

Leave and time off – guidance for schools

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1. “Rarely cover”

- 1.1 A number of situations are detailed in the following guidance which may result in an employee taking time off work. The *School Teachers’ Pay and Conditions Document 2009* introduced the requirement for teachers to rarely cover the absence of teacher colleagues as part of the overall package of contractual change set out in the *National Agreement on Raising Standards and Tackling Workload*.
- 1.2 Model policies (one for primary schools and one for secondary schools) have been prepared in respect of cover for teacher absence and these are available at Appendix A and B to this guidance. All governing bodies should ensure a policy on cover for teacher absence is adopted.
- 1.3 Specific guidance on implementation of Rarely Cover was provided by the Workforce Agreement Monitoring Group (WAMG).

2. Annual leave

2.1 Teaching staff

There are no specific entitlements to “annual leave” for teaching staff. Provision for teachers is as follows:-

In accordance with the Education Act 2002, giving the Secretary of State power to issue guidance on pay and conditions matters, the *School Teachers’ Pay and Conditions Document* contains the statutory requirements for teachers’ pay and conditions for maintained schools in England and Wales. Schools must abide by these statutory

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requirements, which apply to teachers employed by a local authority or by the governing body of a foundation or voluntary aided school.

Under the terms of the *School Teachers' Pay and Conditions Document*, the number of directed hours within which a teacher employed full time shall be available is 1265 in any school year, with the number of days on which teachers shall be available for work in any school year is 195, with five of those days being days on which the teaching of pupils is not required. Teachers cannot therefore be directed to undertake duties on any other days not specified as working days by the employer, including public holidays and weekends (except where their contract specifies weekend working).

The 1265 annual directed time limit does not apply to Headteachers, Deputy Headteachers, Assistant Headteachers, Advanced Skills Teachers and Excellent Teachers. The *Schools Teachers' Pay and Conditions Document* does not specify either maximum weekly hours or maximum annual hours. The document does however, specify that the employer (in the case of a Headteacher, this would be the Governing Body) has a responsibility to ensure a worklife balance exists for these categories of employee. One inference from this is that these categories of employee should benefit from reasonable periods of leave during the year. It is clear that these employees cannot be instructed to work on any Saturday, Sunday or public holiday (unless their contract of employment expressly provides for this).

2.2 Contracted non-teaching staff

Annual leave entitlement varies according to grade and length of service. The table below shows the leave entitlement that employees on NJC terms and conditions are entitled to:

Spinal Column Point	Length of continuous service in complete years immediately prior to commencement of leave year		
	Below 5 years	5 or more but less than 10	10 years or more
Scale E or below	23 days	28 days	28 days
Scale F - G	24 days	28 days	28 days
Scale H - M	26 days	28 days	29 days
Scale N and above	27 days	28 days	30 days

The annual leave period runs from 1 April to 31 March each year. Part-time employees and those employed on temporary and fixed term contracts, receive annual leave on a pro-rata basis.

Those employees who work all year round will take annual leave from their normal working hours. Employees should make requests for annual leave to the Headteacher in advance. Only leave approved by the Headteacher can be taken.

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Normally, all year round employees will be required to take their annual leave during school closure periods, for obvious reasons, but this can be varied at the discretion of the Headteacher. In exceptional circumstances, and by mutual agreement, annual leave can be carried forward to the next year (normally a maximum of five days).

For employees who do not work all year round and are paid an average salary, the averaged salary calculation includes payment for the appropriate number of annual leave days. Leave is effectively taken during weeks when the employee is not expected in school. This also takes into consideration any public or bank holidays owed. Salary is paid in 12 equal monthly instalments to avoid big gaps in payment during long school closures.

When an employee leaves employment, entitlement to any outstanding leave should be calculated with any leave owed being taken before the termination date. Where this is not possible, pay in lieu of the remaining leave entitlement should be paid.

Those employees who work less than all year round and who leave at the end of the Summer Term (provided they have worked the full school year) should remain on the payroll until 31 August, in order that they receive all of the salary to which they are entitled.

2.3 Casual non-teaching staff

Historically, casual claims based employees received entitlement to leave through enhanced salary payments called “rolled up holiday pay”. Legislation removed this method of payments, requiring that leave entitlement be identified and taken as leave. Special arrangements were therefore introduced for these employees in September 2009 under Management Information Sheet MI149/09. The management information provides detailed guidance for Headteachers and Casual Employees. Further guidance can be obtained via HR Direct.

