



Carer's Leave Act, 2001

**Explanatory Booklet for Employers and
Employees**

Web: www.entemp.ie

Issued by the
Department of Enterprise, Trade and Employment

CARER'S LEAVE ACT, 2001

EXPLANATORY BOOKLET

The purpose of this booklet is to provide information for employees and employers in user-friendly language concerning their rights and obligations under the Act. It is important to note that this is an information booklet and not a legal interpretation of the Act.

In cases of doubt or where further information is required, interested parties should refer to the Act or contact the Employment Rights Information Unit, Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2.

Telephone: (01) 6313131. Fax: (01) 6313267.

Lo-call phone number (if calling from outside the (01) area) 1890 201615.

Website:- www.entemp.ie

E-mail:- erinfo@entemp.ie

Other useful telephone numbers:

Department of Enterprise, Trade & Employment	01 631 2121	Lo-call 1890 220222
Employment Appeals Tribunal	01 631 2121	Lo-call 1890 220 222
Labour Relations Commission	01 613 6700	Lo-call 1890 220 227
Rights Commissioner Service	01 613 6700	Lo-call 1890 220 227
Carer's Benefit Section,	043 40087	
Department of Social, Community and Family Affairs, Government Buildings, Ballinalee Road, Longford.		

**Department of Enterprise, Trade and Employment
Dublin 2.**

Contents

Paragraph Number	Page Number
1. Purpose of the Act	5
2. Who is Covered by the Act?	5
3. Entitlement to Carer's Leave	6
4. Manner in which Carer's Leave may be Taken	8
5. Protection of Employment Rights	10
6. Notification of intention to take Carer's Leave	12
7. Confirmation of Carer's Leave	13
8. Postponement of Carer's Leave	14
9. Reference by an Employer to the Minister for Social, Community & Family Affairs on certain issues	14
10. Termination of Carer's Leave	15
11. Return to Work	16
12. Disputes	18
13. Records	21
14. Inspectors	21
15. Penalties	22
16. Protection against unfair dismissal - Amendment of Unfair Dismissals Acts, 1977 to 2001	22
17. Amendment of Organisation of Working Time Act, 1997	23
18. Review of Carer's Leave Act, 2001	23
19. Voidance or Modification of certain provisions in Agreements	23
20. Service of Notices	24
21. Preservation of Social Insurance Benefits	25

APPENDICES

APPENDIX A - Sample Notice of Intention to take Carer's Leave

APPENDIX B - Sample Confirmation Document

CARER'S LEAVE ACT, 2001

(No. 19 of 2001)

EXPLANATORY BOOKLET

1. PURPOSE OF THE ACT

The Carer's Leave Act, 2001 came into operation on 2 July, 2001.

The main purpose of the Act is to provide for a new entitlement for an employee to avail of unpaid leave from his/her employment to enable him/her to personally provide full-time care and attention for a person who is in need of such care.

The period of leave to which an employee is entitled is subject to a maximum of 104 weeks in respect of any one care recipient (hereafter referred to as a "relevant person"). The minimum statutory entitlement is 13 weeks.

2. WHO IS COVERED BY THE ACT?

In general, the Act applies to any person

- working under a contract of employment or apprenticeship
- employed through an employment agency or
- holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act, 1956), an officer or servant of a local authority for the purposes of the Local Government Act, 1941, or of a harbour authority, health board or vocational education committee, and a member of the Garda Síochána or of the Defence Forces,

In the case of agency workers, the party who is liable to pay the wages (employment agency or client company) is the employer for the purposes of this Act.

3. ENTITLEMENT TO CARER'S LEAVE

An employee who wishes to avail of Carer's Leave must fulfil the following conditions:

(i) Service requirement

An employee must have completed at least 12 months continuous service with the employer from whose employment the leave is taken before the commencement of the leave. There is no hours threshold in the Act.

