Please refer to Information Note TC/IN 0002/2025 in relation to Postponement of Maternity Leave due to Serious Health Condition.

Due to legislative changes, employers are advised of an amendment to Circular 0017/2013 titled 'Maternity Protection entitlements for Special Needs Assistants'. Please refer to Information Note TC/IN 0011/2024.

AN ROINN OIDEACHAIS AGUS SCILEANNA | DEPARTMENT OF EDUCATION AND SKILLS

Circular 0017/2013

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

MATERNITY PROTECTION 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 Maternity Protection 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 Maternity Protection Entitlements. Please ensure that copies of this circular are provided to all members of the Board of Management/Vocational Education 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 – Maternity Leave

Dalton Tattan
Teacher/SNA Terms and Conditions
5 March 2013

Padraig Maloney
Payroll Division
5 March 2013

Definitions

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

Breastfeeding Special Needs Assistant – means at any time a special needs assistant whose date of confinement was not more than twenty-six weeks earlier, who is breastfeeding and who has so informed the special needs assistant's employer.

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.

Health and Safety Authority (HSA) – the national body in Ireland with responsibility for securing health and safety at work. It is a state-sponsored body, established under the Safety, Health and Welfare at Work Act 2005.

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

Maternity Benefit - means a payment made by the DSP to women who are absent from work on maternity leave and who meet the qualifying criteria for the benefit.

MB10 Form – means the DSP Maternity Benefit Form.

NCSE – means the National Council for Special Education.

Occupational Health Service (OHS) – means the providers of independent medical advice on occupational health.

On Line Claims System (OLCS) – means the system for the 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. Maternity Leave

1.1 All pregnant special needs assistants, who give birth to a live child, or who reach their 24th week of pregnancy, are entitled to 26 weeks maternity leave and 16 weeks additional unpaid maternity leave.

1.2 Maternity leave will ordinarily begin on such day as the pregnant special needs assistant selects, unless medically certified that the leave should commence on a particular date. However, the commencement date must not be later than 2 weeks before the end of the week of the baby's expected birth and 4 weeks must be taken after the end of the week of the baby's birth. For these purposes, Saturday is regarded as the end of a week. Special needs assistants may also take cognisance of DSP rules whereby eligibility for maternity benefit does not normally commence until the 24th week of pregnancy and ends when maternity leave ceases. Further details on DSP regulations are available directly from that Department.

1.3 If the birth occurs in a week before a special needs assistant has commenced her maternity leave then the maternity leave must commence immediately and the employer must be informed.

1.4 If the birth occurs after the expected date and there are less than 4 weeks of maternity leave remaining, then the employer must be informed and the maternity leave will be extended to ensure that 4 weeks maternity leave are taken following the birth.

1.5 A special needs assistant's entitlement to maternity leave, whether paid or unpaid, shall cease on the expiry of a contract, that contract not having been renewed.

2. Statutory Additional Unpaid Leave

2.1. Commencing on the day immediately following completion of maternity leave, a special needs assistant has the option to take a maximum of 16 consecutive weeks statutory additional unpaid maternity leave.

2.2 A special needs assistant who avails of statutory additional unpaid maternity leave may be entitled to receive PRSI credits. Please complete the Application for Maternity 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 maternity entitlements are:

(a) Maternity leave (26 weeks)
(b) Statutory additional Unpaid maternity leave (maximum of 16 weeks)

3.2 When all associated leave types have been fully utilised, as appropriate to each individual, then the next working day becomes the date of resumption for the special needs assistants.

4. Application Procedures for Special Needs Assistants

4.1 Application for maternity leave both paid and unpaid should be made by special needs assistants 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 MB10 form and should ensure that the school completes the employer's portion before forwarding to the DSP at least 6 weeks prior to the start date. The MB10 form should **NOT** be sent to the Department of Education and Skills.

