

Employment Law Rights during Covid19 pandemic

FLAC (Free Legal Advice Centres) is a voluntary, campaigning organisation which promotes equal access to justice for everybody in Ireland.

As an independent rights organisation, FLAC is not part of the state-funded Legal Aid Board, which is responsible for administering government-funded legal aid and advice.

FLAC is producing a series of fact sheets on Covid19 related legal issues arising in family law, employment law, social welfare and debt.

This sheet explains your employment law rights during the current Covid19 outbreak. As this is an evolving situation, **this information is subject to change.**

This document is for information purposes only and should not be considered as legal advice on your individual circumstances. For further information please contact the FLAC's Telephone Information Line on **1890 350 250** or **01 874 5690**, open Monday to Friday from 9.30-1pm and 2-5pm.

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1. You are an employee working from home

You should continue to be paid as normal.

2. You are unable to work (either from home or in the workplace) due to lack of childcare

❖ *Employee Entitlements*

- **Paid Force Majeure Leave**

It may be possible to claim Force Majeure Leave and, if so, you should be paid as normal by your employer.

Force Majeure Leave is usually only available “for urgent family reasons owing to accident/illness of an immediate relative, or of a person in a relationship of domestic dependency” with an employee. During the Covid-19 crisis employers are being urged by the Government to permit employees to take Force Majeure Leave even where they do not technically qualify under the legislation.

A maximum of 5 days Force Majeure Leave is allowed over a three-year period, with a maximum of 3 days in any one year. Employers may be willing to allow employees to take the full 5 day entitlement during this crisis.

Note that if you claim the full entitlement now, your employer may refuse a request for Force Majeure Leave if a dependant becomes sick over the next 3 years.

- **Paid Annual Leave**

You could ask your employer to allow you take annual leave. It is often at your employer’s discretion when you take it, but there is an obligation on an employer to recognise the need for the employee ‘to reconcile work and any family responsibilities’ when deciding on leave – this is important in the current situation.

If you work full time you are entitled to a minimum of 4 weeks paid annual leave per year, but you may have additional contractual entitlements and may have carried over unused annual leave from previous years that you can use now.

Employees earn annual leave over the time they have worked e.g. after three months of work you will have accrued (and should be able to take) at least one week of your annual entitlement. Your employer may also let you take “future” annual leave now.

Your employer may require you to take annual leave at particular times. Normally, employers should consult with employees 1 month prior to requiring this. However, in the current circumstances if you don't want to take your annual leave your employer may give you the option of taking unpaid leave instead of paid annual leave.

It is worth noting that you may cancel the leave if you are sick and this is medically certified.

- **Unpaid Parental Leave**

If you are a parent, you are entitled to take unpaid leave from work to spend time looking after your children. You can take up to 26 weeks' parental leave for each eligible child before their 12th birthday.

In principle, you must have one year's service by the date it is proposed to take parental leave, but if you have a minimum of three months service by that date, you will be entitled to one week's leave for each month of service.

It is worth noting that you may cancel the parental leave if you are sick.

- **Unpaid Leave**

Your employer may, at its discretion, permit you to take general unpaid leave if you do not want to take paid annual leave to cover your absence.

- **Discretionary Paid leave**

There is nothing to stop employers continuing to pay employees who are not in work. However, this would be a discretionary benefit and may just be a temporary measure meaning your employer could stop paying you at any time.

❖ *Government Income Supports*

- **Paid Parent's Leave and Benefit**

Parent's Leave is a new statutory entitlement for parents to take 5 weeks leave in the first 2 years after the birth or adoption of their child. It is available for children born or adopted after 1 November 2019. These 5 weeks can be taken separately or together.

Each parent of a child may be entitled to be paid Parent's Benefit for the 5 weeks while on Parent's Leave.

3. You are medically certified to not come into work due to COVID-19

❖ *Employee Entitlements*

- **Sick Leave**

You may take sick leave for as long as you are unwell but you may be required to submit a sick cert to your employer. There is no legal obligation on your employer to pay you during a period of sick leave unless it is provided for in your contract, but some employers do grant certain periods of sick pay. You should check your employment contract or the Sick Pay Policy.

You should note that time on medically certified sick leave is considered to be time worked, so your right to build up annual leave continues during a period of medically certified sick leave.

❖ *Government Income Supports*

- **COVID-19 Illness Benefit**

If you are diagnosed with COVID-19, or are suspected of having COVID-19 and are medically required to self-isolate/restrict movements, you can access a new COVID-19 Illness Benefit from day 1.

