

26 June 2009.

Circular 14/2009 - Shorter Working Year Scheme

1. This circular supersedes any previous Term Time Circular¹. The purpose of the shorter working year scheme is to permit public servants to balance their working arrangements with outside commitments, including the school holiday periods of their children. Under the terms of the scheme, special leave is available as a period of not less than 2 and not more than 13 consecutive weeks. The leave may be taken as one continuous period, or as a maximum of 3 separate periods each consisting of not less than 2 weeks and not exceeding 13 weeks in total. The period of leave shall be **unpaid special leave** (see paragraph 12).

Eligibility to apply

2. To be eligible to apply for unpaid special leave, a person must be serving in an Agency² in an established or unestablished position (full-time staff, worksharers and other part-time staff are eligible to apply). Officers on probation at the time it is proposed to take the special leave are not entitled to participate. A public servant on special leave retains his or her public servant status and is subject to all relevant legislation and codes, including the code of conduct and the disciplinary code.

Annual leave and public holidays

3. Subject to the provisions of the Organisation of Working Time Act 1997 (“the Act”), the annual leave allocation of a participant may be reduced to take account of the period of special unpaid leave.

4. The Act provides that an employee who works at least 1,365 hours in a leave year is entitled to an annual leave allowance of 4 working weeks (20 days). In calculating how many days’ holidays an employee may be entitled under the Act, employers should include all hours worked including overtime, time spent on maternity (including unpaid maternity and adoptive leave), adoptive or parental leave, as well as holidays and public holidays taken during the calculation period.

5. Annual Leave - Full Time Staff: Persons serving in a full time capacity who avail of special leave will, in the absence of any other additional unpaid leave, be entitled to a minimum of 20 days annual leave. Staff with an annual leave allowance in excess of 20 days will have their allowance reduced on a pro rata basis. However it must be noted that if no other unpaid time off is taken, the officer will still receive 4 working weeks (20 days) as a statutory entitlement. [See examples in appendix A.]

6. Annual Leave - Worksharing Staff: Worksharers who avail of special leave will also have their annual leave entitlement calculated in accordance with the provisions of the Act as set out in the relevant Worksharing circulars.

¹ Term Time arrangements made for 2009 will not be affected.

² For “Agency” read “Agency, Body, Department or Organisation” throughout this Circular.

7. Public Holidays - Full Time Staff: The entitlement of participants to the benefit of any public holidays falling within the period of special leave is determined by the provisions of the Act. An employee who has not been absent for more than 13 weeks prior to the public holiday is entitled to benefit from the public holiday. The employer shall determine which of the following a fulltime employee is entitled to:

- a) a paid day off within a month of that day;
- b) an additional day of annual leave;
- c) an additional day's pay.

8. Public Holidays - Worksharing Staff: For worksharing staff who avail of special leave the employer shall determine in accordance with the Act which of the following an employee is entitled to:

- a) $\frac{1}{5}$ of their weekly total of hours off within one month;
- b) $\frac{1}{5}$ of their weekly total of hours to be added to their annual leave;
- c) $\frac{1}{5}$ of their weekly pay (equal to $\frac{1}{10}$ of their fortnightly pay).

Restriction on taking leave

9. The starting date for special leave will be agreed by the officer with local management (see paragraph 22), having regards to business demands, including the need to train replacement staff if any. Subject to the discretion of management participants will not be granted leave (paid or unpaid) in the four weeks immediately prior to and following the period of special leave. This restriction will not apply to leave, the granting of which is governed by statute, such as maternity, adoptive, parental or carer's leave.

10. Staff who commence maternity or adoptive leave during special leave retain their normal statutory entitlements.

11. The granting of sick leave in the four weeks immediately prior to and following the period of special leave will remain subject to the normal rules.

Arrangements for the payment of salary

12. As stated in paragraph 1, the period of special leave is **unpaid**. However, those participating in the scheme may apply for special administrative arrangements for the payment of part of basic salary during the period of special leave provided that an application in writing by a certain date, determined by the Agency, is made in the year prior to the year in which it is proposed to avail of the special leave. There may be some variations between salary payments in different periods of the year but every effort will be made to ensure equal payments of basic salary. If a person availing of these special administrative provisions in respect of pay takes other unpaid leave during the twelve month period, then the pro rata rate of salary will be adjusted accordingly.

