

E109/180/01

22 December 2005

Circular 39/2005: Carer's Leave

A Dhuine Uasail

1. I am directed by the Minister for Finance to refer to the Carer's Leave Act 2001 and to say that the arrangements applying to civil servants 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 civil servants. It does not purport to be a legal interpretation of the Act.

2. For further information, please see *Carer's Leave Act, 2001 - Explanatory Booklet for Employers and Employees* issued by the Department of Enterprise, Trade and Employment (Phone: 01-6313131 or LoCall from outside the 01 area 1890 201615). The booklet is available on that Department's website at www.entemp.ie or from your Personnel Section.

General

3. The Carer's Leave Act 2001 came into operation on 2 July 2001. The main purpose of the Act is to provide for a new entitlement for an employee to avail of temporary unpaid leave ("Carer's Leave") from his/her employment for the purpose of personally providing full-time care and attention for a person who is medically certified as being in need of such care.

Entitlement to Carer's Leave

4. A civil servant who wishes to avail of Carer's Leave must fulfil the following statutory conditions:

- (i)(a) he or she must have completed at least 12 months' continuous service in the civil service (there is no hours threshold in the Act). In the case of a civil servant who is on probation at the start of Carer's Leave, the period of probation will stand suspended during the absence on Carer's Leave and will be completed by the civil servant on his or her return to work;
- (b) he or she must intend to take Carer's Leave for the purpose of personally providing full-time care and attention to a person who is medically certified as being in need of such and must actually do so for the duration of the leave;

- (c) the person in respect of whom the full-time care and attention is proposed must be deemed to be in need of such care by a deciding officer (or appeals officer) of the Department of Social and Family Affairs. This decision will be based on information provided by the relevant person's general medical practitioner.

The requirement to provide full-time care and attention will be assessed on an individual basis by the Department of Social and Family Affairs. To apply for the decision, the civil servant should obtain Form CARB1 from Carer's Benefit Section (Department of Social and Family Affairs, Government Buildings, Ballinalee Road, Longford. Phone: 043-40087, Fax: 043-40187) and arrange for its completion (part 3 of which must be completed by the employing Department) and return to the Carer's Benefit Section.

According to Department of Social and Family Affairs regulations, "full-time care and attention" 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 his or her normal personal needs, e.g. help to walk and get about, eat or drink, wash, bathe, dress, etc. or
- continuous supervision in order to avoid danger to himself or herself.¹

A civil servant may engage in employment, including in the civil service (parent Department/Office or otherwise), provided the hours of employment do not exceed the statutory limit and the gross earnings from that employment do not exceed the approved weekly limit as set by the Department of Social and Family Affairs. The decision to allow a civil servant to engage in employment in that Department/Office is at the discretion of the Head of the Department/Office. It may not be possible to accommodate staff in all cases in this regard. During his or her absence, adequate care for the care recipient must be arranged.

- (ii) Having satisfied the statutory conditions set out at (4)(i)(a), (b) and (c) above, an applicant must then provide the employing Department/Office with a copy of the decision of a deciding officer (or appeals officer) of the Department of Social and Family Affairs that the care recipient has been medically certified as being in need of full-time care and attention.
- (iii)(a) A civil servant intending to apply for Carer's Leave must provide written notice to the Personnel Officer not later than six weeks prior to the proposed commencement date of Carer's Leave, setting out the following:
- the date on which the civil servant intends to commence the leave;
 - the duration of the leave;
 - the manner in which the civil servant proposes to take the leave (see paragraphs 9-14 below);

¹The care recipient may attend a non-residential course of rehabilitation training or a non-residential day care centre approved by the Minister for Health and Children. Further information is available from Carer's Benefit Section, Department of Social and Family Affairs, Government Buildings, Ballinalee Road, Longford. Phone: 043-40087. Website: www.welfare.ie

- a statement that an application has been made to the Department of Social and Family Affairs for a decision (in the first instance or an appeal) that the person to be cared for qualifies as a person in need of full-time care and attention for the purposes of the Carer's Leave Act 2001.

A sample of the Notice of Intention to take Carer's Leave is set out at Appendix A to this Circular.

