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Updated June 2020 – guidance on premature birth; expansion of time off for public duties to reflect Time Off for Public Duties Order 2018 (SI 2018/665); added references to domestic violence (paras 5.1.g.ii and 5.9)

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Schools Discretionary Leave Policy

1. Scope

This policy has been adopted by the Governing Board and applies to all members of staff. It should be read in conjunction with other relevant documents (e.g. the Burgundy Book, the Green Book) which cover the terms and conditions of specific groups of staff. Nothing in this document overrides those particular provisions.

2. Legislative Context

- [Section 57A of the Employment Rights Act 1996](#) entitles all employees to take a reasonable amount of time off work "to take action which is necessary" in relation to the care of certain dependants. There is no service qualification for this right, which is available to all employees, both full and part time. Additionally, there is no right of the employee to be paid for this time off.
- [Under s.50 of the Employment Rights Act 1996](#) employees who hold certain public positions have a right to reasonable unpaid time off during working hours. The provisions cover Justices of the Peace and members of certain public bodies.

3. General Principles

- 3.1 It is recognised that there will be occasions when a member of staff could face an emergency or an unforeseen circumstance outside of work that needs their urgent attention and they will need to request time off to deal with the immediate crisis. Therefore, all staff will be made aware of the provisions of this policy, of what to do if they wish to request time off; and what their responsibilities are in these situations.
- 3.2 The purpose of this policy is to provide a framework of guidance to enable requests to be dealt with in a reasonable and consistent way.
- 3.3 Each case will be judged on its own merits and circumstances. The granting of time off in one case will not necessarily set a precedent for other cases.
- 3.4 **Up to 5 days additional paid leave (pro rata for part-time) in any 12 month period** may be granted by the headteacher (approval may be delegated).
- 3.5 **In exceptional circumstances** headteachers may **extend additional paid leave to three weeks**. Approval for more than five days paid leave can only be granted by headteachers.

- 3.6 Headteachers/the governing board may grant unpaid leave of up to six months in any 12 month period.
- 3.7 Whether or not the leave is paid or unpaid will depend on individual circumstances
- 3.8 Additional paid leave is discretionary and is normally applicable to compassionate circumstances such as dealing with matters related to domestic violence (e.g. attending legal proceedings, seeking safe housing), bereavement or terminal illness. There is a separate policy for parental bereavement leave.
- 3.9 The governing board decision is final.
- 3.10 During a period of unpaid leave, the employee's pay and pension contributions will cease.
- 3.11 Pay will only resume at the end of the agreed unpaid leave period.
- 3.12 Employees will need to contact Pensions to discuss any reimbursement of pension contributions on their return from unpaid leave.
- 3.13 If a manager/headteacher has reasonable belief that an employee is abusing an agreement to take additional discretionary leave, they should deal with the situation by following the School's [Disciplinary Procedure](#).

4. Employee Responsibilities

- 4.1 Employees are responsible for:
 - a) Acquainting themselves with the provisions of the School's Discretionary Leave policy.
 - b) Taking steps to avoid requesting time off wherever practicable. This is particularly relevant where there is a possibility of the need for time off to re-occur.
 - c) Ensuring that they discuss, openly and honestly, their request and the reasons for needing additional leave with line management.
 - d) Where applicable, taking into account the amount of annual leave they still have and considering if this can contribute to the time off they need.
 - e) Considering if flexibility in their working arrangements may contribute to assisting the situation.
 - f) Considering the impact on the school if a long period of leave is requested.

g) Keeping line management informed if there are any changes to personal situations requiring further leave requests.

4.2 Unless there are exceptional circumstances preventing them from doing so, all requests for time off must be made in advance so as to give the headteacher a chance to consider the request before the intended absence occurs. As much detail as is reasonable should be provided to assist the headteacher in considering the circumstances of the request.

4.3 If an unexpected emergency does arise and the staff member is unable to let the headteacher know before taking the leave, they must let them know as soon as is practicable, by telephone if necessary. On their return to work they will need to account for the time off in the same way as they would normally have done had the time off been planned.

4.4 If the staff member wishes to appeal against the headteacher's decision they must write to the Chair of Governors, as soon as is practicable after the decision is known.

