ½ time thereafter. Therefore first 8 hours on-call off-site on a Sunday are paid an additional ¾ time on top of the otherwise applicable rate.</p> <p>On call off site is calculated over a one week period as follows:</p> <ul data-bbox="730 1693 1158 1906" style="list-style-type: none"> <li>• Each week Monday to Sunday is considered the reference period for payment</li> <li>• All off-site hours are considered for calculation</li> </ul>	Monday – Sunday	Half of all hours, up to a maximum of 10 hours spent on call – T + ¼	Balance of Hours	½ T	<p>Paid at the appropriate overtime rate (T1/2/double time for Sundays and Public Holidays if additional hours exceed 39 hours per week on average in rostered period.</p>
Monday – Sunday	Half of all hours, up to a maximum of 10 hours spent on call – T + ¼					
Balance of Hours	½ T					

## Theatre Nurse (HSE HR Circular 51/2020 refers)

1. On-call with Standby - Each Day. Nurses who are on call with standby and who attend work will be paid one fee per case

Time Band	Payment
From start of On-Call-22:00 Operations lasting less than 2 Hours	2 Hour operation= Current Rate as per Department of Health consolidated pay scales Multiple operations less that 2 hours duration in this Time Band = Number of cases x Current rate as per Department of Health Consolidated scales
From start of On-Call--22:00 Operation lasting more than 2 hours but less than 3	Current rate as per Department of Health Consolidated scales
From start of On-Call--22:00 Operation lasting more than 4 hours and up to 5 hours	Current rate as per Department of Health Consolidated scales
22:00-08:00 Fee per operation per hour	Current rate as per Department of Health Consolidated scales Multiple operations during this Time Band = Number of cases x current rate as per Department of Health scales.

2. On-call without standby: Fee per operation (call-in without standby) as per current rate in Department of Health Consolidated scales. Overruns from roster at normal overtime rates (no time back in lieu).

3. On-call over Weekend: In situations where no roster duty is available over the weekend the following will apply on a pro-rata basis, i.e. appropriate rate divided by 12, then multiplied by the number of hours available. No time back in lieu will apply.

## Physiotherapists

Description	*On-call Standby Payment	Call-out Payment With Standby	Call-out Payment Without Standby
-After hours service provided as follows: - Monday to Friday - Saturday - -Sunday and Public Holidays	Standby fee – fixed standby fee from Monday to Friday. Enhanced standby fee for Saturday, Sundays and Public Holidays, c/f Consolidated salary scales	Fee per call (paid per half hour), c/f Consolidated salary scales	Enhanced fee per call (paid per hour), c/f Consolidated salary scales

\*A ceiling applies to the total amount on-call that a hospital should pay per week.



## Radiographers<sup>42</sup>

HSE HR Circular 006/2012 refers

<b>Description</b>	<b>On-call Standby Payment (On call off-site)</b>	<b>Call-out Payment With Standby</b>
After hours service where required is provided as follows: <ul style="list-style-type: none"> <li>- 8pm to 8am Monday to Friday</li> <li>- Saturday</li> <li>- Sunday and Public Holidays</li> </ul>	Standby fee – fixed payment which varies according to time period. The standby payments outlined in the Department of Health consolidated salary scales are for a 12 hour period only, and where periods of on call exceed 12 hours, pro rata payment for such additional hours applies.	Paid at appropriate out of hours' hourly rate. First call out which lasts less than one hour in duration will attract a minimum of one hour's pay. Call out thereafter are paid per hour or part thereof. <p style="text-align: right;"><b>Please note a separate payment for On call applies to CT rosters as of 1<sup>st</sup> of February 2022.</b></p>

Note 1<sup>43</sup>: As provided for in LCR20232, an out of hours<sup>44</sup> rate of time and ½ is applied to radiographers in circumstances where all other possible staffing options had been explored in the first instance without success, solely in the context of filling gaps arising from the introduction of the extended day and only between the hours of 8am to 9am and 5pm to 8pm. It is emphasized that this is very much as a last possible option and only in the above circumstances. Such arrangements must be cognizant of and consistent with general HSE policy on such matters (CERS memo 27/9/2012).

