



Circular Letter 0039/2022

To: The Chief Executives of Education and Training Boards

**Coronavirus (COVID-19): Updated Working Arrangements
For Staff Other Than Teachers and Special Needs Assistants
employed in Education and Training Boards**

The Minister for Education directs employers to implement the terms in this Circular for staff other than teachers and special needs assistants who are employed in approved posts funded by monies provided by the Oireachtas.

These arrangements are to be implemented by each employer with effect from 30th June 2022. All staff must adhere to the arrangements.

The contents of this Circular may be amended by the Department at any stage.

This Circular supersedes Circular [0043/2021](#) titled '[Coronavirus \(COVID-19\): Arrangements for Staff Other Than Teachers and Special Needs Assistants employed in ETBs](#)'. The Circular also supersedes Information Notes [ETB ESR 0001/2022](#) and [ETB ESR 0002/2022](#) as well as letters from the Department in relation to staff at risk of 29 June 2021 and 7 July 2021.

Please ensure this Circular is circulated to all of members of Education and Training Board and that its contents are brought to the attention of all relevant staff in your employment, including those on leave of absence.

All queries should initially be brought to the attention of the employer who may wish to consult with ETBI. Any further queries in relation to this Circular may be directed to the Department at the following e-mail address: esr@education.gov.ie

This Circular can be accessed on the Department's website at gov.ie.

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13 June 2022

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Definitions and Abbreviations

For the purpose of this Circular, the following terms have the meanings assigned to them here unless the context indicates otherwise.

DPER – means Department of Public Expenditure and Reform.

Employee – means all staff other than teachers or special needs assistants employed in an approved post funded by monies provided by the Oireachtas.

Employer – means an Education and Training Board (ETB)

GDPR – means the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).

GP – means General Practitioner.

HSE – means Health Service Executive.

Occupational Health Service (OHS) – means the providers of independent medical advice on occupational health to the employer. Medmark Occupational Healthcare Ltd. is the current OHS provider.

Personal Data – has the meaning given to it by Article 4 of the GDPR, which is any information relating to the data subject. For the purpose of this Circular, references to personal data include special category personal data, unless otherwise specified.

Special Category Personal Data - has the meaning given to it by Article 9 of the GDPR, which is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The Department – means the Department of Education.

Workplace Pregnancy Risk Assessment – means the risk assessment carried out by employers as required under the Safety, Health and Welfare at Work Act 2005 and the Pregnancy Regulations, 2007.

1. General Provisions

1.1 Purpose of this Circular

1.1.1 The purpose of this Circular is to advise employer of the main changes as follows:-

- a) Changes to COVID-19 Special Leave With Pay entitlement
- b) Cessation of extended COVID-19 Special Leave with Pay (beyond 28 days)
- c) Cessation of Restricted Movement requirement
- d) Working arrangements for the 'Very High Risk' group
- e) Return to normal arrangements under specified Leave Schemes

1.2 Risk Assessments

1.2.1 The employer has obligations under the Safety, Health, and Welfare at Work Act, 2005 to ensure the safety and welfare of staff at work. It is the duty of the employer to carry out a risk assessment to meet these obligations, including workplace pregnancy risk assessments. For specific questions on health and safety and updated legislation, please refer to the Health and Safety Authority (HSA) at the link: <https://www.hsa.ie>.

1.3 Covid-19 Vaccinations

1.3.1 Where an employee has a COVID-19 vaccination/booster shot appointment during work hours, the absence will be treated in the same manner as other medical appointments.

1.3.2 In this regard, the employee should provide confirmation of the vaccination appointment.

1.3.4 Where an employee has side effects following the COVID-19 vaccination, resulting in absence from duty, the terms and conditions of the Sick Leave Scheme will apply.

1.4 Return to Work following Prolonged Absence from the Workplace

1.4.1 When an employee returns to the workplace following a prolonged absence, they should be supported by the employer in their return.

1.4.2 Paragraph 5.2 of this Circular caters for the return to work arrangements for an employee in the [very high risk group \(extremely vulnerable\)](#) as defined by the HSE.