3. Compassionate leave

3.1 Compassionate leave on bereavement

Following the death of a close relative is a difficult time for most employees. The closer the relationship between the employee and the person who has died, the greater the need for managers to adopt a sensitive approach.

Compassionate leave may be granted at the discretion of the Headteacher to employees who have suffered the death of a close relative.

3.2 Factors to be considered

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- a) The relationship of the employee to the person who has died. A formal family relationship is not necessarily an accurate reflection of the closeness of a family tie; for example, an aunt or grandparent may act as a parent, in adult life brothers and sisters can be distant or inseparable.
- b) Personal responsibilities, for example, the employee may have responsibility for arranging the funeral.
- c) Geographical location of the funeral and the travelling time involved.
- d) The recovery time needed before the employee can cope with the demands of his/her job.

3.3 Guidance on leave entitlement

- a) One day's paid leave to attend the funeral of a spouse, partner, parent, guardian, child, brother, sister, grandparent or grandchild.
- b) Half a day's paid leave to attend the funeral of an aunt, uncle, cousin, mother/father-in-law or brother/sister-in-law.
- c) Employees may request leave to accommodate religious observances following bereavement. This can require extended periods of leave, or leave to be taken at very short notice and should be viewed sympathetically.

Up to an extra four days paid leave can be granted by Headteachers, depending on the circumstances outlined above. Any leave approved beyond this would be unpaid except in the most exceptional circumstances, when Headteachers have the discretion to authorise paid leave for a further five days maximum.

If the employee is unable to return to work beyond the allowed compassionate leave period because s/he is unfit to do so, the relevant parts of the Improving Attendance guidance/policy should be followed.

3.4 Compassionate leave for other domestic circumstances

In circumstances such as the short-term serious illness of a dependant, or other serious domestic emergency, Headteachers have the discretion to grant paid compassionate leave in line with the limits that apply to bereavements. See also section 10, Time off for Dependants ("Emergency Leave") and if appropriate section 8, Maternity support leave and paternity entitlements and responsibilities.

3.5 Medical appointments

Wherever possible, employees should make medical/dental appointments for themselves or their dependents outside of school hours or in school closure

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periods. However, leave of absence with pay can be granted at the Headteacher's discretion for appointments which can only be arranged during the school day.

3.6 Other circumstances

Leave of absence can be granted at the discretion of the Headteacher, with or without pay, in other circumstances where justifiable. Such approval should be considered very carefully to avoid claims of unequal treatment amongst employees.

3.7 Other personal leave

Paid leave of absence can be granted for a reason the Headteacher supports such as moving house, representing County or Regional teams in sporting or cultural events, examination/study leave, attending selection interviews, service as an examiner and meetings of examination panels. There may be other reasons leading to paid leave which the Headteacher/Governors support.

Some occasions may lead to the Headteacher allowing a day's unpaid leave. These would include Graduation/Public Honour of self, spouse or child or the reading of a will after death (more likely where the deceased is a friend and not a family member in which case leave is likely to be granted under 3.1 above). There may be other reasons leading to unpaid leave which the Headteacher/Governors support.

3.8 All leave of absence on compassionate grounds should be minimised and, wherever possible, timed to be outside school hours or in school closure periods. If a school needs a supply teacher to cover for absences, this must be funded from the school's budget.

4. Travel difficulties in bad weather

Headteachers may authorise staff not to attend school when adverse weather conditions make travelling difficult or dangerous.

Where the absence is authorised, the employee would be absent with pay but the Headteacher may be in a position to allocate work that can be carried out at home during this time.

When the Headteacher has not authorised the absence, it should be treated as unpaid leave.

Note: Although in this policy guidance the Headteacher is shown as the person who exercises discretion within a school, the overall policy and arrangements on leave of absence are a matter for the Governing Body of a school to decide.

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5. Time off work for public duties

- 5.1 Under current employment legislation employers are required to grant reasonable time off to employees engaged on certain public duties. A reasonable amount of time off must be allowed to employees who are:
- Justices of the Peace (Magistrates);
 - members of a Family Health Service Authority;
 - members of Local Authorities & Police Authorities;
 - member of Strategic Health Authorities;
 - members of Statutory Tribunals;
 - members of a National Health Service Trust;
 - members of Governing Bodies of Grant Maintained Schools, Higher Education Corporation or Local Authority Education Establishments;
 - members of the Environment Agency;
 - members of the Broads Authority;
 - members of a Board of Visitors, or a Visiting Committee for Prisons, Remand Centres and Young Offenders Institutions.

