



**Maynooth University
Human Resources
Office**

Carer's Leave Scheme

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Maynooth University Carer's Leave Scheme

The purpose of the Carer's Leave Act, 2001, is to:

- Provide for carer's leave of up to 104 weeks (increased from 65 weeks in March 2006) for employees in order to provide full-time care and attention to a person requiring it (a relevant person); and
- Protect the employee's employment rights during the leave.

Scope

The Act, which came into force on 2nd July 2001, covers all employees who are:

- Employed under a contract of employment or a contract of apprenticeship;
- Employed by an employment agency. In this case it is the person who is liable to pay the wages who is deemed to be the employer for the purpose of the legislation.

Minimum service requirement

The employee must have at least one year's continuous service with the employer from whose employment he / she intends to take carer's leave.

Definition of a relevant person

A care recipient will be considered to be a 'relevant person' if he / she needs continual supervision and frequent assistance throughout the day in connection with normal bodily functions or needs continual supervision in order to avoid danger to themselves. A medical practitioner must certify the nature and extent of the care recipient's disability. In general, the carer must live with the relevant person. However, if the carer is not living with the relevant person the following conditions must be met:

- The carer must be providing full-time care and attention;
- There must be a direct system of communication between the carer's residence and that of the care recipient this could be in the form of a telephone or alarm system;
- The care recipient must not already be receiving full-time care and attention within his / her own residence from another person.

Qualifying for carer's leave

Along with the 12 month service requirement, employees will only be entitled to carer's leave if:

- The person they wish to care for is considered to be a relevant person;
- The employee provides full-time care and attention to the relevant person;
- The employee does not engage in employment or self-employment during the period of the leave with the exception of:
 - Attending an educational or training course or taking up voluntary or community work for up to 10 hours per week;
 - Engaging in limited self-employment in the employee's home;
 - Engaging in employment outside of the home for up to 10 hours per week. This must be approved by the Department of Social, Community and Family Affairs (DSCFA).
- The employee has provided the employer with a decision from a deciding officer of the DSCFA, stating that the person in respect of whom the employee proposes to take carer's leave is a relevant person.

Conditions for taking carer's leave

- Only one employee can be absent on carer's leave for a specific care recipient at a time;
- A person is only entitled to leave for one care recipient at a time (see leave for second relevant person below);
- Carer's leave will not be granted if the care recipient is in receipt of full-time attention from someone else;
- An employee shall notify his or her employer of any change in circumstances which affect his / her entitlement to carer's leave as soon as is practicable.

Leave for a second relevant person while on carer's leave

In general a person is only entitled to leave for one relevant person at a time. An exception to this allows an employee while on carer's leave, to apply for leave for a second care recipient who lives with the first care recipient. If this application is approved and, the second care recipient is deemed to be a relevant person, then the second period of leave shall begin on the date that the deciding officer's final decision is made and must finish at the latest 65 weeks from its commencement. The total amount of leave when taken together for both relevant persons cannot exceed 130 weeks. Where leave for the second relevant person is approved in this situation, the employee does not have to reapply to the employer before it can begin, but must inform the employer of the change, and the expected return to work date. If an employee avails of carer's leave for a second relevant person in the above manner, he / she shall not make another application for leave in those circumstances.

Manner in which carer's leave may be taken

The maximum amount of carer's leave that can be taken for each relevant person is 104 weeks. The leave can be taken as a continuous block of 104 weeks or, in shorter periods adding up to 104 weeks. If the leave is broken up, the employee will not be entitled to commence another period of leave for that relevant person until at least six weeks has elapsed since the termination of the previous period of leave taken.

If an employee's carer's leave in respect to one relevant person has finished he / she may not commence leave to care for a second relevant person until six months after the end of the previous period of leave (except as outlined in leave for second relevant person above).

Refusal of carer's leave

An employer may refuse, on reasonable grounds to permit an employee to take a period of leave shorter than 13 weeks. However, the employer must specify in writing the reasons for such refusal.

Procedure for applying for carer's leave

An employee wishing to take leave must apply to the Minister for Social, Community and Family Affairs for a decision by a deciding officer under the Social Welfare (Consolidation) Act, 1993. The deciding officer will be responsible for verifying that the prospective care recipient is a relevant person. The DSCFA also decides an employee's entitlement to Carer's Benefit, which is based on the employee's PRSI contributions (see Appendix 1). If employees do not have sufficient PRSI contributions to entitle them to carer's benefit that does not preclude them from being entitled to carer's leave.

The employee makes the application using the carer's benefit claim form eight weeks before intending to begin carer's leave. The employee, the employer, the care recipient, and the care recipient's doctor, all have to complete parts of the claim form. The DSCFA could also conduct their own medical assessment to determine eligibility. When the deciding officer has assessed the application, they will issue a decision. If the leave is to be granted, a copy of the decision of the deciding officer must be given to the employee's employer before the leave can commence. It is anticipated that it will take the DSCFA four to five weeks to process claims received.