1.5 Employee Assistance Service

1.5.1 The Employee Assistance Service is available as a supportive resource for employees. The free phone confidential helpline is available 24 hours a day, 365 days a year (**1800 814 243**).

1.6 Occupational Health Service

1.6.1 The Occupational Health Service is available to provide medical advice to an employer who has concerns about an employee's medical fitness for work (including COVID-19).

1.7 Data Protection and GDPR

- 1.7.1 The purpose for which the ETB requires the personal data provided, is for the processing of the special leave with pay and substitute claims. Full details of the ETB's Data Protection Policy setting out how personal data will be used, including information regarding rights as a data subject, are available from the ETB.
- 1.7.2 Article 6(1)(c) in conjunction with Article 9(2)(b) in relation to special category data (including health data) of the GDPR permits the processing of special category data (including health data) for reasons of health and safety. In addition, Article 6(1)(e) in conjunction with Articles 9(2)(i), along with section 53 of the Data Protection Act, 2018, permits the processing of special category data (including health data) for reasons of public interest in the area of public health. The measures are deemed both necessary and proportionate, and include safeguards such as limitation on access to the data, strict time limits for erasure, and other measures such as adequate staff training to protect employees' data protection rights. For further information please visit the [Data Protection Commission website](#).
- 1.7.3 In certain circumstances, an employer may ask an employee for information in relation to their COVID-19 special category personal data. For example:
- An employee who requests COVID-19 special leave with pay will be required to provide their COVID-19 test results.
 - An employee who has been advised by the HSE that they are a close contact of a confirmed COVID-19 case may be required to inform their employer, if they have significant vaccine protection. The HSE rules around restricted movement have changed for individuals with significant vaccine protection. In certain circumstances, individuals are no longer required to [restrict their movements](#) where they are a close contact of a confirmed COVID-19 case.
 - Where an employee is required to attend the workplace and is a close contact, the employer may need to enquire in limited circumstances, if he/she has significant vaccine protection, in order for the employer to take a decision in relation to health and safety requirements and workplace attendance.
- 1.7.4 An employer will need to determine on a case-by-case basis, the level of special category personal data they require in order to make relevant decisions with regard to the health and safety of staff in the workplace. At all times, the data collection and processing of special category personal data must be necessary, proportionate and safeguarded.
- 1.7.5 All documentation relating to the processing of applications and declarations must be retained by the employer with the relevant personnel records in a safe and secure manner and in line with the employer's data protection policy and data protection regulations. These records may be selected for inspection by nominated Department officials.

1.8 Compliance

- 1.8.1 Failure to abide by the special arrangements by employees set out in this Circular may be dealt with under the current disciplinary procedures.

2. COVID-19 Special Leave With Pay

2.1 COVID-19 Special Leave With Pay - 2021/22 school year

2.1.1 In the 2021/22 school year, COVID-19 Special Leave With Pay is available to an employee who (a) begins to display COVID-19 symptoms or (b) receives a positive COVID-19 PCR/antigen test result.

2.1.2 From 7th February to the 30th June 2022, the maximum Special Leave With Pay entitlement is 10 consecutive days in any one instance, where the employee provides proof to the employer of the positive PCR test or antigen test registered on the HSE portal.

2.1.3 The terms and conditions of the Sick Leave Scheme apply where an employee remains medically unfit for work after the 10 day Special Leave With Pay period.

2.1.4 Until 30th June 2022, an employee who commenced COVID-19 Special Leave With Pay prior to 7th February can avail of the maximum limit of 28 days, with a further extension available where specific criteria are met.

2.2 Changes to COVID-19 Special Leave With Pay from 1st July 2022

2.2.1 Based on [HSE](#) advice a person who begins to display COVID-19 symptoms or who has received a positive antigen/PCR test result must self-isolate and cannot attend the workplace.

2.2.2 COVID-19 Special Leave With Pay is available to an employee who (a) begins to display COVID-19 symptoms or (b) receives a positive COVID-19 PCR/antigen test result.