Note 2: Due to service demands in certain locations radiographers may work the on call on site. In such circumstances the hourly on call rate may be paid for full shifts. On-call on-site is based on service demand as determined by management. On-call on-site does not attract a Stand-by payment.

Note 3: With reference to LCR20254, CERS Memo 29 May 2014 provides that radiation therapists are entitled to an on call payment from 6pm to 8pm if an extended day has not been introduced. Where an extended day is not in operation such payments should not be a regular occurrence and service requirements should be regularly reviewed in this regard to ensure appropriate service delivery.

<sup>42</sup> These arrangements also apply to Radiation Therapists.

<sup>43</sup> This arrangement is specific to Radiographers.

<sup>44</sup> This out of hours payment is equivalent to time and a half however it is not to be considered or treated as overtime. It is payable to part-time staff for the hours that they work and they are not required to meet the weekly WTE for their grade.

## Medical Laboratory Scientists

HSE HR Circular 001/2011, and CERS Memorandum 02/2020 refers.

<b>Description</b>	<b>On-call Standby Payment</b>	<b>Call-out Payment With Standby</b>
<p>After hours service provided as follows:                      -8pm to 8am                      Monday to Friday                      - Saturday 12 am until Sunday 12am and                      Public Holidays</p>	<p>Standby fee – fixed payment which varies according to time period. The standby payments outlined in the Department of Health salary scales ( are based on a 12 hour period and pro rata applies after 12 hours.</p>	<p>Paid at appropriate out of hours rate based on time worked on a pro rata basis. First callout will attract one hour's pay if less than one hour.</p>

## Ambulance

<b>Description</b>	<b>On-call Standby Payment</b>	<b>Call-out Payment With Standby</b>
<p>After hours service</p>	<p>Standby fee (1/6 of flat rate for each hour on-call).</p>	<p>Paid at appropriate overtime rate per hour worked.</p>

## ICT emergency on call managed through the Office of the Chief Information Officer (OoCIO)

HSE HR Circular 008/2018 refers

<b>Description</b>	<b>On-call Standby Payment</b>	<b>Call-out Payment</b>
<p>After hours service provided as follows:                      Monday -Thursday 5pm-9am and from 5pm Friday to 9am Monday</p> <p>Staff provide the emergency out of hours' service in addition to their normal contractual working hours. All individuals are required to comply with the provisions of the Organisation of Working Time Act. All rest periods related to call outs, including compensatory rest are unpaid.</p>	<p>Standby fee (€450 June 2020) payable for the provision of availability for a continuous seven day period. To receive the full payment, availability must be provided Monday to Thursday 5pm-9am and from 5pm Friday to 9am Monday (total 128 hour period). Where staff provide on call for less than the seven day period, a pro rata payment applies e.g. one night's call (5pm-9am) attracts a payment of €49.22.</p>	<p>Where a call out is required, it will automatically attract a 4 hour overtime allowance, separate to the standby rate. The four hours overtime payment covers any additional calls within those four hours. If a call takes five hours then the overtime paid is five hours at the appropriate overtime rate. Where an individual is required to physically attend at work, travel expenses shall be approved in line with national circulars and National Financial Regulations.</p>

## Planned Essential Services

### Public Health Nurse

Description	Payment
Essential weekend / Public Holiday Service	Fixed payment
First call on Saturday and first call on Sunday	Fixed payment
Each subsequent call on Saturday and Sunday	Fixed payment
Payment in lieu of time off for emergency work	Fixed payment

Where a public health nurse is required to perform planned essential services on a public holiday, and qualifies for special payment for such duties, this should not effect in any way their entitlement to a day off in lieu for the public holiday worked (S100/38, 30 May 1980).

## Sleepover

### Definition of Sleepover

'Sleepover' applies where the provision of social care services occur in a residential setting on a 24 hour, seven day per week basis. Employees are required to sleepover at their work location. Sleepover refers to a continuous period of 8 hours or more usually between the hours of 11pm and 8am.