(ii) Provision of Full-Time Care and Attention

The employee must intend to take Carer's Leave for the purpose of personally providing full-time care and attention to a person (a "relevant person") who is in need of such and must actually do so for the duration of the leave.

The employee may:

- attend an educational or training course or take up voluntary or community work for up to 15 hours per week or
- engage in *limited self-employment in his/her own home or
- engage in employment outside the home for up to *15 hours per week. This must be approved by the Minister for Social, Community and Family Affairs.

**Subject to an upper income limit as set out in regulations made by the Minister for Social, Community and Family Affairs.*

During the employee's absence in the above circumstances, adequate care for the relevant person must be arranged.

The requirement to provide full-time care and attention will be assessed on an individual basis by the Department of Social, Community and Family Affairs. It is not intended nor is it desirable, that an employee on Carer's Leave would be expected to provide care on a 24-hour basis. In this regard, the above

arrangements will be applied in a flexible manner by the Department of Social, Community and Family Affairs, having due regard to both the needs of the employee providing the care and the person requiring the care (the relevant person).

(iii) Relevant Person - Need for Full-Time Care and Attention

The relevant person (i.e. the person receiving full-time care and attention) must be deemed to be in need of full-time care and attention by a deciding officer (or appeals officer) of the Department of Social, Community and Family Affairs. This decision will be based on information provided by the relevant person's general medical practitioner and assessed by the Department's medical advisor.

To apply for the decision, an employee should obtain Department of Social, Community and Family Affairs Form CARB1 from Carer's Benefit Section of that Department and arrange for its completion and return to the afore-mentioned Carer's Benefit Section.

- Meaning of 'Full-time care and attention'

According to Department of Social, Community and Family Affairs Regulations, this means that a person being cared for must be so disabled as to require:

- continuous supervision and frequent assistance throughout the day in connection with his/her normal personal needs, e.g. help to walk and get about, eat or drink, wash, bathe, dress etc.
- or
- continuous supervision in order to avoid danger to him/herself.

Note: The relevant person may attend a non-residential course of rehabilitation training or a non-residential day care centre approved by the Minister for Health and Children. For further information on this contact Carer's Benefit Section of the Department of Social, Community and Family Affairs – Ph. 043 40087, Fax. 043 40040.

The two criteria (at (ii) and (iii)) above are also required to qualify for the parallel State payment of Carer's Benefit. The two schemes, Carer's Leave and Carer's Benefit, are administered in tandem in respect of these criteria. Further information in relation to the Carer's Benefit Scheme may be obtained from the Department of Social, Community and Family Affairs. (See also the booklet on the Carer's Benefit Scheme).

(iv) Other Eligibility Criteria

- An employee will not be entitled to Carer's Leave in respect of the care of an individual at a time when another employee is on Carer's Leave for the purpose of providing full-time care and attention to the same relevant person.
- An employee will generally not be permitted to be on Carer's Leave in respect of more than one relevant person at any one time. However, *on one occasion only*, an employee may commence leave in respect of a relevant person, while already on leave in respect of another relevant person, where the two relevant persons reside together. In such circumstances, an overall total amount of Carer's Leave of 208 weeks (104 weeks in respect of each relevant person) will apply.
- Before an employee can commence Carer's Leave, he/she must provide the employer with a copy of the decision of a deciding officer (or appeals officer) of the Department of Social, Community and Family Affairs, that the relevant person has been medically certified as being in need of full-time care and attention.

NB: It should be noted that entitlement to Carer's Leave is not conditional on entitlement to Carer's Benefit.

4. MANNER IN WHICH CARER'S LEAVE MAY BE TAKEN

The Act provides that the leave shall be taken in one of the following ways:

- one continuous period of 104 weeks; or

- one or more periods, the total duration of which amounts to not more than 104 weeks.

The minimum statutory entitlement that may be taken in one period at the discretion of the *employee* is 13 weeks.

An employer may refuse, *on reasonable grounds* given to his/her employee in writing, to permit an employee to take Carer's Leave for any period of less than 13 weeks.

