
SPECIAL LEAVE GUIDANCE

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1. INTRODUCTION

These guidelines have been produced to provide Schools and Governing Boards with the information they need regarding leave arrangements within schools. The guidance is based on the Council's policies and the LMS Scheme, and covers statutory, legal and contractual requirements relevant to employment as well as discretionary leave.

Although some leave arrangements are provided for by national agreements or legislation, there are some areas over which Headteachers and governing bodies have discretion to grant both paid and unpaid leave. This will lead to schools developing, individually, their own policies on discretionary leave within the framework of this guidance. There will be a convergence of terms for teachers and support staff but some differences will remain due to national agreements.

Should you require further advice on the contents of this guidance, or changes to legislation, please contact Hoople Human Resources - **Except where indicated, the guidance given relates to all employees based in schools, both teaching and support.**

Please note: the guidance does not cover arrangements for Sickness Absence, Maternity, Paternity, Adoption, Shared Parental Leave or Flexible Working.

2. DISCRETIONARY LEAVE

Ensuring that there is equitable treatment of all employees is essential. We strongly recommend that the School and Governors adopt a consistent policy based on this guidance which suits the ethos and culture of the school to provide a framework for decision making.

Inconsistency in this area may lead to a feeling of unfairness which may cause an individual varying levels of stress and can adversely affect motivation. This could also result in an employee invoking the grievance procedure or making a claim of unfair discrimination.

In exercising discretion to grant leave, Schools and Governors should balance a number of factors including:

- the effective running of the school
- the particular merits of the employee's situation
- the equitable treatment of all staff within the school and LA.

The school's position should be clearly stated and advice sought, where necessary, from the Human Resources team, to avoid potentially difficult and stressful situations for individuals. Any leave granted, paid or unpaid, should be recorded using the relevant processes and coding arrangements, e.g. Sickness absence returns, leave cards etc.

All new employees should be made aware of these arrangements as part of their induction programme and it is important that the details published are available to all staff and **applied consistently**. The policy drawn up and/or adopted by each establishment, should make clear the procedures to follow, including grievances and appeals, where there is any dispute regarding decisions on leave.

There may be circumstances where agreement or refusal of a request for leave will depend upon the needs of the school. If the impact of an absence would be to create serious operational difficulties in school the request may have to be refused. However, before such a decision is made, consideration must be given to the reason for the request and the impact on the individual concerned. Factors such as previous special leave, personal circumstances and the seriousness of the particular situation may all be relevant.

3. FAMILY, PERSONAL AND COMPASIONATE LEAVE

3.1. Medical Appointments

As far as possible, routine appointments should be made outside normal working time. Specialist appointments may need to be an exception to this, particularly where consultants or hospitals are involved.

If you have a member of staff who has a disability, the frequency of necessary medical appointments must be reasonable in the circumstances. To unreasonably refuse paid leave in such circumstances could constitute unfair discrimination under Disability Discrimination legislation.

3.2. Time off for Dependants

There is no statutory obligation to time off for dependents to be paid leave, however, all employees (irrespective of length of service, and whether they are part time or full time) are entitled to take a reasonable amount of unpaid time off during working hours in order to take necessary action to deal with unexpected emergencies. Some schools within Herefordshire have adopted an approach whereby they will grant a total of 5 days in one year with pay and all other subsequent days taken to care for dependants will be unpaid. What is reasonable, is for each school to determine and apply consistently throughout the staff.

A dependant is:

- a spouse;
- a civil partner;
- a child;
- a parent;
- a person who lives with the employee other than as his/her employee, tenant, lodger or boarder;
- any other person who would reasonably rely on the employee for assistance if he/she fell ill or was injured or assaulted, or who would rely on the employee to make arrangements for the provision of care in the event of illness or injury; or
- in relation to the disruption or termination of care for a dependant, any other person who reasonably relies on the employee to make arrangements for the provision of care.

Examples of unexpected emergencies include:

- to provide assistance when a dependant falls ill, gives birth or is injured or assaulted;
- to make arrangements for the provision of care for an ill or injured dependant;
- in consequence of the death of a dependant;
- because of the unexpected disruption or termination of arrangements for the care of a dependant;
- to deal with an incident that involves their child and occurs unexpectedly while the child is at school/other educational establishment.