5. Calculations and OLCS Procedures for Employers

5.1 Employers must enter absences on the OLCS at least 6 weeks prior to the start date for maternity leave.

5.2 The procedure for recording maternity leave absence on the OLCS is attached at Appendix B of this circular.

5.3 An example maternity leave case and calculation worksheet is attached at Appendix C of this circular.

6. Correspondence Address

6.1 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.

7. Statutory Annual Leave/Public Holiday Entitlement

7.1 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.

7.2 Any entitlements in respect of public holidays occurring while on maternity leave will be addressed by additional annual leave.

7.3 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 maternity leave period. Annual leave entitlements are to be taken at a time outside of the period of maternity leave.

7.4 When availing of statutory maternity 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 maternity 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.

7.5 Special needs assistants who resign/retire or their employment ceases may be entitled to additional payment in lieu of their accrued leave.

8. Pay Arrangements and Maternity Benefit

8.1 Continuation of salary during maternity 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 a special needs assistant's pay should be notified to the Department/VEC immediately

8.3 Under DSP regulations any Maternity Benefit payable by the DSP to PRSI contributors at the full rate (Class A), will issue directly to the special needs assistant in question. A deduction from salary equivalent to the maximum weekly rate of Maternity Benefit payable to the special needs assistant will initially be applied by the Department.

8.4 If the amount of benefit payable to the special needs assistant is less than the maximum, or if a person is not entitled to any Maternity Benefit, they should notify their payroll section immediately to ensure that the salary adjustments are correct. Changes to the automatic deduction can be made provided the special needs assistant 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 fortnightly during the period of paid leave up to a maximum of 26 weeks for maternity 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 Maternity Benefit payment will be treated as taxable income.

9. Time off for ante-natal care appointments, post natal care appointments and attendance at ante-natal classes.

9.1 Pregnant special needs assistants are entitled to time off work, without loss of pay, to:

(a) attend medical appointments related to ante-natal care,

(b) attend one set of ante-natal classes in a working career, other than the last 3 classes in such a set, and

(c) attend medical appointments related to post-natal care within 14 weeks of the birth

9.2 If a pregnant special needs assistant misses particular ante-natal classes in a set then it is permitted that during a subsequent pregnancy, or pregnancies, she may attend classes equivalent to those missed.

9.3 An expectant father is entitled to time off work, without loss of pay, to attend the last two ante-natal classes in a set attended by the pregnant mother.

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

10. Health and Safety of pregnant, post natal, and breastfeeding special needs assistants

10.1 The Safety, Health, and Welfare at Work Act 2005 and the Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007) place an obligation on the employer, as soon as it is notified by the special needs assistant that she is pregnant, to assess any specific risk in the workplace to that special needs assistant and to ensure that the pregnant, post natal, or breastfeeding special needs assistant is not exposed to any

agents, processes or working conditions that will damage either the safety or health of the pregnant special needs assistant and/or that of the developing child.

10.2 The special needs assistant should be informed of the results of the risk assessment and the measures to be taken. The detailed arrangement regarding the respective responsibilities of the employer and the special needs assistant in relation to health and safety leave are contained in Sections 17 – 20 of the Maternity Protection Act 1994.

10.3 Where a risk has been identified and it is not possible to remove it, protective and preventive measures should be taken to safeguard the health of any special needs assistant to whom the provisions apply, such as:

(a) a temporary adjustment in the working environment of the special needs assistant concerned so that exposure to the risk is avoided, or

(b) in the event that such adjustment is not possible, by moving the special needs assistant to suitable alternative work which does not entail the risk, or

(c) in the event that such alternative work is not available, and having consulted with and received certification from the OHS, by granting the special needs assistant health and safety leave. The special needs assistant is entitled to receive, on request, a certificate stating the reasons why she has been granted leave. The certificate must also state the start date and expected end date of the leave. Maternity Related Health & Safety Leave can be granted in respect of more than one period, provided the conditions outlined in 10.1 and 10.2 above are fulfilled for each such period concerned.

