



Circular 0027/2013

**To: The Managerial Authorities of Recognised Primary, Secondary,
Community, and Comprehensive Schools
and
The Chief Executive Officers of Vocational Education Committees**

**PARENTAL LEAVE ENTITLEMENTS
FOR
SPECIAL NEEDS ASSISTANTS
IN
RECOGNISED PRIMARY AND POST PRIMARY SCHOOLS**

The Minister for Education and Skills directs you to implement the regulations and procedures regarding Parental Leave Entitlements for special needs assistants whose posts are wholly funded by monies provided by the Oireachtas.

The regulations and procedures are to be implemented by each employer with immediate effect and all special needs assistants must adhere to the terms of this circular.

This circular supersedes all previous circulars, memoranda, rules and regulations in relation to Parental Leave Entitlements. Please ensure that copies of this circular are provided to all members of the Board of Management/Vocational Educational Committee and its contents are brought to the attention of all special needs assistants in your employment including those on leave of absence.

This Circular can be accessed on the Department's website under: www.education.ie
Home – Education Staff – Breaks/ Leave – Parental Leave.

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Teacher/SNA Terms and Conditions Division
24 June 2013

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Payroll Division
24 June 2013

PARENTAL LEAVE ENTITLEMENTS

Definitions

For the purposes of this circular the following terms shall have the meanings assigned to them here unless the context indicates otherwise:

Adopting Parent - the term adopting parent refers to a special needs assistant who is in the process of becoming an adoptive parent and in whose care a child has been placed with a view to making an adoption order.

Disability – means, for the purposes of the Parental Leave Acts, an enduring physical, sensory, mental health or intellectual impairment of the child such that the level of care required for the child is substantially more than the level of care that is generally required for children of the same age who do not have any such impairment.

DSP – means The Department of Social Protection.

Employer – means a Vocational Education Committee (VEC) for vocational schools/community colleges and a Board of Management/Manager in the case of primary, voluntary secondary, community and comprehensive schools. The Vocational Education Committee or Board of Management/Manager may delegate responsibility for matters set out in this circular to the Principal of the school.

In Loco Parentis – means the special needs assistant applying for parental leave must be either legally responsible for or fulfil the criterion that he or she is actively parenting the child on an on- going basis.

Leave Year – means the period 1st September to 31st August in each year.

Long-Term Illness – means, for the purposes of the Parental Leave Acts, a long-term illness, the effect of which is that the level of care required for the child is substantially more than the level of care that is generally required for children of the same age who do not have any such long term illness.

On Line Claims System (OLCS) – means the system for recording of absences and inputting the claims for the payment of substitute and non regular part-time special needs assistants which is currently operating in primary, voluntary secondary, community and comprehensive schools.

School Year – as defined by the Minister for Education and Skills from time to time currently beginning on 1st September and ending on 31st August in each year.

The Department – means the Department of Education and Skills.

1. General Information

- 1.1 Parental leave is a period of **unpaid leave** available to special needs assistants for the purpose of the care of children. It is provided for under the Parental Leave Acts 1998 and 2006 and the European Union (Parental Leave) Regulations 2013 (S.I. No.81 of 2013).
- 1.2 A special needs assistant on parental leave is deemed for all purposes to be in employment at that time with the exception of remuneration and superannuation. The absence is therefore fully reckonable for all other purposes including seniority and progression on the incremental salary scale.
- 1.3 A special needs assistant absent on parental leave may not engage in any type of paid employment as, under the terms of the Parental Leave Acts, the leave is specifically intended for the care of children.

2 Entitlement to Parental Leave

- 2.1 A special needs assistant is entitled to 18 weeks parental leave in respect of each child up to the age of 13 years or the age of 16 years in the case of a child with a disability and/or long-term illness. There is no obligation however to take the full 18 weeks leave. Applicants who have taken 14 weeks previously may now apply for an additional 4 weeks provided they still meet the entitlement criteria.
- 2.2 Each parent has a separate entitlement to parental leave from his/her job and such leave is available to each parent who meets any of the following criteria:
 - (a) the natural parent
 - (b) the adoptive parent
 - (c) the adopting parent
 - (d) a special needs assistant acting *in loco parentis* to a child
- 2.3 Where a special needs assistant is acting *in loco parentis* it is a matter for the employer to be satisfied that the granting of parental leave is appropriate.

3. Eligibility

- 3.1 A special needs assistant may be eligible for parental leave where s/he has completed one year's continuous employment with the employer from whose employment the leave is taken.
- 3.2 In circumstances where, on the latest day for commencing a period of parental leave, the special needs assistant has less than one year but more than three months continuous service with the employer from whose employment the leave is to be taken, the special needs assistant shall be entitled to parental leave for a period of one week for each month of continuous service completed with his/her employer at the time of the commencement of the leave.
- 3.3 Entitlement to parental leave shall cease on the expiry of the contract of employment and that contract not having been renewed.