The “reasonable time off” is to allow attendance at meetings of the body or any of its Committees or Sub-Committees, or, performance of duties which have been approved by the body and which are necessary for carrying out its functions.

It is not, however, legally permissible for an employee to serve as an elected Member on Norfolk County Council, although teachers may serve as managers or governors of educational establishments. Additionally employees who hold posts designated as politically restricted under the Local Government and Housing Act, 1989, are prevented from becoming a candidate for election to a Local Authority, the House of Commons or European Parliament and also from undertaking certain other political activities. (A Local Authority in this context includes County Councils, District Councils and Broads Authority).

- 5.1.1 There are other public organisations not specifically covered by the legislation for which the employer would, in certain circumstances, be prepared to consider allowing paid time off. Headteachers should raise individual cases with HR Direct.
- 5.1.2 Reference has been made to allowing reasonable time off. The legislation sets out various criteria for determining reasonable time off under these circumstances. These are:
- how much time off is required for the performance of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty;
 - how much time off the employee has already had in respect of these duties and any other permitted time off (eg for trade union duties).
 - the circumstances of the employer’s business and the effect of the employees absence on the running of the business.

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The Local Government and Housing Act, 1989, however prescribes an absolute maximum of 208 hours per year which Local Authority employees may be paid to undertake duties as a member of a County, District or Parish Council (unless the office of Chairperson of the Council is held).

- 5.1.3 In view of the legislative requirements and in order to ensure equitable treatment for employees, the following guidance has been produced to assist Headteachers in responding to requests from their staff for paid leave to undertake public duties and to provide a guide to individuals on the level of paid time off to which they might be entitled.

As a first step, employees should advise their Headteacher that they are intending to become involved in the public duty covered by the guidelines.

Once the individual member of staff has been appointed to the particular office, the Headteacher should take steps to identify how much time off is likely to be required. This would be through discussion with the member of staff and by contacting external sources if appropriate for guidance, eg Clerk to the Justices.

- 5.1.4 It is not possible to be overly prescriptive about the amount of time off involved as this will vary depending on the role undertaken and the nature of the commitment at any particular time. Each case therefore will need to be considered individually. Clearly, however, the time off requirements of the Chair of a District Council Committee will usually be greater than those of a member of a statutory tribunal.

As stated above, each request for a time off allowance must be looked at individually. In determining an appropriate allowance, however, account should also be taken of the individual's other commitments in respect of such activities as trade union/health and safety activities. Having considered all these factors, a time off allowance can then be agreed. Headteachers have discretion to agree a paid time off allowance of up to 18 working days per annum. Notwithstanding these arrangements some members of staff may, of course, prefer to use annual leave instead of paid time off. Unpaid leave may also be an option to be considered.

Part-time employees have the same legal entitlement to time off as their full-time colleagues. While part-time employees may themselves ask to rearrange their working hours to fit in with the requirements of their public duties they must not be required to do so.

- 5.1.5 No time off, paid or unpaid, other than annual leave will be allowed to employees standing for election to District or Parish Councils for the purpose of campaign or other pre-election duties.

- 5.1.6 For those employees in Community schools who do not hold politically restricted posts, leave of absence without pay will be granted for a period or periods not exceeding four weeks in total in the period immediately preceding an election, up to

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and including the day of the poll. In the event of an employee being elected as a Member of Parliament, the Authority would not keep the individual's job open but, would be willing to seek to re-employ employees with at least ten years previous service with Norfolk County Council, if a return to employment with the County Council is sought within a period of five years after the election. No commitment to either the success of this exercise or to the nature of employment and salary level can be given.

For employees of Foundation schools who seek leave of absence as a parliamentary candidate, the decision is for the Governing Body. The advice above may prove to be a useful guideline.

- 5.1.7 In all cases of time off for public duties members of staff should, in conjunction with the Headteacher, be expected to ensure that their work as an employee of the school is interfered with as little as possible and that their absence is not to the detriment of the efficiency of the school.
- 5.1.8 Public service of some types carries with it entitlement to allowances of various kinds. Allowances relating to subsistence, travel expenses etc are not usually of concern to the school unless they duplicate expenses already paid to the member of staff. However, employees who are able to claim an allowance for loss of wages and salary should either:
- voluntarily forego such allowances; or
 - provide evidence of the amount of allowance claimed in order that the school can arrange for the appropriate deductions to be made from the member of staffs earnings.

