



Circular letter 22/97

## **An Roinn Oideachais**

### **Department of Education**

#### **Primary Branch**

### **To Boards of Management, Principal Teachers and all teaching staff of National Schools**

#### **Maternity Leave, Health and Safety Leave**

The Minister for Education wishes to bring to the attention of Boards of Management, Principal teachers and all teaching staff in National Schools details of the amended maternity leave and health and safety leave procedures which have been agreed by the Conciliation Council for teachers.

The agreement reached between the Managerial Authorities, the Teacher Unions, and the Department of Education takes account of the main provisions of the Maternity Protection Act, 1994, the Maternity Protection (Disputes and Appeals) Regulations, 1995 and the Health, Safety and Welfare at Work Act, 1989 and the Health, Safety and Welfare at Work (General Application) Regulations, 1993 as they apply to teachers.

This Circular supersedes all previous Circulars relating to maternity leave.

Don Thornhill,  
Secretary.  
July 1997

# 1 MATERNITY LEAVE

- 1.1 All pregnant teachers are entitled to 14 consecutive weeks maternity leave, except where the birth occurs before 24 weeks of pregnancy and the child is stillborn. Notwithstanding that or any other provision in this Circular, where a female teacher has been appointed for a fixed term and her employment would have terminated on the expiry of that term had she not been on maternity leave, the period of maternity leave shall not extend beyond the day on which the term expires. The granting or taking of maternity leave or additional maternity leave should not affect the date of termination of a fixed term appointment, neither should it affect the issue of renewing the appointment should that arise - i.e. the fact that a female teacher is on maternity leave or additional maternity leave should not be a factor in deciding whether to terminate or renew her appointment.
- 1.2 The granting of maternity leave is conditional on a female teacher submitting to her Board of Management as soon as is reasonably practicable but not later than **four weeks before the date of commencement of maternity leave** the following (Note: for these purposes, Saturday is regarded as the end of the week):
- (a) written notification of her intention to avail of maternity leave;
  - and
  - (b) a medical certificate confirming pregnancy and stating the expected week of confinement.
- 1.3 Maternity leave will begin on such day as the teacher selects, being not later than four weeks before the end of the expected week of confinement. Maternity leave will end on such day as the teacher selects, being not earlier than four weeks after the end of the week of the expected week of confinement.
- 1.4 Apart from a compulsory period of four weeks to be taken before and after the expected date of confinement, the taking of maternity leave is at the discretion of the teacher concerned. It should be noted that, except as provided in paragraphs 1.5 and 1.6 below, ten weeks is the maximum permissible period of maternity leave before the expected date of confinement; likewise, ten weeks is the maximum permissible period of maternity leave after the expected date of confinement.
- 1.5 If the date of confinement occurs in a week that is four weeks or more before the expected date of confinement and the teacher has not yet commenced her maternity leave, the Board of Management must be notified in writing within 14 days of the date of confinement. The teacher will then be entitled to maternity leave with the date of confinement being regarded as the first day of maternity leave.
- 1.6 If the baby is born in a week after the expected date of confinement and is such that less than four weeks of maternity leave are remaining, maternity leave will be extended by the number of days between the expected date of confinement and the actual date of confinement, subject to a maximum of four weeks, such that at least four weeks of maternity leave will have been taken after the confinement. The Board of Management must be notified in writing,

as soon as is practicable, that the teacher will be extending her maternity leave and indicating how long the extension will be.

- 1.7 Except as outlined in paragraphs 1.8 and 1.9 below, a female teacher on maternity leave is deemed for all purposes (other than remuneration) to be in employment. The absence is, therefore, fully reckonable for all purposes including seniority, determination of panel rights etc. A teacher on maternity leave is entitled to receive notification regarding vacant Posts of Responsibility, which are to be filled. Absence on maternity leave cannot be treated as part of any other form of leave, including sick leave.
- 1.8 In the case of a teacher who is on probation at the start of maternity leave, the period of probation will stand suspended during the absence on maternity leave and will be completed by the teacher on her return to work.