### Payment System

Payment for sleepover is set at the current minimum wage per hour rate for an adult worker as set out in the Department of Health consolidated salary scales. The sleepover rate should be amended in line with any change to the national rate.

**For further information see HSE HR Circular 27/2014.**

## Unsocial Hours Premium Payments

As the health service operates seven days a week on a 24 hour basis, many categories of employees are required to work hours outside of the standard working hours, i.e. 8.00am - 8.00pm Monday to Friday.<sup>45</sup> These hours are worked as part of the contracted weekly working hours (e.g. 37.5 hours for nursing employees) and are described as “unsocial hours” and attract premium rates of pay. Set out below are the periods of time which usually attract premium payments:

- Saturday work
- Sunday work
- Public Holidays
- Night Duty
- Shift Work
- Twilight payment

In determining the appropriate premium payment, the rule normally applied in the health service is that the starting time of the roster determines the premium payment applicable to the hours worked.

Premium pay calculations are based on basic pay rates only. They do not apply to hours worked on an overtime basis.

### Saturday Work

Saturday work is normally defined as any roster commencing between midnight on Friday and midnight on Saturday. An employee who works a **5 over 7 roster** and is scheduled to work on Saturday is entitled to a Saturday allowance. This is a fixed amount and is payable irrespective of the number of hours worked.

Where public holidays fall on a Saturday, the Saturday allowance is not payable as public holiday premium payments apply.

Health Care Support Assistants (formerly known as Home help grade) who work less than four hours on a Saturday receive 50% of the support employees' Saturday allowance and those who work more than four hours receive the full allowance.

### Sunday Work

Sunday work is normally defined as any roster which commences between midnight on Saturday and midnight on Sunday. An employee who works a **5 over 7 roster** and is scheduled to work on Sunday is entitled to single time extra for each hour worked.

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<sup>45</sup> As agreed under the Framework for Implementation of Clause 30.4 of T2016 (see HSE HR Circular 003/2009)

## **Public Holiday**

Public holiday work is normally defined as any roster which commences between midnight on the eve of the public holiday and midnight on the public holiday.

An employee who works a **'5 over 7' roster** and is scheduled to work on a public holiday is entitled to single time extra for each hour worked.

Where the public holiday falls on a Saturday, the Saturday allowance is not payable as public holiday premium payments apply.

For NCHDs public holiday work is any hours worked between midnight on the eve of the public holiday and midnight on the public holiday.

## **Night Duty (HSE HR circular 003/2012)**

Night duty, which is normally defined as hours worked between 8.00 p.m. and 8.00am, attracts a premium payment of time plus  $\frac{1}{4}$ . This premium is only payable to employees rostered for duty through the night, i.e. those who worked at least three hours between midnight and 7.00 a.m. It does not include twilight shifts that extend into night duty hours (e.g. a roster from 4pm – midnight would not attract night duty premium).

In the event of an employee working on a Sunday or Public Holiday, the night duty premium is paid on the basis of the basic salary of the employee and not on the basic plus unsocial hours allowance for that day.

The payment of night duty premium for NCHDs is set out in HSE HR Circular 003/2014. Under the NCHD contract of employment, the payment of night duty premium may be extended from 5pm to 8am should the period of night duty commence at 5pm and run through the night.

## **Shift Work**

Shift work occurs where employees work in rotation so that a function can operate beyond normal daily or weekly hours. Workers with a starting time variation of at least four hours and a difference of at least 12 hours between the earliest and the latest finish should be paid a shift allowance. It should be noted that where a shift premium is paid, Sunday premium is applied but Night Duty and Twilight payments do not apply.

## **Twilight Payment**

Nurses and midwives (Department of Health Circular 115/99), support staff (HSEA letter 24 July 2002), social care workers and leaders (Department of Health Circular 28/2004) who are currently eligible for twilight payments and who are rostered for hours between 6pm and 8pm or until the end of the day roster/shift are eligible for payment of the time and 1/6<sup>th</sup> twilight payment<sup>46</sup>.