Persons availing of the special administrative arrangements for the payment of salary may not vary their working hours during the same year. Each participant is required to give an undertaking that any overpayment that may arise from their participation in the scheme will be repaid to the Agency not later than the last day of the tax year, 31 December, unless otherwise agreed.

13. Staff should note that, under PRSI rules a person availing of special leave is not earning during the period of leave and is not therefore making PRSI contributions³. Staff availing of special leave should contact the Department of Social & Family Affairs to clarify their individual position. It is the responsibility of the person availing of the scheme to make arrangements to ensure that any voluntary contributions (e.g. health insurance, savings plans, etc.) normally deducted from salary continue to be paid.

Social Welfare - Family Income Supplement

14. Persons in receipt of Family Income Supplement who intend to avail of special leave must contact the Department of Social, & Family Affairs to clarify their entitlements.

Reckonable service

15. The period of special leave will reckon for the purposes of increments and seniority. **The period of special leave will not reckon for pension purposes.**

Sick Leave

16. Participants may not avail of sick leave during the period of special leave.

Restriction on Career Breaks

17. A person taking special leave who avails of administrative arrangements for the payment of salary over twelve months may not take a career break in the same year in which he or she avails of special leave.

18. However, in exceptional circumstances, at the discretion of the Personnel Officer, a career break may be granted in the same year in which a person avails of special leave. Any overpayment which may have arisen as a consequence of taking special leave would have to be repaid to the Agency prior to the commencement of the career break.

Promotion

19. Participants in the scheme will continue to be eligible for promotion while on special leave, subject to their meeting the usual eligibility criteria. Participants in the scheme who attend for interview, or who sit examinations as part of internal or interdepartmental promotion competitions, during normal working hours or on Saturdays, while on special leave, will receive leave in lieu. An offer of promotion made to a participant during the period of special leave may, in certain circumstances, be conditional on the person resuming duty in the higher grade with immediate effect.

Filling of ensuing vacancies

20. Agencies should normally reallocate or re-organise work or staff, where any vacancy arises under this scheme. The filling of vacancies arising through persons availing of special leave, including through the granting of higher duty allowances, will be subject to current Government policy on public service numbers and, in particular, the moratorium on recruitment and promotion.

³A person paying Class A PRSI requires 39 insured weeks in the relevant tax year to qualify for benefits. The relevant tax year for a PRSI claim is the last complete tax year before the start of the Benefit Year. (The Benefit Year starts on the first Monday in January).

21. Where specifically sanctioned, the recruitment of staff on a temporary basis to replace staff availing of special leave should be in accordance with such agreed procedures that may exist with the relevant staff unions from time to time for the recruitment of staff to the public service and must be carried out on the basis that Agencies remain within their agreed whole time equivalent staff complement. Temporary staff should not be retained for a period greater than a year. In the case of retired public servants appointed as temporary replacement staff, pension abatement arrangements, as appropriate, will apply. Where staff return from a career break granted under a previous circular (for example, for educational purposes) to fill a vacancy⁴, such service will be regarded as a temporary suspension of their career break and will reckon for purposes of seniority, increment and superannuation purposes. An officer returning in such circumstances will return at the grade at which he or she was serving prior to the career break, if appointed to a vacancy at the same grade.

Applications

22. Persons wishing to avail of special leave must apply each year to participate in the scheme to their parent Agency. Each Agency should inform staff of the procedure for making applications, including discussions with line management, and to whom applications should be addressed. Applications for special leave under this scheme shall generally be made in writing by a certain date, determined by the Agency, in the year prior to the year in which it is proposed to avail of special leave. Persons applying to participate in the scheme will be required to state the period and time of the year that they wish to apply for special leave. Applicants must understand that business needs may preclude the granting of the special leave that they have applied for and they must, in such circumstances, be prepared to discuss possible alternatives, if feasible (paragraph 26 below refers).

23. Agencies may, at their discretion, indicate that they will consider applications for periods of special leave of up to eight weeks at any time from a person who has not applied to participate in the scheme in accordance with paragraph 22, subject to the person not availing of the special administrative arrangements in respect of pay. Any such applications should be in writing as soon as is reasonably practicable but not later than six weeks prior to the proposed commencement date of the period of special leave.

