

## CARER'S LEAVE

### Introduction

The Carer's Leave Act provides an entitlement for employees to avail of unpaid leave from their employment to enable them to personally provide full-time care and attention for a person who needs such care.

### Period of Leave

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 (hereafter referred to as a "relevant person"). The minimum statutory entitlement is 13 weeks.

In general, the Act applies to any person:

- Working under a contract of employment or apprenticeship
- Employed through an employment agency or
- Holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act, 1956), an officer or servant of a local authority for the purposes of the Local Government Act, 1941, or of a harbour authority, health board or vocational education committee, and a member of the Garda Síochána or of the Defence Forces, In the case of agency workers, the party who is liable to pay the wages (employment agency or client company) is the employer for the purposes of this Act.

### Entitlement to Leave

An employee who wishes to avail of Carer's Leave must fulfil the following conditions:

- (i) An employee must have completed at least 12 months continuous service with the employer from whose employment the leave is taken before the commencement of the leave. There is no hours threshold in the Act.
- (ii) The employee must intend to take Carer's Leave for the purpose of personally providing full-time care and attention to a person (a "relevant person") who needs it and must do so for the duration of the leave.

The employee may:

- Attend an educational or training course or take up voluntary or community work for up to 15 hours per week or
- Engage in \*limited self-employment in their own home or
- Engage in employment outside the home for up to \*15 hours per week. This must be approved by the Minister for Social Protection.

*\*Subject to an upper income limit as set out in regulations made by the Minister for Social Protection.*

- (iii) The relevant person (i.e. the person receiving full-time care and attention) must be deemed to need full-time care and attention by a deciding officer (or appeals officer) of the Department of Social Protection. This decision will be based on information provided by the relevant person's general medical practitioner and assessed by the Department's medical advisor.

To apply for the decision, an employee should obtain Department of Social Protection Form CARB1 from Carer's Benefit Section of that Department and arrange for its completion and return to the afore-mentioned Carer's Benefit Section.

### Meaning of 'Full-Time Care and Attention'

According to Department of Social Protection Regulations, this 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 their 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 him/herself.

Note: The relevant person may attend a non-residential course of rehabilitation training or a non-residential day care centre approved by the Minister for Health and Children.

#### (iv) Other Eligibility Criteria

- An employee 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 purpose of providing full-time care and attention to the same relevant person.
- 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. In such circumstances, an overall total amount of Carer's Leave of 208 weeks (104 weeks in respect of each relevant person) will apply.
- Before an employee can commence Carer's Leave, he/she must provide the employer with a copy of the decision of a deciding officer (or appeals officer) of the Department of Social Protection, that the relevant person has been medically certified as needing full-time care and attention.

Carer's Leave is not conditional on entitlement to Carer's Benefit.

### **How may Carer's Leave be taken?**

The Act provides that the leave shall 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.

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

An employer may refuse, on reasonable grounds given to their employee in writing, to permit an employee to take Carer's Leave for any period of less than 13 weeks.

An employer and employee may, however, agree to arrangements for Carer's Leave on terms more favourable to the employee.

The Minister for Jobs, Enterprise and Innovation may make Regulations under the Act in respect of the form in which the Carer's Leave may be taken by a class or classes of employee, where it is taken other than in one continuous period of 104 weeks.

Where Carer's Leave is not taken by an employee in one continuous period of 104 weeks there must be a gap of at least 6 weeks between periods of Carer's Leave taken in respect of the same relevant person. An employee proposing to avail of Carer's Leave for another relevant person cannot generally do so until a period of 6 months has elapsed from the date of termination of the leave in respect of the previous relevant person. This provision does not apply where two relevant persons reside together (see paragraph 3). The Act requires an employee to notify their employer of any change of circumstances that affect their entitlement to Carer's Leave.

### **Protection of Employment Rights**

During an absence on Carer's Leave, an employee shall be regarded as still working in the employment for all purposes relating to his or her employment and none of his or her rights or obligations relating to the employment shall be affected by taking the leave with the following exceptions:

- There is no right to remuneration or superannuation benefits and any obligation to pay superannuation contributions in, or in respect of, the employment.
- 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.
- The right to public holidays is likewise restricted to the period comprising the first 13 weeks only of the Carer's Leave entitlement in respect of any one relevant person.