5.2 Jury service

Employees summoned to serve on a Jury should report this fact to their Headteacher, who shall grant leave of absence unless exemption is secured. An employee required to serve as a juror should be given paid leave to attend court for as long as is necessary.

The employee should claim the appropriate juror's allowance, which will be deducted from his/her pay. The purpose of jurors' allowances is to compensate for loss of earnings and there is no provision for additional payment when an employee has to attend court for longer than his/her normal working hours.

The Local Authority funds the cost of supply cover for employees on Jury service.

5.3 Reserve Forces

County Council Members continue to express their strong support for membership of the Reserve Forces (the Territorial Army, Royal Auxiliary Air Force and Royal Marine Reserve), and wish to encourage membership of such forces. To this end,

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the current policy is for the Local Authority to provide supply cover for up to two weeks' leave to cover absence of staff employed by the Local Authority at a Community school in order that they may fulfil Reserve Forces training requirements

5.4 Court or tribunal attendance

Where an employee is ordered to attend a court or statutory tribunal as a witness, leave of absence should be dealt with as for Jury Service. Where attendance is voluntary, then leave of absence should usually be unpaid.

6. Trade Union duties and activities

6.1 Employee representatives and Trades Union officials must be able to carry out their union duties effectively, whilst having due regard to the reasonable expectations of the Council in relation to the performance of their duties as employees.

6.2 Community schools

Representatives of recognised trade unions have the right to take reasonable time off work, with pay, to carry out duties relating to industrial relations matters between their members and the County Council or Governing Body, and to undergo training.

Such time off is covered by a County Council agreement and the County Council, if required, will meet supply cover. Members of recognised trade unions have the right to take reasonable time off work, without pay, to take part in the activities of their trade union. Any queries on these matters should be referred to HR Direct.

6.3 Foundation schools

The advice detailed above applies to Foundation schools except that time off is to be granted for industrial relations matters between the Governing Body of the school and members of the representative's trade union.

7. Maternity, adoption and surrogacy entitlements and responsibilities

7.1 Maternity, adoption and surrogacy schemes, which detail entitlements and responsibilities exist for teaching staff and non-teaching staff in schools. These can be found on Schools People Net.

8. Maternity support leave and paternity entitlements and responsibilities

8.1 Maternity support leave and paternity leave are covered in the maternity, adoption and surrogacy schemes mentioned in 6.1. These can be found on Schools People Net.

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9. Parental leave and time off for dependants

The Maternity and Parental Leave Regulations 1999 introduced an entitlement to a period of unpaid leave, for employees to look after their children, or make arrangements for their welfare.

9.1 Basic entitlement

Employees are entitled to 13 weeks' unpaid parental leave if:

- they have at least one year's continuous service with the school or a related employer
- they have a child under the age of five or have a child who was adopted within the past five years and is under the age of 18
- they have, or expect to have, parental responsibility for the child.

An employee is entitled to 18 weeks' unpaid parental leave if their child is entitled to receive disability living allowance. A "week's leave" is defined in 9.4 below.

The parent does not have to be living with the child to qualify.

The right applies to a single child. Therefore, if an employee has twins, they are entitled to 26 weeks' parental leave.

Parental leave cannot be transferred between parents.

Parental leave will, in most cases, be unpaid. However, it should be noted that Local Government Services (Green Book) employees are entitled as part of their conditions of service, to five days paid Maternity Support Leave, at or around the time of the birth, if they are the father of the child, or partner or nominated carer of the mother. If employees, who are also entitled to Parental Leave wish to take Maternity Support Leave for their child, it should form the first five days of Parental Leave and therefore, be paid.

9.2 What is parental leave for?

An employee must be taking the leave to care for the child. This means looking after the welfare of a child and can include making arrangements for the good of a child.

For example, an employee might take parental leave to:

- spend more time with the child
- accompany the child during a stay in hospital
- check out new schools
- help settle the child into new childcare arrangements
- enable a family to spend more time together, eg taking the child to stay with grandparents.

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Caring for a child does not necessarily mean the employee has to be with the child 24 hours a day.