5. Headteacher Responsibilities

5.1 Headteachers/managers are responsible for:

- a) Acquainting themselves with the provisions of the school's Discretionary Leave policy.
- b) Meeting with the member of staff as soon as is practicable after a request is received and with due regard to the timing of the intended absence. They will discuss the circumstances of the request, gather all the necessary information and document the outcome of the meeting. Whether the request has been granted will be communicated, normally in writing, within two working days of the decision.
- c) Ensuring that there are proper records of the consideration of all requests for time off and that a copy is placed on the individual's personal file on each occasion. This will include retrospective consideration in cases of emergency (see Section 11).
- d) Paying particular attention to staff who are working carers, as this may have a substantial impact on their daily life and require flexibility towards requests for leave made at short notice.
- e) Being compassionate and demonstrating empathy towards the employee's emotional distress and being aware of the impact this can have on their physical and mental health.
- f) Signposting staff to appropriate support and guidance that may be of assistance.
- g) Giving full consideration to all the circumstances of each member of staff who asks for discretionary leave including considering:
 - i. how much discretionary leave has already been taken in that leave year.

- ii. their personal relationships (i.e. if the member of staff is bereaved, caring or experiencing domestic violence).
- iii. the amount of discretionary leave being requested.
- iv. how other employees' requests have been handled (apply consistency).
- v. where applicable, any outstanding annual leave entitlement (which may be impacted by the time in the leave year when the request is made).
- vi. their work record.
- vii. Considering the impact of the leave on the school.
- viii. Considering alternative working arrangements, where they may be of benefit, including increased flexibility or agile working options.

5.2 Any appeal against a decision not to grant time off (or not to grant paid time off) must be made in writing to the Chair of Governors. It will be considered by a nominated governor. Their decision will be final.

Discretionary and Other Leave - Guidance

The following guidance will be used when considering a request. This guidance cannot address every possible scenario. If in doubt, headteachers/managers should contact their [HR provider](#) for advice.

1. Bereavement

- 1.1 In the event of the death of a member of the employee's immediate family, the employee should contact his/her line manager/headteacher to discuss any required leave.
- 1.2 Each case will be viewed sympathetically and the amount of leave granted will depend on the individual's circumstances.
- 1.3 The number of days granted as discretionary leave will be in line with the general principles outlined in the policy.
- 1.4 There is no specific number of days granted depending on who has died (e.g. 5 for a parent, 3 for a grandparent). Allocating days based on the biological relationship of the deceased to the employee may be unfair. Headteachers/managers should remember that family relationships can vary widely.
- 1.5 Where there has been the death of a child under the age of 18, the parental bereavement leave policy should be followed.
- 1.6 When deciding the number of days to be granted, headteachers should consider:
 - the nature of the relationship between the employee and the deceased, including the closeness of the relationship.
 - if the employee is responsible for making the funeral arrangements etc.
 - If the employee needs to travel a long way to the funeral.
- 1.7 If a longer period of absence is required, for example for a trip to be made abroad, a combination of paid and unpaid additional leave may be used to cover the absence. (Members of staff who can choose when they take their leave could use leave rather than take unpaid additional leave).
- 1.8 Headteachers/managers should inform the employee about the support that the school offers (e.g. Education Support Network, Employee Assistance Programme etc)

2. Caring

- 2.1 Caring can be unpredictable and emotionally upsetting.
- 2.2 The most common caring responsibilities are in relation to employee's children.
- 2.3 An employee may acquire caring responsibilities overnight, for example where the employee's parent has a stroke, or caring responsibilities may develop over time, for example where the employee's partner has a debilitating long-term health condition.
- 2.4 Employees may also need to take care of a dependant in circumstances of terminal illness.
- 2.5 Headteachers/managers should be mindful that employees with caring responsibilities may not have the ability to plan ahead for time off from work so flexibility in making requests for leave is advised. The ability to take leave in an emergency is important for carers, who may be called on at short notice.
- 2.6 The employee should contact their line manager/headteacher to discuss any requirements for leave as soon as reasonably practicable.
- 2.7 Headteachers / managers should inform the employee about the support that the school offers (e.g. Education Support Network, Employee Assistance Programme etc) and encourage them to access additional support (e.g., [Working Carers Network](#) and [Carers Resources](#)).
- 2.8 Headteachers/ managers should consider a variety of options to support carers such as:
 - a) The option of working reduced hours for temporary time periods to deal with a crisis situation.
 - b) The option of making time up if urgent time off is needed to meet commitments, for those roles where this is practicable.
 - c) The ability to be flexible and agile in their working setup.
 - d) Considering if a period of unpaid leave would assist.

3. Premature Birth

- 3.1 The NHS defines premature babies as those born before 37 weeks' gestation. There are three sub-categories of premature babies:
 - Extremely pre-term (before 28 weeks)
 - Very pre-term (before 32 weeks)
 - Moderate to late pre-term (32-37 weeks)
- 3.2 When a baby is born prematurely, or with health needs, it can be a difficult and stressful time for parents.

