

FAQS ON HR AND EMPLOYMENT CONSIDERATIONS FOR THE REOPENING OF EARLY LEARNING AND CARE AND SCHOOL AGE CHILDCARE SETTINGS

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(ADDITIONS HIGHLIGHTED IN GREY)

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Introduction

The COVID-19 Pandemic created major challenges for Ireland, now we must all work intensively to support settings to re-open. Retention of valued staff has been identified by the sector as a key priority, as is supporting employers to reopen in a sustainable way.

All employers are encouraged to read this material and to engage proactively with the various Government supports available.

The purpose of these FAQs is to provide answers to staffing questions that employers may have.

These FAQs aim to be informative and will be added to and/or amended as more information becomes available. In the event that any further corrections need to be made, these changes will be highlighted in future versions.

Throughout this document the employer is encouraged to consult with their employees and it should be noted that the employer should advise the employee to seek the support of their trade union **if they are a member of one**. It should also be noted that there is no obligation on employers to recognise Trade Unions for the purpose of negotiation, but an employee has a constitutional right to join a trade union should they wish to do

These FAQs are for information purposes only and do not provide legal advice and the information provided should not be considered to be such or relied or acted upon in that regard. If you need legal advice you should consult a suitably qualified person.

Frequently Asked Questions

1. Our setting has a staff member on a fixed term contract due to expire at the end of June 2020, employed by the service since September 2019. Our setting has signed up to the WSS/WSCS. Do I renew this contract?

The DCYA and Revenue have noted that the WSS/WSCS represent a method of paying staff wages and so does not change the conditions of contracts or their renewals. As such, using the example above, this is dependent on your business needs upon reopening. Staff employed under fixed term contracts are protected under the Protection of Employees (Fixed Term) Work Act 2003. If there is no need to renew the contract, you should issue the staff member with the requisite notice that their contract will not be renewed, adhering to the notice period in the contract and ensuring this in line with the Minimum Notice Legislation.

2. If a staff member cannot come back to work when we reopen for health reasons, are they to be paid? What should you do in such circumstances?

As is always the case the terms and conditions of employment are a matter for the employer and the employee. The employee should be asked to submit a medical certificate confirming that they are medically unfit to return to work. If the settings sick leave policy allows for payment for sick leave, then this should be followed. Otherwise the employee should be advised to contact the DEASP in relation to possible entitlements to [illness benefit](#).

It is also advisable to read to the [Reopening Funding Package for Childcare Services FAQ Version 2 01/07/2020](#) in relation to vulnerable staff (see page 22)

3. If a staff member cannot come back to work when we reopen for family care reasons, are they to be paid? What should you do in such circumstances?

The Government has asked employers to be as flexible as possible in allowing staff time off to look after their children or other members of their families. This could include:

- Altering shifts, so that staff can coordinate caring with another person
- Allowing part time work
- Unpaid leave
- Parental Leave
- Allowing staff to rearrange holidays
- Allowing staff to take paid time off that you can work back at a later time

As is always the case the terms and conditions of employment are a matter for the employer and the employee. These options should be fully discussed and agreed with the staff member concerned in the context of what meets the needs of the setting. It is important to note that some of the statutory leaves attract social welfare payments. You should refer the staff member to the www.welfare.ie should they have any queries about their entitlements. Further details for staff can also be found in Citizens Information [here](#). Your setting may also have policies

around payment in relation to such leave types and these should be discussed with the staff member concerned. Any discussion about these leave types should be in line with the leave policies in your staff handbook. Where policies allow staff should be afforded an opportunity to consult with their trade union representative.

If the staff member indicates that none of the leave options are viable for them and they do not wish to return, then they may voluntarily resign. In such cases the employee should be advised to contact the DEASP, in advance of any final decision, who will seek information from them as to the reason for not accepting a recall to work, or voluntarily resigning, before making a decision on the worker's entitlement to payment.

4. Our staff member has handed in their notice and advised they will not be returning – What do we do about the WSS/WSCS and removing the staff from it?

The DCYA and Revenue have noted that the WSS/WSCS represent a method of paying staff wages and so does not change the conditions of contracts. Therefore, the notice period should run as normal up to the final day and on that day the staff member should be removed from the WSS/WSCS.

Further details can be found [here](#)

5. a) What do we do about staff who normally sign on during the summer (work 38 weeks term time) – will they go on jobseeker's payment?