4 Correspondence Address

- 4.1 The employer will address all necessary correspondence to the special needs assistant at the address last notified by the special needs assistant and no fault shall lie with the employer in the event that the special needs assistant does not receive such correspondence.

5 Pattern for Parental Leave

- 5.1 A special needs assistant may avail of parental leave in blocks of at least 1 week up to a maximum of 18 weeks. Please note each period of parental leave must be a minimum duration of 7 consecutive days including weekends, school closures and days on which a special needs assistant is not timetabled for attendance occurring within that period.
- 5.2 Where a special needs assistant applies for parental leave for 6 or more weeks, the minimum period which must be granted by the employer is 6 weeks except in the cases of postponement and refusal of parental leave as outlined in paragraphs 9 and 10 below.

6 Special Pattern in Exceptional Circumstances

- 6.1 In certain circumstances a special needs assistant may avail of parental leave in the form of individual days where a child has particular medical problems that require the attendance of a parent with the child at a hospital, clinic or therapeutic appointment on a regular basis.
- 6.2 In such circumstances certification from the hospital or clinic in respect of the absence must be submitted to the employer and retained on the special needs assistant's personnel file.

7 Parental Leave Time Limits

- 7.1 Entitlement to parental leave shall end
- not later than the day on which the child concerned attains his/her 13th birthday or
 - in the case of an adopted child aged between 11 and 13 years, not later than two years from the date of the adoption order
 - in the case of a child with a disability and or long term illness, not later than the day on which the child attains his/her 16th birthday.
- 7.2 Parental Leave for more than 1 child in any period of 12 months may not exceed 18 weeks without the consent of the employer except in the case of multiple births (twins, triplets etc.) where a special needs assistant has a statutory entitlement to take more than 18 weeks in any 12 month period.

8. Statutory Annual Leave/Public Holiday Entitlement

- 8.1 In general full time employees are entitled to 20 days annual leave. Employees who work less than full hours are entitled to annual leave on a pro rata basis.
- 8.2 Any entitlements in respect of public holidays occurring while on parental leave will be addressed by additional annual leave.
- 8.3 These annual leave entitlements are to be taken on existing school closure days that occur in the leave year in question i.e. both before and after the parental leave period. Annual leave entitlements are to be taken at a time outside of the period of parental leave.
- 8.4 When availing of parental leave and there are not enough school closure days in the leave year to absorb all annual leave entitlements, it is permitted to take the necessary days immediately before the parental leave in the same leave year. Alternatively, special needs assistants will be permitted to carry the balance forward to the following leave year but must then take these days during school closures.
- 8.5 Special needs assistants who resign/retire or their employment ceases may be entitled to additional payment in lieu of their accrued leave.

9 Postponement of Parental Leave by the Employer

- 9.1 Parental leave may be postponed in circumstances where granting the leave at that time would have a substantial adverse effect on the operation of the school and ordinarily the leave may only be postponed once. An example of a reason why an employer would postpone parental leave would be a difficulty in obtaining a replacement special needs assistant for the duration of the absence.
- 9.2 In such circumstances the employer is obliged to
- consult with the special needs assistant prior to any decision to postpone the leave
 - where the postponement is deemed necessary, notify the special needs assistant in writing not later than 4 weeks before the intended date of the commencement of the leave
 - ensure that the postponement is not any longer than 6 months from the *original date* on which the parental leave was due to commence
 - agree a new date for the postponed leave to be taken at a time when the special needs assistant would otherwise have been working
 - ensure that any further or subsequent postponement can only be permitted on the grounds where it affects seasonal variation.

- ensure that a new confirmation document (see Paragraph 13 below) agreeing to the new revised dates is signed by both parties with the understanding that this can be further amended provided there is agreement between both parties.

9.3. Where solely as a result of postponement of the leave a child passes the age threshold, the entitlement to parental leave is not lost. The leave should be taken as soon as possible after the period of postponement has lapsed on a precise date agreed by both parties.

10 Refusal to grant Parental Leave

10.1 Where there are reasonable grounds to believe that the special needs assistant may not be entitled to parental leave the employer may refuse to grant such leave.

10.2 In such circumstances the employer is obliged to

- notify the special needs assistant in writing of the reasons for the proposed refusal and invite him/her to make representations on the matter within 7 days.
- consider any representations from the special needs assistant before making a final decision on whether or not to refuse the leave.
- where the employer ultimately decides to refuse the leave then the special needs assistant must be notified in writing of the decision summarising the grounds for the refusal.