## **2. ATTENDANCE AT ANTE-NATAL AND POST-NATAL CLINICS**

- 2.1 Pregnant teachers are entitled to such paid time off from duty as is necessary for attendance at ante-natal and post-natal clinics.
- 2.2 A teacher is required to provide evidence of appointment or attendance at the clinic to her Board of Management, and to give two weeks written notice of her intention to avail of leave for the purposes mentioned. Where, for urgent medical reasons, it was not possible to comply with these requirements, a teacher must, not later than one week after the appointment in question, inform her Board of Management of the reason for not having given the notice and must provide evidence of having attended at the clinic.
- 2.3 Attendance at a postnatal clinic is covered only during the fourteen weeks immediately following confinement.

## **3. LEAVE IN LIEU**

- 3.1 Where maternity leave overlaps with the school vacation, a teacher shall be entitled to leave in lieu for the vacation days which overlap subject to a maximum of 27 days in any calendar year and subject to the provisions in paragraph 1.1 in relation to teachers with a fixed term contract.
- 3.2 The leave in lieu must follow on immediately from the end of the period of maternity leave (or additional maternity leave as appropriate) or from the end of the school vacation period concerned where the maternity leave expires within such vacation period.
- 3.3 The overlapped days for which a teacher will be entitled to leave in lieu are general school vacation days including public and church holidays, where applicable, and other school closures. Days on which schools are closed in exceptional circumstances, e.g. inclement weather or polling, do not count in calculating the number of days leave in lieu due.

## **4. PAYMENT WHILE ON MATERNITY LEAVE OR LEAVE IN LIEU**

- 4.1 With the exception of substitute teachers, and subject to paragraphs 4.2 and 4.3 below, a teacher on maternity leave or leave in lieu is entitled to full pay for the duration of the leave. Substitute teachers are not entitled to payment

while on maternity leave and should confirm their entitlements to Maternity Benefit if any, with the Department of Social Welfare.

- 4.2 A teacher who is, or who was, fully insured under the Social Welfare Acts and who fulfils certain contribution conditions may be entitled to maternity benefit from the Department of Social Welfare while absent on maternity leave.
- 4.3 A teacher on maternity leave, who is entitled to maternity benefit from the Department of Social Welfare will be paid full salary by the Department of Education or an amount equivalent to the full rate of benefit to which she is entitled, whichever is the greater, provided she:
- (a) signs a mandate authorising the Department of Social Welfare to pay any benefits due directly to the Department of Education.
  - (b) makes the necessary claims for social welfare payments within the required time limits.
  - (c) complies with whatever requirements are laid down by the Department of Social Welfare.

## 5. ADDITIONAL MATERNITY LEAVE

- 5.1 At the end of maternity leave, a teacher is statutorily entitled to take further leave, referred to as "additional maternity leave", of up to four consecutive weeks immediately following maternity leave (this additional maternity leave is unpaid), subject to the provisions in paragraph 1.1 in relation to teachers with a fixed term contract.
- 5.2 The granting of additional maternity leave is **conditional** on a teacher, who intends to avail of same, notifying her Board of Management at least four weeks before the date on which the maternity leave is due to end.
- 5.3 Absences on additional maternity leave are not reckonable for any purpose. A teacher on additional maternity leave should be notified regarding vacant Posts of Responsibility, which are to be filled.
- 5.4 In the case of a teacher who is on probation at the start of maternity leave, the period of probation will stand suspended during the absence on additional maternity leave and will be completed by the teacher on her return to work.

## 6. RETURN TO WORK FOLLOWING MATERNITY LEAVE

- 6.1 A teacher who intends to return to work following maternity leave or additional maternity leave must notify her Board of Management in writing of her intention not later than four weeks before the date on which she expects to return.
- 6.2 A teacher who is employed under a fixed term contract, which does not expire within the period of the maternity leave or additional unpaid maternity leave, is entitled to resume her post at the end of the leave period provided that she gives her Board of Management prior written notice of her intention to resume four weeks before the date on which she intends to resume.