Notice

Along with applying to the DSCFA, an employee must notify the employer of his / her intention to take carer's leave. This should be done in writing not later than six weeks before the date he / she intends to commence leave. The document should include:

- The proposal to take carer's leave;
- The proposed date to start the leave;
- The manner in which it is intended to take the leave;
- Confirmation that an application has been sent to the DSCFA.

In exceptional emergency circumstances when it is not possible to comply with this notice requirement, the employee must give as much notice as is reasonably practicable.

Employee takes leave purporting to be carer's leave

Where an employee takes leave purporting to be carer's leave, but has not complied with the notification procedures above, employers may treat the leave as carer's leave, at their own discretion. An employer may, on reasonable grounds, decide not to treat the leave as carer's leave. In that event the employer shall specify the reasons for refusing in writing.

Confirmation document

Both the employer and employee must, not less than two weeks prior to the proposed commencement of the carer's leave, prepare and sign a confirmation document. This document must specify:

- The date the leave will begin;
- Its duration; and
- The manner in which it will be taken.

Both the employer and employee should retain a copy of the signed confirmation document.

Deciding Officer's decision

An employee must provide their employer with the 'decision' from the DSCFA as soon as they receive it. The employee is not entitled to carer's leave until the employer has been given a copy.

Revocation of notice

The employee may revoke in writing his / her notice to take carer's leave at any time before the confirmation document is signed. Where the leave is revoked, it may not then be taken on the date specified in the confirmation document.

Postponement, curtailment or variation

Once the confirmation document has been signed it can only be altered by agreement between the employer and the employee. Once there is agreement, the leave, or part of it, may be postponed, curtailed, or varied. The confirmation document should be amended to reflect the new agreement.

Notice of returning to work

An employee who is on carer's leave shall give notice in writing to the employer of his / her intention to return to work not less than four weeks before the date when he / she intends to return.

Termination of leave

Carer's leave will terminate in the following circumstances:

- On the date of termination of the period of carer's leave specified in the confirmation document;
- On a date agreed between the employer and the employee;
- Where the person in respect of whom the employee has taken carer's leave ceases to satisfy the conditions for a relevant person;
- Where the employee ceases to satisfy the conditions for the provision of full-time care and attention;
- On the date which the employer notifies the employee to return to work following a decision of a deciding officer or an appeals officer that the leave should end;
- Where the relevant person dies during the period of carer's leave, the leave will terminate either six weeks after the date of death; or
- The date of termination specified in the confirmation document, whichever is the earlier.

Notification to DSCFA

The employer must also give notice in writing to the Minister for Social, Community and Family Affairs that the leave has been terminated and specify the employee's date of resumption of employment.

Abuse of leave

Where the employer suspects that carer's leave is being abused, he / she must notify the Minister for Social, Community and Family Affairs and give the grounds for that opinion. The notification will be referred to a deciding officer who will make a decision based on the evidence. This may occur in the following circumstances:

- The care recipient for whom the employee proposes to take leave either is not, or is no longer, a relevant person;
- The care recipient for whom the employee is on carer's leave is not, or is no longer, a relevant person;
- The employee who proposes to take, or who is on leave, will not, or is not, providing full-time care to the relevant person;
- The employee who proposes to take, or who is on leave, is engaging, or has engaged, in employment or self-employment other than that provided for.

Deciding officer's decision to terminate leave

The leave shall terminate where a deciding officer or an appeals officer makes a decision that:

- The person being cared for did not or does not, satisfy the requirements of a relevant person;
- The employee does not satisfy the conditions of providing full-time care and attention; or
- The employee is, or has been, engaged in employment or self-employment other than as prescribed.

The deciding officer shall inform the employer and employee of the decision as soon as possible. Following this, the employer must notify the employee, in writing, specifying the date on which the employee is to return to his or her employment. The employee must return to the employment on the specified date. Any outstanding leave specified in the confirmation document shall be deemed not to be carer's leave.

Protection of employment rights

An employee is regarded as remaining in the employment concerned, during an absence on carer's leave, and retains all employment rights except the following:

- The right to remuneration;
- Annual leave (after 13 weeks of absence for each relevant person);
- Public holidays (after 13 weeks of absence for each relevant person);
- Superannuation benefits; or any obligation to pay contributions in, or in respect of, the employment.

The absence counts as reckonable service for the purposes of increments, seniority, redundancy etc. Carer's leave cannot be treated as part of any other leave from employment including sick leave, adoptive leave, maternity leave, parental leave, annual leave or force majeure leave to which an employee is entitled.