- 3.3 Pregnant employees and new mothers are entitled to 52 weeks of maternity leave and normally the earliest maternity leave can start is 11 weeks before the expected week of childbirth. However, if the baby is stillborn after 24 weeks' pregnancy, or is born live at any stage of pregnancy, maternity leave will start the day after the birth.
- 3.4 Where a baby is stillborn before the end of the 24th week of pregnancy or a termination takes place before the end of the 24th week of pregnancy, there is no eligibility to maternity leave or maternity pay. Special leave provisions and/or sick leave may be used as appropriate to support the individual through this difficult period, taking into consideration the employee's needs and medical opinion.
- 3.5 Headteachers/managers should be mindful around communications with parents, which should be conducted extremely sensitively and be approached compassionately.
- 3.6 Headteachers/managers should ask parents what information they would like to be relayed to work colleagues about their situation.
- 3.7 Returning to work may be difficult for parents as their baby may have been in hospital for a while or may have ongoing sickness which may cause worry or anxiousness in leaving them. Ongoing hospital appointments may also be taking place.
- 3.8 Consideration should be given to the employee's circumstances, with each case judged on its own merits. For example, extension of the maternity leave period (via using additional or other leave) may be appropriate in some cases.
- 3.9 Wherever possible headteachers/managers should try to balance the needs of the school with understanding the pressures on parents. Support could be offered in the following ways:
 - By reminding the employee about the option of [parental leave and the provisions for shared parental leave](#).
 - By reminding the employee, where applicable, about any annual leave accrued which could be taken.
 - By offering [additional leave](#) (which could be paid or unpaid).
 - By considering a request for a [formal flexible](#) working pattern either temporarily or permanently.

4. Exams

- 4.1 Employees who are required to sit a **work-related** course examination are entitled to paid leave for doing so. The amount of leave given will cover the period of the examination. Headteachers will have discretion as to whether to give paid leave in the event of the employee needing to re-sit exams.
- 4.2 There is no right to time off for revision, but this may be agreed locally at the school's discretion.

4.3 Where employees choose to undertake a course of study and/or sit examinations (rather than required as a necessity of their employment) the arrangements for any paid or unpaid release from work should be agreed by management and set out in writing in advance.

5. Jury service/other court attendance

5.1 An employee receiving a summons to serve on a jury must inform their headteacher, who will grant paid leave of absence (unless exemption from Jury Service is secured).

5.2 The Court will provide a form which the employee must complete and forward to the school, who will return it to the Court after their payroll provider has entered further information.

5.3 The employee will continue to be paid by the school and their pay will be unaffected. The School's payroll provider will reclaim this cost from the court.

5.4 Employees should claim any "loss of earnings" that they are entitled to from the court and liaise with the school or school's payroll provider over how that is reclaimed by the school. The employee's salary will not change.

5.5 Employees are expected to return to work for each day or half day they are not needed in court.

5.6 If the employee's jury service ends before the expected 10-day period (or such longer period as the court may have indicated to the employee that he/she will be required for) the employee will be expected to return to work for the remainder of that period.

5.7 Employees attending court as part of the duties of their post do so during their normal working time.

5.8 If an employee is required to attend Court as a witness for the school, but not as part of their normal duties, they should be granted paid leave.

5.9 Consideration should be given to granting paid discretionary leave for court attendance related to domestic violence.

5.10 If an employee needs to attend court for any other reason they should inform the head as soon as possible and request unpaid discretionary leave to attend.

6. Maternity/antenatal leave

6.1 Pregnant employees have the right to paid time off for ante-natal care. Evidence of appointment times must be provided if requested.

- 6.2 With effect from 1 October 2014, under s.57ZE of the Employment Rights Act 1996, an employee who has a "qualifying relationship" with a pregnant woman or her expected child has the right to take unpaid time off during working hours to accompany the pregnant woman to an antenatal appointment on up to two occasions for a maximum of six-and-a-half hours on each occasion.
- 6.3 The right, which does not require any qualifying service, applies only where the appointment is made on the advice of a registered medical practitioner, midwife or nurse.

Further details are available in the Maternity Leave policy, Chapter 16 of the Schools HR handbook.

7. Public service leave

7.1 This covers absence during normal working hours for duties as:

- an elected Member of another local authority
- a Justice of the Peace
- school governors
- special constables
- NHS Responders
- retained firefighters
- search and rescue volunteers
- lay observers, who monitor conditions in court custody and under escort
- members of immigration visiting committees
- members of the short-term holding facilities visiting committee
- any other form of public duty, agreed as such by the school

7.2 The time allocation for each member of staff, per year, is up to the following:-

- (a) 18 days paid for official duties in any of the categories.
- (b) 18 specified additional days unpaid for further special responsibilities (e.g. Chairs of Committees).
- (c) Any requests for additional time beyond this (e.g. for a person to carry out a role as Mayor) should be referred to the headteacher/Chair of Governors This leave can be allocated on an appropriate pro rata basis for part-time staff or job sharers.

