



EMPLOYMENT RIGHTS EXPLAINED

Factsheet 3: Holidays and leave from work

IN THIS SERIES

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Employees may be entitled to time off in certain circumstances but are not always entitled to be paid for such time off. This factsheet covers leave from work and carer's leave. **Factsheet 4: Leave for parents** covers maternity, adoptive and parental leave. You can find more information about your employment rights in the booklet *Employment rights explained* (available from your local Citizens Information Centre), from the National Employment Rights Authority (NERA) at www.employmentrights.ie or from the Citizens Information website at www.citizensinformation.ie

Am I entitled to be paid while off work sick?

There is no general right in legislation for an employee to be paid while off work sick. Your rights will generally depend on the terms of your contract of employment or any trade union/employer collective agreement. You may have no sick pay entitlement, or you may receive payment for a specific length of

time or at your employer's discretion. Sometimes you may be entitled to receive sick pay based on custom and practice in the workplace. Certain Employment Regulation Orders (EROs) and Registered Employment Agreements (REAs) do provide for a legal entitlement to pay while you are ill and off work (see **Factsheet 2: Pay and wages**). Your employer is obliged to provide you with information on sick pay entitlements in your contract of employment. If you are entitled to sick pay from your employer, you will probably be required to sign over any Illness Benefit payment from the Department of Social and Family Affairs to your employer for the duration of the sick pay.

If I have a family death or emergency, does my employer have to give me time off?

The Parental Leave Act 1998 contains a limited right to leave from work in a time of family crisis. This is known as force majeure leave. It arises where, for urgent family reasons, the immediate presence of the employee is indispensable owing to an injury or illness involving a close family member such as a spouse or partner, a parent, a son, daughter, brother, sister or grandparent. The Parental Leave (Amendment) Act 2006 extended the force majeure provisions to include people in a relationship of domestic dependency, including same-sex partners.

The maximum amount of such leave is three days in any 12-month period, or five days in a 36-month period. You are entitled to be paid while on force majeure leave.

Force majeure leave does not apply to the death of a close family member. Leave following a death (often called compassionate leave) is not an entitlement in legislation. Whether you can take time off on in these circumstances depends on any provision in your contract providing for such leave, the existence of custom and practice within the job, or the employer's discretion. In practice, many employers do allow for paid compassionate leave.

Does my employer have to allow me paid time off to go on jury service?

Yes, the Juries Act 1976 requires an employee or an apprentice who is called for jury service to be given time off to attend the court. You are entitled to be paid and should not suffer loss of any other employment entitlements. So, for example, time spent on jury service will not mean any loss of annual leave entitlement.

Am I entitled to take a career break or study leave from a job?

There is no legal entitlement to take a career break or study leave. You must rely on any provision in your contract of employment or on negotiations with your employer. However, your employer should consider requests for a career break or study leave on an individual basis. Blanket refusals to consider such requests may give rise to issues under equality legislation if the refusal can be connected with one of the nine discriminatory grounds under the Employment Equality Acts.

ANNUAL LEAVE

How is annual leave entitlement calculated?

The Organisation of Working Time Act 1997 provides for a basic paid annual leave entitlement of four working weeks. This is the statutory minimum and your contract of employment could provide for more.

Under the legislation, your annual leave entitlement is based on your working hours during what is called the leave year. This runs from April each year to the following March although many employers use the calendar year. An employee who has worked 1,365 hours in the leave year qualifies for the basic annual leave. For example, an employee working a 40-hour week will build up the required number of hours in just under 35 weeks. Another way to calculate annual leave is to give annual leave of one third of the working week for each calendar month in which the employee works at least 117 hours. The third possibility is to base the entitlement on 8% of the hours worked in the leave year, subject to a maximum of four working weeks.

An employee who has worked for at least eight months in a leave year is entitled to an unbroken period of two weeks' annual leave.

Are part-time employees entitled to annual leave?

Yes. The entitlement is calculated as described above. For most part-time or casual employees, the leave entitlement is 8% of the hours worked subject to a maximum of four working weeks.