To receive the enhanced payment, you must be: self-isolating on the instruction of a doctor or diagnosed with COVID-19 (Coronavirus); be absent from work; and not getting paid by your employer.

The personal rate for this payment is €350, as compared with the normal Illness Benefit rate of €203. It will be paid for a maximum of 2 weeks where a person is self-isolating but will be paid for a maximum of 10 weeks of a person's absence from work if they have been diagnosed with COVID-19 (Coronavirus).

If you have an illness that is not related to Covid-19 you may be eligible for normal illness benefit.

Illness benefit is paid to you by the State, not by your employer. The Government is considering new legislation to provide for sick pay by employers but that hasn't been enacted yet.

4. Your workplace remains open, but you cannot work from home and:

- You do not want to risk going to work; or
- there are other practical reasons you cannot go to work

❖ *Employee Entitlements*

- **Paid Annual Leave**

You could ask your employer to allow you take annual leave. It is often at your employer's discretion when you take it, but there is an obligation on an employer to recognise the need for the employee 'to reconcile work and any family responsibilities' when deciding on leave – this is important in the current situation.

If you work full time you are entitled to a minimum of 4 weeks paid annual leave per year, but you may have additional contractual entitlements and may have carried over unused annual leave from previous years that you can use now.

Employees earn annual leave over the time they have worked e.g. after three months of work you will have accrued (and should be able to take) at least one week of your annual entitlement. Your employer may also let you take "future" annual leave now.

Your employer may require you to take annual leave at particular times. Normally, employers should consult with employees 1 month prior to requiring this. However, in the current circumstances if you don't want to take your annual

leave your employer may give you the option of taking unpaid leave instead of paid annual leave.

It is worth noting that you may cancel the leave if you are sick and this is medically certified.

- **Unauthorised Absence**

If you do not attend for work, but you do not want to take annual leave or you have no days left, your employer will be required to act reasonably in how they treat you.

Your employer could decide there are exceptional circumstances justifying your inability to come into the office and may decide to continue to pay you.

Alternatively, your employer could withhold your pay on the basis that your absence is unauthorised.

- **Unpaid Leave**

Your employer may, at its discretion, permit you to take general unpaid leave if you do not want to take paid annual leave to cover your absence.

5. You are not medically certified, but your employer has instructed you not to come into work

❖ *Employee Entitlements*

- **Continue pay as normal**

If your employer directs you not to attend work (for reasons unrelated to a downturn in business i.e. they are not placing you on lay off) and you are willing and able to work, it is your employer's decision so they should continue to pay you.

❖ *Government Income Supports*

- **Pandemic Unemployment Payment**

If you are asked to stay at home on a permanent basis due to Covid-19 and your employer is not paying you, you may be eligible for the Pandemic Unemployment Payment (**PUP**).

The PUP is a payment of up to €350 per week for the duration of the pandemic and is designed for employees and self-employed people who have lost their jobs due to Covid-19. The rate of payment is linked to your previous average gross weekly earnings:

Average weekly earnings	Current rate
€400 or over	€350
€300 - €399.99	€300
€200 - €299.99	€250
Less than €200	€203

To be eligible for PUP, you must have:

- been in employment or self-employment on or after 13 March 2020
- Have lost your job or be temporarily laid off from work or asked to stay at home from work due to the pandemic
- Stopped trading as self-employed due to the pandemic.

You cannot claim the PUP if you are continuing to receive any income from your employment (e.g. if you are working reduced hours or if your employer is topping up your wages or availing of the Employment Wage Subsidy Scheme) or if you voluntarily left your employment.

It is important to note that the PUP is taxable. The amount of tax you are required to pay will depend on your overall income during the year. In 2021 the PUP is taxed in real time, but you may have received PUP payments in 2020 in respect of which tax had not been deducted which means you may have an outstanding tax liability. You should contact Revenue if you have any queries about this.

You can apply online for the benefit at www.mywelfare.ie. Alternatively, the Department of Social Protection can provide you with a paper application form which you can post for free to: Free Post to PO BOX 12896, Dublin 1.

6. You cannot work due to caring for person with Covid-19

❖ *Employee Entitlements*

- **Paid Force Majeure Leave**

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Force Majeure Leave is usually only available “for urgent family reasons owing to accident/illness of an immediate relative, or of a person in a relationship of domestic dependency” with an employee. During the Covid-19 crisis employers are being urged by the Government to permit employees to take Force Majeure Leave even where they do not technically qualify under the legislation.

A maximum of 5 days Force Majeure Leave is allowed over a three-year period, with a maximum of 3 days in any one year. Employers may be willing to allow employees to take the full 5 day entitlement during this crisis.