10.4 A sample certificate of risk form is supplied in the schedule to the Maternity Protection (Health and Safety Leave Certification) Regulations 1995 (SI No. 19 of 1995).

10.5 Health and Safety Leave will cease when:

(a) the special needs assistant concerned commences maternity leave, or

(b) the special needs assistant is no longer an employee to whom Part III of the Maternity Protection Act, 1994 applies (i.e. she notifies the employer that she is not pregnant, has not given birth within the last fourteen weeks or is not within 26 weeks of the birth and breastfeeding, as defined in the Act); or

(c) the risk ceases,

10.6 Specific questions on health and safety issues should be addressed to the Health and Safety Authority (HSA), www.hsa.ie , which can provide advice, assistance and encouragement aimed at the prevention of work related accidents and the promotion of occupational safety, health and wellbeing.

10.7 A special needs assistant will be entitled to full salary for the first 21 days while on health and safety leave.

11. Father's Leave: Entitlement of male special needs assistants to leave in the event of the death of the mother while on maternity leave.

11.1 In the event of the death of the mother within 40 weeks of the birth of a living child, a male special needs assistant who is the father of the child is entitled to leave as follows:

(a) if the mother dies before the end of the 24th week following the week of the birth of her child, the father is entitled to paid leave up to the 24th week. At the end of this period he is entitled to apply for a further 16 consecutive weeks additional unpaid leave commencing immediately

or

(b) if the mother dies after the 24th week following the week of the birth of her child, the father is entitled to unpaid leave up to the 40th week following the week of the birth of the child.

11.2 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 maternity leave entitlement up to the 24th week following the week of birth)

(b) Statutory additional unpaid father's leave (the transfer to the father of any balance remaining of the mother's additional unpaid leave up to the 40th week following the week of birth)

11.3 The leave should normally commence within 7 days of the event which has created the father's entitlement to the leave but the employer should exercise discretion appropriate to the individual circumstances. 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 and a copy of the birth certificate of the child.

12. Postponement of leave entitlements in the event of the hospitalisation of the child

12.1 In the event of the hospitalisation of the child, a request may be made to the employer for postponement of

(a) maternity leave
(b) statutory additional unpaid maternity leave
(c) father's leave
(d) statutory additional unpaid father's leave

12.2 Maternity leave can only be postponed after at least 14 weeks of the leave has expired, 4 weeks of which must have been taken after the week of the child's birth. Postponement of the leave will require the absent special needs assistant to resume duties in the school during the period of postponement.

12.3 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 special needs assistant in writing as soon as possible of its decision. If the leave is postponed, the employer and the special needs assistant must agree the date of return to work.

12.4 The Department/VEC, and the DSP must be notified immediately if the special needs assistant is to return to work to facilitate pay adjustment and cease any benefit from the DSP and the finalisation of payment to the replacement special needs assistant.

12.5 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.

12.6 The special needs assistant 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.

12.7 If the special needs assistant 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 special needs assistant 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.

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

13.1 If a special needs assistant has made an application for statutory additional unpaid maternity 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 special needs assistant must agree the date for any such termination of the leave. The date agreed can not 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 special needs assistant will not be entitled subsequently to take the additional unpaid maternity leave or any part of it not taken at the time of commencement of sick leave.

13.3 To facilitate necessary pay adjustment the Department/VEC must be notified immediately that the special needs assistant is now on sick leave.

14. Provision for breastfeeding

14.1 Within a twenty six week period after the birth of the child, a special needs assistant who has returned to work is entitled to one hour per day for the purpose of breastfeeding. The time off, without loss of pay, may be taken as follows:

(a) one break of 60 minutes, or

(b) two breaks of 30 minutes each, or

(c) three breaks of 20 minutes each

14.2 A special needs assistant who qualifies for this provision must notify the employer in writing of her intention to avail of such breaks. Notice should be given 4 weeks prior to the return to work following maternity related leave under the terms of this circular. A copy of the birth certificate of the child must be submitted with the application for breastfeeding breaks. It is a matter for the employer to make the necessary arrangements with the special needs assistant to facilitate the taking of the breastfeeding breaks.