If it is found that the employee is using the parental leave for some other purpose, eg to do other work, this could be dealt with using the disciplinary procedure.

Because notice needs to be given with a request for leave, parental leave is not suitable where an employee's child suddenly falls ill. However, under the Employment Relations Act 1999, employees are able to take a short period of emergency leave to care for the child - see Time off for dependents ("emergency leave").

9.3 When parental leave can be taken and for how long?

An employee can only take a period of parental leave before:

- the child's fifth birthday
- the fifth anniversary of an adopted child's placement with them or their child's 18th birthday, whichever is earlier
- a disabled child's 18th birthday

Employees can take a maximum of four weeks' leave in any year in respect of any individual child. Therefore an employee with twins could take up to eight weeks in any one year.

An employee can take a period of leave immediately after the end of normal maternity, paternity or adoption leave.

Periods of leave must be taken in multiples of one week – unless the child is disabled, in which case it may be taken as individual days.

Employees must give 21 days notice of any parental leave requested. Requests should be addressed to the Headteacher unless the member of staff making the request is the Headteacher (in which case the request is made to the Chair of Governors).

For those with an entitlement under the regulations, parental leave cannot be refused, only postponed, and can only be postponed where the needs of the business or quality of the service so requires. Headteachers should record their reasons for refusing such a request and may be required to justify their decision then or at a later date.

If refused, leave must be allowed within six months of the start date of the leave originally requested. Headteachers should discuss the matter with the employee and confirm the postponement arrangements in writing, no later than seven days after the employee's notice to take leave.

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When an employee gives 21 days' notice prior to the expected week of childbirth, to take parental leave immediately after the birth of a child, then the leave cannot be postponed. In the case of adoption, the employee needs to give 21 days' notice of the expected week of placement, or in rare cases where this is not practical, an adoptive parent should give notice as soon as is reasonably practical.

9.4 What is a week's leave?

One week's parental leave is equal to the length of time that an employee is normally required to work in a week.

This means that a week's leave for an employee who usually works from Monday to Friday is equal to five days. For an employee who usually works Mondays and Tuesdays only, a week's leave is equal to two days.

If an employee's working pattern varies from week to week, an average working week must be calculated as a fraction of the period for which the employee is required to work in a year. For example, if the contract with the employee is for them to work three days a week for 30 weeks, four days a week for 18 weeks, and two days a week for four weeks, you would calculate the number of days leave in their average week by dividing the total number of working days in these periods by 52.

If an employee takes leave in blocks of less than one week, a week is only deducted from their overall entitlement to 13 weeks (or 18 weeks for parents of disabled children) when the short periods of leave add up to what would be a normal or average working week.

9.5 Moving between employments

The 13 or 18 week entitlement applies to an individual child, not to an individual employment. Therefore if, for example, an employee has taken eight weeks' parental leave with their previous employer, they are only entitled to take another five (or ten) weeks in their subsequent employment(s).

9.6 Evidence of entitlement

The employee can be asked to produce evidence to show that:

- they are the parent of a child
- they have parental responsibility for the child
- the child is below the age at which the right to parental leave ceases
- in the case of a disabled child, the child is entitled to disability living allowance.

The evidence could be:

- the child's birth certificate

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- papers confirming a child's adoption or the date of placement for adoption
- in the case of a disabled child, a record of disability living allowance payments for the child.

The request for evidence must be reasonable, eg it may not be reasonable to check on the employee's entitlement on every occasion on which leave is asked for.

9.7 Record keeping

There is no requirement in law to keep formal records of an employee's parental leave but, clearly, it is wise to do so.

One record should be kept per employee for each child concerned. Leave should not be aggregated or recorded jointly between parents, or where an employee is entitled to leave for more than one child.

Copies of any relevant documentation should be kept with the record on the employee's file. (NB Once documents have been checked, the employee should not be asked to produce the documents each time leave is requested.)

9.8 Notifications

Headteachers should ensure that employees who are members of the Local Government Pension Scheme are aware that, under the rules of the scheme, the first 30 days of any period of unpaid leave is still subject to pension contribution from both the employee and employer.

Headteachers should notify their contact in the Employee Services Centre of any periods of unpaid leave, in order that deductions from pay can be made.

10. Time off for dependants (“emergency leave”)

10.1 Entitlement to time off

Under Section 57A of the Employment Rights Act 1996, amended by the Employment Relations Act 1999, all employees have the right to take a reasonable period of unpaid time off work to deal with an emergency involving a dependant. This could be with or without pay, at the discretion of the Headteacher, depending on the circumstances.