Note that if you claim the full entitlement now, your employer may refuse a request for Force Majeure Leave if one of your children/a dependant becomes sick over the next 3 years.

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- **Discretionary Paid leave**

There is nothing to stop employers continuing to pay employees who are not in work. However, this would be a discretionary benefit and may just be a temporary measure meaning your employer could stop paying you at any time.

- **Unpaid Carer's Leave**

Carer's Leave may be available if you need to leave your employment temporarily to provide care for someone certified as in need of full-time care and attention for at least 13 weeks. This could include a person who has contracted COVID-19.

An employer is entitled to refuse a proposed period of less than 13 weeks, but only on reasonable grounds and must set out those reasons in writing. In the current uncertainty, it might be difficult for an employer to show that it is reasonable to refuse you a period of less than 13 weeks Carer's Leave.

You need approval from the Department of Employment Affairs and Social Protection and you must have 1 years' service with your employer to avail of the full leave period.

❖ **Government Income Supports**

A welfare payment – **Carers Benefit** – is available to employees taking Carer's Leave, subject to a number of conditions. If you do not qualify for Carer's Benefit you may qualify for **Carer's Allowance** which is a means-tested payment.

7. Your place of work remains open, but business is reduced

❖ **Employee Entitlements**

- **Reduced Hours**

Your employer may seek to temporarily reduce your working hours if there is less work available for you to do. Usually your employer would need to have included a clause in your employment contract to allow them to do this. However, if the current public health emergency of COVID-19 has led to an immediate downturn in business, your employer may use this to justify a reduction in your hours and pay, and indeed, you may be willing to consent to the reduction in the short term.

Note that if you continue to work more than half of your normal hours each week you do not have any entitlement to Short Time Work Support, a welfare payment that is set out in more detail below.

You may be able to supplement reduced hours by taking paid annual leave or parental leave on days you are not working.

- **Short Time**

If there is a decrease in your work so that your pay is less than 50% of your normal weekly pay, this is known as “Short Time”. If the Short Time is due to Covid-19 you may be entitled to a number of Government supports (see below).

❖ **Government Income Supports**

- **Employment Wage Subsidy Scheme**

If you have been placed on layoff or short time due to Covid-19, the Government may subsidise your wages, on a temporary basis and subject to a number of conditions, as follows:

Gross pay per week	Current Subsidy rates
Less than €151.50	No subsidy applies
€151.50 - €202.99	€203
€203 - €299.99	€250
€300 - €399.99	€300
€400 - €1,462	€350
Over €1,462	No subsidy applies

There are also a number of eligibility requirements for your employer and they must be able to show that their business has been adversely affected by Covid-19. They are not obliged to top up your salary as part of this scheme.

Your employer will apply for this benefit on your behalf and should pass it to you (after deducting relevant taxes). They must keep you on payroll and you will receive the payment directly from your employer.

You should contact your employer directly to discuss your potential eligibility.

- **Short Time Work Support**

If you are ineligible for the Covid-19 Wage Subsidy Scheme, you may be eligible for Short Time Work Support.

This is a form of Jobseeker's Benefit. It is an income support payment if you have been temporarily placed on a shorter working week.

The payment is made in respect of your regular salary for the days that you are no longer working. For example, if your working week has been reduced from a 5 day work pattern to a 3 day work pattern, you can receive support for the other 2 days.

Short Time Work Support is paid for a maximum of 234 days. Your entitlement will depend on the number of social insurance contributions you have.

Claiming Redundancy lump sum when on lay off or short time

If you are placed on layoff or short time as result of COVID-19 you may only make a claim for redundancy after the expiry of the "emergency period" which is currently set to end on 30 June 2021 (though we expect this will be extended again by the Government).

In such a case the onus is on you to claim a redundancy payment after the expiry of the emergency period or not later than 4 weeks after the end of the lay-off or short-time. If your employer disputes the claim for redundancy, they must issue a notice stating that they will be able to provide at least 13 weeks work for you within 4 weeks of receipt of the claim from you. You must receive that notice within 7 days of the date of your claim for a redundancy payment.

8. Your place of work is closed and employee cannot work from home

❖ Employee Entitlements

- **Lay off**

A lay off occurs when an employer has no work for the employee to do at present but reasonably believes that this situation will not be permanent. There should be a clause in your employment contract allowing your employer to place you on unpaid lay off.

Normally employees can claim redundancy after unpaid lay off of four consecutive weeks or 6 weeks over a 13 week period, but during the ongoing pandemic that right is restricted (as explained above).

