



Circular letter 05/03

DEPARTMENT OF EDUCATION AND SCIENCE PRIMARY BRANCH

**TO: BOARDS OF MANAGEMENT, PRINCIPAL TEACHERS
AND ALL TEACHING STAFF IN NATIONAL SCHOOLS**

Carer's Leave for Primary Teachers

1. INTRODUCTION

- 1.1** I am directed by the Minister for Education and Science to refer to the Carer's Leave Act 2001 and to say that the arrangements applying to permanent and temporary teachers in relation to Carer's Leave are, in general, as specified in that Act. This Circular provides a summary of the main provisions of the Carer's Leave Act, 2001 as they apply to primary teachers. It does not purport to be a legal interpretation of the Act.
- 1.2** The Carer's Leave Act 2001 came into operation on 2 July 2001. Carer's Leave is the term used to describe temporary **unpaid** leave from work to personally provide full-time care and attention for a person who is medically certified as being in need of such care.

2. ENTITLEMENT & ELIGIBILITY TO CARER'S LEAVE

- 2.1** To be eligible for Carer's Leave a teacher must have worked for a period of one continuous year with the Board of Management. This condition may be waived only in exceptional circumstances and subject to the educational and welfare needs of the pupils.

This requirement is waived in the case of a teacher compulsorily redeployed into a school provided that s/he has worked for at least one full year in her/his former school before being redeployed. The requirement is also waived in the case where a teacher seeking carer's leave is teaching in a school that was amalgamated within a year of the application date for Carer's Leave.

A teacher who is due to be placed on a panel for redeployment or who is on a panel for redeployment may not apply for Carer's Leave beyond the end of the school year in which her/his post is to be withdrawn.

- 2.2** Where a teacher has been appointed for a fixed term contract and the employment would have terminated on the expiry of that fixed term had s/he not been on Carer's Leave the period of Carer's Leave shall not extend beyond the day on which the fixed term expires. The granting or taking of Carer's Leave shall not affect the date of termination of a fixed term appointment.

3. RELEVANT PERSON

- 3.1** The person for whom the Carer's Leave is being applied for, (referred to as the "relevant person") must first be deemed to be in need of full-time care and attention by the Department of Social & Family Affairs. Therefore the teacher must first make an application on the prescribed Department of Social and Family Affairs Forms (CARB1) which can be received from the Carer's Benefit Section of the Department of Social and Family Affairs, Government Buildings, Ballinalee Rd., Longford, Co. Longford (Tel 043 45211 or 01 8748444).

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

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

4. PERIOD OF CARER'S LEAVE AVAILABLE

- 4.1** The maximum period of Carer's Leave allowable to care for one "relevant person" shall be 65 weeks unpaid leave.
- 4.2** A teacher is not permitted to be on Carer's Leave in respect of more than one person at any one time. However, on one occasion only, a teacher may commence leave in respect of a person, while already on leave in respect of another person, where the two persons reside together, providing approval is received from the Department of Social and Family Affairs for the second person. In such circumstances, an overall total amount of Carer's Leave of 130 weeks can be taken together (65 weeks for each relevant person). This can only be done once.
- 4.3** A teacher will not be entitled to Carer's Leave where another person is on Carer's Leave for the purpose of providing full-time care and attention for the same relevant person.
- 4.4** Before a teacher can commence Carer's Leave, he/she must provide the Board of Management with a copy of the decision of a deciding officer of the

Department of Social and Family Affairs, that the relevant person has been medically certified as being in need of full-time care and attention.

4.5 Teachers shall have the option of either taking the Carer's Leave as

- (a) one continuous period of 65 weeks,
- or
- (b) one or more periods, the total duration of which amounts to not more than 65 weeks

The minimum statutory entitlement that may be taken in one period is 13 weeks. However, applications for Carers Leave for periods of less than 13 weeks will be considered on their merit and approved by the Board of Management where possible, having regard to the capacity of the school to meet the educational and welfare needs of

the pupils and the number of periods of Carers Leave already taken by the teacher in the school year.

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

Note 1 : Where the Carer's Leave is not taken in one continuous period of 65 weeks there must be a gap of at least 6 weeks between periods of Carer's Leave in respect of the same person.