There is no qualifying period. Employees have this entitlement from their first day of employment.

10.2 Taking time off

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Employees can use leave to deal with an unexpected or sudden problem and make any necessary longer-term arrangements:

- if a dependant falls ill or has been involved in an accident or assaulted, including where the victim is hurt or distressed rather than injured physically;
- when a partner is having a baby;
- to make longer term care arrangements for a dependant who is ill or injured;
- to deal with the death of a dependant, for example, to make funeral arrangements or to attend a funeral;
- to deal with an unexpected disruption or breakdown in care arrangements for a dependant, for example, when the childminder or nurse fails to turn up;
- to deal with an incident involving the employee's child during school hours, for example, if the child has been involved in a fight or is being suspended from school.

10.3 Definition of dependant

A dependant is the partner, child or parent of an employee, or someone who lives with an employee as part of their family. For example, this could be an elderly aunt or grandparent who lives in the household. It does not include tenants or boarders living in the family home, or someone who lives in the household as an employee, for example, a live-in housekeeper.

In cases of illness, injury or where care arrangements break down, a dependant may also be someone who reasonably relies on the employee for assistance. This may be where the employee is the primary carer or is the only person who can help in an emergency.

10.4 Amount of leave

There is no set limit to the amount of time off which can be taken. In most cases, the amount of leave will be one or two days at the most, but this will depend on individual circumstances, although employees may be able to take longer periods of leave under other arrangements (see Compassionate leave for bereavement and Parental leave).

For example, if a child falls ill, the leave should be enough to help the employee cope with the crisis - to deal with the immediate care of the child, visiting the doctor if necessary and to make longer term care arrangements. It does not mean that the employee may take two weeks leave to look after a sick child.

10.5 Notification

Employees must tell their employer, as soon as is practicable, the reason for their absence and how long they may be away. There may be exceptional circumstances where an employee returns to work before it was possible to contact

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the employer, but s/he should still tell the Headteacher the reason for absence immediately on returning. It is not necessary to give notice in writing.

10.6 Abusing the right

If it is believed that an employee is abusing the right to time off, the matter should be addressed under the school's disciplinary procedure.

10.7 Protection from dismissal and detriment

Employees are protected from being penalised or dismissed because they have taken, or have sought to take, time off under this right. For example, someone who is moved to a lower salary grade because they have exercised this right would be able to make a complaint that they have suffered a detriment. It is unfair to dismiss or select for redundancy any employee on the basis that they have taken, or have sought to take time off under this right.

If an employee is unreasonably refused time off under this right, suffers a detriment or is dismissed for taking, or seeking to take, time off under this right, the matter should be considered under the school's grievance procedure.

10.8 Record keeping

A record must be kept of all emergency leave taken.

Headteachers should ensure that their contact in the Employee Services Centre is notified of any periods of unpaid leave, in order that deductions from pay can be made.

11. Elective surgery, including fertility treatment and transgender procedures

11.1 Elective surgery

Elective surgery is surgery a person chooses to have. There are different reasons for electing to have surgery, and different types of elective surgery, ie:

- cosmetic surgery is a non-essential surgical procedure for the purpose of improving appearance, ie a life style choice, eg face lifts, eye laser treatment, cosmetic dentistry
- sometimes cosmetic surgery can be of psychological or physical benefit eg breast reduction, removal of birth marks, and can be recommended by a medical practitioner in order to assist an employee to overcome emotional issues that are having an impact on their wellbeing
- fertility treatments including IVF, egg implantation, hormone therapy
- transgender surgical procedures, hormone treatment and other treatments eg electrolysis

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Other examples of elective surgery include:

- nose reconstruction (rhinoplasty)
- breast augmentation
- liposuction
- tummy tucks
- botox
- vasectomy
- termination of pregnancy

Fertility treatment includes:

- the use of fertility drugs
- surgery
- intrauterine insemination
- in vitro fertilisation
- gamete intrafallopian transfer
- intracytoplasmic sperm injection

These lists are not exhaustive.

There is no legal requirement to grant time off for elective or cosmetic surgery or procedures including fertility treatment. Therefore staff should make every effort to arrange appointments and procedures outside of school hours or in school closure periods. However, if the Headteacher is satisfied that this has not been possible, s/he has the discretion to grant leave of absence with or without pay.