The employee must inform their Headteacher or nominated representative of the reason for his/her absence and how long he/she expects to be absent as soon as is reasonably practicable. The amount of time off will vary depending on the emergency. In some situations an hour or 2 may be sufficient. Time off work under this right is envisaged as being no more than one or two days in most cases. If it is expected that more than 2 days is needed you should speak with your Headteacher or nominated representative about taking annual leave, or whether it may be possible to agree to extend the unpaid leave.

3.3. Serious Illness of a Close Relative

Serious illnesses of a parent, brother, sister or partner is not intended to cover routine illnesses such as colds and flu or other ailments. The purpose of approving the leave is to allow for attendance and caring of a relative, who may be admitted to hospital with a serious illness, or has returned home following a serious illness and still requires care.

As far as children are concerned, it is suggested that any significant illness of a baby or very young child is serious for this purpose. Beyond that age a judgement has to be made on whether it is important for the employee to be absent or it is alternatively reasonable to expect parents to make normal child care arrangements.

A Headteacher or nominated representative may grant up to 1 working week's paid leave in any twelve-month period to care for a seriously ill close relative. Further periods of absence must be taken unpaid or alternative arrangements agreed with the Headteacher.

3.4. Compassionate Leave

Up to 5 days' paid leave may be granted upon the death of a close relative at the discretion of Headteachers or governors. This time is to include the organisation and attendance at a funeral. Where requests are received in excess of this guidance, then consideration should be given for the employee to take annual holiday or unpaid leave or in exceptional circumstances, further paid leave may be granted at the discretion of the Headteacher.

A close relative in this context means:

- Spouse, partner, child (including foster child), parent, parent-in-law, grandparent, brother/sister;
- Any close relative living with the employee;
- Any situation where the employee is not related but has a particularly close relationship with the person concerned.

It would be usual for agreement to be given to attend for any other relative or close friend's funeral although this is at the discretion of the Headteacher. Payment of leave is also at the Headteacher's discretion.

3.5. Parental Bereavement Leave

Parental bereavement leave is time off to deal with the death of a child, if they die under the age of 18 or are stillborn.

Eligible parents have a right to 2 weeks:

- Statutory Parental Bereavement Leave, if they're an employee
- Statutory Parental Bereavement Pay, if they're an employee or worker, who has worked for their employer for at least 26 weeks, on the Saturday before the child's death.

Employees and workers are entitled to 2 weeks' Statutory Parental Bereavement Pay if:

- their child dies under the age of 18 or is stillborn after 24 weeks of pregnancy
- they were employed when their child died
- they'd worked for their employer for at least 26 weeks, on the Saturday before the child's death
- they earn on average at least £125 per week, before tax
- If more than 1 child dies, the employee is entitled to 2 weeks' Statutory Parental Bereavement Leave for each child.

This right will apply to the:

- biological parent
- adoptive parent, if the child was living with them
- person who lived with the child and had responsibility for them, for at least 4 weeks before they died
- 'intended parent' – due to become the legal parent through surrogacy
- partner of the child's parent, if they live with the child and the child's parent in an enduring family relationship

Most schools have decided to top up Statutory Parental Bereavement pay to full pay.

3.6. Family or Domestic Crisis

Schools may wish to consider the granting of paid leave of up to 1 working week in any twelve-month period in circumstances of family crisis other than those occasions outlined in the guidance. Such events as marriage break-up, financial or housing problems, burglary, fire, etc. might be appropriate grounds. The employee would thus have an opportunity to sort out the situation, taking specialist advice if appropriate, in circumstances where, if they were to attend for duty, their performance may well be impaired because of their domestic difficulties.

It would not be appropriate to include such "routine" events as domestic appliance service or breakdown as a reason for granting leave under this heading.

3.7. IVF Treatment

There is no statutory right for employees to take time off work to undergo IVF investigations or treatment, but schools should treat attendance at IVF related appointments the same as any other medical appointment. Schools can therefore request that appointments are made outside of working hours where possible.

Sickness absence that arises as a consequence of IVF treatment should not be considered for absence management purposes.

Once the employee has had the embryo transfer, she should be considered pregnant for the two weeks following, until it can be confirmed by a pregnancy test. Once the employee has a confirmed positive pregnancy test, she should notify the Headteacher or nominated representative in writing, and continues under the Maternity Policy.