15. Discounting of pregnancy related sick leave for pay purposes.

15.1 A pregnant special needs assistant who is ill may qualify for pregnancy related sick leave. Employers are therefore permitted, upon receipt of a medical certificate stating the illness to be pregnancy related, to enter the absence on the OLCS as "pregnancy related illness". This arrangement applies only to illness occurring during pregnancy and before maternity leave commences.

15.2 In the case of a special needs assistant who is approaching her maximum entitlement to paid sick leave under normal rules any period of pregnancy related sick leave may be discounted. In order to confirm that the absence was indeed pregnancy related, employers should seek the advice of the OHS.

15.3 The employer, in making a referral to the OHS, should follow the Standard Operating Procedures Manual.

16. Replacement Contracts

16.1 All absences covered by the terms of this circular, of duration of at least one day, are substitutable. 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. an absent special needs assistant postpones part of the maternity leave due to the hospitalisation of the newborn baby).

17. Status during Leave

17.1 A special needs assistant 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 maternity leave is reckonable for all purposes, with the exception of remuneration and superannuation.

17.2 In the case of a special needs assistant who is on probation at the start of maternity leave, the period of probation will stand suspended during the absence and will be completed by the special needs assistant on return to work.

18. Employment during Maternity Leave

18.1 Special needs assistants are not permitted to engage in any paid employment during the course of their maternity leave. Under DSP regulations Maternity Benefit may be terminated in the event that paid employment is taken up while on maternity leave. Any salary payment from this Department may have to be reviewed in the event of termination of Maternity Benefit arising from non compliance with the terms of the DSP scheme.

19. Resumption of Duties

19.1 The employer should provide the absent special needs assistant with a written statement of their absence and expected date of resumption of duties. Four weeks before the special needs assistant is due to return to the workplace written notice should be given to the employer confirming the intention to resume duties from that date.

20. Increase / Decrease in Special Needs Assistant Allocations

20.1 Where the hours allocated to a special needs assistant's post increase during the term of her maternity leave, salary will be increased with effect from the date on which she resumes duty in the school at the higher hours.

The hours of the substitute special needs assistant will increase with effect from the date on which the increased allocation, recommended by the NCSE, comes into effect in the school.

20.2 Where the hours allocated to a special needs assistant's post decreases during the term of her maternity leave, salary will be reduced with effect from the date on which the decreased allocation is made to the school by the NCSE. The special needs assistant may apply for compensation for loss of hours under the terms of the current Department circular on redundancy arrangements for special needs assistants within 52 weeks of the date on which the post was reduced.

The hours of the substitute special needs assistant will decrease with effect from the date on which the decreased allocation, recommended by the NCSE, comes into effect in the school.

21. Compliance

21.1 All special needs assistants 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.

21.2 All documentation relating to maternity 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 OLCS.

22. Further Information

22.1 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 employer 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 form for Maternity Leave Entitlements

This application must be fully completed and retained in the school for record and audit purposes. It can be used to apply for maternity and/or statutory unpaid maternity leave. It should be completed and submitted at least 6 weeks before the leave is due to commence.

This applicant is NOT to be submitted to the Department of Education and Skills.

If the applicant pays Class A PRSI contributions a completed MB10 Form should be submitted to DSP. This Form is available from DSP or online at: www.welfare.ie

APPLICATION IN RESPECT OF:

☐ **Maternity Leave** ☐ **Statutory Unpaid Maternity Leave**

Please tick as appropriate:

Name: _____ School: _____

Roll No. _____Contact No: _____PPSN: _____

Expected date of birth (EDB) ____/_____/____

(Medical certificate must be enclosed confirming expected date of birth)

I wish to commence my maternity leave on ___/_____/____

State the number of days statutory additional unpaid maternity leave that are to be taken (if any):

_____(Consecutive days and to include weekends)

Statutory Additional Unpaid Maternity Leave from _____to _____(enter inclusive dates)

I wish to apply for the above leave in accordance with the terms of Circular 0017/2013

Signature of special needs assistant: _____ ***Date:*** _____

Approval and Verification by Employer

I certify that I have approved the above leave in accordance with the terms of Circular 0017/2013 and I have retained on file the following documents for audit purposes:

1) All applications for maternity leave entitlements.

