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12 March 1998



DEPARTMENT
OF HEALTH AND
CHILDREN
12 MARCH 1998

Chief Executive Officer
Each Health Board

Secretary/Manager
Each Voluntary and Joint Board Hospital

Chief Officer
Each Other Health Agency

**Treatment of job sharing staff - Implications of the judgement of the
European Court of Justice (Hellen Gerster v Freistatt Bayern)**

For your information, I draw your attention to the attached statement which the Department of Finance has asked to be circulated to all public service bodies and/or agencies. The statement deals with the implications for the treatment of job sharing staff of the judgement of the European Court of Justice in the Hellen Gerster v Freistatt Bayern case.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Melanie Pine', written over a horizontal line.

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E109/125/97

10 February 1998

Circular 4/98: Amendment to the job sharing scheme re reckoning of service and seniority

A Dhuine Uasail

1. I am directed by the Minister for Finance to refer to the job sharing scheme (reference Circular 3/84, Circular 2/88 and subsequent minutes to Personnel Officers - see Appendix to this Circular). Following on the European Court of Justice ruling in the case of Hellen Gerster v Freistaat Bayern, it is necessary to amend the job sharing scheme in certain respects as detailed below.

2. I am to say that, for the purposes of reckonable service (insofar as it affects qualifying service for purposes other than pay, incremental progression and superannuation), credit should be given for all job sharing service upon the same basis as full-time service. This is to apply to all appointments¹ made since 2 October 1997, the date on which the judgement was handed down. Paragraph 8 (i) of the Appendix to Circular 3/84 should, therefore, be deleted. When recalculating the reckonable service of staff who are job sharing, or who have job shared in the past, all service prior to 2 October 1997 will be taken into account. For example, if a person was appointed as Executive Officer on 2 October 1993 and served in a full-time capacity for one year to 1 October 1994, then served in a job sharing capacity for two years to 1 October 1996 and resumed full-time on 2 October 1996, s/he would, up to now, have had three years reckonable service as of 2 October 1997. Under the revised arrangements, that person will have four years reckonable service as of 2 October 1997.

¹ Includes all forms of selection processes in which reckonable service is a factor [eg promotions, assignment to higher duties, assignment to higher scales under restructuring agreements, qualification for IT gratuities (where still applicable), assignment to special posts, whether they attract an allowance or otherwise]

3. The calculation of, and use of, seniority is, in general, a matter for each Head of Department. However, I am to say that the Gerster judgement means that it is not permissible, in general, under the Employment Equality Act, 1977, to reckon job sharing service as anything other than fully equivalent to full-time service for seniority lists used for the purposes of promotion or other similar purposes. Where necessary, therefore, seniority lists will be amended on the same basis as described above, namely with effect from 2 October 1997, but including service prior to that date.

4. Job sharing service for purposes of calculating pay and superannuation entitlements should continue to be calculated on a pro rata basis as at present. Paragraphs 1 and 6 of the Appendix to Circular 3/84 remain unchanged.

Mise, le meas

J McGovern
Assistant Secretary