An employer and employee may, however, agree to arrangements for Carer's Leave on terms more favourable to the employee.

The Minister for Enterprise, Trade and Employment may make Regulations under the Act in respect of the form in which the Carer's Leave may be taken by a particular class or classes of employee, where it is taken other than in one continuous period of 104 weeks.

Intervals between periods of Carer's Leave

Where Carer's Leave is not taken by an employee in one continuous period of 104 weeks there must be a gap of at least 6 weeks between periods of Carer's Leave taken in respect of the *same* relevant person.

An employee proposing to avail of Carer's Leave for *another* relevant person cannot generally do so until a period of 6 months has elapsed from the date of termination of the leave in respect of the previous relevant person. This provision does not apply where two relevant persons reside together (see paragraph 3).

Change in circumstances

The Act requires an employee to notify his/her employer of any change of circumstances that affect his/her entitlement to Carer's Leave.

5. PROTECTION OF EMPLOYMENT RIGHTS

During an absence on Carer's Leave, an employee shall be regarded as still working in the employment for all purposes relating to his or her employment and none of his or her rights or obligations relating to the employment shall be affected by taking the leave with the following exceptions:

Exceptions:

- There is no right to **remuneration** or **superannuation benefits** and any obligation to pay **superannuation contributions** in, or in respect of, the employment.
- The right to **annual leave** is restricted to the period comprising the first 13 weeks *only* of the Carer's Leave entitlement in respect of any one relevant person.
- The right to **public holidays** is likewise restricted to the period comprising the first 13 weeks *only* of the Carer's Leave entitlement in respect of any one relevant person.

Absence from employment while on Carer's Leave shall not be treated as part of any other leave to which the employee is entitled (e.g. sick leave, annual leave, adoptive leave, maternity leave, parental leave or *force majeure leave*).

Protection against Penalisation including Dismissal

The Carer's Leave Act, 2001, prohibits an employer from penalising an employee on the grounds that he/she has exercised or proposes to exercise his/her right to Carer's Leave.

Penalisation of an employee includes –

- (a) dismissal of the employee
- (b) unfair treatment of the employee, including selection for redundancy, and
- (c) an unfavourable change in the conditions of employment of the employee.

The dismissal of an employee, solely or mainly because of the exercise, or proposed exercise by him or her of his/her rights under the Carer's Leave Act, 2001, will be regarded as an unfair dismissal for the purposes of the Unfair Dismissals Acts, 1977 to 2001, unless having regard to all the circumstances, there were substantial grounds justifying the dismissal (see paragraph 16 regarding the amendment of the Unfair Dismissals Acts, 1977 to 2001).

An employee will be regarded as having been dismissed by his/her employer where the employer does not permit that employee to return to work on the termination of a period of Carer's Leave.

The general qualification requirement under the Unfair Dismissals Acts, 1977 to 2001, of one year's continuous service will not need to be met where an employee claims he/she was dismissed for exercising his/her rights under the Carer's Leave Act, 2001.

An employee may seek relief against penalisation involving a dismissal under the Unfair Dismissals Acts, 1977 to 2001, and not under the Carer's Leave Act, 2001.

Date of Dismissal

An employee who is entitled to return to work in the employment concerned in accordance with the provisions of the Carer's Leave Act, 2001 but is not permitted to do so by his or her employer shall-

- for the purposes of the Unfair Dismissals Acts, 1977 to 2001, be deemed to have been dismissed on the date on which he/she was entitled to so return and the dismissal shall be deemed to have been an unfair dismissal for the purposes of the Unfair Dismissals Acts, 1977 to 2001, unless having regard to all the circumstances, there were substantial grounds justifying the dismissal and
- be deemed for the purposes of the Redundancy Payments Acts, 1967 to 2001, to have had his or her contract of employment with his/her employer terminated on the date he/she was entitled to return to work.