For example, a person who works 10 hours a week over 52 weeks will qualify for the following annual leave entitlement. The employee has worked 520 hours and 8% of those hours are 41.6 hours. However, holiday entitlement calculated on this basis is subject to a maximum of four working weeks, so the entitlement is four weeks' leave (40 hours).

Am I entitled to be paid while on annual leave?

Yes, you are entitled to pay in advance of annual leave. The pay is based on the rate for your normal working week. If your pay varies from week to week, pay received while on annual leave is the average weekly payment for your normal working hours in the 13 weeks immediately preceding the leave. If your pay takes into account board or lodgings provided by your employer, the holiday pay you receive will compensate you for board or lodgings not received during annual leave.

Who decides when annual leave can be taken?

Your employer can decide when annual leave may be taken, subject to a number of conditions. The employer is required to take into account the family responsibilities of the employee, the opportunities for rest and recreation available to the employee, and to consult with the employee (or their union) at least one month before the leave is to be taken.

In addition, annual leave should be taken within the appropriate leave year, or, with the employee's consent, within six months of the relevant leave year. Further holding over of annual leave at the wish of the employee would be a matter for agreement between the employee and the employer.

Do I have a right to time off for public holidays?

You are entitled to time off for public holidays. Your employer can decide on one of the following options:

- A paid day off on the public holiday*
 - A paid day off within a month of the public holiday
 - An additional day of annual leave
 - An additional day's pay
 - The nearest church holiday to the public holiday as a paid day off
- * *This option does not apply if you do not normally work on the day on which a public holiday falls (for example, if you do not normally work on a Saturday or Sunday and if the public holiday falls on these days or, in the case of a part-time employee, if the public holiday falls on a day on which the employee is not normally due to work).*

The Organisation of Working Time Act 1997 provides that you may ask your employer, at least 21 days before a public holiday, which option will apply to you. Your employer should respond at least 14 days before the public holiday. If not, you are entitled to take the public holiday as a paid day off.

Part-time employees who have not worked at least 40 hours in total during the five weeks before the public holiday are not entitled to paid leave on that public holiday.

Where the public holiday falls on a day on which the employee normally works, the public holiday pay entitlement is the pay for the normal daily working hours last worked before the public holiday.

Where the public holiday falls on a day on which the employee does not normally work, the public holiday pay entitlement is the pay for one fifth of the normal weekly working hours last worked before the public holiday.

If, for example, a public holiday falls on a Monday, a part-time employee who works Tuesdays, Wednesdays and Thursdays for 4 hours each day is entitled to one fifth (20%) of 12 hours – that is, 2.4 hours pay in place of the public holiday.

Does taking other leave, such as maternity leave, affect my annual leave entitlement?

No, annual leave is not affected by other leave provided for by law. This includes maternity, adoptive (including additional unpaid maternity and adoptive leave), parental and force majeure leave. Time spent on all of these forms of leave is treated as time in employment and can be used to accumulate annual leave entitlement. However Carer's leave does affect annual leave (see below).

How is annual leave affected by time off work during illness?

If you are ill during annual leave, you should get a medical certificate to cover the days of illness and give it to your employer. If you do this, the sick days do not count as annual leave and will, therefore, be available to you at a later date.

Sickness during the leave year reduces your hours worked and therefore may affect your entitlement to annual leave. However, an employee working 40 hours a week will establish the required 1,365 working hours in the leave year after just under 35 weeks working. As a result, absence through sickness would need to be extensive (18 weeks or more) before it affected that employee's annual leave.

What happens if I leave a job and have not taken my holidays?

If you leave your job, you are entitled to receive payment for any outstanding annual leave and public holidays due to you. This is the only occasion where an employee can receive pay in lieu of holidays.

CARER'S LEAVE

The Carer's Leave Act 2001 allows employees in Ireland to leave their employment temporarily to provide full-time care for someone in need of full-time care and attention. The person being cared for does not have to be a relative or spouse; they can be a friend, partner or colleague.

Do all employees qualify for carer's leave?

No. In order to qualify for carer's leave, you must have worked for your current employer for a continuous period of at least 12 months.

What level of care is required?