24. While Agencies are asked to grant applications for special leave as far as possible, the needs of the work may require that some or all applications will have to be refused. The operation of the scheme is subject to the operating requirements of Agencies not being adversely affected. It is also important that the absence of staff on special leave does not place an undue burden on the staff remaining in the workplace. Agencies should consider the work patterns and anticipated leave needs of those remaining in the workplace when considering whether an application will impact upon operating requirements.

25. Agencies may decide, where not all applications can be granted, to set out the grounds on which priority will be given to applications, for example, priority to be given to staff who have not previously availed of special leave under this scheme (or Term Time Leave under the relevant Circular). Agencies have discretion to refuse some or all of the applications made.

⁴ Staff on Incentive Career Break under circular 13/2009 are not eligible to fill vacancies

In particular, an Agency may refuse an application for special leave under this scheme in the following circumstances -

- the person has specialist or hard-to-replace skills,
- the person works in a location or area where an absence would be difficult to accommodate for the proposed period of special leave,
- where there are a number of applications from a particular location or work area for special leave under this scheme,
- where there are or will be a number of persons on reduced work hours or other types of leave, including statutory leave, in that location or area under other schemes, or
- any other stated reason.

26. Agencies should consider, in advance of refusing any application, whether an application for a different period of special leave or a different time of the year would be acceptable and, if so, discuss changing or deferring the period of special leave with the applicant. Where applicable, Heads of Business Units may, in consultation with relevant staff, wish to arrange for staggered periods of special leave (e.g. over the summer months).

27. Persons whose applications are accepted will be required to confirm, in writing, that they wish to avail of the relevant period of special leave without pay. It will not be possible for a participant to withdraw or to alter an application for the scheme once that undertaking has been given if they have applied for special salary arrangements. An offer of participation must be accepted within five working days of the offer being made to a person. Failure to do so will be considered as a refusal. An offer may then be made to another person.

Queries

28. Officers should address queries in relation to this circular to the Personnel Section of their parent Agency.

Review

29. The scheme will operate for a period of 3 years. At the expiry of that period the operation of the scheme will be reviewed by the Department of Education and Science in consultation with the staff unions.

Philip Crosby
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To: All Agencies, etc.

Appendix A

Annual Leave Calculations for Staff availing of the Shorter Working Year scheme

Annual Leave - Full Time Staff

(1) a person who has 22 days annual leave and avails of thirteen weeks unpaid special leave, would have their annual leave entitlement reduced by 25% or 5.5 days to reflect the period of unpaid special leave. As the pro rata reduction would leave the person with less than their statutory minimum they will still receive 20 days.

The officer will still have worked for more than 1365 hours and therefore entitled to 4 working weeks (20 days)

(6.95 hours per day * 5 days * 39.18 weeks = 1361.505 hours in the year.

Plus payment for the August Bank holiday = total of 1368.455 hours.)

(2) a person who has 29 days annual leave and avails of thirteen weeks unpaid special leave, would have their annual leave entitlement reduced by 25% or 7.25 days to reflect the period of Term Time leave. Their annual leave entitlement would be 22 days.

Annual Leave - Worksharers.

The Organisation of Working Time Act provides that from 1 April 1999, depending on time worked, the holiday entitlement of an employee should be calculated by one of the following methods, whichever is the more favourable:-

(a) 4 working weeks in a leave year in which the employee works at least 1,365 hours (unless it is a leave year in which he or she changes employment);

(b) one third of a working week per calendar month that the employee works at least 117 hours;

(c) 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks);

(Option (d) is not part of the Organisation of Working Time Act 1997)

(d) pro-rata the holiday entitlement of an equivalent full-time employee in that grade.

In calculating the number of days' holidays to which an employee is entitled for the purposes of (a) (b) and (c) above, employers should include all hours worked including extra attendance, rostered time spent on any form of paid leave (such as maternity leave, adoptive leave, paternity leave, force majeure parental leave, marriage leave, paid study leave and paid examination leave), as well as holidays and public holidays taken during the calculation period. Certain unpaid leave is also counted (such as maternity leave and adoptive leave).