## **7. FATHER'S ENTITLEMENT TO LEAVE**

- 7.1 Under certain circumstances, if the mother of the child dies within fourteen weeks of her confinement, the father of the child may be entitled to leave of up to fourteen weeks. The conditions governing the granting of leave to fathers on the birth of a child are laid down in Section 16 of the Maternity Protection Act, 1994. A male teacher who is granted leave under Section 16 is entitled to the same employment protection as a female teacher on maternity leave or additional maternity leave as appropriate. The arrangements for payment while on such leave will be similar to those described in paragraphs 4.1, 4.2 and 4.3 above.

## **8. NON-STATUTORY MATERNITY LEAVE TO THE END OF THE SCHOOL YEAR**

- 8.1 A teacher who, on completion of maternity leave; additional maternity leave; and leave in lieu as appropriate, may avail of further unpaid maternity leave referred to as "non-statutory maternity leave to the end of the school year", subject to obtaining written sanction from the Board of Management, which body should be notified four weeks in advance and subject to the provisions in paragraph 1.1 in relation to teachers with a fixed term contract.
- 8.2 Absences on non-statutory maternity leave to the end of the school year are not reckonable for any purpose other than seniority. A teacher on such leave should be notified regarding vacant Posts of Responsibility, which are to be filled.
- 8.3 In the case of a teacher who is on probation at the start of maternity leave, the period of probation will stand suspended during the absence on non-statutory maternity leave to the end of the school year and will be completed by the teacher on her return to work.

## **9. PROTECTION OF THE HEALTH AND SAFETY OF PREGNANT EMPLOYEES**

- 9.1 The Safety, Health, and Welfare at Work Act, 1989, and the Safety, Health and Welfare at Work (General Application) Regulations, 1993 place the following obligations on employers:
- (a) to carry out an assessment of risks in the workplace to employees to whom the provisions of the Acts apply;
  - (b) to take protective and preventive measures to safeguard the health of any employee to whom the provisions apply, where the assessment reveals a risk to such employees, or, where a risk cannot be removed by such measures, to take other measures as are necessary to avoid exposure of that employee to the risk;
  - (c) to inform the employees and/or their safety representatives of the results of the assessment and the measures to be taken concerning the health and safety of such employees.
- 9.2 The Regulations contain two Schedules, which list agents, processes and working conditions exposure to which may entail a risk to employees to whom the provisions apply. Those listed in the First Schedule are of a type, which may be rendered harmless by preventive or protective measures (for example

the handling of loads or noise). The Second Schedule contains a list of agents and working conditions to which employees who are pregnant or are breastfeeding may not be obliged to expose themselves in any circumstances.

## **10. HEALTH AND SAFETY LEAVE**

10.1 Where a risk to the health and safety of an employee to whom the provisions of the regulations apply has been identified and it is not possible to remove the risk by preventive or protective measures, a Board of Management, as the employer shall:

- temporarily adjust the working conditions or hours (or both) of the teacher concerned so that exposure to the risk is avoided and inform employees and safety representatives of the outcome, or
- in the event that such adjustment is not possible, the Board of Management shall move the teacher to suitable alternative work which does not entail the risk, or
- in the event that such alternative work is not available, the employer shall grant the teacher health and safety leave.

10.2 Except as outlined in paragraphs 10.4 and 10.5 below, a female teacher on health and safety leave is deemed for all purposes (other than remuneration or entitlement to public holidays) to be in employment. The absence is, therefore, fully reckonable for all purposes including seniority, determination of panel rights etc. A female teacher on health and safety leave is entitled to receive notification regarding vacant Posts of Responsibility, which are to be filled. Absence on health and safety leave cannot be treated as part of any other form of leave, including sick leave.