Absence from employment while on Carer's Leave shall not be treated as part of any other leave to which the employee is entitled (e.g. sick leave, annual leave, adoptive leave, maternity leave, parental leave or force majeure leave).

The Carer's Leave Act, 2001, prohibits an employer from penalising an employee on the grounds that they have exercised or proposes to exercise their right to Carer's Leave. Penalisation of an employee includes:

- (a) Dismissal of the employee
- (b) Unfair treatment of the employee, including selection for redundancy, and
- (c) An unfavourable change in the conditions of employment of the employee.

The dismissal of an employee, solely or mainly because of the exercise, or proposed exercise by him or her of their rights under the Carer's Leave Act, 2001, will be regarded as an unfair dismissal for the purposes of the Unfair Dismissals Acts, 1977 to 2001, unless having regard to all the circumstances, there were substantial grounds justifying the dismissal (see paragraph 16 regarding the amendment of the Unfair Dismissals Acts, 1977 to 2001).

An employee will be regarded as having been dismissed by their employer where the employer does not permit that employee to return to work on the termination of a period of Carer's Leave.

The general qualification requirement under the Unfair Dismissals Acts, 1977 to 2001, of one year's continuous service will not need to be met where an employee claims they were dismissed for exercising their rights under the Carer's Leave Act, 2001. An employee may seek relief against

penalisation involving a dismissal under the Unfair Dismissals Acts, 1977 to 2001, and not under the Carer's Leave Act, 2001.

### **Date of Dismissal**

An employee who is entitled to return to work in the employment concerned in accordance with the provisions of the Carer's Leave Act, 2001 but is not permitted to do so by his or her employer shall:

- For the purposes of the Unfair Dismissals Acts, 1977 to 2001, be deemed to have been dismissed on the date on which they were entitled to so return and the dismissal shall be deemed to have been an unfair dismissal for the purposes of the Unfair Dismissals Acts, 1977 to 2001, unless having regard to all the circumstances, there were substantial grounds justifying the dismissal and
- Be deemed for the purposes of the Redundancy Payments Acts, 1967 to 2001, to have had their contract of employment with their employer terminated on the date they were entitled to return to work.

Replacement of an employee on Carer's Leave The Unfair Dismissals Acts, 1977 to 2001 shall not apply to a dismissal where an employer informs an employee, in writing, at the commencement of the employment that the employment will terminate on the return to work of another employee from Carer's Leave under the Carer's Leave Act, 2001 and the dismissal duly occurs for the purpose of facilitating the return to work of that other employee.

### **Notification of intention to take Carer's Leave**

An employee must give written notice to their employer of the intention to take Carer's Leave, not later than 6 weeks before the employee proposes to commence the leave. The statement of notice must contain the following details:

- The date on which the employee intends to commence the leave;
- The duration of the leave;
- The way the employee proposes to take the leave;
- A statement that an application for a decision (in the first instance or on appeal) that the person to be cared for is a relevant person for the purposes of Carer's Leave Act, 2001 has been made to the Department of Social Protection;
- The employee's signature and date.

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

### **Revocation of Notice**

An employee may revoke 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 employer.

### **Exceptional or Emergency Circumstances**

In exceptional or emergency circumstances, where it is not reasonably practicable for an employee wishing to avail of Carer's Leave, to give notice in accordance with the notice provisions of the Carer's Leave Act, 2001, such notice must be given as soon as it is reasonably practicable for the employee to do so.

### **Employer's Discretion**

Where an employee who is entitled to Carer's Leave has taken leave purporting to be Carer's Leave but has not complied with the notice requirements, the employer may, at his or her discretion, treat that leave as Carer's Leave for the purposes of the Carer's Leave Act, 2001.

Where an employer in exercising this discretion, refuses to treat leave as Carer's Leave, on reasonable grounds, he/she must specify the grounds in writing for such refusal. This matter may be treated as a dispute for the purposes of the Act.

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

Once an employee has given notice of his or her intention to take Carer's Leave:

- The employee must give the employer a copy of the decision from the deciding officer (or appeals officer) of the Department of Social Protection that the person in respect of whom the employee proposes to avail of Carer's Leave is a relevant person i.e. medically certified as requiring full-time care and attention.
- The employee and the employer must then prepare a confirmation document. This document must be prepared and signed no later than two weeks before the leave is due to begin and must include the following details:
  - The date on which the leave period will commence;
  - The duration of the period of leave;
  - Signatures of employer and employee.