- (b) The Personnel Officer will draw up a confirmation document not later than two weeks before the leave is due to begin; it will detail the date on which the leave period will commence and the duration of the period of leave, and will be signed by the civil servant and the Personnel Officer; once signed, no amendment can be made to this document without the agreement of both parties.

A sample confirmation document is set out at Appendix B to this Circular.

5. In exceptional or emergency circumstances, where it is not reasonably practicable for a civil servant wishing to avail of Carer's Leave to give notice in accordance with the notice provisions, such notice must be given as soon as it is reasonably practicable for the civil servant to do so.

6. A civil servant may revoke, in writing, his or her notice of intention to take Carer's Leave at any time before the confirmation document is signed. Such revocation must be made in writing to the Personnel Officer.

7. A civil servant will not be entitled to Carer's Leave in respect of the care of an individual at a time when another employee is on Carer's Leave for the provision of care in respect of the same individual and will be required to sign an undertaking to this effect.

8. A civil servant will generally not be permitted to be on Carer's Leave in respect of more than one care recipient; however, on one occasion only, a civil servant may commence leave in respect of a care recipient while already on leave in respect of another care recipient where the two care recipients reside together.

Manner in which Carer's Leave may be taken

9. Carer's Leave may be taken as (i) one continuous period or (ii) one or more periods, the total duration of which does not exceed the statutory limit. However, the Personnel Officer and the applicant may agree to postpone or vary the form in which it is to be taken. Where Carer's Leave is postponed or varied, it may, subject to the conditions of entitlement to Carer's Leave, be taken at another time.

10. The minimum statutory entitlement that may be taken in one period at the discretion of the civil servant is 13 weeks.

11. The Personnel Officer may refuse, for reasons which should be stated in writing, to permit an officer to take Carer's Leave for any period of less than 13 weeks.

12. Where Carer's Leave is not taken by a civil servant as one continuous period, the Act provides that there must be a gap of at least 6 weeks between periods of Carer's Leave taken in respect of the same care recipient. In some cases, a shorter gap may be sought by an

officer. The decision as to whether a civil servant is required to work the full 6 weeks between periods of Carer's Leave is at the discretion of the Head of the Department/Office.

13. Other than in the circumstances outlined in paragraph 8, a civil servant proposing to avail of Carer's Leave for another care recipient cannot do so until a period of 6 months has elapsed since the date of termination of Carer's Leave for the previous care recipient. In some cases, a shorter gap may be sought by an officer. The decision as to whether a civil servant is required to work the full 6 months between periods of Carer's Leave is at the discretion of the Head of the Department/Office.

14. A civil servant must notify the Personnel Officer of any change of circumstances that affects his or her entitlement to Carer's Leave. He or she must also notify the Personnel Officer while on Carer's Leave of any change of address for correspondence purposes.

Protection of Employment Rights during Carer's Leave

15. A civil servant is not entitled to remuneration or superannuation benefits whilst absent on Carer's Leave, and such periods are not reckonable for superannuation purposes.

16. The first 13 weeks only of the Carer's Leave entitlement in respect of any one care recipient will qualify for public holiday entitlements and will be treated as qualifying service for annual leave purposes.

17. A civil servant on Carer's Leave will be treated as if he or she had not been absent from his or her employment so that all his or her employment rights, except the right to remuneration, annual leave and public holidays in excess of the initial period of 13 weeks of Carer's Leave and superannuation benefits, will be unaffected during the leave.

18. Absence on Carer's Leave cannot be treated as part of any other form of leave to which the civil servant is entitled (including sick leave, annual leave, adoptive leave, maternity leave, parental leave or *force majeure* leave).

19. It should be noted that the arrangements for special leave for domestic circumstances, including *force majeure* leave under the Parental Leave Act 1998, remain as set out in Annex 1 to Circular 22/98. Depending on the circumstances of the particular case, the statutory entitlement to Carer's Leave may supersede the discretionary special leave without pay to care for an immediate relative² who is ill, under paragraph 3(a) of the Annex. A civil servant who is not eligible for Carer's Leave may still be eligible for the grant of discretionary special leave under the terms of the Annex.