11 Transfer of Parental Leave

11.1 Subject to the approval of the employer, it is possible to transfer 14 weeks out of the 18 week parental leave entitlement to another parent of a relevant child, provided the other parent is employed with the same employer. In compliance with Council Directive 2010/18/EU, it is necessary for each parent to retain 4 weeks, out of his/her 18 week entitlement, for his/her own personal use. Under that Directive, these 4 weeks may not be transferred to another parent and can only be used by the parent with whom the entitlement originates. This means where both parents are employed by the same school one parent may avail of 32 weeks and the other 4 weeks.

12 Special Needs Assistant Application

12.1 Application for parental leave should be made by a special needs assistant to his/her employer at least 6 weeks in advance of commencement of the leave on the prescribed application form which is attached at Appendix A of this circular.

13 Employer Confirmation Document

- 13.1 The employer in granting parental leave should, 4 weeks prior to the commencement of the leave, prepare with the special needs assistant the confirmation document attached at Appendix B of this circular. This document constitutes a legal agreement between the parties. A special needs assistant may revoke the application at any point prior to the signing of the confirmation document by both parties.

14 Confirmation to the Department/VEC

- 14.1 The school must notify the Department (via recording of the leave on the OLCS)/VEC, not later than 4 weeks prior to the commencement of the leave. As parental leave is unpaid leave, undue delay in recording of the leave may result in overpayment of salary to the special needs assistant concerned. Any overpayment of salary arising in this manner must be recouped from the special needs assistant.

15 Replacement Special Needs Assistant

- 15.1 Contracts awarded to cover absences outlined in this circular should make clear reference to the fact that there are circumstances where the replacement appointment may have to be terminated in the event of the absent special needs assistant returning to duties earlier than initially expected e.g. suspension/postponement of parental leave through illness of the special needs assistant.
- 15.2 Where a replacement special needs assistant is employed, he/she may be required to be available for the additional 72 hours that form part of a special needs assistant contract (pro-rata for part-time special needs assistants) to be utilised and delivered outside of normal school opening hours and/or the normal school year.
- 15.3 Where a replacement special needs assistant is employed to cover an absence under this circular, he/she will not attain any seniority in the school and will have no entitlement to a redundancy payment when his/her post is terminated due to the return of the absent special needs assistant, the reduction of allocation of special needs assistant resources to the school or for any other reason.

16 Termination of Parental Leave

- 16.1 Parental leave may be terminated by the employer if there are reasonable grounds to believe that the leave is being used for a purpose other than the care of the child/children concerned.
- 16.2 Before terminating the leave the employer is obliged to
- notify the special needs assistant in writing that the matter is under consideration, and invite the special needs assistant to make representations within 7 days
 - consider any representations from the special needs assistant before making a final decision

- notify the special needs assistant in writing of the decision summarising the grounds

16.3 The final decision notification should inform the special needs assistant of his/her obligation to return to work after the expiry of 7 days from the receipt of the notice.

17 Suspension/Postponement of Parental Leave through illness of the Special Needs Assistant

17.1 If during, or immediately prior to, the agreed period of parental leave, the special needs assistant concerned becomes ill to the extent that s/he is unable, or will be unable to care for the child it is possible:

- where the leave has not already commenced, to postpone the taking of the leave to such time as the special needs assistant is fit to resume the care of the child, or
- where the leave has already commenced, to suspend the taking of the balance of the leave to such time as the special needs assistant is fit to resume the care of the child.

17.2 Where it becomes necessary due to illness to suspend or postpone the leave the special needs assistant must as soon as is reasonably practicable provide written notification to the employer of the postponement/suspension of the leave due to illness and provide appropriate medical certification to the employer which confirms the special needs assistant's incapacity to care for the child as a result of illness.

17.3 It should be noted that the suspended portion of the leave, if it is to be availed of, must be taken as soon as possible after the special needs assistant has been certified fit to resume.

17.4 If, purely as a consequence of a suspension of the leave due to the certified illness/incapacity of the parent, the child goes over the age threshold, the entitlement to take the leave remains and must be taken as soon as possible.

18 Carryover of remaining Parental Leave from a previous employment

18.1 Subject to the normal age threshold limitations and service requirements, a special needs assistant entering this scheme from a previous employment either in a special needs assistant or non- special needs assistant capacity where some parental leave has already been availed of

- shall retain his/her statutory right to any unused remainder of parental leave which has been carried over to the new employment, and
- irrespective of previous arrangements, shall take his/her parental leave in accordance with the terms of this circular.