A sample confirmation document is set out at Appendix B.

Alterations to the Confirmation Document Once a confirmation document has been signed by both the employee and the employer, it cannot be altered unless both parties agree.

### **Postponement of Carer's Leave**

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 is to be taken and the confirmation document shall be amended to accord with such agreement.

Where Carer's Leave is postponed, curtailed or varied, it may be taken at another time.

### **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 employer and employee
- Where the person being cared for ceases to require full-time care and attention
- Where an employee ceases to satisfy the requirements for the provision of full-time care and attention for the purposes of the Act
- Where a decision against an employee is made by a deciding officer (or appeals officer) of the Department of Social employer
- Where the relevant person dies during a period of Carer's Leave, that date which is the earlier of the following dates (a) that date which occurs 6 weeks after the date of death or (b) the date specified in the confirmation document

### **Return to Work**

An employee who is on Carer's Leave, shall not less than 4 weeks before the date on which that employee is due to return to work, notify their employer 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.

Where Carer's Leave terminates on foot of a decision of a deciding officer/appeals officer that:

- A person is not a relevant person;
- Full-time care and attention is not being provided or
- The person providing the full-time care and attention has worked in excess of 15 hours allowable per week

then the notice of return to work will come from the employer. In such give the employee written notice to return to work on a date that is reasonable and practicable having regard to all the circumstances.

Where Carer's Leave is terminated in such circumstances, the employee shall return to work on the date specified by the employer and any period between the date of return to work and the termination date set down in the confirmation document shall be deemed not to be Carer's Leave.

Any dispute in relation to the decision of the deciding officer may only be appealed to an officer of the Department of Social Protection.

If the business has changed ownership during the employee's absence on the leave, they are entitled to work with the new owner under a contract of employment identical to the contract that existed with the original employer.

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

If an interruption or cessation of work at an employee's place of employment on the date of the intended return to work makes it unreasonable to expect the employee to return to work on that date, the employee may return to work as soon as is reasonably practicable after the interruption or cessation ends.

### **Alternative Employment**

If it is not reasonably practicable for an employer or his or her successor, to allow an employee to return to the job held immediately prior to the leave, the employer, or his or her successor, must offer the employee suitable alternative employment under a new contract of employment. The terms of the alternative employment (e.g. the place of work, the capacity in which the employee is employed) must not be substantially less favourable to the employee than the terms of his or her original job and continuity of employment will be preserved.

When an employee returns to work, their employer must notify the Carer's Benefit Section of the Department of Social Protection in writing:

- That the period of Carer's Leave has ended
- That he/she has returned to work, and
- The date of return to work

For further information, please contact ISME 01 662 2755 [www.isme.ie](http://www.isme.ie) [HR@isme.ie](mailto:HR@isme.ie)

Appendix A:

NOTICE OF INTENTION TO TAKE CARER’S LEAVE

I,

Name \_\_\_\_\_

Position \_\_\_\_\_

hereby notify my employer 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:

Name \_\_\_\_\_

Relationship \_\_\_\_\_

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

☐ One continuous period of 104 weeks

☐ In periods of \_\_\_\_\_ weeks/months

I confirm that I have made an application to the Department of Social Protection for a decision of a deciding officer of that Department that the aforementioned person is a ‘relevant person’ for the purposes of the Carer’s Act 2001.

I understand that if this is not deemed to be the case, my Carer’s Leave is not authorised and I must return to work upon receipt of confirmation of same, with immediate effect.

Name \_\_\_\_\_  
Employee

Date \_\_\_\_\_

Name \_\_\_\_\_  
On behalf of the Employer

Date \_\_\_\_\_

Appendix B:

CONFIRMATION DOCUMENT

Name of Employee \_\_\_\_\_

Name of Employer \_\_\_\_\_

Commencement Date of Period(s) of Carer’s Leave  
\_\_\_\_\_

Specific Details of Period(s) of Carer’s Leave:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name \_\_\_\_\_  
Employee

Date \_\_\_\_\_

Name \_\_\_\_\_  
On behalf of the Employer

Date \_\_\_\_\_