

TIME OFF FOR DEPENDANTS POLICY AND PROCEDURE

Submitted by: Executive Management Team

Portfolio: Finance and Resources

Purpose of the Report

To obtain approval for a proposed Policy and Procedure advising employees of their statutory right to unpaid time off to deal with emergencies relating to dependents, the process to be followed when requesting time off and the conditions that apply.

Recommendation

That the proposed Policy and Procedure attached at Appendix A be approved.

1. **Background**

- 1.1 Under the Employment Rights Acts 1996 and 1999, employees have a statutory right to take a reasonable amount of time off work to deal with unexpected and/or sudden emergencies and to make any necessary longer-term care arrangements for dependants.
- 1.2 The right to time off is available to all employees from their first day of employment and whether they work full-time or part-time. The legislation does not state a specific allowance of time off in an emergency, as this is likely to vary depending on individual circumstances. However, it is considered that in the majority of cases one or two days should be sufficient.
- 1.3 The right does not include entitlement to pay.

2. **Issues**

- 2.1 To date, very few Newcastle Borough Council employees have taken time off under the Regulations. However, it is good practice for employers to have a policy and procedure in place so that staff are made aware of their entitlement to time off and the process to be followed.
- 2.2 The Head of HR and the Chair of the Employees Consultative Committee (ECC) met with the trade unions on 15 August 2013 to discuss a proposed Policy and Procedure (copy attached at Appendix A). The trade unions were in agreement that it should be implemented but wished to the council to consider paying employees for the first day of any period of 'dependants leave'. They have suggested that if this is agreed, the number of occasions/reasons/cost to the council could be monitored to inform a review of the policy after one year.
- 2.3 The proposed Policy and Procedure was subsequently discussed at the ECC meeting on 16 September 2013. The ECC endorsed the Policy and Procedure but has recommended that instead of pay being suspended when employees take time off work to deal with unexpected and/or sudden emergencies and to make any necessary longer-term care arrangements for dependants (see section 6 of the policy) they should continue to receive pay (and contractual benefits) 'at the manager's discretion'.
- 2.4 The ECC has also recommended that instances of employees taking time off under the policy should be monitored and reported back to the ECC after 6 months.

- 2.5 It is difficult to predict the likely number of occasions/potential cost to the council of adopting an approach involving payment of 'dependants leave'. However, your Officers are of the view that proposals for time taken off under the Policy to be paid should not be supported, either for the first day, or for the whole period of 'dependants leave' due to:
- The potential for additional costs (pay, and in some cases, pay for staff to cover absence) when there is currently an ongoing requirement for the council to make budget savings;
 - The approach could compromise the objectives/use of approved flexible working arrangements which are designed to be mutually beneficial to the council and employees;
 - The potential for other, previously agreed arrangements to be compromised (see paragraph 2.8).
- 2.6 Generally, employees prefer not to lose pay when having to take time off at short notice. In circumstances when an employee needs to leave work immediately to deal with an emergency situation, arrangements tend to be made retrospectively, usually for annual leave to be taken, or the hours lost to be made up, either via the flexitime scheme or otherwise.
- 2.7 Payroll records indicate that for the 12 month period to 16 September 2013, only one individual, a Streetscene employee, had pay deducted as a result of having to take time off work to deal with an unexpected emergency relating to a dependant. On this occasion the employee specifically requested unpaid leave as they did not wish to use annual leave for this purpose.
- 2.8 The current Guidance for Managers and Staff in relation to situations affecting dependants during adverse weather conditions was issued in January 2010 following consultation with the trade unions and provides:

'Employees who are unable to get to work due to the weather conditions should use annual leave, flexi leave or compensatory leave in the first instance.'

Requests for additional unpaid leave will be treated sympathetically but will be at the manager's discretion, taking into account the requirements of the service.'

Employees who may be required to be at home to care for dependants (eg, to care for children in the event of school closures) are encouraged to use annual leave, flexi leave or compensatory leave in the first instance. However, employees have the statutory right under the Employment Rights Act 1996 to take a reasonable amount of unpaid time off to care for dependants in certain circumstances, provided they notify their employer as soon as is reasonably practicable.'

3. **Legal and Statutory Implications**

- 3.1 Implementation of the proposed Policy and Procedure will ensure the council continues to comply with the Employment Rights Acts 1996 and 1999 and that best practice is followed when dealing with future requests.

4. **Equality Impact Assessment**

- 4.1 The Policy and Procedure as proposed will ensure a consistent approach to processing requests from staff.

5. **Financial and Resource Implications**

- 5.1 Under the Employment Rights Acts, the right to take a reasonable amount of time off work to deal with unexpected and/or sudden emergencies and to make any necessary longer-term care arrangements for dependants does not include entitlement to pay.
- 5.2 If it is decided that such leave should be unpaid, few requests are likely. However, on occasions there may be an indirect cost when it is necessary to backfill a post of a person who is taking 'dependants leave'. It is anticipated that these costs would be met from within existing approved budgets.
- 5.3 It is difficult to estimate the potential demand for/cost of paid dependants leave and this would have to be monitored to determine whether the increased costs could be met from within existing approved salary budgets.

6. **Major Risks**

- 6.1 None.

7. **List of Appendices**

Appendix A – Proposed Time Off for Dependants Policy and Procedure.



