



Circular Letter 0043/2020

To: The Chief Executives of Education and Training Boards

**SCHEME FOR LEAVE OF ABSENCE FOLLOWING ASSAULT FOR
STAFF OTHER THAN TEACHERS AND SPECIAL NEEDS ASSISTANTS
IN EDUCATION AND TRAINING BOARD WORKPLACES**

The Minister for Education and Skills directs you to implement the regulations and procedures regarding the Scheme for Leave of Absence following Assault for Staff other than Teachers and Special Needs Assistants employed in approved posts wholly-funded by monies provided by the Oireachtas via Education and Training Boards.

The regulations and procedures are to be implemented by each employer from 1 September 2020 up to the 31 August 2021 on a pilot basis, and all relevant Staff must adhere to the terms of the attached Scheme for Leave of Absence following an Assault.

Please ensure that copies of this circular are provided to all authorised officers of Education and Training Boards and its contents are brought to the attention of all Staff other than Teachers and Special Needs Assistants in your employment including those on leave of absence.

This Circular can be accessed on the Department's website under www.education.ie

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SCHEME FOR LEAVE OF ABSENCE FOLLOWING ASSAULT

Definitions

For the purposes of the scheme the following terms have the meanings assigned to them here unless the context indicates otherwise:

Assault – means physical contact from a third party causing physical injury to Staff other than Teachers and Special Needs Assistants in the course of their duties.

Employer - means an Education and Training Board (ETB). The ETB may delegate responsibility for matters set out in this circular as appropriate.

Employee – means an employee of an ETB, other than a Teacher or a Special Needs Assistant.

The Department – means The Department of Education and Skills (DES).

1. Introduction

- 1.1 Leave of absence under this scheme may be granted to an employee who is unable to perform their duties due to a physical injury following an assault in the course of the employee's duties.
- 1.2 The incident giving rise to an application for leave under this scheme must not have been due to any negligence or any act or omission on the part of the employee and all due procedures and protocols in regard to personal safety must have been adhered to.
- 1.3 Granting of leave under this scheme is not an admission of liability on the part of the employer and any such leave is granted on a strictly without prejudice basis.
- 1.4 The Scheme for Leave of Absence following Assault will operate on a pilot basis from 1 September 2020 to 31 August 2021.
- 1.5 **ETBs should apply to the relevant Department Line Section seeking sanction to employ a substitute to cover an employee who has been granted Leave of Absence following Assault. Such requests will be dealt with on a case-by-case basis, taking into account the needs of the organisation at that time. If a replacement post is sanctioned then the cost of that post must be paid for from within the ETB's Current Pay Budget.**

2. ETB Policy

- 2.1 The Health and Safety Authority (HSA) is the national statutory body responsible for regulating health and safety in the workplace. The employer has a duty under Section 8 of the Safety, Health and Welfare at Work Act 2005 to "ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees". Employers should familiarise themselves with their responsibilities and obligations under the Acts and the various Regulations accessible on the HSA website at www.hsa.ie.
- 2.2 ETBs should have in place a clearly defined policy/ Code of Behaviour/ Safety Statement which includes procedures to be implemented in the event of an assault on an employee. These procedures should include provision for
 - (i) seeking medical assistance, where necessary.
 - (ii) immediate reporting of incidents to Management.
 - (iii) recording of incidents in an Incident Report Book.
 - (iv) reporting of the incident to the Health and Safety Authority.
 - (v) reporting to the Gardaí, where appropriate.

- (vi) ensuring that all appropriate safeguards have been put in place to protect persons at risk and to prevent, in so far as is practicable, the occurrence of assault

3. Entitlement to Leave of Absence following Assault

- 3.1 Only absences medically certified as a physical injury qualify for leave under this scheme.

To be acceptable, a medical certificate must:

- be signed by a duly qualified medical practitioner registered with the Irish/UK Medical Council/Dental Council of Ireland, and
 - normally cover a period of no more than one week. However, certification for periods of up to one month may be permitted at the discretion of the employer, and
 - state fitness to work or otherwise.
- 3.2 The maximum leave available under the Scheme for Leave of Absence following Assault is 3 months (92 days) at full pay in a rolling 4 year period. In exceptional cases, such as where a significant period of hospitalisation is required or in situations of a second or subsequent incident of assault, the leave may be extended for a further period not exceeding 3 months (91 days) at full pay, subject to an overall limit of 6 months (183 days) at full pay in a rolling 4 year period. Any subsequent absence will be dealt under the Sick Leave scheme.
- 3.3 Leave of Absence following Assault includes weekends, business closures and days on which an employee is not scheduled for attendance, occurring within the period of absence.
- 3.4 When calculating an employee's entitlement, any Leave of Absence following Assault granted in the previous four years from the current absence will be taken into account in determining access to leave under this scheme.
- 3.5 Leave of Absence following Assault ends on:
- the ceasing of the certification by a duly qualified medical practitioner of the physical injury; or
 - the maximum leave limits available under this scheme being exhausted; or
 - certification of fitness to return to duties.
- 3.6 An employee who has exhausted the maximum period of paid leave under the Scheme for Leave of Absence following Assault and who is still medically unfit to resume duty may avail of Sick Leave under the Sick Leave scheme, subject to the normal rules of that scheme.