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<sup>46</sup> Some locations may have an established practice of paying time and a sixth to other staff categories.

Time and one sixth payments are paid to radiographers in respect of time worked as part of core working hours between 8am to 9am, and 5pm to 6pm.

Medical Scientists who are rostered to work any time between 6pm to 8pm from Monday to Friday as part of their core working week are paid time plus 1/6<sup>th</sup>.

Twilight premium may also be payable to consultants in line with section 13.4 of the Consultants' Contract 2023, in the following circumstances:

*Where services to patients require it, the Employer may request the Employee to be available to be scheduled to carry out their core weekly working hours later than is provided in paragraph 13.2. If the Employee agrees to such a request, the Employee's core weekly working hours will be scheduled to occur between 8.00 am and midnight on rostered Mondays to Saturdays. In that event, work that is (a) done by the Employee during the hours of 8.00 pm and midnight (on Mondays to Fridays) and 6.00 pm and midnight (on Saturdays) and (b) that is part of the Employee's scheduled core weekly working hours will not be regarded as overtime and will be regarded as "twilight working". For the avoidance of doubt, work that is done by the Employee (c) during the hours of 8.00 pm and midnight (on Mondays to Fridays) and 6.00 pm and midnight (on Saturdays) and (d) that is not part of the Employee's scheduled core weekly working hours will not be regarded as twilight working but will be regarded as overtime if it meets the requirements for overtime set out in this contract.*

*14.3.4 If the Employee's roster involves twilight working then a twilight premium (and not the overtime rate) will apply to the hours during which the Employee is engaged in twilight working (as defined in paragraph 13.4). This twilight premium will be an additional 1/6<sup>th</sup> of the Employee's hourly rate of pay.*

In the event of an employee working on a Sunday or Public Holiday, the above premium is paid on the basis of the basic salary of the employee and not on the basic plus unsocial hours allowance for that day.

# Section 3 - Incremental Credit and Starting Pay on Promotion

## Incremental Credit

### Section A General Principles

- New appointees to any grade start at the minimum point of the scale. Incremental credit will be applied for recognised relevant service in Ireland and abroad (Department of Health Circular 2/2011). Incremental credit is normally granted on appointment, in respect of previous experience in the Civil Service, local authorities, health service and other public service bodies and statutory agencies. This provision is not affected by a break in service.
- Annual increments are normally granted to employees, subject to satisfactory service.
- Increments are normally postponed in respect of leave without pay for a period exceeding 28 days (e.g. during special leave without pay for domestic reasons or during unpaid sick leave) or for the period a person is on a career break. However increments are not deferred during periods of unpaid parental leave, unpaid maternity leave and unpaid adoptive leave.
- Employees who have availed of the scheme relating to special leave with nominal pay in order to work in under-developed countries are entitled to incremental credit in respect of this period, provided the duties performed overseas are broadly similar to present duties. One increment is granted in respect of each year worked, up to a maximum of three increments (Circulars S146/30, 31-08-76).
- Temporary employees enjoy the same incremental credit arrangements as their permanent counterparts.

### Long Service Increments (LSI)

Where applicable the first LSI is payable to employees after three years at the maximum of the scale. The second LSI (if applicable) is payable after a further three years and the third LSI (if applicable) is payable after a further three years.

*The rule governing access to LSIs in respect of experience gained outside the Irish public health service is as follows:*

An employee's aggregate recognised service is reckonable for the purposes of entitlement to LSIs i.e. they will acquire an entitlement to an LSI after the same number of years service as their equivalent in the Irish public health service. A newly appointed staff nurse, for example, who has 14 or more

years' recognised service will be entitled to be placed on the LSI. The requirement that the employee was in receipt of the maximum point of the salary scale for three years no longer applies ([HSE HR Circular No. 004/2009](#)).

