

File Ref: E109/44/10

05 May 2010

Circular 05/2010: Force Majeure and Other Urgent Family Reasons Leave

A Dhuine Uasail

1. I am directed by the Minister for Finance to refer to the Parental Leave Acts, 1998 to 2006 and to say that the following statutory entitlements to *force majeure* leave apply to civil servants. This circular also sets out the non-statutory entitlements to other forms of leave for urgent family reasons that apply to civil servants and supersedes all previous circulars and instructions covering these matters.¹

***Force Majeure* leave.**

2. Under the Parental Leave Acts, an officer is entitled to *force majeure* leave, which is leave with pay for urgent family reasons owing to the injury or illness of an immediate relative. Entitlement to *force majeure* leave is limited to circumstances where the immediate presence of the officer is indispensable, at the place where the ill or injured person is situated.

3. An “immediate relative” is defined for the purposes of this Circular as:

- A child or adopted child of the officer;
- The spouse of the officer which also includes a partner with whom the officer is co-habiting, but who is not the officer’s legal spouse;
- A person to whom the officer is in *loco parentis*;
- A brother or sister of the officer;
- The father, step-father, father-in-law, mother, step-mother and mother-in-law of the officer;
- The grandfather and grandmother of the officer; or
- Persons in a relationship of domestic dependency, including same-sex partners.

¹ Part III of Circular 2/1976, Circular 28/1991, Annex 1 and Annex II of Circular 22/1998.

4. In determining whether an officer is entitled to *force majeure* leave under paragraph 2, the following considerations apply:

- the reason is urgent when the officer has to act without delay, there is no advance notice of the illness/injury and there is little time to plan or manage it or to make alternative arrangements. In this sense, a scheduled hospital appointment or a routine childhood illness would not attract *force majeure* leave. An event might be urgent on the first day, but not on subsequent days if the initial urgency has passed;
- the need for the officer's presence is immediate when the officer's presence with the sick person could not have been delayed because of the seriousness/urgency of the illness/injury. The officer had to be with or go to the sick/injured person without any delay;
- the officer's presence is indispensable when the situation demands the presence of the officer. Nobody else will do, or will be able to give the support that the sick/injured person requires.

5. These three criteria for *force majeure* leave must apply on each individual day for which *force majeure* is requested, not just the first day.

6. *Force majeure* leave shall not exceed 3 days in any period of 12 consecutive months or 5 days in any period of 36 consecutive months. An absence for part of a day is counted as one day for the purposes of *force majeure* leave.

7. During an absence on *force majeure* leave, an officer is deemed for all purposes to be in employment. *Force majeure* leave is paid leave. It cannot be treated as part of any other leave such as sick leave, maternity leave, adoptive leave, annual leave or parental leave to which the officer is entitled.

8. Officers who avail of *force majeure* leave for family emergencies should be required to complete the notice at Appendix 1 as soon as is reasonably practicable after the taking of such leave.

9. Departments² should, in applying the foregoing provisions, satisfy themselves that, in the circumstances, an application for *force majeure* leave is fully justified. If not, the officer should apply for annual leave or special leave as set out below.

Paid family illness leave.

10. In the event of the serious and unforeseen illness of or injury to an officer's immediate relative and in any case where *force majeure* leave has been exhausted or does not apply, an officer may, at the discretion of the Personnel Officer, be granted special leave with pay in any leave year up to a limit, as appropriate, of -

(a) 5 working days in the case of a spouse, partner with whom the officer is co-habiting but who is not the officer's legal spouse, including same-sex partner, or child, adoptive child or child to whom the officer is *in loco parentis*, or

(b) 3 working days in the case of another immediate relative.

² For "Department(s)", read "Department or Office" throughout this Circular.