Replacement of an employee on Carer's Leave

The Unfair Dismissals Acts, 1977 to 2001 shall not apply to a dismissal where an employer informs an employee, in writing, at the commencement of the employment that the employment will terminate on the return to work of another employee from Carer's Leave under the Carer's Leave Act, 2001 and the dismissal duly occurs for the purpose of facilitating the return to work of that other employee.

6. NOTIFICATION OF INTENTION TO TAKE CARER'S LEAVE

An employee must give written notice to his/her employer of the intention to take Carer's Leave, not later than 6 weeks before the employee proposes to commence the leave.

The statement of notice must contain the following details:

- the date on which the employee intends to commence the leave;
- the duration of the leave;
- the manner in which the employee proposes to take the leave;
- a statement that an application for a decision (in the first instance or on appeal) that the person to be cared for is a relevant person for the purposes of Carer's Leave Act, 2001 has been made to the Department of Social, Community and Family Affairs;
- the employee's signature and date.

A sample of the Notice of Intention to take Carer's Leave is set out at Appendix A.

Revocation of Notice

An employee may revoke his or her notice of intention to take Carer's Leave at any time before the *Confirmation Document* (see Paragraph 7) is signed. Such revocation must be made in writing to the employer.

Exceptional or Emergency Circumstances

In exceptional or emergency circumstances, where it is not reasonably practicable for an employee wishing to avail of Carer's Leave, to give notice in accordance with the notice provisions of the Carer's Leave Act, 2001, such notice must be given as soon as it is reasonably practicable for the employee to do so.

Employer's Discretion

Where an employee who is entitled to Carer's Leave has taken leave purporting to be Carer's Leave but has not complied with the notice requirements, the employer may, at his or her discretion, treat that leave as Carer's Leave for the purposes of the Carer's Leave Act, 2001.

Where an employer in exercising this discretion, refuses to treat leave as Carer's Leave, on reasonable grounds, he/she must specify the grounds in writing for such refusal. This matter may be treated as a dispute for the purposes of the Act (see paragraph 12).

7. CONFIRMATION OF CARER'S LEAVE

Once an employee has given notice of his or her intention to take Carer's Leave: -

- The employee must give the employer a copy of the decision from the deciding officer (or appeals officer) of the Department of Social, Community and Family Affairs that the person in respect of whom the employee proposes to avail of Carer's Leave is a relevant person i.e. medically certified as requiring full-time care and attention.
- The employee and the employer must then prepare a *confirmation document*. This document must be prepared and signed *no later than two weeks before the leave is due to begin* and must include the following details:
 - the date on which the leave period will commence;

- the duration of the period of leave;
- signatures of employer and employee.

A sample *confirmation document* is set out at Appendix B.

Alterations to the Confirmation Document

Once a confirmation document has been signed by both the employee and the employer, it cannot be altered unless both parties agree.

8. POSTPONEMENT OF CARER'S LEAVE

An employer and an employee may agree, after the date of the *confirmation document*, to postpone or curtail the leave, or vary the form in which it is to be taken and the *confirmation document* shall be amended to accord with such agreement.

Where Carer's Leave is postponed, curtailed or varied, it may, subject to the provisions of paragraph 3, (which is concerned with the conditions for entitlement to Carer's Leave), be taken at another time.

9. REFERENCE BY AN EMPLOYER TO THE MINISTER FOR SOCIAL, COMMUNITY AND FAMILY AFFAIRS ON CERTAIN ISSUES

Where an employer is of the opinion that any of the following circumstances exist –

- that the person in respect of whom the employee proposes to take Carer's Leave is not or is no longer a relevant person;
- that the person in respect of whom Carer's Leave has been granted, and in respect of whom the employee is on Carer's Leave, is not or is no longer a relevant person;

- that an employee who proposes to take or is on Carer's Leave does not satisfy the conditions for providing full-time care and attention to the relevant person;
- that an employee who proposes to take or is on Carer's Leave is engaging or has engaged in employment or self-employment other than as provided for in regulations made by the Minister for Social, Community and Family Affairs;

the employer shall notify the Department of Social, Community and Family Affairs of such opinion together with the grounds of that opinion.