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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

TIME OFF FOR DEPENDANTS POLICY AND PROCEDURE

1. What is time off for dependants?

This is a statutory right under Section 7A of the Employment Rights Act 1996, as amended by the Employment Rights Act 1999, which allows employees to take a reasonable amount of time off work to deal with unexpected and/or sudden emergencies and to make any necessary longer term care arrangements for dependants.

The right does not include an entitlement to pay.

Some examples of issues which may require an employee to take time off are as follows:

- **If a dependant falls ill, or has been injured or assaulted** – The illness or injury may not necessarily be serious and may be mental or physical. It can be a result of an ongoing condition which is deteriorating and may therefore require occasional care. The right to time off is also available where a dependant has been assaulted and requires care, this may not necessarily be a physical injury, but could be to provide comfort or help to the individual.
- **When a dependant is having a baby** – Where necessary an employee can take time off to assist a dependant when she is having a baby. This does not include taking time off after the birth of the child (See also Parental Leave Policy and procedure).
- **To make longer term care arrangements** – Where a dependant needs to be cared for because of an illness or injury, the employee can take time off work to make longer term care arrangements. This could mean making arrangements to employ a carer or taking a sick child to stay with a child minder or relative.
- **To deal with the death of a dependant** – When a dependant dies, an employee can take time off to make funeral arrangements, as well as attend the funeral. If the funeral is overseas then the employer and employee will need to agree a reasonable length of absence acceptable in such circumstances. (See also arrangements for Bereavement Leave.)
- **To deal with an unexpected disruption or cancellation of care arrangements for a dependant** – Time off can be taken where the normal carer for the dependant is unexpectedly unavailable; for example a child minder/carers may fail to arrive as arranged or the nursery/care home may be closed unexpectedly.
- **To deal with an unexpected incident involving the employee's child during school hours** – An employee can take time off to deal with a serious incident involving his/her child during the school day. For example if the child has been injured or is being suspended from school.

2. **Who can take time off for dependants?**

The right to time off is available to all employees whether they work full-time or part-time. There is no qualifying period in order to be able to take time off in an emergency; this entitlement exists from an employee's first day of employment. In the event that both parents are employed by the authority it is recognised that there will be occasions that both parents may need to take time off to care for the dependant(s). In the event of such an emergency employees are requested to discuss the arrangements with their respective line manager and Human Resources if necessary.

3. **Who is a dependant?**

A dependant is the husband, wife, partner (if living together), child or parent of the employee. It also includes someone who lives in the same household, for example an elderly grandparent. The entitlement does not however include tenants or employees, such as live-in house keepers etc.

In the case of illness or injury a dependant may also be someone who relies on the employee for assistance. Some examples might be an elderly relative whom the employee ordinarily looks after outside of work or a neighbour living alone. In these cases time off would be allowed if the employee was the closest on hand at the time of the emergency.

4. **How much time off can an employee take?**

The legislation does not state a specific allowance of time off in an emergency, as this is likely to vary depending on individual circumstances. In the majority of cases one or two days should be sufficient to deal with the problem and if necessary make longer term care arrangements. Entitlements do not extend, for example up to a period of two weeks in order to care for a sick child. The legislation is designed to provide for unseen emergencies. If an employee knows in advance that time off will be required then they are advised to book annual leave or other leave for which they are eligible. Employees are advised to speak with their line manager and if necessary Human Resources if a dispute arises regarding the amount of time off permitted. In the event that an informal resolution cannot be achieved, employees should refer to the authority's formal Grievance Procedure.

5. **Conditions of time off for dependants**

Due to the nature of the requirement to take time off for dependants, employees are not required to give notice in writing of the requirement. Employees are, however required to inform their line manager in person, wherever possible of the requirement to take time off and the expected time that they will be away from work. Where it is not practical to inform the line manager in person, employees are asked to email, leave written notification or confirm via a message, the reason for the absence.

In the event of a change to circumstances which require an extension to the period of time off or which allow the employee to return to work earlier than expected, the employee should discuss the extension/return in advance with their line manager, wherever possible.

6. **Rights during time off for dependants**

During a period of time off to care for dependants, the employee will remain employed, although most pay and most contractual benefits will be suspended. The right to accrue statutory holiday entitlement will however remain in place. During time off for dependants employees will be entitled to the implied obligation of trust and confidence, and any terms and conditions of employment relating to:

- Notice of termination;
- Redundancy compensation; and
- Disciplinary and grievance procedures.

During any period of time off to care for dependants employees will not make any contributions to the Local Government Pension Scheme. However, if employees want this unpaid period to count as pensionable service they are advised to contact Payroll to arrange payment.

Employees taking time off for dependants are bound by the implied obligation of good faith and any terms and conditions of employment relating to:

- Notice of termination;
- Disclosure of confidential information;
- The acceptance of gifts or other benefits; and
- Participation in any other business/outside interests.

7. **Misuse of the entitlement**

Any misuse of the entitlement will be dealt with under the Council's disciplinary procedure. The following are examples of misuse:

- Taking time off to care for dependants for purposes other than caring for a dependant as defined in section 3.
- Making a false statement as to the requirement to take time off to care for a dependant as defined in section 1.

8. **Multiple contracts**

Where an employee works in more than one Service Area/Directorate of the Council this will not affect the total entitlement to time off. It is suggested that the employee and the relevant line managers in addition with Human Resources, if necessary, agree a suitable period of time off at the earliest opportunity. (It is recognised that this may not be reasonably practicable in the event of a serious emergency).

9. **Review of policy and procedure**

The policy will be reviewed every three years by Human Resources or sooner if necessary in the light of experience gained from its operation and emerging best practice.