The person you are proposing to care for must need full-time care and attention. You must apply to the Department of Social and Family Affairs for a decision that the person requiring the care needs full-time care and attention. You must then give this decision to your employer.

In all cases a doctor must certify the nature and extent of the person's disability, except where the person to be cared for is under 16 and Domiciliary Care Allowance is being paid for that person.

What notice must I give my employer?

You must give your employer at least six weeks' notice in writing of your intention to take carer's leave. In exceptional or emergency situations where it is not reasonably practicable to give six weeks' notice, you should give notice as soon as it is reasonably possible. The initial notice to the employer is followed, at least two weeks before the leave is to start, by a written confirmation of the leave and the details of its duration and form. Both you and your employer must sign this confirmation document. If your employer considers that you do not meet the requirements, they are required to notify the Department of Social and Family Affairs. The Department will then investigate the matter and issue a decision. Either you or your employer may appeal this decision. Appeals must be made to the Social Welfare Appeals Office.

If you fail to give notice or give notice but not in the required form, your employer has discretion whether to treat the leave as carer's leave. In such a case, the protection of the law will apply. An employer who refuses to treat the leave as carer's leave must have reasonable grounds for such a refusal and must specify the grounds in writing to the employee.

If you fail to comply with the notice requirements and your employer exercises his or her discretion to accept the leave as carer's leave, a confirmation document must also be prepared and signed by both you and your employer. In such circumstances, the legislation requires this to be done as soon as possible.

How much carer's leave am I entitled to?

Since 24 March 2006, the minimum period of leave is 13 weeks and the maximum period is 104 weeks. You may apply to take carer's leave in one continuous period of 104 weeks or for a number of periods not exceeding a total of 104 weeks. If you do not take carer's leave in one continuous period, there must be a gap of at least six weeks between the periods of carer's leave. Your employer may refuse (on reasonable grounds) to allow you take a period of carer's leave which is less than 13 weeks' duration. Where your employer refuses this leave, they must specify in writing the grounds for refusing you this leave.

You may only be on carer's leave in respect of any one person in need of full-time care at any one time. An exception is where two people live together and both are in need of full-time care and attention. In this situation the total amount of carer's leave is 208 weeks (104 for each person being cared for).

If your carer's leave for someone has ended, you cannot begin another period of carer's leave to care for a different person until six months after the end of the previous period of carer's leave.

Am I entitled to payment during carer's leave?

Unless you have an agreement with your employer to the contrary, you are not paid by your employer during the period of carer's leave. Carer's Benefit is paid by the Department of Social and Family Affairs to employees who fulfil the qualifying conditions. Employees who do not qualify for Carer's Benefit may qualify for Carer's Allowance which is means tested. You can take carer's leave even though you may not be entitled to either Carer's Benefit or Allowance.

How do I qualify for Carer's Benefit or Carer's Allowance?

To qualify for Carer's Benefit you must have 156 PRSI paid contributions in Class A, B, C, D, E or H and 39 contributions paid in the relevant tax year, or in the 12 months immediately before the start of Carer's Benefit, or 26 contributions paid in the relevant tax year and 26 paid in the relevant tax year prior to that. You must leave employment (of at least 32 hours a fortnight) to look after someone with a disability in need of full-time care. If you are self-employed and paying Class S PRSI contributions, you are not eligible for Carer's Benefit.

To qualify for Carer's Allowance you must be aged 18 or over and satisfy both a means test and a habitual residence test. You must be living with the person you are looking after, or be providing full-time care and attention to a person who is not living with you. The person you are caring for must be aged 16 or over, require full-time care and attention for at least 12 months (medical certification is required) and not normally be living in a hospital, home or similar institution. They can be under the age of 16 if a Domiciliary Care Allowance is being paid. If you are getting certain social welfare payments in your own right, you may keep your main payment and get an extra half-rate Carer's Allowance. An additional 50% of the maximum payment (for both Carer's Benefit and Allowance) is payable if you are caring for more than one person.

Can carer's leave be ended?

The leave usually ends on the date set out in the confirmation document.