Termination of Carer's Leave

20. In accordance with the provisions of the Act a period of Carer's Leave shall terminate as follows:

- on a date agreed between the Personnel Officer and the civil servant when the original application is approved;
- where the person being cared for ceases to require full-time care and attention;
- where a civil servant ceases to satisfy the requirements for the provision of full-time care and attention for the purposes of the Act;

² Immediate relative is defined in Circular 22/98, Annex 1, paragraph 4.

- where a decision against a civil servant is made by a deciding officer (or appeals officer) of the Department of Social and Family Affairs on foot of a reference by the Personnel Officer (see paragraph 27);
- where the care recipient dies during a period of Carer's Leave, that date which is the earlier of the following dates (a) the date which occurs 6 weeks after the date of death or (b) the date specified in the confirmation document. In some cases, where an officer is returning after the death of the care recipient, the officer may wish to return to work sooner than the six weeks provided. The decision as to whether a civil servant is required to wait the full 6 weeks is at the discretion of the Head of the Department/Office.

Return to work

21. A civil servant who is on Carer's Leave shall, not less than 4 weeks before the date on which he or she is due to return to work, notify the Personnel Officer of the intention to so return. Any dispute about the return to work may be dealt with under the dispute resolution mechanisms provided for under the Act.

22. When a civil servant returns to work, his or her Department/Office must notify the Carer's Benefit Section of the Department of Social and Family Affairs in writing:

- that the period of Carer's Leave has ended
- that he or she has returned to work, and
- the date of return to work.

23. Where Carer's Leave terminates on foot of a decision of a deciding officer/appeals officer of the Department of Social and Family Affairs, the deciding/appeals officer shall notify the Department/Office and the civil servant as soon as is practicable. On receipt of the decision, the Personnel Officer shall give the civil servant written notice to return to work as soon as possible on a date that is reasonable and practicable having regard to all the circumstances. Where Carer's Leave is terminated in such circumstances, any period between the date of return to work and the termination date of Carer's Leave specified in the confirmation document shall be deemed not to be Carer's Leave.

24. At the end of a period of Carer's Leave, a civil servant is entitled to return to work under the same terms and conditions of employment in the Department/Office where he or she was working immediately before the absence on Carer's Leave.

25. If the job held by the civil servant before commencing Carer's Leave was not his or her normal or usual job, the civil servant shall be entitled, following a period of Carer's Leave, to return to that job, or to his or her normal or usual job, as soon as is reasonably practicable.

26. If it is not reasonably practicable for a Department/Office to allow a civil servant to return to the job held immediately prior to the leave, the Department/Office must offer the civil servant suitable alternative employment. The terms of the alternative employment (e.g. the place of work, the capacity in which the civil servant is employed) must not be substantially less favourable to the civil servant than the terms of his or her original job and continuity of employment will be preserved.

Resolving conflicting views on entitlement

27. If the Personnel Officer is of the opinion that any of the following circumstances exist:

- that the person in respect of whom the civil servant proposes to take Carer's Leave is not or is no longer a person who is in need of full-time care and attention;
- that the person in respect of whom Carer's Leave has been granted, and in respect of whom the civil servant is on Carer's Leave, is not or is no longer a person in need of full time care and attention;
- that a civil servant who proposes to take or is on Carer's Leave does not satisfy the conditions for providing full-time care and attention to the person concerned;
- that a civil servant 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;

he or she shall notify the Department of Social and Family Affairs (Carer's Benefit Section) of such opinion together with the grounds for that opinion. On receipt of such notification, the Department of Social and Family Affairs (Carer's Benefit Section) will 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.

28. Where a deciding officer (or an appeals officer) makes a decision that:

- the person in respect of whom a civil servant proposed to take or has taken Carer's Leave was not or is no longer in need of full time care and attention, or
- the civil servant does not satisfy the conditions for providing full-time care and attention, or
- the civil servant is engaging or has engaged in employment or self-employment other than as prescribed,

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

29. Any dispute in relation to the decision of the deciding officer may only be appealed to an appeals officer of the Social Welfare Appeals Office, D'Olier House, D'Olier Street, Dublin 2.