As advised in Question 4, the WSS/WSCS are wage subsidy schemes and do not change the conditions of contracts. Therefore, if it is a condition of contract that staff go on lay off for the summer and return to work in September then this is what should happen as normal. Staff members should contact the [Department of Employment Affairs and Social Protection](#) should they have any queries about their entitlements.

b) What is the case where I normally keep staff on during the summer even when we are closed? Can I access the TWSS for them?

As previously advised, as a wage subsidy scheme the TWSS does not change the conditions of contracts, if staff normally stayed in your employment over the summer months then this should happen in the normal way and eligible services may continue to avail of the Revenue operated TWSS. There is a variety of conditions relating to the Temporary Wage Subsidy Scheme. Revenue update their guidance frequently and it is essential that providers participating in TWSS are alert to these materials. In general, the DCYA understand that where a service continues to meet the eligibility criteria for the Revenue operated TWSS, and continues to make payments in line with the requirements of that scheme, they can continue to avail of the wage subsidy under that scheme. This applies whether a service is open or closed in July/August. You can read more about the funding model [here](#)

6. We are concerned about staff returning to work on less money than they were receiving during COVID – how do we deal with the difficulties around this?

It is understandable that returning to work will be a cause of concern for staff members and the change in their financial circumstances will be a large part of this. This should be discussed fully with staff members. If staff have been laid off and their role is now to be reinstated as the layoff is no longer in place, they should be put on notice of this and they should be advised of their proposed return to work date. If such staff members are having financial difficulty upon returning to work they should contact the [Department of Employment Affairs and Social Protection](#) in relation to what, if any, income supplements they may be entitled to.

In general, under the terms of the TWSS payments to employees cannot exceed the Average Revenue Net Weekly Pay (ARNWP), which is calculated based on pay in January and February, without the wage subsidy being tapered off. However, in cases where an employee has an ARNWP of less than €350, employers may top-up to €350 without the Revenue subsidy being tapered. This may assist providers in dealing with the change to the financial circumstances of the employees or if the provider wishes to extend the working hours of some staff with their agreement over the summer Further details here: [Reopening Funding Package for Childcare Services FAQ Version 2 01/07/2020](#) (at page 19 and 20.)

The DEASP has set up a process where employers who have concerns about employees not wishing to return and employers may provide details to the following dedicated email address - C19EmployerReports@welfare.ie. The DEASP will follow up on all notifications, to include requesting the employee to provide any information as to the reason for not accepting a recall to work, or voluntarily resigning, before making a decision on the worker's entitlement to payment.

7. Does annual leave accrue during TWSS/TWSCS period and how do you make sure staff have taken leave prior to reopening?

The strict legal view is that annual leave only accrues based on working time and so does not accrue if staff are not working at all. It follows therefore that where an employer is accessing a subsidy under the wage subsidy schemes for employees and those employees are not actually working at all that leave will not accrue during this time.

(Note: The situation in relation to staff on lay off and claiming the pandemic unemployment payment is covered in question 17 below)

It is worth noting that employee who have worked at least 1,365 hours in a leave year is entitled to the statutory maximum of 4 working weeks' paid annual leave (they may contractually be entitled to more) in any event. Some employees may be entitled to their full annual leave entitlement if they have completed their full working hours during the year even where they did not work during the closure period. You can read more about the threshold and calculation of annual leave [here](#)

The situation differs for employees who are working during the closure period whilst on the TWSS/TWSCS. Where the staff are engaging in CPD (as was encouraged under the TWSCS) or administrative work, such as preparing activities for delivery to the children in their homes, virtual activities, carrying out reopening preparatory work etc (this list is not exhaustive) then this would be considered working time and leave will accrue. This should be assessed on a case by case basis and based on the hours worked by the staff member whilst the employer was in receipt of TWSS/TWSCS. The accrual of annual leave will be in accordance with the employee's normal contract hours/hours worked or average working hours where they work on a rostered basis based on the statutory minimum for annual leave as provided for in the Organisation of Working Time Act or their contract of employment whichever is the greater.