2.2.3 From 1st July 2022, based on the DPER's '[Guidance and FAQs for Public Service Employers during COVID-19](#)', the COVID-19 Special Leave with Pay entitlement for eligible employees will change.

2.2.4 From 1st July 2022, the maximum Special Leave With Pay entitlement is 7 consecutive days in any one instance, which is the current [HSE stated self-isolation period](#).

2.2.5 The terms and conditions of the Sick Leave Scheme will apply where an employee remains medically unfit for work immediately after the 7-day Special Leave With Pay period. The employee must provide a medical certificate(s) to the employer, similar to the requirements contained in the Sick Leave Scheme. Please refer to the Sick Leave Scheme to determine the medical certification that is acceptable.

2.2.6 Special Leave With Pay is not available to an employee with COVID-19 symptoms, following a negative COVID-19 antigen/PCR test result. This absence must be recorded by the employer as Sick Leave on the relevant ETB system.

2.2.7 The arrangements relating to the application of COVID-19 Special Leave With Pay are temporary and will be kept under regular review by DPER.

2.3 Arrangements for employees on extended COVID-19 Special Leave With Pay immediately prior to 1st July 2022

- 2.3.1 From 1st July 2022, the terms and conditions of the Sick Leave Scheme will apply to an employee absent on COVID-19 Special Leave With Pay beyond 7 consecutive days in any one instance,
- 2.3.2 From 1st July 2022, an employee already absent on extended COVID-19 Special Leave With Pay (28 continuous days or more) who remains medically unfit for work beyond that date, will be subject to the terms and conditions of the Sick Leave Scheme.
- 2.3.3 For an employee who remains absent on extended COVID-19 Special Leave With Pay on 1st July 2022, the period must be recorded as Sick Leave on the relevant ETB system by the employer from that date.
- 2.3.4 Similar to the Sick Leave Scheme, an employee absent on extended COVID-19 Special Leave With Pay should, prior to returning to the workplace, be assessed as medically fit by the OHS to return to their normal duties.
- 2.3.5 An employee on extended COVID-19 Special Leave With Pay immediately prior to 1st July 2022 and who is due to remain absent beyond this date, will have already been provided, by the OHS, with the following:
- (a) future date of medical fitness to return to work or
 - (b) future date for further medical review
- 2.3.6 The period from 1st July 2022 until the date they are medically fit to return to work must be recorded by the employer on the relevant ETB System as Sick Leave. The employer must ensure they are provided with the OHS advice and/or medical certification, as appropriate before recording this period of Sick Leave.
- 2.3.7 In respect of an employee on extended COVID-19 Special Leave With Pay immediately prior to 1st July 2022, who is due to remain absent beyond this date under paragraph 2.3.5 above, but who wishes to resume duty prior to the medical fitness to work date specified by the OHS, the following must take place:
- (a) The employer must refer them to the OHS by 24th June 2022 for a medical fitness for work assessment, to determine whether the employee is:-
 - i. Medically fit to resume duty
 - ii. Remains medically unfit to resume duty
 - (b) Where the employee is deemed medically unfit for work, the terms and conditions of the Sick Leave Scheme will apply from 1st July 2022, until the date they are deemed medically fit for work by the OHS.
 - (c) Where the employee does not attend the OHS appointment, the terms and conditions of the Sick Leave Scheme will apply from 1st July 2022.

- (d) A medical certificate from a GP or Consultant cannot be accepted by the employer as evidence of the employee's medical fitness for work, in lieu of the OHS medical fitness for work assessment.