### **Part-time Employees**

Part-time employees may also progress along the incremental salary scale on the same basis as permanent whole time equivalent employees upon completion of satisfactory service. Therefore incremental progression will occur after 52 continuous weeks' service i.e. on the anniversary of the employee's appointment date. In the case of employees who provide relief services on an "if and when required basis", any week in which no hours were worked is normally counted for incremental credit purposes in accordance with the arrangements which apply to all other employees with fixed contracted hours. (Refer to Corporate Employee Relations Services Memos of 26/10/2011 and 3/11/2011).

## **Section B – Special Arrangements**

### **Nurses**

#### **Incremental Credit on Appointment**

Full incremental credit may be granted on appointment in respect of all previous genuine nursing service in the public or private sector in Ireland and abroad.

Nurses will be required to satisfy the following validation criteria:

1. Letter from previous employer in Ireland confirming service and relevant salary point.
2. Statement of employment details from employers based outside of Ireland.
3. Up to date C.V.

Students will receive incremental credit in respect of the 36 week placement period (HSE HR Circular 005/2016). On successful completion of the Degree Programme and registration with the Nursing and Midwifery Board of Ireland (NMBI) and on commencement of employment in the public health service graduates will be remunerated at the first point of the nurse salary scale for a period of sixteen weeks taking into account the incremental credit applied for their 36 week placement.

Incremental credit for experience as a State Enrolled Nurse in the U.K. should be granted on appointment as a nurse on the basis of one increment for every three years service as a State Enrolled Nurse with the seventh incremental point being given for 20 years service ([HSE HR Circular No. 18/2006](#)).



Health service employees who undergo the nursing degree programme whether sponsored or self-funded, will, upon appointment as a staff nurse, be assimilated on the nearest monetary point of the staff nurse scale to their existing salary ([HSE HR Circular No. 11/2008](#), [HSE HR Circular No. 30/2017](#) and [HSE HR Circular 40/2020](#)).

### **Post Registration Courses**

Incremental credit may be granted to nurses undertaking approved courses by the Nursing and Midwifery Board of Ireland on a full-time basis, up to a maximum of *two* increments, provided the employee obtains the qualification within a reasonable period of time.

### **Note**

***This provision only applies once during a nurse's career, irrespective of the number of full-time courses the nurse undertakes.***

### **Changing Disciplines**

An employee is entitled to incremental credit in respect of previous service in another nursing discipline. For example, a mental health nurse who transfers to general nursing is entitled to incremental credit in respect of service as a mental health nurse.

### **Clerical/Administrative Grades**

Clerical and administrative grades are entitled to incremental credit on the same basis as set out above under "General Principles". In this context, 'previous relevant experience' refers to previous service in a similar grade in the Civil Service, Local Authority Service, Health Service and other public service bodies and statutory agencies, in Ireland or abroad.

### **Craftworkers**

Employees are appointed to the second point of the craftworker salary scale after six months. Thereafter, movement to the next point is after 12 months. (Department of Health Circular 87/98).

### **Non Consultant Hospital Doctors**

a) Incremental credit is granted to the NCHD in respect of:

- i) previous employment as an NCHD in Ireland or an EU member state in the public service, including:
  - (1) periods spent in a recognised training post; and
  - (2) periods spent employed by an agency and assigned to the public health service for periods of in excess of two consecutive weeks.

For periods spent employed by an agency there shall be a limit of one incremental point of progression irrespective of the number of periods or duration of same.

- ii) time spent gaining a graduate qualification (prior to completion of internship) in the health sciences subject to a limit of one incremental point of progression for any such qualification.
- iii) time spent out of a substantive post whilst gaining a postgraduate qualification (post completion of internship) provided that during such time (s)he was actively engaged in clinical and/or relevant public or private hospital work (whether as part of or separate to the qualification); in a vocational training scheme for general practice; or working as a university lecturer, tutor or demonstrator.

and subject to the provisions of the Public Service Stability Agreements.

In relation to the appointment of a doctor to the post of registrar, they should have at least 24 months post qualification (completion of internship) experience before being eligible for such an appointment.