Note 2 : If a teacher wishes to avail of Carer's Leave for another person a period of 6 months must elapse from the date of termination of the leave in respect of the previous Carer's Leave even if the teacher has not taken the maximum period of 65 weeks for the other person. This provision does not apply where two persons to be cared for reside together.

4.6 The first thirteen weeks only of Carer's Leave entitlement in respect of any one care recipient will qualify for public holiday entitlements. The right to annual leave is restricted to the period comprising the first 13 weeks only of the Carer's Leave entitlement in respect of any one relevant person. Accordingly a deduction of 3 days pay will be made immediately following the period of carers leave in respect of each 14 days of absence on Carer's Leave in excess of the initial thirteen week period. This is illustrated in the Table in Appendix A.

5. NOTIFICATION REQUIRED TO AVAIL OF CARER'S LEAVE

5.1 Granting Carer's Leave is conditional on a teacher notifying her/his Board of Management in writing as soon as is reasonably practicable but not later than six weeks prior to the proposed commencement date of Carer's Leave. In exceptional circumstances, an application may be made later than six weeks prior to the proposed commencement date.

5.2 The Department has prepared a standard Application Form, which must be used when a teacher is applying for Carer's Leave. This form is available on the Department website at www.education.ie or on request from the Primary

Payments Section of the Department. This must contain a statement that an application for a decision that the person to be cared for is in need of full-time care and attention has been made to the Department of Social and Family Affairs (See Section 3).

- 5.3 The teacher must give a copy of the decision of the deciding officer (or appeals officer) of the Department of Social and Family Affairs to his/her Board of Management immediately on receipt of certification from that Department.
- 5.4 A Board of Management must process an application for Carer's Leave under the terms of the Act, no later than 2 weeks prior to the proposed commencement of the Carer's Leave. To facilitate adjustments to the teachers payroll the Board of Management should process the application as early as possible. The Board of Management can only process the application provided they have certification from the Department of Social and Family Affairs (see 5.3 above). If the Department of Social and Family Affairs refuse an application for Carer's Leave then the Board **cannot** approve the application. Once a Board of Management has approved the Application Form, it becomes a Confirmation Document.
- 5.5 Once agreed, the proposed absence on Carer's Leave cannot be amended save with the agreement of all parties concerned.
- 5.6 A copy of the confirmation document must be given to the teacher and the original forwarded to the Department of Education and Science no later than 2 weeks before the proposed start date of the leave.
- 5.7 A Board of Management may postpone Carer's Leave if such leave is likely to disrupt significantly the general operation of the school. The postponement may be to an agreed date. A decision to postpone Carer's Leave should be notified in writing to the teacher.

6. REPLACEMENT TEACHER

- 6.1 A Board of Management may appoint a temporary teacher, paid for by the Department, when a teacher is on Carer's Leave provided the post is warranted by reference to the staffing schedule applicable for that particular year. The contract offered to the temporary teacher should be a fixed purpose contract for the duration of the absence of the teacher on Carer's Leave. The Board of Management should list the "Reason for the Appointment" under the sub heading "Other-Please Specify" as Carer's Leave.

7. MAINTENANCE OF EMPLOYMENT RIGHTS DURING CARER'S LEAVE

- 7.1 In the case of a teacher who is on probation at the start of Carer's Leave, the period of probation will stand suspended for the duration of the absence on Carer's Leave.
- 7.2 Except as outlined in paragraph 7.1 above, and other than the right to remuneration and superannuation benefits, a teacher on Carer's Leave is

deemed for all purposes to be in employment. The absence is therefore fully reckonable for the determination of panel rights, seniority, etc.

- 7.3** A teacher on Carer's Leave is entitled to receive notification regarding vacant posts of responsibility, which are to be filled in the school, such notification to be sent by the Board of Management to the last known address.
- 7.4** Absences from employment while on Carer's Leave cannot be treated as part of any other leave to which the employee is entitled eg. Sick leave, adoptive leave, maternity leave, parental leave or force majeure leave.
- 7.5** A teacher absent on sick leave prior to the start of Carer's Leave must produce a certificate of fitness to resume duty before commencing Carer's Leave.