Carer's leave may also end in the following circumstances:

- At a date agreed between the employer and the employee
- Where the person being cared for no longer meets the conditions
- Where the employee is no longer in a position to provide full-time care and attention
- Where the person being cared for dies. In these circumstances, the carer's leave will end six weeks after the death or on the date specified in the confirmation document – whichever is earlier
- Where an employer is of the opinion that the employee, or the person receiving the care, no longer meets the conditions for carer's leave. In such a situation, the employer may refer the matter to the Department of Social and Family Affairs for a decision
- Following the ending of the carer's leave, the employer must give notice of this fact (including the date of return) in writing to the Department of Social and Family Affairs

Can I work during carer's leave?

Yes, but only for a maximum of 15 hours per week. The earnings from such employment or self-employment must not exceed a weekly limit set by the Department of Social and Family Affairs. The employer from whom you are taking carer's leave is not obliged to provide these hours. You can seek employment elsewhere.

Alternatively, you may attend an educational or training course or take up voluntary or community work during carer's leave, again for a maximum of 15 hours per week.

You should inform the Department of Social and Family Affairs if you take up any of these options.

Do I have the right to return to work after carer's leave?

Yes, but you must give your employer at least four weeks' notice in writing of your intention to return to work. It is not necessary to give notice if the Department of Social and Family Affairs gives a ruling that you are no longer entitled to carer's leave.

Following carer's leave, you are entitled to return to your previous job or a suitable alternative.

You are protected against being victimised for taking carer's leave, or proposing to take it. Being victimised includes dismissal, unfair treatment and an unfavourable change in your conditions of employment. You may not be dismissed for taking carer's leave.

Can I lose out in regard to employment conditions after returning from carer's leave?

No. As a general rule, you must be treated as if you had been in work during the carer's leave, except that you are not entitled to pay and are only entitled to annual leave and public holidays in respect of the first 13 weeks of carer's leave.

ENFORCING YOUR RIGHTS

You can refer a complaint about holiday entitlements to a Rights Commissioner. You should bring the complaint within six months of the date of the dispute occurring (12 months if there is reasonable cause for delay).

Alternatively, you can take your claim to the Employment Appeals Tribunal if it is connected with a claim in relation to another employment matter such as dismissal, maternity, notice, or redundancy.

Problems arising from force majeure leave may be referred to a Rights Commissioner. Disputes with your employer concerning carer's leave should be referred to a Rights Commissioner within six months of the dispute occurring.

Disputes relating to a decision by the Department of Social and Family Affairs should be referred to the Social Welfare Appeals Office. Appeals to the Social Welfare Appeals Office should be made within 21 days of the date of the decision by the Department of Social and Family Affairs. The Chief Appeals Officer has the power to extend the period for bringing an appeal.

Disputes arising from the dismissal of an employee for issues relating to carer's leave are dealt with under the provisions of the Unfair Dismissals Acts and not under the Carer's Leave Act 2001. However, disputes arising from other forms of victimisation are dealt with under the Carer's Leave Act 2001.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

USEFUL ADDRESSES

Citizens Information Board Head Office

George's Quay House
43 Townsend Street, Dublin 2

Tel: (01) 605 9012

Website:

www.citizensinformationboard.ie

Email: info@ciboard.ie

Department of Social and Family Affairs

Information Services, Social Welfare
Services Office, College Road, Sligo

Carer's Benefit Section/
Carer's Allowance Section
Social Welfare Services,
Ballinalee Road, Longford

Tel: (043) 40000 or (01) 704 3000

Website: www.welfare.ie

Citizens Information 

LOG ON

www.citizensinformation.ie

LO-CALL

1890 777 121 Open Mon to Fri, 9am to 9pm

DROP IN

For your local centre see Golden Pages listing

Labour Relations Commission (including Rights Commissioner Service)

Tom Johnson House,
Haddington Road, Dublin 4

Tel: (01) 613 6700

Email: info@lrc.ie

Website: www.lrc.ie

Social Welfare Appeals Office

D'Olier Street, Dublin 2

Lo-call: 1890 747 434

Email: swappeals@welfare.ie

Website: www.socialwelfareappeals.ie

National Employment Rights Authority

O'Brien Road, Carlow

Lo-call: 1890 201 615

Website: www.employmentrights.ie