Such annual leave accrual may present some employers with undue costs or leave them unable to meet service needs on reopening. Employers should consider asking staff if they would take some days as annual leave during the period prior to reopening. This should be raised sensitively by outlining the current circumstances, and the wider circumstances of a global pandemic. Due consideration should be given to family responsibilities, opportunities for rest and recreation that are available to the employee and it is preferable that you consult fully your employees, and reach an agreement with them.. As a last resort, employers can compel employees to take annual leave by providing a 30-day notice to the employees. It is important to adopt a prudent approach to this being mindful of an employees need for proper rest and recreation as well as their family responsibilities as restrictions lift and so it would not be advisable to compel employees to take their entire leave entitlement during the closure period,. So whilst annual leave should be taken within the appropriate leave year, it can, by agreement be carried over and taken within 6 months of the relevant leave year. Employers should discuss and agree this with their employees should it be necessary to facilitate a carry over into next year.

b) Can I pay staff for their annual leave instead of them taking it?

It is illegal under the Organisation of Working Time Act, 1997 for an employer to pay an allowance in lieu of their statutory holiday entitlement of an employee unless the employment relationship is terminated.

c) If an employee is not returning when we reopen due to health reasons, can I make them take accrued annual leave then?

As per question 2 above, in such a situation you should be asking the employee to provide a medical certificate and as an employer you cannot require an employee to take annual leave for a certified period of illness.

8. How do you deal with staff anxiety about returning to work?

Employers should discuss with each of their staff members their particular role and what is expected of them when the setting reopens. Staff should be brought up to date on any changes implemented as a result of reopening. It is not possible to completely eliminate the risk of staff coming into contact with Covid19 upon their return to work, however, by following HSE guidance the risk will be minimised. Staff should be asked to complete the return to work checklist contained in the settings reopening protocol ([link to protocol here](#)) wherein they can highlight any concerns that they have. These concerns should then be fully discussed with the staff member to, where possible, alleviate them.

Staff should also read in detail [the DCYA FAQs for Practitioners](#), [COVID-19 Infection Prevention and Control guidance for settings providing childcare during the COVID-19 Pandemic](#) and [the Return To Work Safely Protocol COVID-19 Setting Preparation Plan Template](#)

The DCYA is running a series of wellbeing webinars for practitioners that can be accessed on the practice supports section of <https://first5.gov.ie/practitioners/reopening>

9. What if a staff member confirms they are vulnerable/lives with someone who is?

The [guidance](#) from the HSPC should be followed in relation to vulnerable people or those living with vulnerable people. If an at risk or vulnerable worker cannot work from home and must be in the workplace, employers will make sure that they are preferentially supported to maintain a physical distance of 2 metres. It is recognised by the DCYA that, by its very nature, setting based childcare does not lend itself to remote working arrangements; however, employers should enable vulnerable workers to work from home where possible (e.g. administrative or support work). Where remote working cannot be facilitated then this should be discussed fully with staff members prior to them returning and any concerns considered and addressed by way of adjustments to their work where possible and if required. It is important to remind all staff that the risk of infection can be reduced significantly by following up to date guidance on infection control. respiratory hygiene, hand hygiene and cleaning control protocols.

Staff should also read in detail the [COVID-19 Infection Prevention and Control guidance for settings providing childcare during the COVID-19 Pandemic](#) and the [Return To Work Safely Protocol COVID-19 Setting Preparation Plan Template](#)

10. Can I employ students with Garda vetting if my staff cannot work over the summer months?

No, all employers will still be subject to the Childcare Regulations 2016. As such, any requirements under the regulations, such as vetting and qualifications, will still apply.

Tusla Early Years Inspectorate have released a guidance document which can be found [here](#)

11. Some of my staff members are in receipt of the Pandemic Unemployment Payment and will return when my setting reopens. What do I and they need to do?

The staff member needs to notify the DEASP that they are returning to work and no longer require the payment. They should advise them what their return to work date is. The staff member should be put back on payroll from that date.

12. Will staff contracts be amended upon reopening?

This is a decision for each service employer and if the staff members terms or conditions of employment have changed it is recommended. However, if they staff member is returning on the same terms and conditions of employment as previously in place then it is not necessary.

Any changes to a staff members contract can only be done with their agreement and a new contract or addendum should issue and be signed by both the employer and employee.

13. Does my staff handbook need to be changed and updated when I reopen?

It may be necessary to update your staff handbook to reflect operational changes in your service as per the various Covid-19 guidelines. It would therefore be good practice to review the handbook and update it where necessary.