Where possible staff should ensure there is sufficient time outside school hours or in school closure periods to allow for recovery. However, if the Headteacher is satisfied that this has not been possible, the usual sick leave and sick pay arrangements will apply provided the school's sickness absence procedure is followed. If the employee is unfit to work due to complications resulting from surgery or hormone treatment, or the surgery results in injury, the usual sick leave and sick pay arrangements will apply provided the school's sickness absence procedure is followed.

Staff should provide the Headteacher with written confirmation from their GP or consultant that the surgery is essential for their physical and/or mental wellbeing. If the Headteacher is in any doubt the advice of Occupational Health should be sought.

11.2 Transgender procedures

If an employee is undergoing gender reassignment they are afforded specific protection and can not be treated any less favourably than someone who is absent for some other reason. Employers have a duty to ensure that an employee in these circumstances does not suffer harassment once they return to work.

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Headteachers should also consider the need for treatments such as electrolysis for beard removal as part of the gender reassignment process.

It should be noted that the completion of surgical procedures could take years.

11.3 Confidentiality and support

Employees should be encouraged to discuss their plans with the Headteacher before any treatment begins. This will enable the school to prepare for any absence and allow the employee to feel supported on their return.

While Headteachers should do their best to maintain confidentiality, it may be appropriate to give colleagues some information. This should only be done with the consent of the employee. Headteachers should be mindful that details of any procedure will probably be considered sensitive personal data for the purposes of the Data Protection Act 1998.

11.4 Relevant legislation

Apart from the Data Protection Act 1998, Headteachers should be aware of other legislation with implications for the different types of elective surgery.

11.5 Statutory Sick Pay

Employees are entitled to SSP when they are unfit to work provided the usual notification requirements are followed. Therefore the reason for the absence is essentially immaterial.

11.6 Sex Discrimination Act 1975 and IVF

Employers are not legally obliged to allow employees time off from work to undergo IVF treatment. However women undergoing IVF treatment are protected under the Sex Discrimination Act 1975. If they are dismissed or treated differently because they are undergoing surgery or other treatment, or have undergone IVF, this will constitute unlawful sex discrimination.

If an employee is ill as a result of treatment, eg if they suffer from stress or some other complication, then they will be entitled to take sick leave, and receive sick pay if they are unfit for work.

11.7 Indirect sex discrimination

Women are more likely to undergo cosmetic surgery and fertility treatment (almost 90% of cosmetic procedures are carried out on women). Any less favourable

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treatment of women undergoing these procedures could potentially be indirect discrimination.

11.8 Gender Recognition Act (GRA) 2004 and transgender surgery

Staff undergoing transgender surgery (transsexual people) are protected by the Gender Recognition Act 2004 and must not be treated any less favourably on account of the surgery. When transsexual people begin surgical procedures or hormone therapy they would be entitled to sick leave and sick pay if they were unfit for work provided.

11.9 Protection from Harassment Act 1997

Employers have a duty to ensure that a transsexual person does not suffer harassment during reassignment and once they return to work. Confidentiality is therefore important, and Headteachers should discuss with the employee what information will be given to colleagues about the reason for absence.

11.10 Disability Discrimination Act (DDA) 1995

If surgery has left an employee disabled then the DDA might apply and Headteachers may need to consider reasonable adjustments to enable the employee to return to and remain at work.

11.11 Equality Bill 2009

The Equality Bill seeks to reform and harmonise equality law and restate some of the enactments relating to discrimination and harassment relating to personal characteristics. In addition it seeks to prohibit victimisation in certain circumstances.

11.12 General

Occupational Health will be able to advise on specific cases.

Complications – If the employee is unfit to work due to complications resulting from surgery, or the surgery results in injury, the usual sick leave and sick pay arrangements will apply provided the school's sickness absence procedure is followed.

Indefinite absence – if a procedure goes wrong and the employee is absent indefinitely they should be treated like any other employee on long term sickness absence, and the policy complied with. Seek medical evidence concerning their condition and prognosis. Consult with them as to their likely return and consider reasonable adjustments to facilitate their return, especially if the DDA applies. If termination of employment is appropriate, ensure redeployment is considered and

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statutory dismissal procedure is followed. Consider whether ill health retirement is possible.

Advice on any aspect of the elective surgery process can be accessed through HR Direct.