- b) An NCHD will not be regarded as having incremental credit or previous experience at Registrar level unless they have worked for at least three months in a role which requires them to undertake the full range of duties associated with a Registrar post.
- c) An NCHD who takes up appointment as a Senior House Officer having previously held a Registrar post will be placed on the equivalent point of the SHO salary scale.
- d) Periods spent in vocational training schemes for general practice are reckonable for incremental credit.
- e) Locum NCHDs shall be granted incremental credit on the basis of previous recognised hospital experience.
- f) An NCHD who was employed in an EU Member State will be granted incremental credit for such experience. In such cases, incremental credit will be evaluated on the basis of the NCHD's date of registration to practise as a doctor and subsequent experience.
- g) An NCHD who was employed in a state (other than an EU member state) prior to taking up appointment in Ireland may be granted incremental credit where the experience was obtained in a recognised teaching hospital. Satisfactory evidence of same must be provided by the NCHD. Where such a determination is in question, a tripartite committee of the IMO, HSE and DoH will consider the evidence in a similar fashion to questions regarding pre-internship qualifications.
- h) Up to two years incremental credit shall be granted to Maxillo-facial trainees based on previous postgraduate dental experience.

- i) Assimilation to the Specialist Registrar salary scale shall be on the basis of completed years of service as follows on the following salary points:

Point of Scale	Specialist Registrar Point of Scale
2 <sup>nd</sup> / 3 <sup>rd</sup> SHO	1 <sup>st</sup> Point
4 <sup>th</sup> SHO and 1 <sup>st</sup> Registrar	2 <sup>nd</sup> Point (maximum point for assimilation for SHO service)
2 <sup>nd</sup> Registrar	3 <sup>rd</sup> Point
3 <sup>rd</sup> Registrar	4 <sup>th</sup> Point
4 <sup>th</sup> Registrar	5 <sup>th</sup> Point (maximum point for assimilation for Registrar service)

- j) NCHDs appointed to posts of Senior Registrar who have been employed as Registrars for three years or more will be granted one increment for each year or part of a year employed in excess of the first three years. This shall be up to a maximum of three increments over and above the first point on the Senior Registrar scale.

#### Senior Registrar Pay scale assimilation

Up to 3 years of Registrar service	1st Point
3 to 4 years of Registrar service	2 <sup>nd</sup> point
4 to 5 years Registrar service	3 <sup>rd</sup> point
5 years or more of Registrar service	4 <sup>th</sup> point (maximum point for assimilation)

- k) Incremental credit is not granted to NCHDs in respect of:
- i) Service as locum general practitioner,
  - ii) Service in a non-training post with the Irish Blood Transfusion Service.

#### Senior Medical Officer:

Previous experience as a General Practitioner may be granted for incremental credit at this grade. SHO and Registrar are not considered equivalent experience and therefore are not applicable.

#### Therapy Grades

Full incremental credit is granted to therapy grades for previous professional experience (both in the private and public sector), in Ireland and subject to certification, abroad. This arises from the recommendations of the **Report of the Expert Group on Various Health Professions** (2000).

## **Dentists**

Full incremental credit is granted in respect of all post-graduate experience both in the public and the private sectors on appointment. In accordance with CERS Memo 17/2019, periods of self employment or private practice in Ireland or abroad may be reckoned once the experience is verified. Where the dentist was a contract holder of the Dental Treatment Benefit Scheme (DTBS) of the Department of Social Protection (DSP) or Dental Treatment Services Scheme (DTSS) of the HSE, whether as a standalone dentist or in a practice, incremental credit may be granted based on the duration of the contract held.

If a dentist worked as an assistant under another dentist's number this can be checked with the dentist(s) involved who could verify the candidate's service.

## **Dental Nurses**

Full incremental credit is granted to Dental Surgery Assistants for appropriate experience in the private sector. Such credit can only be accrued from the date the national certificate for dental surgery assistants (UK) or equivalent is awarded.

## **Social Care Workers (Intellectual Disability Services)**

Social Care Workers in the Intellectual Disability Service may not proceed beyond the seventh point of the salary scale until they have obtained the appropriate professional qualification.