This can be done by way of an addendum document that highlights any updates. Some updates you may wish to consider are:

- Sick leave policy and return to work procedure
- Dress code and personal hygiene
- Infection control
- Rest breaks procedure
- Covid-19 related staff leave

*this list is non exhaustive

It is good practice to consult with staff in relation any proposed changes to policies and procedures. In certain circumstances, it is necessary, where the proposed changes to workplace policies / work patterns constitute a change to agreed terms and conditions of employment then negotiation and agreement with employees, where applicable, should take place to agree any temporary restructuring of work patterns / policies to implement the necessary COVID 19 prevention measures in the workplace

It is recommended that staff sign to say they received notification of changes and updates.

14. I laid my staff off due to the closures. What do I need to do now?

If you have laid your staff off due to COVID-19, you should seek contact with each laid off staff member to establish their circumstances and agree a return to work date. Once they return to work you should reinstate them on the payroll. Their terms of employment will be the same as they were prior to lay off. Employers should also run through a return to work form with each of their employees prior to their return to the service.

15. a) In the case of reduced occupancy and a reduction in work, what are my options in relation to staff?

Given previous and current issues with staff turnover in the Early Years Sector, employers do need to be mindful of protection of employment and eliminating the need for redundancies should be the priority. The TWSS continues to be available to eligible services and this option should be fully examined in order to retain staff in the employment of the service.

Thereafter, you can consider lay off or short time working as an option (see question below 26 below) and as a final resort examine if necessary, to make certain roles redundant.

Where a service is proposing to lay staff off or introduce short time working or to make certain roles redundant, they should engage in consultation with the staff where applicable, well in advance and all alternatives should be discussed. It is also important to ensure such actions are taken in line with fair and transparent procedures and legal advice should be taken.

b) I have examined various options but have to let staff go because of reduced occupancy I have no money for redundancy what do I do?

Where an employer can prove to the satisfaction of the Department of Social Protection that it is unable to pay the statutory redundancy to its employees, the Department may agree to make lump sum payments directly to the employees who have been chosen for redundancy and they then will seek to recover this as debt from the employer. In order to be approved for this the employer must prove inability to pay and the employer must submit documentary evidence to confirm that this is the position that the company is in.

The employer should follow the steps below:

- Complete and submit the [RP50 form online](#)
- Print a copy of the completed form and both the employer and employee sign it
- Post the signed form to the Redundancy and Insolvency Section of the DEASP – and include a letter with the form from an accountant or solicitor stating that the

employer is unable to pay the redundancy for lump sum but is accepting liability 100% of the lump sum owing as a debt to the Social Insurance Fund. Documentary evidence such as audited accounts should also be included.

15. What do you do if a staff member is off on sick leave due to Covid-19 and then wants to return to work?

Sick leave and return to work should be managed in line with the sick leave policy in your Staff Handbook. It is recommended that this policy be updated in line with current best advice around Covid-19. Staff members should be certified fit to return to work by their medical practitioner. Upon their return they should complete the relevant forms and checklists contained in the Return to Work Safely Protocol -COVID-19 Setting Preparation Plan Template and liaise with their manager and the Settings Worker Representative.

16. Do staff who were laid off accrue annual leave?

Where staff members were laid off temporarily due to the closure, they do not accrue annual leave for the lay off period. This is different to staff who are on the WSCS, as detailed in question 7 above. Staff who were laid off are entitled to leave accrued before layoff commenced. Upon return, such annual leave should be taken within the appropriate leave year or with consent, within 6 months of the relevant leave year. It will be necessary to discuss and agree with your employees about scheduling of this leave and whether it is necessary to facilitate a carry over into next year if leave cannot be taken due to business constraints around re-opening.

17. We have a staff member who started with us in early March of this year and was on probation. What do I do now with the probation period?

For most settings, during the closure period probation was paused as performance was not capable of being assessed. It can restart once settings reopen again and work can begin. The staff member can then be assessed under probation as normal. Upon cessation of the initial probation period they should be notified whether they have been successful.

Where the probation period was not paused, and you are still assessing staff members suitability then you can consider extending the probation period to allow for assessment. This date should not extend beyond 11 months and employers should be mindful of the Unfair Dismissal's legislation and recent case law in relation to management of probation.

Once you reopen it is important to meet the staff member to update any work or performance improvement plans with your staff member and advise them as to any revised probation dates. Throughout the process, employers should link in with their staff members to ensure that they are settling into the setting, particularly once the setting reopens.