11. The grant of leave under paragraph 10 is subject to the following restrictions:

- The amount of special leave granted to an officer in any one leave year under paragraph 10 must not exceed a total of 5 days (in the case of leave granted under paragraph 10(a)) or a total of 3 days (in the case of leave granted under paragraph 10(b)). Together with *force majeure* leave and his/her annual leave allowance (excluding carryover leave), the leave granted to an officer must not exceed a total of 26 days;
- *Force majeure* leave must be claimed where applicable, before the grant of any special leave under this provision. The amount of any special leave granted under this provision must then be reduced accordingly, i.e. if the first day of the serious and unforeseen illness of or injury to a relative may be claimed as *force majeure* leave in accordance with the Parental Leave Acts, the maximum amount of additional special leave that may be granted in that leave year is reduced to 4 or 2 days, as appropriate;
- Where the annual leave allowance (including carryover leave) of the officer concerned was exhausted prior to the illness or injury arising and the officer is the only person who can offer the support necessary, the Personnel Officer may at his or her discretion and on a case by case basis grant special leave under paragraph 10;
- Special leave may be granted only at the time of the illness or injury. An officer who is absent on another form of statutory or non-statutory leave may not be granted special leave at the end of, or instead of, that leave, except that officers on annual leave at the time of a sudden and unforeseen illness or injury to a relative may be allowed special leave, subject to the limits and conditions applying to the grant of such leave, instead of annual leave and have their annual leave restored.

12. Where a Personnel Officer is satisfied that special circumstances exist, special leave may be granted in accordance with paragraph 10 in the event of the serious and unforeseen illness or injury of a more distant relative.

Unpaid leave for domestic reasons.

13. An officer may be granted special leave without pay-

(a) for up to 6 months to (i) cope with difficulties arising from the death or serious illness of an immediate relative, including after the birth of a child with a serious illness, or, in exceptional circumstances, in respect of a more distant relative or (ii) care for an immediate relative during sickness or old age (provided no suitable person other than the officer is available to provide the care);

(b) for up to 2 months to deal with other urgent domestic affairs.

14. Departments could in appropriate cases consider granting periods of carer's leave (Circular 39/2005) or leave under the Shorter Working Year scheme (Circular 14/2009). Anticipation of annual leave is dealt with in Circular 27/2003.

15. The grant of special leave under paragraph 10 or 13 is subject to the operating requirements of Departments not being adversely affected. In considering the grant of special leave under paragraph 10 or 13, Departments/Offices should:

- (a) satisfy themselves that the circumstances which give rise to an application for special leave fully justify any concession granted;
- (b) grant the maximum period of paid or unpaid leave only where the situation warrants this course; and
- (c) ensure that the different forms of leave are not combined so as to exceed the maximum period of leave allowable in a particular situation.

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Brendan Duffy

Assistant Secretary

Appendix 1.

Form of notice of *Force Majeure* leave under the Parental Leave Act, 1998 and Parental Leave (Amendment) Act 2006.

An employee is entitled to *force majeure* leave under section 13(1) of the Parental Leave Act 1998, where for urgent family reasons, owing to an injury or illness of a person as defined in section 13 (2) and section 8 of the Parental Leave (Amendment) Act 2006, the immediate presence of the employee, at the place where the person was, is indispensable. The relevant provisions are set out at paragraphs 2 – 9 of Circular 05/2010. This form must be completed by employees who avail of *force majeure* leave as soon as reasonably practicable after the taking of such leave.

Employee Details

Name: _____ PPS Number: _____

Section: _____ Grade: _____

Employer's Name and address: _____

I have availed of *force majeure* leave as provided by Section 13 of the Parental Leave Act 1998 and Section 8 of Parental Leave (Amendment) Act 2006 for the following reasons: _____

Date(s) of *force majeure* leave: _____

Declaration

I declare that the details above are true and complete and that I have not exceeded the statutory entitlement to *force majeure* leave, pursuant to Section 13 (4) of the Parental Leave Act, 1998 (i.e. not exceeding 3 days in any period of 12 consecutive months or 5 days in any period of 36 consecutive months).

Signed: _____

Address: _____

Date: _____