If the pregnancy test proves negative, the employee is deemed to no longer be pregnant, 2 weeks after the attempt at implantation.

3.8. Fostering

There is no statutory right to paid time off for employees who foster a child, except in a "foster to adopt" situation. Meetings and training, should be arranged outside of working hour where possible. Schools could consider allowing flexibility to working hours and unpaid leave to support an employee who plans to foster.

All employees with at least 26 weeks' continuous service have the right to request flexible working. Employees who are foster parents could use this right to request a working pattern that fits with their caring responsibilities. The employer is not obliged automatically to agree to a request for flexible working, but must deal with the request in a reasonable manner and may refuse it only if one of a specified list of business reasons applies to the specific circumstances.

If the employee is a local authority foster parent who is also approved as a prospective adopter and a child is placed with the employee in a "foster to adopt" situation, they will be entitled to adoption leave and pay.

Foster parents may also be entitled to Parental leave. Please see policy HR016 (SCH) Parental Leave Policy for more details.

4. TIME OFF FOR REPRESENTATIVE & PUBLIC DUTIES

4.1. Trade Union Representatives

Employees who are officials of an independent trade union recognised by the Authority are permitted reasonable time off (not defined in law but ten days has been judged "reasonable" by an Employment Tribunal), during working hours to carry out certain trade union duties and must be paid for the time off taken. There is no statutory requirement to pay for time off where the duty is carried out at a time when the official would not otherwise have been at work, but staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. This will encompass a range of topic areas including requests for time off for safety inspections and attendance on training courses for union representatives but will relate to matters within section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) and for which the union is recognised for the purposes of collective bargaining by the Authority.

Applications for leave, including leave to attend training courses for union representatives, should be submitted through the County Secretary of the relevant trade union, who should make a recommendation to the Hoople Human Resources team who, in turn, will liaise with the school.

4.2. Union Learning Representatives

Employees who are members of an independent trade union recognised by the Authority can take reasonable paid time off to undertake the duties of a Union Learning Representative, provided that the union has given the Authority notice in writing that the employee is a learning representative of the trade union and has been sufficiently trained to carry out duties as a learning representative.

The duties for which time off is allowed are:

- Analysing learning or training needs
- Providing information and advice about learning or training matters
- Arranging learning or training
- Promoting the value of learning or training
- Consulting the employer about carrying out any such activities
- Preparation to carry out any of the above activities
- Undergoing relevant training

4.3. Facilities Time

An arrangement is in place for teaching trade unions facilities time. The Trade Union Facilities budget is shared between unions on a membership basis, plus an extra 10 days for the Staff Side representative.

For teachers engaged on approved trade union duties, schools will receive a voucher that provides an entitlement to supply cover.

There is no recognised or standard practice for non-teaching trade unions. Headteachers have generally released representatives without seeking recompense.

Leave for not more than one week may be allowed to enable an employee to attend an approved Educational and/or National Conference on educational subjects, provided that such an employee was a delegate or an officer of the society or conference. Pay is allowed for no more than three days.

4.4. Health & Safety Representatives

Health and Safety representatives elected by the recognised trade union have the right to reasonable paid time off to undertake safety inspections at their workplace. Headteachers should discuss in advance with safety representatives the extent, timing and pattern of any inspections they wish to carry out and allow them reasonable time off. What is 'reasonable' will depend on the size and complexity of the site.

4.5. Public Duties

The amount of time off, whether it should be paid, and any other conditions will depend on the circumstances of the individual and the school, but Headteachers will have regard to:

- how much time off is needed for these duties
- how much time off has already been taken for this and/or for other activities
- impact on the needs of the school
- any limitations on funding

The following will provide some examples of public duties although the list is not exhaustive:

- Member of County, District or Parish Council
- Magisterial duties for support staff this is up to 13 days per year (pro rata for part time & term time) any additional leave should be taken as annual leave, TOIL or flexi
- Member of Employment Tribunal
- Member of Regional or Area Health Authority
- Court Witness for support staff mandatory attendance to fulfil public duties such as jury service, school governor etc. will be paid. Where attendance is not mandatory each case will be judged on its own merit and time off is with discretion.
- Territorial Army, Auxiliary Services
- Political Duties (Parliamentary candidate, Polling clerk duties etc.)
- Reservist Forces Call Up – (support staff maximum 2 weeks per year with pay, includes firefighters and special constables mandatory annual training)

4.6. Jury Service

Employees required to undertake Jury Service, should provide the Headteacher or nominated representative of the details as soon as possible. Where the employee cannot be released as the date is unsuitable, they will be asked to defer their jury service. Employees can apply to defer their jury service only once.