- 3.7 Fixed-term/fixed-purpose contract of employment: An employee's entitlement to Leave of Absence following Assault shall cease on the expiry of the contract and that contract not having been renewed.

4. Application process

- 4.1 In order for an absence to be recorded as Leave of Absence following Assault, the Application Form (attached at Appendix A) must be completed by the employee concerned and the ETB authorised officer and forwarded onto their relevant ETB within a week of the incident occurring. Where in exceptional cases the employee is unable to complete their part of the application within a week of the incident due to physical incapacity, this period may be extended by the local manager – applications must be forwarded to the ETB within a reasonable period in this event.
- 4.2 The Application Form must set out details of the incident and be accompanied by copies of the required reporting documentation.

5. Occupational Health Service (OHS) referral

- 5.1 Absences recorded under this scheme will be combined with previous Sick Leave absences for the purposes of non-discretionary referral to the OHS as provided for under the Sick Leave Scheme.
- 5.2 The OHS Standard Operating Procedures will apply, including in relation to referral and fitness to return to work.

6. Recording of Leave of Absence following Assault

- 6.1 For the duration of the pilot scheme, Leave of Absence following Assault will be initially entered on the ETB system by the relevant Section/HR Department on receipt of the fully completed Application Form. Any continued absence under this scheme must be entered on the ETB system by the ETB on receipt of acceptable medical certification and subject to a maximum period of 3 months (92 days).
- 6.2 In exceptional circumstances, where a further extension is required, an application must be forwarded to the Chief Executive by the local authorised officer setting out the reasons for such an extension. This extended leave is entered on the ETB system by the relevant Section/HR Department. The employee's absence may then be extended by the ETB for a further period, subject to receipt of the appropriate medical certification and subject to a maximum of 91 days. Leave of Absence following Assault is subject to an overall maximum period of 6 months (183 days) in a rolling 4-year period.

7. Status while on leave

- 7.1 The employee's Sick Leave record will not be affected by any absences recorded as Leave of Absence following Assault.
- 7.2 Absences under this scheme are fully reckonable for all purposes including seniority, determination of panel rights etc.

8 Correspondence Address

- 8.1 The ETB will address all necessary correspondence to the employee at the address last notified by the employee and no fault shall lie with the ETB in the event that the employee does not receive such correspondence.

9. Compliance

- 9.1 All employers and employees must adhere to the regulations and procedures set out in this circular. Failure to abide with the regulations and procedures will be dealt with under the agreed disciplinary procedures and may lead to the cessation of salary in the case of the employee and/or withdrawal of substitute where sanctioned.
- 9.2 All documentation relating to Leave of Absence following Assault must be retained by the employer with the relevant personnel records for 10 years. These records may be selected for inspection by nominated Department officials. All records should correspond with the data input on appropriate ETB System.

10. Further Information

- 10.1 In accordance with the introductory paragraph, the regulations in this circular are to be implemented by the employer. All queries should initially be brought to the attention of the employer who may further wish to consult with the Department at the following email address: financialetb@education.gov.ie

Appendix A

Application Form for Leave of Absence following Assault

Completed forms, with attachments, should be submitted to the relevant Education and Training Board as appropriate.

(A copy of the completed form should be retained in the employee's personnel file in accordance with the ETB's Data Retention Policy).

Name of Employee: _____

PPSN: _____

Workplace: _____ Roll No.(if applicable): _____

Date and Time of incident: _____

Place where incident occurred: _____

Brief summary of incident (please do not name the other party to the incident):

I, the undersigned, declare that the above information is true, accurate and complete; that I have read Circular 0043/2020, and that the leave of absence applied for is in accordance with the terms of that circular.

Signature: _____

Date: _____

To be completed and signed by the Employer

Period of leave of Absence following Assault: From _____ to _____.

I confirm that (*please tick as appropriate*):

- I have received medical certification in relation to the period of absence above in accordance with the scheme as set out in Circular 0043/2020.

- The incident has been recorded in the Incident Report Book.
(Copy of record to be attached - please do not name the other party to the incident)

- The incident has been reported to the Health and Safety Authority.
(Copies of relevant correspondence to be attached - please do not name the other party to the incident)

- The incident has been reported, where appropriate, to An Garda Síochána.
(Copies of relevant correspondence to be attached - please do not name the other party to the incident), OR

- The incident was considered inappropriate to be reported to An Garda Síochána,

- All appropriate safeguards have been put in place to protect persons at risk, and to prevent, in so far as is practicable, the re-occurrence of a similar incident.

I, the undersigned, declare that I have read the circular, that the information recorded in this form is true, accurate and complete and that the leave of absence applied for is in accordance with the terms of the circular.

Signature: _____ **Date:** _____
(ETB Authorised Officer)

Full name and address of workplace: _____

Email address: _____ Telephone number: _____

ETBs should insert a link to their Privacy Statement here when making the form available for use