



Circular Letter 0065/2016

**To: The Chief Executives of Education and Training Boards**

**ADOPTIVE LEAVE FOR ALL STAFF OTHER THAN PERSONS EMPLOYED AS TEACHERS AND SPECIAL NEEDS ASSISTANTS IN EDUCATION AND TRAINING BOARDS**

The Minister for Education and Skills directs you to implement the regulations and procedures regarding adoptive leave for all eligible staff other than persons employed as teachers/special needs assistants (SNAs) employed in ETBs whose posts are wholly funded by monies provided by the Oireachtas.

The regulations and procedures outlined in this circular are to be implemented by each employer with immediate effect and all staff other than persons employed as teachers/SNAs must adhere to the terms of this circular.

This circular supersedes all previous circulars, memoranda, rules, regulations and arrangements in relation to adoptive leave for all staff other than persons employed as teachers/SNAs in ETBs.

Please ensure that copies of this circular are brought to the attention of all staff other than persons employed as teachers/SNAs in your employment including those on leave of absence.

Queries should be sent in the first instance to [hr@etbi.ie](mailto:hr@etbi.ie) for collation and forwarding to Department of Education and Skills where appropriate.

This Circular can be accessed on the Department's website under [www.education.ie](http://www.education.ie)

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## Definitions

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

**ABI Form** – means the Department of Social Protection Adoptive Benefit Form.

**Adoption Authority of Ireland** – means the independent statutory body with responsibility for overseeing the adoption process on behalf of the State.

**Adoptive Benefit** – means a payment made by the Department of Social Protection to those on adoptive leave who meet the qualifying criteria for the benefit.

**Adopting mother** – means a woman in whose care a child (of whom she is not the natural mother) has been placed or is to be placed.

**Adopting father** – means a male employee in whose care a child has been placed or is to be placed with a view to the making of an adoption order where the adopting mother has died.

**Sole Male Adopter** – means a male employee, in whose sole care, subject to the approval of the Adoption Authority of Ireland, a child has been placed or is to be placed.

**Adopting staff member** – means adopting mother or sole male adopter.

**Certificate of Placement** – means a document issued by the Adoption Authority of Ireland which states the date of placement, the gender and age of the child being adopted and name and address of the adopting parent(s).

**Declaration of Eligibility and Suitability** – means a declaration issued by the Adoption Authority of Ireland which confirms approval of the adopting parent(s) to engage in inter-country adoption.

**DSP** – means the Department of Social Protection.

**Employer** – means an Education and Training Board (ETB)

**Employee** – means a member of staff of an ETB other than persons employed as a teacher/SNA who are in receipt of an incremental salary under a permanent contract, contract of indefinite duration (CID), or a fixed term contract as defined in the Protection of Employees (Fixed Term Work) Act 2003.

**The Department** – means the Department of Education and Skills.

## **1. Adoptive Leave**

- 1.1 Adoptive leave consists of a period of 24 consecutive weeks from the date of placement of the child with the adopting staff member.
- 1.2 Adoptive leave is granted to staff members who are adopting mothers or sole male adopters. The adopting father who is not a sole male adopter may be entitled to adoptive leave in certain circumstances. Please see section 10 for details on this provision.
- 1.3 In order to qualify for adoptive leave, the adoption, whether foreign or domestic, must be formalised by the Adoption Authority of Ireland.
- 1.4 In the case of a domestic adoption, the employer must be supplied with a *Certificate of Placement* no later than four weeks after date of placement.
- 1.5 In the case of foreign adoption, the adopting Staff Member must obtain a *Declaration of Suitability and Eligibility* from the Adoption Authority of Ireland, in advance of the date of placement. As soon as possible after the date of placement the adopting Staff Member should provide written confirmation of placement to their employer.
- 1.6 An adoptive Staff Member's entitlement to adoptive leave, whether paid or unpaid, shall cease on the expiry of a contract, that contract not having been renewed.

## **2. Statutory Additional Unpaid Adoptive Leave**

- 2.1 An adopting Staff Member has the option to take a maximum of 16 consecutive weeks statutory additional unpaid adoptive leave.
- 2.2 In the case of foreign adoptions, some or all of the statutory additional unpaid adoptive leave may be taken prior to the date of placement, in order to allow the adopting Staff Member to attend meetings and/or classes held outside of the State, or for the purposes of familiarisation with the child. A period of statutory additional unpaid adoptive leave taken under this provision must cease no later than the last day immediately prior to the date of placement. The balance of any statutory additional unpaid adoptive leave remaining may be taken immediately after the end of adoptive leave.
- 2.3 An adopting Staff Member who avails of statutory additional unpaid adoptive leave may be entitled to receive 'PRSI credits'. Please complete the 'Application for Adoptive Leave Credits' which is available from DSP and request your employer to complete and return the employer's section to the DSP.