On receipt of such a notification from an employer, the Department of Social, Community and Family Affairs shall refer it to a deciding officer for a decision under the Social Welfare (Consolidation) Act, 1993 i.e. as to whether the afore-mentioned conditions are satisfied.

Where a deciding officer (or an appeals officer) makes a decision that -

- (a) the person in respect of whom an employee proposed to take or has taken Carer's Leave was not or is no longer a relevant person,
- (b) the employee does not satisfy the conditions for providing full-time care and attention or
- (c) the employee is engaging or has engaged in employment or self-employment other than as prescribed (e.g. working more than the 10 hours allowed per week)

then the period of Carer's Leave, if commenced, shall terminate on the date of that decision and the employee shall return to work (see paragraph 11).

In a situation where Carer's Leave terminates on foot of a decision of a deciding officer/appeals officer, then the notice of return to work will come from the employer (see paragraph 11 re return to work).

10. TERMINATION OF CARER'S LEAVE

The Act provides that a period of Carer's Leave shall terminate as follows:

- on the date specified in the confirmation document;
- on a date agreed between employer and employee;
- where the person being cared for ceases to require full-time care and attention;
- where an employee ceases to satisfy the requirements for the provision of full-time care and attention for the purposes of the Act (in this regard there are circumstances in which an employee shall continue to be regarded as providing full-time care and attention e.g. during a period when the employee or the relevant person is receiving up to 13 weeks temporary medical treatment in an institution) (See paragraph 3);
- where a decision against an employee is made by a deciding officer (or appeals officer) of the Department of Social, Community and Family Affairs on foot of a reference by an employer (see paragraph 9);
- where the relevant person dies during a period of Carer's Leave, that date which is the earlier of the following dates (a) that date which occurs 6 weeks after the date of death or (b) the date specified in the *confirmation document* (see paragraph 7).

11. RETURN TO WORK

An employee who is on Carer's Leave, shall *not less than 4 weeks before the date on which that employee is due to return to work*, notify his/her employer of the intention to so return. Any dispute about the return to work may be dealt with under the dispute resolution mechanisms provided for under the Act (see paragraph 12).

Where Carer's Leave terminates on foot of a decision of a deciding officer/appeals officer that

- a person is not a relevant person;
- full-time care and attention is not being provided or
- the person providing the full-time care and attention has worked in excess of 10 hours allowable per week

then the notice of return to work will come from the employer. In such circumstances, the deciding/appeals officer of the Department of Social, Community and Family Affairs, shall notify the employer and employee as soon as is practicable. Once the employer receives the decision, he/she shall give the employee written notice to return to work on a date that is reasonable and practicable having regard to all the circumstances.

Where Carer's Leave is terminated in such circumstances, the employee shall return to work on the date specified by the employer and any period between the date of return to work and the termination date set down in the *confirmation document* (see paragraph 7) shall be deemed not to be Carer's Leave.

Any dispute in relation to the decision of the deciding officer may only be appealed to an appeals officer of the Department of Social, Community and Family Affairs.

Return to work

An employee is entitled to return to work at the end of a period of Carer's Leave to the employer with whom he/she was working immediately before the absence, or with his or her successor, in the job held immediately prior to the leave and under the same contract and terms and conditions of employment. If the business has changed ownership during the employee's absence on the leave, he/she is entitled to work with the new owner under a contract of employment identical to the contract that existed with the original employer.

If the job held by the employee before commencing Carer's Leave was not his or her normal or usual job, the employee shall be entitled, following a period of Carer's Leave, to return to that job, or to his or her normal or usual job, as soon as is reasonably practicable.

If an interruption or cessation of work at an employee's place of employment on the date of the intended return to work makes it unreasonable to expect the employee to return to work on that date, the employee may return to work as soon as is reasonably practicable after the interruption or cessation ends.