2.4 COVID-19 Special Leave With Pay – General Rules

- 2.4.1 Special Leave With Pay commences from the date an employee displays COVID-19 symptoms, or receives a positive COVID-19 PCR test result or a positive COVID-19 antigen test result. The employee cannot attend the workplace and is unavailable for work during this period.
- 2.4.2 An employee with COVID-19 symptoms must arrange a COVID-19 test as soon as possible and within one day of the onset of symptoms.
- 2.4.3 Similar to the general principles that apply to the management of Sick Leave, the employee must contact the employer immediately where they display COVID-19 symptoms or receive a positive antigen/PCR test result, in accordance with the employer's normal absence reporting arrangements.
- 2.4.4 Where circumstances or diagnosis changes, the employee must also inform the employer immediately.
- 2.4.5 COVID-19 Special Leave With Pay is available to eligible employees, to assist in the prevention of the possible onward spread of COVID-19 in the workplace. The eligibility for Special Leave With Pay only applies to an employee who was rostered or due to be working and it cannot be substituted for other forms of leave.
- 2.4.6 COVID-19 Special Leave With Pay granted by the employer will not be counted as part of the employee's Sick Leave record.
- 2.4.7 An employee is not entitled to days in lieu of bank holidays whilst absent on COVID-19 Special Leave With Pay.
- 2.4.8 Where an employee has been granted COVID-19 Special Leave With Pay the employer may appoint a substitute, paid by the Paymaster.
- 2.4.9 An employee's entitlement to COVID-19 Special Leave With Pay shall cease on the expiry of a contract and that contract not having been renewed, unless that contract is followed directly by a 'back to back' contract in an approved employee post funded by monies provided by the Oireachtas.

2.5 Application and Recording Procedure for COVID-19 Special Leave With Pay

- 2.5.1 An employee who begins to display COVID-19 symptoms or who has received a positive COVID-19 antigen/PCR test result must complete the Application Form at [Appendix A](#) of this Circular, to apply for COVID-19 Special Leave with Pay.
- 2.5.2 The employee who receives a positive COVID-19 antigen test result must report this result on the [HSE portal](#). The employee must provide their employer with confirmation of this HSE record, as supporting evidence (screenshot of relevant HSE text message is acceptable as evidence), including the test date.

2.5.3 The employee who receives a positive COVID-19 PCR test result must provide their employer with supporting HSE evidence of the positive COVID-19 PCR test result (screenshot of relevant HSE text message is acceptable as evidence), including the test date.

2.5.4 ETBs must record this leave on their relevant ETB system.

2.5.5 The employer must satisfy themselves with the documentary evidence provided, before recording the period of 'COVID-19: Special Leave With Pay'.

3. Ordinary Sick Leave

3.1.1 Any non-COVID-19 illness must be recorded by the employer as Sick Leave on the relevant ETB system and the terms and conditions of the Sick Leave Scheme will apply. If the employee is subsequently diagnosed with COVID-19, Special Leave With Pay can be retrospectively applied in lieu of the specific period of Sick Leave

4. Restricted Movement

4.1.1 Based on the most recent [HSE advice](#), there is no longer a requirement for a person to restrict their movements if they are a close contact of a confirmed COVID-19 case.

4.1.2 On this basis, an employee who is a close contact of a confirmed case will continue to attend the workplace, as normal and will not be required to work from home during this period. Therefore, from 1st July 2022 onwards, access to COVID-19: Restricted Movement ceases.

4.1.3 ETBs must ensure that where on 30th June 2022 an employee is recorded as on COVID-19: Restricted Movement, an end-date is recorded on their systems.

5. Higher Risk Groups

5.1 Working Arrangements for Higher Risk Employees – 2021/22 school year

5.1.1 In the 2021/22 school year, arrangements are in place for the following employee categories to be facilitated by the employer to work from home:-

(a) an employee currently categorised by the Occupational Health Service (OHS) as 'Very High Risk' of serious illness from contracting COVID-19.

(b) a pregnant employee currently categorised by the OHS as 'High Risk' of serious illness from contracting COVID-19, and working in a special education setting.

5.1.2 The OHS COVID-19 Health Risk Categorisation Reports for the employees at (a) and (b) above will expire at the latest on 30th June 2022.

5.1.3 The employer is required to insert an end-date of 30th June 2022 on the employee's record, as their Health Risk Categorisation Report expires on that date.