10.3 Where a female teacher has been appointed for a fixed term and her employment would have terminated on the expiry of that term had she not been on health and safety leave, the period of health and safety leave shall not extend beyond the day on which the term expires. The granting or taking of health and safety leave should not affect the date of termination of a fixed term appointment, neither should it affect the issue of renewing the appointment should that arise - i.e. the fact that a female teacher is on health and safety leave should not be a factor in deciding whether to terminate or renew her appointment.

10.4 In the case of a teacher who is on probation at the start of health and safety leave, the period of probation will stand suspended during the absence on health and safety leave and will be completed by the teacher on her return to work.

## **11. PAYMENT WHILE ON HEALTH AND SAFETY LEAVE**

11.1 With the exception of substitute teachers, and subject to Paragraphs 11.2 and 11.3 below, a teacher on health and safety leave is entitled to full pay for the duration of the leave. Substitute teachers may, subject to the terms of Statutory Instrument No. 20 of 1995 (or subsequent additional or amending Statutory Instruments), be entitled to payment for the first 21 days of health and safety leave. Apart from such statutory entitlement, substitute teachers

will not be paid while on health and safety leave. They should confirm their entitlements to Health and Safety Benefit if any, with the Department of Social Welfare.

11.2 A teacher who is, or who was, fully insured under the Social Welfare Acts and who fulfils certain contribution conditions may be entitled to an allowance from the Department of Social Welfare while absent on health and safety leave.

11.3 A teacher on health and safety leave, who is entitled to health and safety benefit from the Department of Social Welfare will be paid full salary by the Department of Education or an amount equivalent to the full rate of benefit to which she is entitled, whichever is the greater, provided she:

- (a) signs a mandate authorising the Department of Social Welfare to pay any benefits due directly to the Department of Education.
- (b) makes the necessary claims for social welfare payments within the required time limits.
- (c) complies with whatever requirements are laid down by the Department of Social Welfare.

## **12. ENDING OF HEALTH AND SAFETY LEAVE**

12.1 Health and Safety Leave will cease when:

- (a) the teacher concerned commences maternity leave or not later than four weeks before the end of the expected week of confinement, whichever is the sooner

or

- (b) the teacher is no longer an employee to whom Part III of the Maternity Protection Act, 1994 applies (i.e. is not pregnant, has not given birth within the last fourteen weeks or is not breastfeeding); in these circumstances, the teacher should notify the Board of Management, in writing, at the earliest practical time that she is no longer at risk; the leave will end seven days after receiving notification that she can resume work or on the day she returns to work, whichever is earlier

or

- (c) the term of a fixed-term appointment expires and the employment of the teacher concerned would have terminated had she not been on health and safety leave; in this situation health and safety leave will not extend beyond the day on which the term expires - reference paragraph 10.3 above

or

- (d) the risk ceases, or if the Board of Management implements measures which will no longer render the teacher vulnerable to the risk which gave rise to the leave, or if suitable alternative work becomes available for the teacher; in these circumstances, the Board of Management should notify the teacher, in writing, that she can return

to work without exposure to the risk, or that suitable alternative work is available, as appropriate; the leave will end seven days after the teacher receives such notification, or on the day she returns to work, whichever is earlier.

The detailed arrangement regarding the respective responsibilities of the employer and the employee in relation to health and safety leave are contained in Sections 17 - 20 of the Maternity Protection Act, 1994.

### **13. RESOLUTION OF DISPUTES**

- 13.1 Any dispute concerning an entitlement under the Maternity Protection Act, 1994, which does not relate to a dismissal or to technical matters on health and safety risks, may be referred by either party to the dispute to a Rights Commissioner within six months of the commencement of the dispute and on appeal to the Employment Appeals Tribunal.

### **14. QUERIES**

- 14.1 Enquiries about this Circular should be made to :

Payments Sections I or II  
Primary Branch  
Department of Education  
Cornamaddy  
Athlone  
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July, 1997

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