Alternative Employment

If it is not reasonably practicable for an employer or his or her successor, to allow an employee to return to the job held immediately prior to the leave, the employer, or his or her successor, must offer the employee suitable alternative employment under a new contract of employment. The terms of the alternative employment (e.g. the place of work, the capacity in which the employee is employed) must not be substantially less favourable to the employee than the terms of his or her original job and continuity of employment will be preserved.

When an employee returns to work, his/her employer must notify the Carer's Benefit Section of the Department of Social, Community and Family Affairs in writing –

- that the period of Carer's Leave has ended
- that he/she has returned to work, and
- the date of return to work.

12. DISPUTES

RIGHTS COMMISSIONER SERVICE

Referral of Complaints to Rights Commissioner

An employee may refer a dispute in relation to an entitlement under the Carer's Leave Act, 2001, or any matter arising out of such an entitlement to a Rights Commissioner of the Labour Relations Commission for adjudication. Hearings of the Rights Commissioner under the Act are held in private. Such referrals must be made in writing within 6 months of the occurrence of the dispute.

Where, in any dispute between an employer and his/her employee, there is a decision of a deciding or appeals officer, concerning whether a person is a

relevant person, as defined and/or whether full-time care and attention is being provided, the Rights Commissioner shall accept that decision as a final determination of the matter.

The provisions of the Carer's Leave Act, 2001, regarding the resolution of disputes (access to Rights Commissioner/Employment Appeals Tribunal) do not apply to members of the Defence Forces.

Exception – referral to Deciding Officer of the Department of Social, Community and Family Affairs on certain issues

The above provisions **do not** apply in relation to a dispute concerning whether or not-

- a person is a relevant person, as defined;
- full-time care and attention is being provided or
- the person providing the full time care and attention has worked in excess of 10 hours allowable per week.

Such disputes must be referred to the Department of Social, Community and Family Affairs.

Disputes regarding dismissal

Disputes concerning the dismissal of an employee are dealt with under the provisions of the Unfair Dismissals Acts, 1977 to 2001 and not under the Carer's Leave Act, 2001.

Under the Unfair Dismissals Acts, 1977 to 2001, a reference to the Rights Commissioner or the Employment Appeals Tribunal concerning a dismissal must generally be made in writing within 6 months of the date of the dismissal.

The Unfair Dismissals Acts, 1977 to 2001, have been amended by the Carer's Leave Act, 2001 to provide protection for employees against unfair dismissal for the exercise or proposed exercise of their rights under the Carer's Leave Act, 2001. Where the dismissal results wholly or mainly from the exercise or proposed exercise by the employee of rights under the

Carer's Leave Act, 2001, the one year's service general qualification will not apply (see also paragraph 16).

EMPLOYMENT APPEALS TRIBUNAL

Appeal from decision of Rights Commissioner

Either party may appeal against a decision of the Rights Commissioner to the Employment Appeals Tribunal. An appeal is made by giving written notice to the Tribunal within 4 weeks of the date on which the Rights Commissioner's decision is notified to the prospective appellant.

The Tribunal may, if it considers it reasonable to do so, having regard to all the circumstances, extend by no more than a further 6 weeks, the period of time within which a notice of appeal is required to be given to it.

REDRESS

The Rights Commissioner and the Employment Appeals Tribunal may order redress, as they consider appropriate, as follows:

- the granting of Carer's Leave of such length to be taken at such time or times and in such manner as may be so specified;
- an award of compensation in favour of the employee concerned to be paid by the employer concerned but not exceeding 26 weeks' remuneration;
- a combination of both a grant and an award as above.

Non-Cooperation With Employment Appeals Tribunal

Failure to appear before the Employment Appeals Tribunal where a subpoena is served and/or failure to produce documentation is an offence liable, on summary conviction, to a fine of up to € 3,000 (£2,362.69).