2) Certificate showing expected date of birth.

3) A copy of the completed MB10 form.

Signature: _____***Date:*** _____

(On behalf of Employer)

Appendix B

Procedures relating to the Recording of Maternity Leave on the OLCS (non VEC schools)

1) Click Add under Leave on the OLCS menu

2) Enter start and end date of the leave.
   - Click Next

3) Select the staff member on leave
   - Select the leave category – Family Leave and
   - Select the leave sub category – Maternity Leave
     The total number of days in the range should read 182 (26 weeks) in respect of maternity leave.
   - Click Next

4) Enter the expected date of birth
   - Verify MB10 certification

Information to Assist Employers in the Completion of the MB10 Form

➢ A list of the PRSI weeks for the current and previous year is displayed on OLCS to assist in the completion of the employer's section of the MB10 form.

➢ Where the total number of PRSI weeks is 52 for the previous tax year and the special needs assistant has been in continuous employment since then, the total number of weeks to be entered is 52. If the total number of weeks is less than 52 and the special needs assistant has a contract to the start date of her maternity leave the total number of weeks is the sum of PRSI weeks in the previous tax year plus the PRSI weeks in the current tax year to the start date of her maternity leave.

➢ Enter the appropriate Employers Registered Number, sign, date and stamp accordingly

Employer Register Number for special needs assistants is 9599516K

   - Click on Add Certificate
   - Enter start and end date of the Certificate (This date must match the Start and End date of the Maternity leave)
   - Click Add (A Certificate number is generated which should be recorded on the back of the application and filed.)
   - Click Next
   - Click Add. A confirmation message is displayed.

Note: Additional Maternity Leave (Unpaid)

It is important to note the Unpaid Maternity Leave absence cannot be entered on OLCS until the next working day subsequent to the notification of Maternity Leave. The Department must first verify the Maternity Leave in order to commence deductions from salary.

Appendix C (i)

Example Maternity Leave Calculation Worksheet

Example

Example based on Expected Date of Birth (EDB) of 20 September 2013; leave commencing from 02 September 2013 followed by 112 days statutory unpaid leave.

(1) Expected date of Birth (EDB)	20 September 2013
(2) Commencement Date (must be at least 2 weeks prior to the end of the week of the baby's expected birth)	02 September 2013 (In this example the latest permissible start date would be 07 September 2013)
(3) Maternity Leave end date (26 weeks from 02 September 2013)	02 March 2014
(4) Statutory Unpaid Maternity Leave (max of 16 weeks= 112 days)	In this example 112 days unpaid leave are to be availed of from 03 March 2014 to 22 June 2014 inclusive
(5) Resumption Date following Statutory Unpaid Maternity Leave	23 June 2014

Appendix C (ii)

Maternity Leave Calculation Worksheet for Special Needs Assistant Absences

Name:		PPS No:
(1) Expected date of birth (EDB)	Applicant must provide Doctor's Certification to confirm this.	Date:
(2) Commencement	Date maternity leave is to commence (must be at least 2 weeks prior to the end of the week of the baby's expected birth):	Date:
(3) End date	Count 26 weeks from date of commencement (182 days)	Date:
(4)Statutory Unpaid Maternity (commences immediately after ordinary Maternity Leave and includes weekends)	The amount of unpaid leave applied for (up to maximum of 16 weeks = 112 days)	Dates: From:_____ To: _____
(5) Resumption date	Determine the next working day which follows the end of the Statutory Unpaid Maternity period.	Date: