



Stiúrthóra Náisiúnta,
Acmhainní Daonna

Feidhmeannacht na Seirbhísí
Sláinte Ospidéal Dr. Steevens',
Baile Átha Cliath 8, D08 W2A8

National Director
Human Resources

Health Service Executive,
Dr Steevens' Hospital,
Dublin 8, 08 W2A8

[@hselive](http://www.hse.ie)

t 01 635 2319
e nationalhr@hse.ie

To: Chief Executive Officer
Each National Director
Each Assistant National Director HR
Each Assistant Chief Finance Officer
Each Hospital Group CEO
Each Hospital Group Director of HR
Each Chief Officer CHOs
Each Head of HR CHOs
Head of HR, PCRS
Each CEO Section 38 Agencies
Each HR Manager Section 38 Agencies
Each Employee Relations Manager
Each Group Director of Nursing & Midwifery
Each Group Director of Midwifery
Each Clinical Director
Director National Ambulance Service

From: Anne Marie Hoey, National Director of Human Resources

Date: 2nd February 2022

Re: HR Circular 003/2022 - Carryover of Annual Leave during COVID-19

Dear Colleagues

As a result of the unprecedented demands on health and social care services during COVID-19, it has been difficult for managers in many settings to facilitate some employees to take their full annual leave entitlement in the normal manner whilst trying to maintain staffing levels and continuity of essential services.

In light of essential service needs during COVID-19, an employer's normal arrangements for ensuring that employees avail of their full annual leave entitlement within the current leave year¹, including the application of a maximum limit for carryover of untaken annual leave where applicable in an organisation, should be *temporarily waived* for those employees who are unable to avail of outstanding annual leave due to the employer's service requirements. In these circumstances, any untaken annual leave which could not be granted by management to the employee within the employer's current annual leave year due to essential service needs cannot be forfeited and should be carried over

¹ The annual leave year in the HSE is 1 April to 31 March. In some section 38 organisations, the annual leave year is 1 January to 31 December.

to the following annual leave year. Managers should ensure that a record is maintained of any annual leave that employees are precluded from taking within the current leave year due to service imperatives to ensure that it is carried over in full to the following leave year. Managers should engage with their employees and ensure that plans are in place to enable employees to avail of unused annual leave within the following leave year.

Employers are obliged to ensure that annual leave entitlements for all employees are granted in accordance with the Organisation of Working Time Act 1997, which sets out the statutory entitlements and other provisions in respect of annual leave. All managers are required to ensure that employees within their area of responsibility are granted these entitlements and to demonstrate compliance by maintaining accurate records.

The Organisation of Working Time Act 1997 provides that the time at which annual leave is taken is determined by the employer having regard to work requirements and subject to the employer taking into account:

- the need for the employee to reconcile work and any family responsibilities;
- the opportunities for rest and recreation available to the employee; and
- the requirement to consult the employee or their trade union representative not later than one month before the day on which the annual leave is due to commence.

An employee who has worked eight or more months in a leave year is entitled to an unbroken period of two weeks' leave, which may include one or more public holidays.

The legislation provides that the onus is on the employer to ensure that employees avail of their statutory annual leave entitlement in the leave year to which it relates. In exceptional circumstances, due to service requirements, annual leave may be carried forward into the first six months of the next annual leave year, provided the employee agrees to defer his/her leave. At a minimum, managers should ensure that employees avail of the statutory² component of their annual leave entitlement within the current leave year for health and safety reasons.

In addition to the employer's legal obligations under the Organisation of Working Time Act 1997, managers are required to monitor annual leave arrangements to ensure that employees avail of their full contractual annual leave entitlement. Managers are required to give prior approval for the carryover of annual leave, if deemed necessary, and are responsible for ensuring that employees are not permitted to accumulate excessive amounts of annual leave which must be accommodated at a later date.

Where management are unable to facilitate employees to avail of untaken annual leave due to essential service needs, this should be documented and the unused portion of annual leave should be carried forward to the following leave year. In such cases, the

² The statutory entitlement to annual leave is set out under section 19 of The Organisation of Working Time Act 1997 [view here](#).

application of an organisation's maximum limit in relation to carryover of annual leave should not apply on the basis that the employee has not been afforded an opportunity by the employer to avail of untaken annual leave and should not be adversely affected. Any annual leave that is carried forward should be granted as soon as is reasonably practicable in line with the provisions of the Organisation of Working Time Act 1997 and service needs.

Public health service employees are **not** entitled to receive payment in lieu of any outstanding annual leave unless the employment relationship is terminated.

NCHDs

As previously advised in CERS Memo 25/2020 dated 8 May 2020, NCHDs should be facilitated to avail of their full annual leave entitlement to the maximum extent possible during their current placement with their employer. It is recognised that due to essential COVID-19 service needs, it may not be possible for managers in some instances to facilitate NCHDs to take their full annual leave entitlement prior to the termination date of their current placement with the employer / changeover date. In these circumstances, and in accordance with the provisions of the NCHD contract, NCHDs will be entitled to payment from their current employer in lieu of any outstanding annual leave upon the termination of their contract of employment.

Please ensure that this Circular is brought to the attention of managers and staff within your area of responsibility.

Queries

Queries from individual employees or managers should be referred to local HR/Employee Relations Departments. Please note that the National HR Helpdesk is also available to take queries from employees Tel: 1800 444 925 Email: Ask.HR@hse.ie

Queries from HR/Employee Relations Departments on this Circular may be referred to Anna Killilea, National Employee Relations, HR Directorate, 63-64 Adelaide Road, Dublin 2. Tel: 01 6626966 Email: anna.killilea@hse.ie

Yours sincerely



Anne Marie Hoey
National Director of Human Resources