19 Overlap of statutory leave types

- 19.1 It is not permissible to be simultaneously absent on two types of statutory leave. Where there is an overlap (e.g. maternity leave), parental leave may be postponed for a reasonable period by mutual agreement between the employer and the special needs assistant.

20 Request to change work hours/pattern

- 20.1 A special needs assistant returning to work from parental leave may request a change in work hours/pattern for a set period of time.
- 20.2 Such request must be made in writing to the employer as soon as reasonably practicable, but not later than six weeks before the proposed commencement of the set period of time concerned, specifying the nature of the changes requested and the date of commencement and duration of the set period requested.
- 20.3 The employer shall consider that request having regard to the special needs assistant's terms and conditions in relation to leave and remuneration as well as the needs of both the school and the special needs assistant. The employer shall inform the special needs assistant in writing if the request is being granted or refused as soon as reasonably practicable, but not later than four weeks after receiving an application.
- 20.4 Where the request is approved, both parties must prepare and sign a written agreement which sets out the revised work arrangements, including date of commencement and duration of the changes. The employer must retain the original agreement on file and give a copy to the special needs assistant. At any time before the agreement has been signed, the special needs assistant may, by notice to the employer in writing, revoke the requested change to work hours/pattern.

21 Voluntary Deductions

- 21.1 Voluntary deductions from salary cease when a special needs assistant goes on parental leave. It is the sole responsibility of a special needs assistant availing of parental leave to ensure that union subscriptions do not lapse and that alternative arrangements are made for the repayment of any monies owed in respect of the Cycle to Work or Travel Pass Schemes. No liability rests with the Department/VEC for any entitlements which may be impacted by failure to make alternative arrangements for the payment of Voluntary Deductions. Further details in relation to voluntary deductions can be found on the Department's website www.education.ie under Education Staff – Information – Payroll & Financial – Voluntary Deductions.

22 Social Welfare Arrangements

- 22.1 All queries in relation to Social Welfare arrangements and appropriate credits should be directed to the Department of Social Protection.

23 Compliance

- 23.1 All special needs assistants/employers must adhere to the regulations and procedures set out in this circular. Failure to abide with the regulations and procedures will be dealt with under the agreed disciplinary procedures and may lead to the cessation of salary in the case of special needs assistants and/or withdrawal of substitute cover in the case of schools.
- 23.2 All documentation relating to parental leave arrangements must be retained by the employer with the relevant personnel records for 8 years. These records may be selected for inspection by nominated Department officials. All records should correspond with the data input on the OLCS/VEC System.

24 Application form and the confirmation document

- 24.1 Copies of the
- (a) application form for parental leave and
 - (b) confirmation document

are attached at Appendices A and B.

25 Further Information

- 25.1 In accordance with the introductory paragraph the regulations in this circular are to be implemented by the employer. Thus all queries should initially be brought to the attention of the school management who may wish to consult with their representative organisation, who may further wish to consult with the Department at the following email address: teachersna@education.gov.ie

Appendix A

APPLICATION FOR PARENTAL LEAVE

(TO BE COMPLETED BY THE SPECIAL NEEDS ASSISTANT)

School: _____ Roll No. _____

Name: _____

Home Address: _____

Telephone No: _____

PPSN:

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I hereby make application for parental leave in respect of:

Name of Child: _____ Date of birth: _____

(The birth certificate of the child and, where applicable, evidence of the date of the adoption order of the child, or evidence of parent acting in loco parentis should accompany this application)

Have you previously availed of parental leave in respect of the child above?

Yes No

If yes please state the number of weeks: _____

I propose to take parental leave as follows:

Please tick

- In one continuous block of 18 weeks
 In separate periods of weeks as follows:

Dates of parental leave as follows:

From - To:	From - To:	From - To:

I hereby confirm that the information recorded in this document is true and accurate and my application for parental leave is submitted in accordance with the regulations and procedures set out in circular letter 0027/2013.

Signature of Special Needs Assistant: _____ Date: _____

On completion please forward this Application Form to your employer

Appendix B

CONFIRMATION DOCUMENT FOR PARENTAL LEAVE

(TO BE COMPLETED BY THE EMPLOYER AND SPECIAL NEEDS ASSISTANT)

I hereby confirm that parental leave has been granted to:

Name of Special Needs Assistant: _____

PPSN:

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In respect of:

Name of Child: _____ Date of birth: _____

Parental leave has been granted in accordance with circular 0027/2013 as follows:

From – To:	From – To:	From – To:

Signature of Special Needs Assistant: _____ Date: _____

Signature of Employer: _____ Date: _____

Following signing, no amendment can be made to the confirmation document without the agreement of both parties.

This document should be retained on the special needs assistant's personnel file and a copy retained by the special needs assistant.