Annual leave

For the first 13 weeks of absence on carer's leave for each relevant person, annual leave accrues in accordance with Section 19 of the Organisation of Working Time Act, 1997.

Public holidays

For the first 13 weeks of absence on carer's leave for each relevant person, public holidays accrue in accordance with Section 21(1) of the Organisation of Working Time Act, 1997.

Suspension of probation

The employer may suspend a period of probation, or apprenticeship, while the employee is on carer's leave.

Return to work

An employee is entitled to return to work at the end of a period of carer's leave, with the employer with whom he / she was working immediately before the absence, or with his / her successor, in the job held immediately prior to the leave and under the same contract, terms and conditions of employment.

Change of ownership

If the business has changed ownership during the employee's absence on the leave, he / she is entitled to work under a contract of employment identical to the contract that existed with the original employer.

Same job

Following a period of carer's leave, the employee is entitled to return to the job that was held immediately prior to the commencement of the leave, or to his / her normal / usual job, as soon as is practicable.

Alternative 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, suitable alternative employment must be provided under a new contract of employment. The terms and conditions of the alternative employment must not be substantially less favourable to the employee than the terms of his / her original job, and his / her continuity of service is preserved.

Protection from penalisation

An employer cannot penalise an employee for exercising or proposing to exercise an entitlement to carer's leave. Penalisation could include dismissal, unfair treatment of the employee, including unfair selection for redundancy, or an unfavourable change to the employee's terms and conditions of employment.

Protection against dismissal

If an employee is penalised by dismissal, he / she may institute proceedings under the Unfair Dismissals Acts, 1977 to 2001, and such dismissal may not be referred to a Rights Commissioner under the disputes procedure provided for under the Carer's Leave Act, 2001.

If an employee is prevented from returning to work by the employer, the employee shall be deemed to have been unfairly dismissed for the purposes of the Unfair Dismissals Acts, 1977 to 2001, unless there are substantial grounds justifying the dismissal.

Disputes procedure

The disputes procedure under the Carer's Leave Act, 2001 does not apply to members of the Defence Forces, also it does not apply to disputes concerning decisions given by a deciding officer or an appeals officer from the DSCFA.

Rights Commissioner

In the event of certain disputes arising relating to an employee's entitlement to carer's leave, a claim for redress may be made to a Rights Commissioner. A reference to a Rights Commissioner must be made within six months of the date of the alleged contravention giving rise to the dispute. In exceptional circumstances this period may be extended by up to a further six months. Where there is a decision from a deciding officer or an appeals officer concerning a dispute over carer's leave, the Rights Commissioner shall accept that decision as a final determination on the matter.

Appeals

Either party may appeal a decision of the Rights Commissioner to the Employment Appeals Tribunal. An appeal is made by giving written notice to the Tribunal within four weeks of the date on which the Rights Commissioner's decision is given.

Redress

The Rights Commissioner and the Employment Appeals Tribunal may order redress, as they consider appropriate, comprising either, or both, of the following:

- The granting of carer's leave;
- The payment by the employer of compensation not exceeding 26 weeks remuneration.

Where appropriate, the parties shall amend the confirmation document in accordance with the decision.

Enforcement by the Circuit Court

If a person fails or refuses to comply with a decision of the Rights Commissioner or a determination of the Tribunal, the other party, or the Minister for Enterprise, Trade and Employment, may apply to the Circuit Court for an order directing compliance.

Appeals to the High Court

Either party to proceedings in the Employment Appeals Tribunal may appeal a determination of the Tribunal to the High Court on a point of law only.

Records of carer's leave

An employer must keep a record of carer's leave taken by employees, specifying the period of employment for each employee, and the dates and times of the leave taken. These records must be retained for eight years. An employer who fails to keep records may be liable, on summary conviction to a fine not exceeding €3,000. Notices or copies of notices, required by this Act shall be retained for a period of three years.

Appendix 1

Carer's Benefit PRSI Contributions

If the care recipient is found to be a relevant person, the DSCFA will assess the carer's entitlement to carer's benefit based on their PRSI contributions.

The contribution conditions are as follows:

- For a first claim the employee must have:156 contributions paid since entry into insurable employment, and:
 - a) 39 contributions paid in the relevant tax year; or
 - b) 39 contributions paid in the 12 month period before commencement of the carer's benefit; or
 - c) 26 contributions paid in the relevant tax year and 26 contributions paid in the relevant tax year prior to that.
- For second or subsequent claims, the employee must:
 - a) Leave employment; and
 - b) Have been in employment for the previous 13 week period (or have been in receipt of carer's benefit in that period).

The personal rate payable as carer's benefit for the 2006 tax year is €180.70 per week, if providing care for one relevant person. This rate applies from 24th March 2006.