## **3. Sequence in which leave must be taken**

- 3.1 The sequencing arrangements for adoptive entitlements are:
  - (a) In the case of foreign adoptions some or all of the statutory additional unpaid adoptive leave (maximum of 16 weeks) may be taken prior to placement
  - (b) Adoptive leave (24 weeks)
  - (c) Statutory additional unpaid adoptive leave up to a maximum of 16 weeks. (In the case of foreign adoptions this refers to any entitlement remaining from the 16 weeks not already used prior to the adoption)

- 3.2 When all associated leave types have been utilised, as appropriate to each individual, then the next working day becomes the date of resumption for the adopting Staff Member.

#### **4. Application Procedures for Adopting Staff Members**

- 4.1 Application for adoptive leave both paid and unpaid should be made by adopting Staff Members to their 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.
- 4.2 The applicant is responsible for completion of the AB1 form and should ensure that the ETB completes the employer's portion before forwarding to the DSP at least 6 weeks prior to the start date. The AB1 form should **NOT** be sent to the ETB or to Department of Education and Skills.

#### **5. Calculations and Procedures for Employers**

- 5.1 An example adoptive leave case and calculation worksheet is attached at Appendix B of this circular.

#### **6. Correspondence Address**

- 6.1 The employer will address all necessary correspondence to the adopting Staff Member at the address last notified and no fault shall lie with the employer in the event that the Adopting Staff Member does not receive such correspondence.

#### **7. Statutory Annual Leave/Public Holiday Entitlement**

- 7.1 Any entitlements in respect of public holidays occurring while on adoptive leave will be addressed by additional annual leave.
- 7.2 These annual leave entitlements are to be taken at a time outside of the period of adoptive leave.
- 7.3 Adoptive Staff Members who resign/retire or their employment ceases may be entitled to additional payment in lieu of their accrued annual/public holiday entitlement leave.

#### **8. Pay Arrangements and Adoptive Benefit**

- 8.1 Continuation of salary during adoptive leave is not a statutory entitlement and is contingent upon compliance with the agreed terms and conditions of this scheme.
- 8.2 Any action which necessitates an adjustment to an employee's pay should be notified to the ETB immediately.
- 8.3 Under the DSP regulations any Adoptive Benefit payable by the DSP to PRSI contributors at the full rate (Class A), will issue directly to the Adopting Staff Member in question. A deduction from salary equivalent to the maximum weekly rate of Adoptive Benefit payable to the Adopting Staff Member will initially be applied by the ETB.

8.4 If the amount of benefit payable to the Adopting Staff Member is less than the maximum, or if a person is not entitled to any Adoptive Benefit, s/he should notify her/his payroll section immediately to ensure that s/he can remain on the appropriate salary. Changes to the automatic deduction can be made provided the Adopting Staff Member furnishes a copy of DSP's written notice of the actual Benefit rate applicable, if any, to the relevant payroll. Deductions, where appropriate, will be made during the period of paid leave up to a maximum of 24 weeks for adoptive leave. If the absences are recorded late any arrears due will have to be deducted from salary after the date of notification.

8.5 With effect from 1 July 2013 Adoptive Benefit payment will be treated as taxable income.

## **9. Time off for Pre-Adoption Classes, Meetings and Visits within the State**

9.1 An adopting Staff Member is entitled to time off work, without loss of pay, to attend pre-adoption classes or meetings held within the State which they are obliged to attend as part of the adoption process.

9.2 Two weeks' notice should be given for each absence referred to in this section and appropriate certification provided.

## **10. Father's Leave: Entitlement to Adoptive Leave in the event of the death of the adoptive mother.**

10.1 In the event of the death of the adopting mother at any time prior to or during her adoptive leave, the adopting father becomes entitled to the remainder of the leave.

10.2 The adopting father should inform her/his employer as soon as possible of her/his intention to take adoptive leave and/or statutory additional unpaid adoptive leave.

10.3 The Certificate of Placement, or Declaration of Eligibility and Suitability, should be provided to the employer within 4 weeks of placement/commencement of the leave.

10.4 The leave should normally commence within 7 days of the event which has created the father's entitlement, or on the day of placement; whichever is later. To avail of his leave entitlement, the father in this circumstance may simply apply in writing to his employer. As soon as is reasonably practicable, the employer should be provided with a copy of the death certificate of the mother.