7.3 Leave, within the allowance, must be requested and agreed, in advance on every occasion, by the Headteacher.

7.4 The reason for the request for time off for public duty must be provided. Agreement to the leave is subject to service needs, but should not be unreasonably refused.

7.5 Payment should be at the rate normally received by the member of staff for the time in question.

7.6 Any payment should be offset by any allowances for the official duty in question received from the official body concerned.

8. Volunteer reservists

- 8.1 The volunteer reserve forces consist of: the Maritime Reserve Force (Royal Navy Reserve and Royal Marines Reserve); the Territorial Army; and the Royal Air Force Reserves.
- 8.2 Volunteer reservists should be allowed up to an additional two weeks' paid discretionary leave to attend annual training (sometimes called "annual camp").
- 8.3 Should a volunteer reservist be required to undertake further training in addition to attending the annual training mentioned above and are unable to arrange it outside working hours or cannot amend their work pattern to accommodate it, they may be granted reasonable discretionary paid leave at a mutually convenient time.
- 8.4 Mobilisation is the process of calling Reservists into full-time service to serve alongside the Regular Armed Forces on operations. All Reservists are committed to the possibility of being mobilised if necessary.
- 8.5 A Reservist should inform their manager/headteacher as soon as they become aware that they may be called up, and immediately on receiving their call out notice.
- 8.6 Reservists should be placed on discretionary unpaid leave when they are mobilised as they are able to claim the difference between their military pay and their civilian pay in such circumstances.
- 8.7 The school may also be able to claim financial assistance including costs incurred for: replacing a mobilised reservist; covering the work of a mobilised reservist by other means e.g. through overtime; retraining a reservist who returns to work.

Headteachers and reservists are advised to see the latest information on the [Defence Relationship Management](#) website.

9. Trade Union Facility Time

Will be paid or unpaid depending on activity. See Chapter 7 of the Schools' HR handbook.

10. Instances in which discretionary leave should not be requested

- 10.1 Discretionary Leave (paid or unpaid) should **NOT** be requested or granted for:
 - a) Attendance at sporting events.
 - b) Elective surgery or medical treatment, which employees should schedule for the school holidays. Time off for **medically necessary** surgery should be logged as sickness absence.

- c) Illness or accident suffered on holiday which leads to a later than planned return to work. This is sickness absence, for which the employee should provide a medical certificate.
- d) Dentist and other medical appointments (unless related to a disability or for cancer screening) should, wherever possible, be arranged outside of normal working hours.
- e) Childcare arrangements (except in the case of illness of a child – see Section 11)

11. Emergencies

- 11.1 In the event of a domestic emergency arising, the employee should notify his/her headteacher/manager as soon as it is reasonably practicable (either face-to-face if the employee is at work or otherwise by telephone), explaining the nature of the emergency.
- 11.2 Discretionary paid leave may be granted temporarily, to care for dependents in an emergency situation, for example the illness of a child.
- 11.3 Time off may be granted to make alternative care arrangements.
- 11.4 It is expected that the amount of time off work taken is only that necessary to resolve the immediate emergency (in many cases, this would be less than one day).
- 11.5 Once the immediate emergency has been taken care of, the employee is expected to return to work.
- 11.6 In compassionate caring situations (e.g. following a stroke), where it has not been possible to secure alternative care or support in the short term, employees should discuss this with their line manager/headteacher.

12. Parliamentary candidates

- 12.1 Employees should give notice of their need to take leave as soon as their candidacy is confirmed and give at least a week's notice when they intend to start campaigning.
- 12.2 Unpaid leave may be granted from that date until the end of the day of the election. If they are unsuccessful in the election, they may return to their post. If successful, they must resign from the School.

13. Religious observation

- 13.1 Schools should consider requests for time off for religious observation sympathetically and be cognisant of their responsibilities under the Equalities Act when doing so.
- 13.2 Many religions or beliefs have special festival or spiritual observance days. Employees may request leave in order to celebrate festivals or attend ceremonies or observe mourning periods. Headteachers should sympathetically consider such requests where it is reasonable and practical to do so and grant unpaid leave.

14. Other matters

- 14.1 The nature of working patterns in schools mean that one off requests for discretionary leave may be received for a range of matters, for example moving house, graduation, interviews, unavoidable late/non-return from leave, e.g. due to civil disturbance or transport delays. Schools should consider granting discretionary leave in such circumstances.
- 14.2 Closure of schools due to strike action or elections are normally known in advance, and staff should have made every effort to make arrangements for childcare rather than rely on the use of discretionary leave.