Non-Implementation By Employer of Decision of Rights Commissioner /Determination of Tribunal

If a person fails or refuses to comply with a decision of the Rights Commissioner or a determination of the Tribunal, the other party, or the Minister for Enterprise, Trade and Employment (if he or she considers it appropriate having regard to all of the circumstances), may apply to the Circuit Court for an order directing compliance.

Appeals to the High Court

Either party to proceedings before the Employment Appeals Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law. The Tribunal itself may refer a question of law arising in proceedings before it to the High Court for determination by it.

13. RECORDS

An employer must make a record of the Carer's Leave taken by his or her employees, specifying the period of employment of each employee and the dates and times of the leave taken. Such records must be retained for 8 years.

A person found guilty of an offence relating to failure to keep such records may be liable, on summary conviction, to a fine of up to € 3,000 (£2,362.69).

Employers and employees who are required by the Carer's Leave Act, 2001 to retain certain notices or copies of notices must do so for a period of 3 years.

14. INSPECTORS

The Carer's Leave Act, 2001 provides that the Minister for Enterprise, Trade and Employment shall appoint persons to be Inspectors for the purposes of the Act. The Act confers certain powers upon these Inspectors, and regulates those powers in relation to investigating whether the provisions of the Act are being complied with. The Act also creates an offence for, inter alia, giving

false or misleading evidence to an Inspector, or obstructing or impeding an Inspector in the exercise of any of his/her powers under the Act.

Complaints about infringements of the Act may be made in confidence to the Employment Rights Section, Department of Enterprise, Trade and Employment, 65a Davitt House, Adelaide Road, Dublin 2. The Department's Inspectors do not reveal without the consent of the person making the complaint, whether the inspection is a routine one or is as a result of a complaint.

15. PENALTIES

The Minister for Enterprise, Trade and Employment can take a summary prosecution for any offence under the Carer's Leave Act, 2001. Proceedings for an offence under the Act must be started within 12 months of the date of the offence. A person guilty of an offence under the Act is liable on summary conviction to a fine of up to € 3,000 (£2,362.69).

16. PROTECTION AGAINST UNFAIR DISMISSAL - AMENDMENT OF UNFAIR DISMISSALS ACTS, 1977 TO 2001

The Unfair Dismissals Acts, 1977 to 2001, have been amended by the Carer's Leave Act, 2001-

- to provide protection for employees against unfair dismissal for the exercise or proposed exercise of their rights under the Carer's Leave Act;
- to provide that persons engaged under a statutory apprenticeship shall not be excluded from the provisions of those Acts, where the dismissal results from the exercise or proposed exercise by the employee, of the right to Carer's Leave under and in accordance with the Carer's Leave Act, 2001;
- to ensure the protection of certain categories of employees, who do not generally have the protection of the unfair dismissals legislation, by bringing them within the scope of those provisions in relation to dismissals arising from the exercise or proposed

exercise by those employees of the right to Carer's Leave under and in accordance with the Carer's Leave Act, 2001.

The categories of employees, otherwise excluded from the provisions of the Unfair Dismissals Acts, will be afforded the protection of the Unfair Dismissals Acts only where the dismissal results wholly or mainly from the exercise or proposed exercise of rights under the Carer's Leave Act, 2001. These categories are:-

- employees with less than one year's continuous service;
- employees who have reached normal retiring age or who are not covered by the Redundancy Payments Acts because of age;
- persons working for a close relative in a private house or farm, provided both also live in the same house or farm;
- members of the Gardai;
- persons undergoing full-time training or apprenticeship in FÁS establishments;
- State employees;
- officers of health boards and vocational education committees.

17. AMENDMENT OF ORGANISATION OF WORKING TIME ACT, 1997

The Carer's Leave Act, 2001, has amended sections 15 and 16 of the Organisation of Working Time Act, 1997, to provide that the reference periods over which maximum day and night working hours are averaged, do not include absences on Carer's Leave.