10.5 The sequencing arrangement outlined in **Section 3** will also apply to the father's leave:

(a) Father's Leave (the transfer to the father of any balance remaining of the mother's 24 week adoptive leave entitlement)

(b) Statutory additional unpaid father's leave (the transfer to the father of any balance remaining of the mother's additional 16 weeks of statutory additional unpaid adoptive leave)

## **11. Postponement of leave, including in the event of hospitalisation of the child**

- 11.1 In the event that the date of placement is postponed, the commencement date of adoptive leave may also be postponed, provided the employer is informed of the new date of placement as soon as possible.
- 11.2 In the event of the hospitalisation of the child, a request may be made to the employer for postponement of any of the following:
- (a) adoptive leave
  - (b) statutory additional unpaid adoptive leave
  - (c) father's leave
  - (d) statutory additional unpaid father's leave
- 11.3 Postponement of leave will require the absent Adopting Staff Member to resume duties during the period of postponement. An application for postponement must be made in writing to the employer, accompanied by certification from the hospital in which the child is hospitalised. The employer must notify the Adopting Staff Member in writing as soon as possible of its decision. If the leave is postponed, the employer and the Adopting Staff Member must agree the date of return to work.
- 11.4 The ETB and the DSP must be notified immediately if the Adopting Staff Member is to return to work to facilitate pay adjustment, cease any benefit from the DSP and the finalisation of payment to the replacement employee if applicable.
- 11.5 The postponed leave must be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital. The maximum period for postponement of the leave is 6 months.
- 11.6 The Adopting Staff Member must provide the employer with a letter or other appropriate document from the hospital, or the child's doctor, confirming the child's discharge date.
- 11.7 If the Adopting Staff Member becomes ill having returned to work and before s/he has taken the postponed leave, s/he will be considered to have started the postponed leave on the first day of absence due to illness unless the Adopting Staff Member notifies the employer that s/he does not wish to begin the postponed leave. If this happens s/he will forfeit the postponed leave and the absence will be treated as sick leave. The normal procedures in relation to sick leave should then be followed, including the furnishing of a medical certificate where appropriate.

## **12. Termination of Placement**

- 12.1 Where, other than as a result of the death of the child, the placement of a child with an Adopting Staff Member terminates before the expiration of the adoptive leave or statutory additional unpaid adoptive leave, the Adopting Staff Member must notify the employer in writing of the date of termination within 7 days.

## **13. Termination of statutory additional unpaid adoptive/father's leave in the event of sickness of the mother/father**

- 13.1 If an Adopting Staff Member has made an application for statutory additional unpaid adoptive leave, or statutory additional unpaid father's leave, and subsequently becomes ill, s/he is

entitled to cancel that application in writing, not later than 4 weeks before such leave is due to commence. If the 4 week deadline has passed the entitlement to cancel the leave has been lost. However, a formal request can still be made to cancel such leave in favour of a certified sick leave absence.

- 13.2 Approval of such a request to terminate the leave is at the discretion of the employer. If approved, the employer and the Adopting Staff Member must agree the date for any such termination of the leave. The date agreed cannot be earlier than the first day of certified illness and not later than when the terminated leave would otherwise have ended. The normal procedures in relation to sick leave will then apply. The Adopting Staff Member will not be entitled subsequently to take the statutory additional unpaid adoptive leave or any part of it not taken at the time of commencement of sick leave.
- 13.3 To facilitate any necessary pay adjustment the ETB must be notified immediately that the Adopting Staff Member is now on sick leave.

#### **14. Replacement Contracts**

- 14.1 In the event of the employee on adoptive leave being replaced, 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 employee returning to duties earlier than initially expected. (e.g. an absent employee postpones part of the maternity leave due to hospitalisation of new born baby)

#### **15. Status during Leave**

- 15.1 An Adopting Staff Member absent on any of the leave types referred to in this circular is deemed to have been in employment at that time. Paid absences are fully reckonable for all purposes including seniority. Statutory additional unpaid adoptive leave is reckonable for all purposes, with the exception of superannuation and remuneration.
- 15.2 In the case of an Adopting Staff Member who is on probation at the start of adoptive leave, the period of probation will stand suspended during the absence and will be completed by the Adopting Staff Member on return to work.

#### **16. Employment during Adoptive Leave**

- 16.1 Adopting Staff Members are not permitted to engage in any paid employment during the course of their adoptive leave. Under DSP regulations Adoptive Benefit may be terminated in the event that paid employment is taken up while on adoptive leave. Any salary payment from the ETB may have to be reviewed in the event of termination of Adoptive Benefit arising from non-compliance with the terms of the DSP scheme.