Worksharing staff availing of the Shorter Working Year scheme

Example 1 -

Clerical Officer - Worksharer - 4 day week pattern - avails of 10 weeks unpaid special leave (on 20 days leave if full time)

1 day = 6.95 hours, 1 week = 27.8 hours (6.95 x 4)

Annual hours = 1172.6 hours (27.8 hours x 42.18 weeks)

1172.6 hours is 64.68% of the annual hours of a full-time person (1813.255 hours) for D.

The officer was paid for the August bank holiday (only one in this example).

$1172.6 + 6.95 = 1179.554$ hours worked for A - C.

- Option A - does not apply in this case because the person works less than 1,365 hours per year.
- Option B - for the purposes of this example there are eight months in which a 4 day week person availing of the Shorter Working Year scheme may work more than 117 hours in the month. $1/3$ of a week = 9.27 hours x 8 = 74.16 hours per year. $74.16 \div 6.95 = 10.67$ days leave.
- Option C - 8% of 1172.6 hours (total annual hours) = 94.36 hours \div 6.95 = 13.58 days (rounded up to 14 days).
- Option D - pro rata a full-time person. 20 days x 64.68% = 12.93 days.

Option C gives the most favourable outcome - person entitled to 14 days annual leave.

Example 2 -

Clerical Officer - Worksharer - 4 day week pattern - avails of 13 weeks unpaid special leave (on 20 days leave if full time)

1 day = 6.95 hours, 1 week = 27.8 hours (6.95 x 4)

Annual hours = 1089.2 hours (27.8 hours x 39.18 weeks)

1089.2 hours is 60.07% of the annual hours of a full-time person

- Option A - does not apply in this case because the person works less than 1,365 hours per year.
- Option B - for the purposes of this example there are eight months in which a 4 day week person availing of the Shorter Working Year scheme may work more than 117 hours in the month. $1/3$ of a week = 9.27 hours x 8 months = 74.16 hours per year. $74.16 \div 6.95 = 10.67$ days leave.
- Option C - 8% of 1089.2 hours (total annual hours) = 87.14 hours \div 6.95 = 12.54 days leave (rounded up to 13 days).
- Option D - pro rata a full-time person. 20 days x 60.07% = 12.01 days

Option C gives the most favourable outcome - person entitled to 13 days annual leave.

Example 3 -

Assistant Principal - Worksharer - 4 day week pattern - avails of 10 weeks unpaid special leave

1 day = 6.95 hours, 1 week = 27.8 hours (6.95 x 4),

Annual hours = 1172.6 hours (27.8 hours x 42.18 weeks)

1172.6 hours is 64.68% of the annual hours of a full-time person 1 day = 6.95 hours

Option A - does not apply in this case because the person works less than 1,365 hours per year.

Option B - for the purposes of this example there are eight months in which a 4 day week person availing of the Shorter Working Year scheme may work more than 117 hours in the month. $\frac{1}{3}$ of a week = 9.27 hours x 8 = 74.16 hours per year. $74.16 \div 6.95 = 10.67$ days leave.

Option C - 8% of 1172.6 hours (total annual hours) = 93.8 hours \div 6.95 = 13.49 days.

Option D - pro rata a full-time person. 31 days x 64.68% = 20.04 days (rounded up to 20.5 days).

Option D gives the most favourable outcome - person entitled to 20.5 days annual leave.

Example 4 -

Assistant Principal - Worksharer - 3 day week pattern - avails of 13 weeks unpaid special leave

1 day = 6.95 hours, 1 week = 20.85 hours (6.95 x 3)

Annual hours = 816.9 hours (20.85 hours x 39.18 weeks)

816.9 hours is 45.06% of the annual hours of a full-time person

Option A - does not apply in this case because the person works less than 1,365 hours per year.

Option B - does not apply in this case because a person working a 3 day week pattern works less than 117 hours per month.

Option C - 8% of 816.9 hours (total annual hours) = 65.35 hours \div 6.95 = 9.4 days.

Option D - pro rata a full-time person. 31 days x 45.06% = 13.97 days (rounded up to 14 days).

Option D gives the most favourable outcome - person entitled to 14 days annual leave.