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It is important to note that the PUP is taxable. The amount of tax you are required to pay will depend on your overall income during the year. In 2021 the PUP is taxed in real time, but you may have received PUP payments in 2020 in respect of which tax had not been deducted which means you may have an outstanding tax liability. You should contact Revenue if you have any queries about this.

You can apply online for the benefit at www.mywelfare.ie. Alternatively, the Department of Social Protection can provide you with a paper application form which you can post for free to: Free Post to PO BOX 12896, Dublin 1.

9. Your place of work decides to permanently let people go

❖ *Employee Entitlements*

- **Redundancy**

If you are permanently let go from your employment, for example as a result of lack of work or due to the closure of your employer's business, you may be entitled to a redundancy lump sum.

To qualify, you must have over two or more years 'reckonable service' and there are rules in place to calculate service. Two weeks' pay per 'reckonable' year of service, plus a 'bonus' week, is payable, capped at a maximum of €600 per week. So, for example, if you have five years' service, you would be entitled to 11 weeks' pay. Depending on your length of service, this may amount to an important sum of money (which is paid tax free) at a difficult time.

Where your employer is insolvent and cannot afford to make this payment, it may be claimed from the state Social Insurance Fund, which is based in the Department of Employment Affairs and Social Protection.

An employee who is owed other monies, such as pay in lieu of notice, unpaid wages or outstanding holiday pay, may also claim these amounts from the Fund.

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- **Jobseeker's Benefit and Jobseekers Allowance**

If for any reason you are not eligible for the Pandemic Unemployment Benefit, you may be entitled to an unemployment social welfare payment. If you have enough social insurance contributions, you may be entitled to [Jobseeker's Benefit](#). If you do not have enough PRSI contributions you may qualify for [Jobseeker's Allowance](#) which is a means-tested benefit. Depending on your circumstances you may qualify for a [medical card](#) or [GP visit card](#) and other secondary benefits such as [Rent Supplement](#) under the [Supplementary Welfare Allowance Scheme](#).

10. You are preparing to return to the workplace

Over a year since the first lockdown, workplaces are starting to reopen as more people are vaccinated and restrictions gradually lift. Here are a number of key issues which employees should be aware of:

- **Employers' Health And Safety Obligations To Provide A Safe Place Of Work**

Protecting the health and safety of you and others in the workplace as they return to work will be paramount. Employers in Ireland already have a number of legal duties to you as employees under health and safety law, including:

- duty to protect the health, as well as safety, of their employees;
- duty to protect others who may be exposed to health risks as a result of the employer's activities, including members of the public, service users and contractors; and
- duty to manage safety risks in workplaces under the employer's control.

The Government has published a new Work Safely Protocol which covers the current advice on the Public Health measures needed to reduce the spread of Covid-19 in workplaces:

- employers must have a Covid-19 response plan in place

- employers must maintain up-to-date contact information on all workers for contact tracing purposes in the event of a case or outbreak at work
- infection prevention and control measures should be maintained in the workplace, including physical distancing, proper hand hygiene, respiratory hygiene, pre-return to work measures (including your employer providing you with a Pre-Return to Work form), procedures for dealing with a suspected case of Covid-19 in the workplace, thorough and regular cleaning of the workplace by employers and the provision of PPE if appropriate.
- Employees should not go to work if you are ill and also stay at home if you are identified as a close contact of a confirmed case of Covid-19.
- Employers have an obligation to ensure that there is an adequate supply of fresh air (ventilation) in enclosed areas of the workplace. Your employer should consider ventilation as part of their workplace risk assessment.
- **Vaccinations and the workplace**

While employers can encourage employees to take the vaccine, unless the Government legislates that employees are required to receive the vaccine, your employer will not be able to force you to receive it before you are allowed return to the workplace. The decision to get a COVID-19 vaccine is voluntary.

- **Temperature Testing**

Employers are allowed implement temperature testing in line with public health advice.

The HSE currently does not recommend temperature testing in the workplace, with the exception of certain healthcare settings. However, many employers are implementing temperature testing anyway. It is vital that employers process any health data (incl. temperature checks) that relates to you in compliance with the General Data Protection Regulation (GDPR). You should be made aware of the processing of this data and be informed of the purpose of the processing and for how long the data will be retained.

- **PCR/Antigen testing**

There is currently no government guidance or regulation compelling employees to submit to Covid-19 testing by their employer. You should inform your employer if you do not wish to take part in COVID-19 testing.

Like temperature testing, from a data protection perspective, your employer will need to prove that any Covid-19 testing is necessary and proportionate for a particular workplace and is fully compliant with GDPR.