#### **17. Resumption of Duties**

- 17.1 The employer should provide the absent Adopting Staff Member with a written statement of her/his absence and expected date of resumption of duties. Four weeks before the Adopting Staff Member is due to return to the workplace written notice should be given to the employer confirming the intention to resume duties from that date.

## **18. Compliance**

- 18.1 All adopting Staff Members 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.
- 18.2 All documentation relating to adoptive leave arrangements must be retained by the employer with the relevant personnel records. These records may be selected for inspection by nominated Department officials. All records should correspond with the data input on the ETB HR/payroll systems.

## **19. Further Information**

- 19.1 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 HR Unit in a staff member's ETB.



## **Appendix A – Application form for Adoptive Leave Entitlements**

This application must be fully completed and retained in the ETB for record and audit purposes. It can be used to apply for adoptive and/or statutory and/or non-statutory additional unpaid adoptive leave. It should be completed and submitted at least 6 weeks before the leave is due to commence. This application is NOT to be submitted to Department of Education and Skills.

If the applicant pays Class A PRSI contributions, a completed AB1 Form should be submitted to DSP. This form is available from DSP or online at [www.welfare.ie](http://www.welfare.ie)

### **APPLICATION IN RESPECT OF:**

Adoptive Leave  Statutory Additional Unpaid Adoptive Leave

*Please tick as appropriate:*

Name: \_\_\_\_\_ ETB : \_\_\_\_\_

Roll No. \_\_\_\_\_ Contact No: \_\_\_\_\_ PPSN: \_\_\_\_\_

Expected date of placement (EDP) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

*(A certificate of placement should be submitted as soon as reasonably practicable. In the case of foreign adoption a declaration of eligibility and suitability should be provided in advance of commencement)*

In the case of foreign adoption, if any of the statutory additional unpaid adoptive leave is to be taken prior to placement please enter the dates here: \_\_\_\_\_ to \_\_\_\_\_

I wish to take 24 weeks Adoptive Leave from \_\_\_\_\_ to \_\_\_\_\_ (enter the dates)

State number of days statutory additional unpaid adoptive leave that are to be taken following adoptive leave (if any): \_\_\_\_\_ (consecutive days and to include weekends)

Statutory additional unpaid adoptive leave from \_\_\_\_\_ to \_\_\_\_\_ (enter inclusive dates)

I wish to apply for the above leave in accordance with the terms of Circular 0065/2016

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(Staff Member)

### **Approval and Verification by Employer**

I certify that I have approved the above leave in accordance with the terms of Circular 0065/2016 and I have retained on file the following documents for audit purposes:

- 1) All applications for adoptive leave entitlements.
- 2) Certificate of placement (declaration of eligibility and suitability, where appropriate).
- 3) A copy of the completed AB1 form.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(On behalf of Employer)

## **Appendix B - Example Adoptive Leave Calculation**

### **Example**

Example based on a Date of placement of 20 September 2013 and full use of the 112 days statutory additional unpaid adoptive leave (some taken before the date of placement and some after the adoptive leave).

<p>(1) Statutory Additional Unpaid Adoptive Leave (max of 16 weeks=112 days)</p> <p>Foreign adoption: Where a period of Statutory Additional Unpaid Adoptive Leave is required before the day of placement, for the purposes of meetings outside the State or familiarisation with the child to be adopted, some or all of the Statutory Additional Unpaid Adoptive Leave may be taken before the day of placement.</p>	<p>In this example 11 unpaid days are taken prior to the date of placement for the purposes of familiarisation with the child in a foreign adoption:</p> <p>From 9 September to 19 September 2013 = 11 days</p> <p>101 days remain out of the 112 day allocation of statutory additional unpaid adoptive leave</p>
<p>(2) Commencement Date for 24 weeks of Adoptive Leave (same as the date of placement)</p>	<p>20 September 2013</p>
<p>(3) Adoptive Leave end date (last day of the leave)</p>	<p>06 March 2014 (this date is 24 weeks on from 20 Sept)</p>
<p>(4) Statutory Additional Unpaid Adoptive Leave (max of 16 weeks=112 days)</p>	<p>In this example 11 days have already been taken prior to placement [see (1) above], leaving up to 101 days to be taken now. The full 101 days remaining are taken in this case.</p> <p>From 07 March 2014 to 15 June 2014 inclusive</p>
<p>(5) Provisional Resumption date following Statutory Additional Unpaid Adoptive Leave</p>	<p>16 June 2014 (if no other leave is taken, this is the date that the employee should return to duty)</p>