5.1.4 An employee in the 'high risk' group, as defined by the [HSE](#) attends the workplace, as normal.

5.2 Working Arrangements for Very High Risk Employees from 1st July 2022

- 5.2.1 From the 1st July 2022 (in most cases this will come into effect from the commencement of the 2022/23 school year), an employee in the [very high risk group](#) as defined by the HSE, as well as pregnant employees defined in paragraph 5.1.1(b) above, must attend the workplace if they are medically fit for work. The employer has a role in supporting the employee's return to the workplace.
- 5.2.2 An employer therefore can no longer facilitate remote working for an employee in the very high risk group. On this basis, OHS COVID-19 Health Risk Assessments are no longer available.
- 5.2.3 As these employees' OHS health risk categorisation status of 'Very High Risk' are due to expire on 30th June 2022, the employer is advised to ensure they carry out a workplace risk assessment, (as detailed at paragraph 1.2 of this Circular), ahead of their return to the workplace.
- 5.2.4 An employee whose OHS health risk categorisation status of 'Very High Risk' is due to expire on 30th June 2022 and who considers they are medically unfit for work, must notify the employer immediately. In accordance with the Sick Leave Scheme, the employer must refer the employee to the OHS in line with the protocol laid out in the Employers Procedures Manual (Chapter 2, paragraph 2 'Employment Medical Assessments'). This referral should take place in advance of the 2022/23 school year.
- 5.2.5 Further to paragraph 5.2.4, where the employee is deemed medically unfit for work by the OHS, the terms and conditions of the Sick Leave Scheme will apply for the period until they are medically fit to return to work. The period must be recorded by the employer as 'Certified Sick Leave' on the relevant ETB system.
- 5.2.6 Further to paragraph 5.2.4, where an employee is deemed medically fit for work by the OHS, they may not apply for Critical Illness Provisions (as detailed in the relevant Sick Leave Scheme) due to COVID-19 medical vulnerability alone.
- 5.2.7 A pregnant employee may not apply for Maternity Health and Safety Leave based solely on a COVID-19 risk in the workplace.

Appendix A

Application for COVID-19 Special Leave with Pay displaying COVID-19 symptoms or diagnosed with COVID-19

The Application Form should be fully completed by the employee and submitted to the employer as soon as possible. The completed Application Form must be accompanied by supporting evidence i.e. positive antigen or PCR test result, as appropriate including the date of fitness to return to work (where this date is available).

Part 1 - Employee Details

Employee's Name: _____ Contact No: _____

Home Address: _____

E-mail Address: _____

PPSN: _____

School Name: _____ Roll No: _____

Part 2 – Details of Special Leave with Pay

I wish to apply for Special Leave With Pay, for the reason indicated below (tick relevant box).

I am:

- Displaying COVID-19 symptoms.
- Received a positive COVID-19 antigen test result.
- Received a positive COVID-19 PCR test result.

Start Date (DD/MM/YYYY): _____ Estimated End Date (DD/MM/YYYY): _____

Declaration

I wish to apply for Special Leave with Pay in accordance with the terms and conditions of Circular 00XX/2022 titled 'Coronavirus (COVID-19): Updated Working Arrangements for Staff Other Than Teachers and Special Needs Assistants employed in Education and Training Boards'

The completed Application Form is accompanied by supporting evidence.

I confirm that the information provided in the Application Form is true and accurate.

Signature of Employee: _____ Date: _____

Part 3 – Employer Record

(A) COVID-19: Special Leave With Pay:
Employee is displaying COVID-19 symptoms

(B) COVID-19: Special Leave With Pay:
Evidence of positive COVID-19 antigen/PCR test result (including test date)
provided
(HSE text message screenshot is acceptable)

Recorded on relevant ETB system under 'COVID-19: Special Leave With Pay' (as appropriate)

Signature: _____ Date: _____
(Employer)

Application Form/Supporting Documentation should NOT be submitted to the Department of Education. They should be retained in the ETB with any other relevant documentation for record and audit purposes with the relevant personnel records.

Data Protection Privacy Statement

ETBs should insert a link to their Privacy Statement here when making the form available for use