30. Other than disputes concerning the matters covered at paragraphs 27-28, the Act provides for referral of a dispute by either party in relation to entitlement under the Act to a Rights Commissioner of the Labour Relations Commission.

31. A civil servant may refer a dispute in relation to an entitlement under the Carer's Leave Act 2001 or any matter arising out of such an entitlement to a Rights Commissioner of the Labour Relations Commission for adjudication. Hearings of the Rights Commissioner under the Act are held in private. Such referrals must be made in writing within 6 months of the occurrence of the dispute.

Preservation of Social Insurance benefits

32. A civil servant in receipt of Carer's Benefit from the Department of Social and Family Affairs will automatically have his or her social insurance benefits preserved for the duration of receipt. Civil servants who qualify for Carer's Leave but not Carer's Benefit should on

return to work request an application form for Carer's Leave credits from Carer's Benefit Section of the Department of Social and Family Affairs. This form should be completed by the employing Department/Office and submitted to the Department of Social and Family Affairs, Client Data Services, Gandon House, Amiens Street, Dublin 1 (Phone: 01-7043364 or 01-7043368).

Carer's Benefit

33. 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.

34. It should be noted that the entitlement to Carer's Leave is not conditional on entitlement to Carer's Benefit, or vice versa. Please note also that PRSI contribution classes A, B (i.e. "modified class PRSI", which includes civil servants who entered the civil service prior to 6 April 1995), C, D, H and E count for the purposes of meeting the PRSI contribution requirements for Carer's Benefit.

Replacement

35. Departments/Offices may, if they wish, replace staff on Carer's Leave on a temporary basis provided the Department's or Office's approved core numbers and targets are not even temporarily exceeded. Generally, vacancies arising from the participation of serving staff in the scheme which are above basic recruitment level may be filled by the granting of temporary higher duty allowances. Where such allowances are required the criteria for selection of recipient staff are a matter to be determined by individual Departments/Offices.

Queries

36. Queries in relation to this Circular may be referred to your Personnel Section which in turn may refer them to this Department and/or seek advice from the Employment Rights Information Unit of the Department of Enterprise, Trade and Employment (Phone: 01-6313131).

37. All queries in relation to Carer's Benefit and its eligibility requirements, the meaning of "full-time care and attention", and the circumstances in which a civil servant on Carer's Leave may engage in employment should be addressed to Carer's Benefit Section of the Department of Social and Family Affairs, Government Buildings, Ballinalee Road, Longford (Phone: 043-40087).

38. Please bring this circular to the attention of all officers in your Department/Office.

Mise le meas,

John O'Connell
Assistant Secretary

Appendix A

Carer's Leave Act 2001

SAMPLE NOTICE OF INTENTION TO TAKE CARER'S LEAVE

I _____ hereby notify the Department/Office of:

that I propose to take Carer's Leave in accordance with the provisions of the Carer's Leave Act 2001, with effect from _____ to _____
to provide full-time care and attention to _____

I propose to take Carer's Leave in the following manner:

Tick Box:

one continuous period of 65 weeks³

in periods of _____ weeks (each of which must be of at least 13 weeks duration,⁴ the aggregate of which does not exceed the statutory limit).

I wish to confirm that I have made an application to the Department of Social and Family Affairs for a decision of a deciding officer of that Department that _____ in respect of whom I propose to take Carer's Leave, is a relevant person (i.e. is in need of full-time care and attention) for the purposes of the Social Welfare (Consolidation) Act 1993.

Signature: _____

Date: _____

³ The current maximum entitlement to Carer's Leave is 65 weeks. It is planned to increase this to 2 years from May 2006.

⁴ Unless otherwise agreed with the Department/Office.

Appendix B

Carer's Leave Act 2001

SAMPLE CONFIRMATION DOCUMENT

Name of Officer: _____

Name of Department/Office: _____

Commencement Date of Period(s) of Carer's Leave: _____

Duration of Period(s) of Carer's Leave: _____

SIGNATURES:

Civil Servant: _____ Date: _____

Personnel Officer: _____ Date: _____