18. Is there any issue with regards to GDPR when asking staff for their information for contact tracing purposes?

The [Data Protection Commission](#) advises as follows:

“Governments, as well as public, private, and voluntary organisations are taking necessary steps to contain the spread and mitigate the effects of COVID-19, widely referred to as the ‘coronavirus’. Many of these steps will involve the processing of personal data (such as name, address, workplace, travel details) of individuals, including in many cases sensitive, ‘special category’ personal data (such as data relating to health).

Data protection law does not stand in the way of the provision of healthcare and the management of public health issues; nevertheless there are important considerations which should be taken into account when handling personal data in these contexts, particularly health and other sensitive data.

Measures taken in response to Coronavirus involving the use of personal data, including health data, should be necessary and proportionate. Decisions in this regard should be informed by the guidance and/or directions of public health authorities, or other relevant authorities.”

19. We operate time off in lieu where staff work extra hours. Some staff had worked up time, but they could not take it as we have been closed. What do we do now?

Much will depend on what is written into your time off in lieu policy. Does the policy state when such leave must be taken? For example, it may state that such leave must be taken within leave month in which it is worked up or it is lost. The policy may also contain a provision stating that where the staff member cannot take the leave through no fault of their own that management that the discretion to allow for carry over or to pay for the leave not taken. In the absence of a written policy it is important to consider all options and agree with the staff members about how to treat the untaken leave, such a carry over to take at a future date.

20. I am changing staff from weekly to monthly payroll and want to know if it is ok to carry this out when we return to work.

Any changes to pay periods, i.e. from weekly to monthly or vice versa, is a change to terms and conditions of employment and must be agreed in advance with staff. It is good practice to get staff to sign to show that they have agreed to the changes.

21. How can we change staff hours before the 29th June start date?

Any changes to staff hours, such as reducing their weekly hours or vice versa, is a change to terms and conditions of employment and must be agreed in advance with staff. It is good practice to get staff to sign to show that they have agreed to the changes.

22. We have a staff member who is returning to the setting after period of maternity leave, can we get TWSS for that staff member?

On the 08/06/2020, Revenue confirmed that changes to the Temporary Wage Subsidy Scheme (TWSS) are now in place to accommodate employees who have returned or are due to return to work following a period of maternity leave, adoptive leave or related unpaid leave.

These changes also apply to employees who were not on their employer's payroll on 29 February 2020 and who were:

- on a period of paternity, parental or related unpaid leave
- in receipt of Health and Safety Benefit, Parent's Benefit or Illness Benefit paid by the Department of Employment Affairs and Social Protection (DEASP).

Employers who wish to access the TWSS on behalf of eligible employees covered by these changes can do so by completing a short form available for download via MyEnquiries in Revenue's Online Service (ROS). You can get further details [here](#)

23. How can we change staff hours before our reopening start date?

Any changes to staff hours, such as reducing their weekly hours or vice versa, is a change to terms and conditions of employment and must be agreed in advance with staff. It is good practice to get staff to sign to show that they have agreed to the changes.

24. When staff return to work over the summer, can we pay staff just the 85% of their average Revenue net weekly pay on the TWSS and not top up the 15%? They will be working full time hours.

It is not possible to pay staff less than their contracted wages in this way unless you get their agreement to do so. This is essentially a wage reduction and a change to their terms and conditions of employment. Any changes to terms and conditions of employment and must be agreed in advance with staff. It is good practice to get staff to sign to show that they have agreed to the changes.

25. If we don't have enough work for all of our staff to return to work in July, how do we decide who comes back to work?

If there is a reduction in work/occupancy, then you will need to consider firstly what are your best options for retaining employees. The TWSS continues to be available to eligible services for July and August so this option should be fully examined in order to retain staff in the employment of the service.

However, if you need to put staff on short time or lay off for a period of time. If that is the case, then you need to select who goes on short time/lay off using objective criteria and fair procedures. You must have a short time/lay off provision in the terms and conditions of employment so either in the contract or staff handbook. If you don't have this, then you must get agreement in advance from the staff before you proceed.

Where a service is proposing to lay staff off or short time, they should engage in consultation with the employees in advance and all alternatives to redundancy should be discussed

There may be an entitlement to a social welfare payment whilst on short time working or lay off and staff should be encouraged to contact <https://services.mywelfare.ie/> about their own situation.

You can read more about short time and lay off [here](#)