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From: Anne Marie Hoey, Chief People Officer

Date: 5th June 2024

Subject: HR Circular 010/2024 - Right to Request Flexible Working Arrangements for Caring Purposes and Right to Request Remote Working

Dear Colleagues

I wish to advise that provisions for the right to request flexible working arrangements for parents and carers and the right to request remote working for all employees came into operation on 7 March 2024.

The Work Life Balance and Miscellaneous Provisions Act was enacted on 4 April 2023¹. Part 2 of the Act contains provisions for the right to request flexible working arrangements for parents and carers. The right to request flexible working

¹ The Parental Leave Act 1998 is amended by the Work Life Balance and Miscellaneous Provisions Act 2023. The WRC has produced a Code of Practice for Employers and Employees on the Right to Request Flexible Working and the Right to Request Remote Working. The Code is available on the [WRC's website](#).

arrangements for parents and carers transposes Article 9 of the EU Work Life Balance Directive.

The right to request remote working is provided for in the *HSE Blended Working Policy for the Public Health Service*². This Policy was implemented in December 2022 and applies to all public health service employees. A copy of the Policy is available [here](#). The term 'blended working' in this policy refers to a combination of working from the employer's work premises and working from home.

Blended working is not an automatic entitlement and is subject to an application process and management approval. Managers are responsible for identifying roles which are suitable for remote working and engaging with their staff. While managers should encourage and facilitate blended working where practicable, it is also recognised that many roles within the public health service require employees to work on-site and are not suitable for remote working. A summary of the policy is set out [here](#).

This Circular deals with the right to request flexible working arrangements for caring purposes.

Right to Request Flexible Working Arrangement for Caring Purposes

1. Types of Flexible Working

For the purposes of the Parental Leave Acts, 1998-2023, flexible working (FW) is a working arrangement where an employee's working hours or working patterns are adjusted, including through the use of remote working arrangements, flexible working schedules or reduced working hours. The following national HR policies/schemes provide for flexible working and will continue to operate in the normal manner:

Types of Flexible Working	Description
Part-time work	Where an employee works fewer hours than full-time employees Please refer to the <i>Agreement on Flexible Working</i> here .
Shorter Working Year	Where an employee can take unpaid leave for a certain period(s) of the year. Please refer to the Shorter Working Year Scheme here .

Working from home (WFH)	The <i>HSE Blended Working Policy for the Public Health Service</i> provides for the right to request remote working (WFH) and is available here . The term ‘blended working’ refers to a combination of working from the employer’s work premises and working remotely.
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Employees should contact their manager for specific information on the types of flexible working arrangements that may be available as this may depend on the job and/or work location (e.g. flexitime).

2. Eligibility criteria

To make a request for flexible working (FW) for caring purposes an employee must be:

- (i) the parent or acting in loco parentis to a child under 12 years of age or under 16 years if the child has a disability or illness and who is or will be providing care to the child, or
- (ii) providing or will provide personal care or support to a specified person who
 - (a) is one of the following:
 - the employee’s child,
 - spouse or civil partner,
 - cohabitant,
 - parent or grandparent,
 - sibling or
 - a person other than one in the categories already specified who lives in the same household as the employee.

and

- (b) is in need of significant care or support for a serious medical reason.

Section 3 gives details of any additional information that employees may be required to give about the person in need of care.

An employee can request FW from their first day at a new job, but they must complete a minimum of 6 months’ continuous service with their employer before an approved arrangement can start. A gap in service of less than 26 weeks with the relevant

employer will be discounted for the purpose of assessing whether the employee has the required 6 months' continuous service before a FW arrangement can start.

3. Making a Flexible Working Request for Caring Purposes

An employee must submit their request for FW to their employer as soon as is reasonably practicable but not later than 8 weeks before the proposed starting date. A request for FW must be in writing (this includes an online application) and signed by the employee.

HSE employees should complete the application form for the relevant scheme. See links below:

<https://healthservice.hse.ie/staff/benefits-and-services/hr-forms/>

Section 38 employers should inform their employees of the application process for making a flexible working request for caring purposes and the information required namely:

- the form of FW being requested;
- the proposed starting date; and
- proposed duration of the FW arrangement.

An employer can ask an employee for any additional information that they may reasonably require about the person in need of care. Employees should provide the following relevant documents and/or information with their original application so as to expedite the process:

- details of whom the request for FW for caring purposes is in respect of i.e. a child or a specified person as provided for under the Act which could be a parent, spouse, civil partner, grandparent, cohabitant, brother or sister of the employee;
- in the case of a child, a copy of the child's birth certificate or certificate of placement from a registered adoption agency or Tusla (the Child and Family Agency);
- in the case of a specified person in need of significant care or support for a serious medical reason:
 - the employee's relationship to the person, and
 - the nature of the significant care or support, and relevant evidence of the need for significant care or support, that is;

a medical certificate;

f stating that the person named in the certificate is in need of significant care or support for a serious medical reason, and
f signed by a registered medical practitioner

Or

in the absence of a medical certificate, such evidence the employer may reasonably require in order to show that the person concerned is in need of significant care or support for a serious medical reason.

Both employers and employees should be mindful of their obligations under Data Protection legislation in relation to such sensitive personal data [here](#). An employee can withdraw their request for FW at any time, up to when an approved arrangement is signed by the employee and employer. Notice to withdraw a request must be in writing and signed by the employee and given to the employer.

4. Right to a Response to a Flexible Working Request for Caring Purposes

An employer who receives a request for FW for caring purposes must respond as soon as is reasonably practicable, but not later than 4 weeks after receiving the request. If an employer experiences difficulty assessing the viability of the request, they can extend the 4-week period for a further period not exceeding 8 weeks.