8. TERMINATION OF CARER'S LEAVE

- 8.1** Generally a period of Carer's Leave shall terminate on the date specified on the confirmation document, or where the person being cared for ceases to require full-time care and attention or where the person being cared for dies during a period of Carer's Leave. In the latter instance the teacher may return on the date specified in the confirmation document or a date which occurs within 6 weeks after the date of death which ever is the earlier.
- 8.2** Where a Board of Management is of the opinion that any of the following circumstances exists :
- That the person in respect of whom the teacher proposes to take Carer's Leave is not or is no longer a relevant person
 - That the person in respect of whom Carer's Leave has been granted, and in respect of whom the teacher is on Carer's Leave is not or is no longer a relevant person
 - That a teacher who proposes to take or is on Carer's Leave does not satisfy the conditions for providing full-time care & attention to the relevant person
 - That a teacher who proposes to take or is on Carer's Leave is engaging or has engaged in employment or self-employment other than as provided for in regulations made by the Minister for Social and Family Affairs;

the Board of Management shall notify the Department of Social and Family Affairs of such opinion together with the grounds of that opinion.

On receipt of such a notification from the Board, the Department of Social and Family Affairs shall refer it to a deciding officer for a decision under the Social Welfare (Consolidation) Act, 1993 i.e. as to whether the aforementioned conditions are satisfied.

Where the Department of Social and Family Affairs makes a decision that:

- A person in respect of whom a teacher proposed to take or has taken Carer's Leave was not or is no longer a relevant person
- The teacher does not satisfy the conditions for providing full-time care and attention or

- The teacher is engaging or has engaged in employment or self-employment other than as prescribed (eg. working more than the 10 hours allowed per week)
- then the period of Carer's Leave, if commenced, shall terminate on the date of that decision and the teacher shall return to work.

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

9. WORKING WHILE ON CARER'S LEAVE

- 9.1** During Carer's Leave a teacher may engage in employment or training/education outside of teaching provided the hours of employment do not exceed 10 hours per week and the net earnings from that employment do not exceed €95.23 per week. During his/her absence, adequate care for the care recipient must be arranged.

10. DISPUTES AND APPEALS

- 10.1** Disputes about entitlement to Carer's Leave may, in general, be referred to a Rights Commissioner. The Rights Commissioner is empowered to hear the parties to the dispute and to receive any relevant evidence tendered. Where either party is dissatisfied with the decision of the Rights Commissioner, the Act provides for a right of appeal to the Employment Appeals Tribunal.
- 10.2** Notice to a Rights Commissioner in relation to a dispute must be given no later than 6 months after the occurrence of the dispute. Redress can be granted in the form of Carer's Leave or in the form of monetary compensation.

11. PRSI MATTERS

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

12. CARER'S BENEFIT

- 12.1** The two schemes, Carer's Leave and Carer's Benefit, are administered in tandem as regards conditions relating to (i) the provision of full time care and attention, and (ii) the requirement for a decision to be made by a deciding officer (or appeals officer) of the Department of Social and Family Affairs that the relevant person is medically certified as being in need of full-time care and attention.

12.2 It should be noted that the entitlement to Carer's Leave is not conditional on entitlement to Carer's Benefit and vice versa. Please note that PRSI contribution classes A,B,C,D,H and E count for the purposes of meeting the PRSI contribution requirements for Carer's Benefit.

13. REVIEW

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

14. CIRCULATION AND QUERIES

14.1 Copies of this Circular should be given to all members of the Board of Management and teachers in the school.

14.2 This Circular may also be accessed on the Department of Education & Science website at www.education.ie . You can access the Circular by entering the site, clicking on the heading "education personnel" and then clicking on the heading "primary" and "salary and personnel". Queries regarding the Circular may be E Mailed to ppc@education.gov.ie

14.3 Further information regarding the Carer's Leave Act may be obtained from the Employment Rights Information Unit, Department of Enterprise, Trade and Employment, Davitt House, 65 A Adelaide Road, Dublin 2. Their Website is www.entemp.ie

D. O'Riain,
Principal Officer.
Primary Branch.
2003.

January

Appendix A

Carer's Leave

Primary Teachers

No. of days Absent

Pay Deduction during the summer period

0-91	0 days
92-105	3 days
106-119	6 days
120-133	9 days
134-147	12 days
148-161	15 days
162-175	18 days
176-189	21 days
190-203	24 days
204-217	27 days
218-231	30 days
232-245	33 days
246-259	36 days
260-273	39 days
274-287	42 days
288-301	45 days
302-315	48 days