## **Pharmacists**

On permanent appointment, an employee is entitled to full incremental credit in respect of previous recognised service in the public and private sectors subject to appropriate verification and certification.

## **Pharmaceutical Technicians**

Incremental credit may be granted in respect of previous service in both the public and private sector.

## **Assistant Technical Services Officer**

Incremental credit is granted in respect of relevant post-graduate experience as follows:

- \* to qualify, an employee must have in excess of five years' experience on the date of their appointment
  - \* the qualifying period is not recognised for the purpose of awarding increments; an additional increment is awarded for each year worked thereafter.
- The Technical Services Officer must confirm, in writing, that the employee's post-graduate experience is relevant to the current post
  - The above arrangement *does not apply* where:
    - \* an employee is in receipt of a substitution allowance;
    - \* an existing permanent officer is appointed to the post.

### **Senior Assistant Technical Services Officer**

Incremental credit is granted in respect of relevant post-graduate experience as follows:

- \* to qualify, an employee must have in excess of eight years experience on the date of their appointment
  - \* the qualifying period is not recognised for the purpose of awarding increments; an additional increment is awarded for each year worked thereafter.
- The Technical Services Officer must confirm, in writing, that the employee's post-graduate experience is relevant to the current post.

The above arrangement *does not apply* where:

- \* the employee is in receipt of a substitution allowance;
- \* an existing permanent officer is appointed to the post.

## Starting Pay on Promotion

Starting Pay and Promotion Rules are governed by the following provisions (refer to Department of Health Circular 10/1971):

- (i) Where the same salary scale applies to the employee's existing office and the office to which they are being newly appointed, they shall remain on the same point of the scale and may retain their incremental date.
- (ii) Where the minimum of the new salary scale is greater than existing pay by an amount greater than one increment on the new scale, the employee shall enter the new scale at the minimum – the date of promotion to be the new incremental date.
- (iii) Where the minimum of the new salary scale is greater than existing pay by an amount equal to one increment on the new scale, the employee shall enter the new scale at the minimum – the employee may retain their incremental date.
- (iv) Where the minimum of the new salary scale is greater than existing pay by an amount less than one increment on the new scale, the employee may enter the new scale at the minimum plus one increment – the date of promotion shall be the new incremental date.
- (v) Subject to subparagraph (i) above, where the minimum of the new salary scale is equal to existing pay, the employee may enter the new scale at the minimum plus one increment – the employee may retain their existing incremental date, if any.
- (vi) Subject to sub-paragraph (i) above, where the minimum of the new scale is less than existing pay, the employee may enter the new scale at the point nearest but not below existing pay plus one increment, and
  - a) where the point of entry on the new scale is equal to existing pay, the employee may retain their incremental date, if any,
  - b) in any other case, the date of promotion shall be the new incremental date.
- (vii) Where an employee to whom sub-paragraph (ii) (in cases only where the minimum of the new scale exceeds existing pay by an amount less than two increments in the new scale), (iii), (iv), (v) or (vi) above applies, has been on a fixed salary or on the maximum of their existing salary for at least three years at the date of their promotion or new appointment, they may enter the new scale in accordance with the appropriate provision and with a further additional increment, but in that case, the date of promotion or new appointment will be the employee's new incremental date.
- (viii) Where after a person has been promoted, and their salary has been determined in accordance with sub-paragraphs (i) to (vii) above, the salary or salary scale applicable to either the employee's former office or their new office, or both, is revised with effect from a date which is earlier than the date of the promotion, the commencing salary shall, subject to sub-paragraphs (ix) and (x) below, be re-determined in accordance with these rules and by reference to the revised salaries or salary scales.
- (ix) Where, in a case to which sub-paragraph (viii) applies, the salaries or salary scales of both the employee's former office and his new office are

revised with effect from different dates not more than six months apart, but only one of the revisions is made effective from a date which is earlier than the date of the promotion or new appointment, the commencing salary shall, subject to sub-paragraph (x), be re-determined as if both revisions had been effective on the date of promotion.