Within 4 weeks of receiving the request, the employer must:

- Approve the request and include an agreement prepared and signed by the employer and employee which sets out the details of the agreed arrangement, the start date and duration of the arrangement, or
- Provide notice in writing informing the employee that the request has been refused and the reasons for the refusal, or
- Provide notice in writing informing the employee that more time is needed to assess the request and set out the length of the extension.

When the agreement is signed by the employer and the employee, the employer must retain the agreement and provide a copy of the agreement to the employee.

If the employer does not approve the request, the employee may appeal the decision under the Grievance Procedure.

5. Considering a Flexible Working Request for Caring Purposes

An employer who receives a request for FW for caring purposes must consider the request, having regard to:

- the needs of the service;
- the employee's needs, i.e. the reasons why the employee is requesting the FW.

6. Changes to a Flexible Working Arrangement for Caring Purposes

An employer and an employee can agree, in writing, a change to a FW arrangement which has already been signed, before or after it has started.

A change to an arrangement can be:

- Postponing the arrangement or part of it to an agreed date; or
- Curtailing the period of the arrangement in a way and to the extent agreed; or
- Varying the arrangement in an agreed way.

Where an approved FW arrangement has not yet commenced and the employee becomes ill or incapacitated and is unable to undertake the care in relation to which the FW arrangement is based, the employee can give notice to the employer postponing the arrangement until the employee has recovered.

The notice must be in writing and be given as soon as is reasonably practicable and include a medical certificate or such evidence that the employer may reasonably require showing that the employee is unable to care for the person concerned.

7. Termination of a Flexible Working Arrangement

An employer can terminate an approved FW arrangement in certain circumstances, before or after it has started if the employer is satisfied that the FW arrangement would have, or is having, a substantial adverse effect on the operation of their services because of:

- seasonal variations in the volume of the work concerned, or
- the unavailability of a person to carry out the duties of the employee in the employment, or
- the nature of the duties of the employee in the employment, or
- the number of employees in the employment, or
- the number of employees in the employment whose periods of approved FW arrangement overlap in whole or in part with the period specified in the employee's FW arrangement, or
- any other matters relevant to the substantial adverse effect on the operation of the employer's services.

In such circumstances, the employer can give an employee written notice of termination of an arrangement, having considered the following:

- the needs of the service, and

- the employee's needs, i.e. the employee's reasons for requesting FW.

The notice must set out the reasons for termination and specify the date on which the employee must return to their original working arrangement. This date must not be earlier than 4 weeks from the date of receipt of the notice of termination unless the date the approved FW arrangement comes to an end is less than 4 weeks from the date of receipt of the notice.

An employer who proposes to give notice of termination must first:

- notify the employee in writing of the proposal to terminate the arrangement, and
- include details of the grounds for terminating the arrangement, and
- give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal, and
- consider any representations made by an employee before deciding whether to give notice of termination.

When considering termination of a FW arrangement, an employer should consider whether their reasons for terminating the arrangement are objective, fair and reasonable. The grounds for the decision should be set out in a clear manner in the notice to help the employee to understand why the arrangement is being terminated and that the decision has been given consideration. Where the employee receives the notice, the employer should also consider in an objective, fair and reasonable manner any representations that have been made by the employee. The parties should consider whether any alternative arrangement may be feasible other than termination depending on the particular circumstances of each individual case.

If an employer decides to proceed with terminating the arrangement, the employee must return to their original working arrangement on the date stated in the notice.

8. Return to Previous Working Arrangement

An employee can request by written notice to return to their original working arrangements earlier than had been approved by providing reasons and a proposed date of return. An employer must consider and give notice within 4 weeks of receipt as to whether the request has been approved or refused and the reasons for any refusal. When considering the request, the employer must have regard to:

- the needs of the service; and
- the employee's needs i.e. the reasons the employee made the request to return early.

If the employer agrees to an early return, they can propose an alternative date for return to the original working arrangement.

On the expiration of an employee's FW arrangement, the employee is entitled to return to the original working arrangement that they held immediately before the approval of the FW arrangement.

9. Abuse of a Flexible Working Arrangement

An employee must use the approved FW arrangement for the purpose for which it was approved.

If an employer has reasonable grounds for believing that the FW arrangement is not being used for that purpose, they can give an employee written notice of termination setting out the reasons for the termination and specifying the date on which the employee must return to their original working arrangement.

An employer who proposes to give notice of termination on these grounds must first:

- notify the employee in writing of the proposal to terminate the arrangement; and
- include details of the grounds for terminating the arrangement; and
- give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal; and
- consider any representations made by an employee before deciding whether to give notice of termination.

An employee is required to return to their original working arrangement 7 days after receiving notice of termination for abuse of an arrangement.

10. Protection of Employees from Penalisation

An employer must not penalise an employee for proposing to or having exercised their rights to make a request for FW or a request to return to a previous working arrangement.

11. Record Keeping

An employer must keep a record of approved FW arrangements taken by their employees for three years and include the following information:

- The period of employment of each employee; and
- The dates on which each employee was on an approved FW arrangement; and
- The number of times each employee was on an approved FW arrangement.

All notices, or copies of notices, given or received by an employer or employee must also be retained by the employer and employee for one year.

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

Queries

Queries from individual employees or managers regarding these arrangements should be referred to local HR Departments/Employee Relations Departments. Please note that the National HR Help Desk is also available to take queries on 1850 444 925 or email: ask.hr@hse.ie.

Queries from HR Departments on the contents of this Circular may be referred to National Employee Relations, HR Directorate, 63-64 Adelaide Road, Dublin 2 Tel: 01 6626966, Email: info.t@hse.ie.

Yours sincerely



Anne Marie Hoey
Chief People Officer