Employees are required to claim loss of earnings whilst on Jury Service. The application should be forwarded to employee services and the amount claimed will be deducted from the employees pay.

5. OTHER LEAVE

5.1. Redundancy – time to attend interviews

Employees under notice of redundancy will be allowed up to 5 days paid leave to seek alternative work or for retraining. Statutory guidance if you have been continuously employed for over 2 years by the time your notice period ends you are entitled to “reasonable time off” to look for another job or attend/arrange training which will help you find another job.

5.2. Study leave

Paid leave will be given of a half day/full day as appropriate per exam/formal assessment for study, plus paid time off to take the exam/formal assessment itself. Total time off must not exceed five working days in any twelve-month period for appropriate courses of study recognised by the Authority.

Other arrangements will apply for specific post qualifying training (eg social work or where nationally agreed training study has been agreed, e.g. General Social Care Council).

5.3. Volunteering

Volunteering – up to 2 days paid leave per year (pro rata for part time employees) involving registered charities within Herefordshire. Headteacher’s agreement is required and leave should be recorded on the Sickness Absence Return (SARS).

5.4. Inclement weather

School policies concerning exceptionally severe weather conditions, eg closure and communication arrangements, should include staff responsibility for making contact and agreed absence arrangements when attendance time at work may be curtailed, e.g. for staff living in particularly vulnerable locations; requirements to make up time lost; take leave/unpaid leave. Staff not able to work because of school closure should not be expected to take unpaid leave.

In certain premises, consideration may need to be given to the advisability of working in particularly hot weather. There is no generally applicable rule on maximum permitted temperature but special arrangements may need to be made, e.g. limitation of particular working areas in such circumstances or for an employee who, by reason of a medical condition or pregnancy is suffering, or is likely to suffer, by reason of abnormal heat.

5.5. Smoking cessation

Employees who wish to stop smoking will be granted a maximum of six hours paid leave to attend individual sessions or group cessation programmes by arrangement with their Headteacher. If further sessions are needed, employees will be expected to arrange these in their own time.

5.6. Personal Leave

There may be other circumstances that arise where discretionary leave paid/unpaid may be granted including:

- Moving house
- Religious observance
- Attendance at formal ceremonies, e.g. degree
- Attendance at a child's passing out parade
- Attendance at a Royal Garden Party
- To accompany child to college/university interviews
- Participation in International / National / County level in sport, drama, etc.
- Attendance at new school prior to job start
- To perform/participate or to watch child perform/participate in a national or international event
- Assist elderly dependent move residence
- Undertake a holiday which the employee had committed to prior to appointment and which has been made known prior to appointment
- Accompany partner on a business trip or to a business conference – allowed only exceptionally where employee has demonstrated that some specific professional or educational benefit will arise
- Job Interviews - It may be helpful for schools to establish a clear policy which acknowledges and supports the professional advancement of staff by giving paid leave to attend job interviews, but addresses the financial needs of the school by limiting the amount of paid leave available for that reason to any individual in any one year

6. HOLIDAYS

6.1. Annual Leave

Please note this is NOT applicable to Term Time only employees as annual leave is fractioned into the employee's salary and taken during school holiday periods. Occasions may arise, however, where requests for time off during term time will need to be considered by the Headteacher but this is at the Headteachers discretion and, if granted, will normally be taken unpaid.

26 days plus an additional 5 days for continuous service in excess of 5 years, applies for all employees not employed on a term time only contract and is pro-rata for part time employees.

With agreement, employees may carry forward up to a maximum of 5 days' leave from one leave year to the next (pro rata for part time employees).

6.2. Public Holidays

Employees shall, irrespective of length of service, be entitled to a holiday with a normal day's pay for each of the statutory and public holidays as they occur. This will be prorated for part time employees.

7. REQUESTS FOR LEAVE

This document provides guidance on what may be allowed, but the decision lies with the Headteacher or Governors. Employees should not 'expect' to be allowed leave without first seeking prior approval. Where an employee is dissatisfied with a decision regarding their request for leave, they should be referred to the grievance policy HR004 (SCH).