- (x) Nothing in sub-paragraphs (i) to (ix) shall be applied so as to enable an employee to have a salary in excess of the maximum salary for the office to which he is promoted or newly appointed.

### **Nurses**

The normal pay on promotion rules as outlined above apply to nurses, except in circumstances where the nurse might be financially disadvantaged on promotion due to loss of their qualification or location allowance, e.g. when promoted from CNM3 to ADON/ANP. In these cases the provisions of [HSE HR Circular 23/2006](#) as outlined below would apply.

Clinical Nurse Managers 2 or 3 who are in receipt of an allowance and who are promoted to Assistant Director of Nursing/Advanced Nurse Practitioner will be assimilated on a person to holder basis in the following manner:

Existing substantive salary plus a sum equivalent to the Specialist Qualification or Location Allowances if they are in receipt of one or the other of these allowances.

The normal application of [Department of Health Circular No.10/71](#) provisions will then apply.

### **Mental health nurses**

Mental health nurses who are promoted for example from staff nurse to CNM I or from CNM I to CNM II have the difference between the maximum of the current scale and the scale to which the nurse is being promoted added to their existing salary before they are assimilated onto the new scale using the pay on promotion rules outlined in [Department of Health Circular No. 10/71](#).

c.f. Department of Health Circular issued on 11 August 1969 under file reference S100/94.

### **Therapy Grades**

A set differential applies to therapy grades upon promotion (Dieticians, Occupational Therapists, Physiotherapists and Speech and Language Therapists, Orthoptists and Chiropodists/Podiatrists). The value of the differential is added to the employee's current salary and rounded to nearest salary point on the higher scale. This arrangement supersedes the instructions on starting pay and promotion as outlined in [Department of Health Circular No.10/71](#)

c.f. [Department of Health and Children Circular No. 152/2000](#) issued 18 December 2000.

An exception arises in the case of employees promoted from Therapy Manager to In Charge III posts who have the provisions of Circular 10/71 applied (Department of Health Circular No. 31/2004).

### **Support Staff**

Where staff are being permanently promoted within the banding system the pay on promotion principles of Circular 10/71 may be applied e.g. a Domestic being appointed as a Health Care Assistant (HSEEA Memo of 29 November 2005).

### **Craft Workers**

Where an employee is promoted to any grade above their existing grade the employee may move to the corresponding point on the new scale provided the employee has completed at least five years' service as a qualified craft worker in the health service.

In any other case the employee shall be placed on the minimum of the new scale or receive 50% of the differential between their point on the existing scale and the corresponding point on the new scale adjusted up thereafter to the nearest scale point, whichever is the most favourable.

## **Temporary Appointments**

Temporary appointments may be made to cover periods of leave or to cover vacancies (see HSE HR Circular 17/2013, HSE HR Circular HSE HR Circular 001/2018, and HSE HR Circular 068/2020).

The rules governing temporary appointments are as follows:

- No payment is made for a temporary appointment of less than three months. This includes periods which cover annual leave, sick leave, special leave or other leave, or to allow for a recruitment process, or the appointment from a panel, following a retirement or resignation.
- Temporary appointments in excess of three months will attract additional remuneration and the terms and conditions of the higher/temporary post for the duration of the period. The pay and assimilation arrangements for such staff should be the same as those applying to employees who have been permanently appointed. [See HSE HR Circular 08-2016.](#)
- All appointments must be made in accordance with the Commission for Public Service Appointments Code of Practice.



## **Exceptions to the general rules**

### ***Support Staff Grades***

Where an employee in a support staff grade performs their duties at a higher band within the support staff grading structure on a short term basis, they will be paid the rate for the job at the outset. This will also apply to situations where support employees are engaged in support duties on a short term basis which are not of a supervisory or managerial nature.

HSE HR Circular 001/2018 (referencing Memoranda issued by HSE Corporate Employee Relations, 17th October 2013, 14th July 2014 and 19th May 2015).