18. REVIEW OF THE CARER'S LEAVE ACT, 2001

The Minister for Enterprise, Trade and Employment will review the operation of the Act, on consultation with employee and employer representatives, between 2 and 3 years after the commencement of the Act and place a Report of the findings of the review before each House of the Oireachtas.

19. VOIDANCE OR MODIFICATION OF CERTAIN PROVISIONS IN AGREEMENTS

The Carer's Leave Act, 2001, provides that a provision in any agreement shall be void in so far as it attempts to exclude or limit the application of any provision of the Act or is inconsistent with any provision of the Act.

A provision in any agreement that is, or becomes less favourable in relation to an employee than a similar or corresponding entitlement conferred on the employee by the Carer's Leave Act, 2001, shall be deemed to be so modified as to be not less favourable.

Nothing in the Carer's Leave Act, 2001, shall be construed as prohibiting the inclusion in an agreement of a provision more favourable to an employee than any provision in the Act. References to an agreement are to any agreement, whether a contract of employment or not and whether made before, or after, the passing of the Act.

20. SERVICE OF NOTICES

For the purposes of the dispute resolution mechanisms (See paragraph 12), the Carer's Leave Act, 2001, provides that, subject to the provisions in relation to a company set out below, the service of documents shall be done in the following manner:

- a notice or other document shall be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways-
 - (a) by delivering it to the person,
 - (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,
 - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides, or in a case in which an address for service has been furnished, to that address.

For the purposes of the Carer's Leave Act, 2001, a company within the meaning of the Companies Acts, 1963 to 1990, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

21. PRESERVATION OF SOCIAL INSURANCE BENEFITS

Carer's Leave credits will be available for employees who avail of Carer's Leave and not Carer's Benefit. Employees will receive an application form for Carer's Leave Credits to be completed by their employer on their return to work. This form should be submitted to:

Department of Social, Community and Family Affairs,
Client Data Services,
Gandon House,
Amiens Street,
Dublin 1.

Telephone: 01-7043364/7043368.

Note: In the event of an employee being in receipt of Carer's Benefit from the Department of Social, Community and Family Affairs, the social insurance benefits for the employee shall be automatically preserved for the duration of receipt.

Relevant Statutory Instruments -

SI No 340 of 2000 - Social Welfare (Consolidated Payments Provisions) (Amendments) (No. 13) (Carers) Regulations, 2000.

SI No 103 of 2001 - Social Welfare (Consolidated Payments Provisions) (Amendment) (No. 1) (Miscellaneous Provisions) Regulations, 2001

SI No. 301 of 2001 - Social Welfare Act, 2001 (Section 26) (Commencement) Order, 2001.

Appendix A

Carer's Leave Act, 2001

SAMPLE NOTICE OF INTENTION TO TAKE CARER'S LEAVE

I _____ hereby notify my employer

that I propose to take Carer's Leave in accordance with the provisions of the Carer's Leave Act, 2001, with effect

from _____ to _____ to provide full-time care and attention to _____.

I propose to take the Carer's Leave in the following manner:

Tick Box

- one continuous period of 104 weeks
- in periods of _____ weeks/months (each of which must be of at least *13 weeks duration - the aggregate of which does not exceed 104 weeks).

I wish to confirm that I have made an application to the Department of Social, Community and Family Affairs for a decision of a deciding officer of that Department that _____ in respect of whom I propose to take Carer's Leave, is a relevant person (i.e. is in need of full-time care and attention) for the purposes of the Social Welfare (Consolidation) Act, 1993.

Signature: _____

Date: _____

* Unless otherwise agreed with the employer.

Appendix B

Carer's Leave Act, 2001

SAMPLE CONFIRMATION DOCUMENT

Name of Employee: _____

Name of Employer: _____

Commencement Date of Period(s) of Carer's Leave: _____

Duration of Period(s) of Carer's Leave: _____

SIGNATURES:

Employee: _____ Date: _____

Employer: _____ Date: _____

