

Policy and procedure for Special Leave (Time Off)

Shropshire Community Health

NHS Trust

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1	June 2015	1.1 Inclusion of reference to Shared Parental Leave and right to request flexible working

		2.1 Requirement to explore use of TOIL, Flexi-time or annual leave before granting paid time off for personal or domestic leave New guidance on level of personal or domestic leave 2.3 New section on Parental Leave 2.9 Change to process for jury service 3.0 Additional information included about Reservists – in line with 2014 updates
2	July and August 2015	Consultations with HR and Workforce Group and JNP
3	December 2018	Review in line with current legislation
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1. Introduction

The Trust recognises that situations will arise where staff will find it necessary to be released from their normal duties for a period of time in order to deal with a variety of situations ranging from urgent domestic and personal crises through to activities connected with their role as Trade Union/Staff Side representatives.

These situations are described as follows together with guidelines on whether the time off is paid or unpaid.

1.1 Statutory Entitlement to Time off

Employees have a statutory entitlement to time off for the following:

- Personal and Domestic Leave (including Adoptive, Maternity, Paternity, Parental Leave and Shared Parental Leave)
- Time off for family emergencies
- Trade union duties and activities (refer to the Trust's Recognition Agreement)
- Military Training and Service
- Carrying out Public Duties
- Court Service

There is also a statutory right to time off for holidays and a right to request flexible forms of working including time off to train. These are detailed in the Trust policies on Annual Leave and General Public Holidays and the Trust policy on Flexible Working both of which can be found on the staff zone of the Trust website <http://www.shropscommunityhealth.nhs.uk/policies>

1.2 Payment of Normal Earnings during paid Time Off

Where reference is made to "normal earnings" this means the payment that employees would have received had they not been away from work.

The normal earnings of salaried staff would have no additions or deductions made, however, the normal earnings of hourly paid employees could include scheduled overtime, but not irregular overtime.

Overtime/enhanced payments are not made for the time spent at a meeting or on a training course, etc in excess of normal working hours or for time spent in travelling.

1.3 Absence on a Rest Day

When a meeting, training course, etc takes place on the employee's normal rest day, they should, if possible, be given an alternative rest day off. The only alternative normally allowed is for payment to be made at the basic rate. Where additional hours are incurred beyond the normal hours, time off in lieu will be given.

2. Special Leave

As a reasonable employer, and to meet statutory duty, the Trust will grant time off to employees in particular circumstances as outlined in this policy.

2.1 Personal and Domestic Leave

As a reasonable employer, the Trust will grant time off, which can be paid or unpaid, for sudden personal reasons such as bereavement or looking after dependents who are ill, or domestic emergencies like fire, flooding or burglary. Before agreeing to paid personal and domestic leave, options to use accrued time (TOIL or flexi-time) or annual leave should be explored.

What is 'reasonable' is not specified in the legislation as it will depend on the circumstances, but one or two days should be sufficient for most typical emergencies such as having to make arrangements for a sick child or other dependent.

Subject to detailed discussion and in exceptional circumstances where no other types of leave are appropriate, Line Managers have discretion to allow up to a maximum of five days paid or unpaid leave of absence. Line Managers should contact Human Resources for advice where the amount of personal or domestic leave is likely to exceed two days. Managers must record any special leave on ESR self-service, in addition to the record on the personal file.

Under the 1996 Employment Relations Act, employees may take a reasonable amount of time off:

- to help when a dependant falls ill, gives birth, is injured or assaulted
- to make longer term arrangements to care for an ill or injured dependant
- because of unexpected disruption or breakdown in the arrangements for the care of a dependant
- as a result of the death of a dependant
- to deal with an incident involving an employee's child

A dependant is defined as:

- the employee's spouse or civil partner, child, parent or someone who lives in the same house (but not a lodger or tenant), or
- any person who reasonably relies on the employee for assistance when they fall ill, are injured or assaulted, or to make arrangements for provision of care in the event of their illness or injury.

2.2 Compassionate Leave

In the event of the death of a person with whom they have a close personal relationship (for example, mother, father, partner, grandparents, child, brother or

sister) an employee will be entitled to up to four (4) days leave of absence with no loss of normal earnings. Line Managers should exercise their discretion, through discussion with the employee, in the interpretation of 'close personal relationship'. Compassionate leave should be used in conjunction with flexibility in using annual leave and Human Resources advice should be sought where necessary.

2.3 Parental Leave

Eligible employees can take unpaid parental leave to look after their child's welfare, e.g. to: spend more time with their children, look at new schools, settle children into new childcare arrangements. For information on 'Shared Parental Leave' where both parents share maternity leave please refer to the Trust Policy on Maternity, Paternity and Adoption.

Parents are entitled to 18 weeks' leave for each child and adopted child, up to their 18th birthday. The limit on how much parental leave each parent can take in a year is 4 weeks for each child.

Employees qualify if **all** of these apply:

- You have worked for the Trust for more than a year
- You are named on the child's birth or adoption certificate
- You have or are expected to have parental responsibility
- You are not a foster parent (unless they've secured parental responsibility through the courts)
- The child is under 18

Parental leave must be taken as whole weeks rather than individual days, unless your child is disabled.

A 'week' equals the length of time an employee normally works over 7 days.

2.3.1 Making a Request to take Parental Leave

Applications should be made in writing to the line manager giving at least 21 days notice to commence the leave.

The line manager must consider the request and can only postpone the leave rather than refusing to grant it. Requests to postpone cannot be made in the following circumstances:

- If it is being taken by the father or partner immediately after the birth or adoption of a child
- If it means an employee would no longer qualify for parental leave, e.g. postponing it until after the child's 18th birthday

If it's postponed, the line manager:

- must write explaining why within 7 days of the original request
- suggest a new start date - this must be within 6 months of the requested start date

2.4 Paternity Leave

For entitlement to Statutory Paternity leave, Occupational Paternity Leave and Additional Paternity Leave refer to Section 6 of the Trust's Maternity, Paternity and Adoption Policy at on the staff zone of the Trust website

<http://www.shropscommunityhealth.nhs.uk/policies>

2.5 Personal Choice Treatment

Where an employee chooses to undergo treatment where there is no medical or clinical necessity (eg. 'cosmetic' surgery/aesthetic surgery) they should discuss this with their manager. Scheduled time off, such as annual leave, time owing or unpaid leave, should be used.

If as a result of such treatment the individual is unfit to work then they should submit a certificate in the usual way.

2.6 Essential Medical and Dental Appointments

Employees should, where possible, arrange for appointments outside of working hours.

However it is accepted that essential medical and dental appointments are not always available outside of working hours and where it is not possible, Managers should grant the time off to attend. In this case, accrued time off in lieu (TOIL) should be used or the time paid back by the employee, or time off with pay can be granted in exceptional circumstances. Such appointments should be arranged to cause minimal disruption to the service, for example, at the beginning or end of the day.

Should leave for this purpose continue for a complete shift or day this will normally be counted against sick leave entitlement and the normal sickness absence arrangements apply.

2.7 Time off for Interviews

Employees will be expected to use their annual leave entitlement, TOIL or flexi-time towards job interviews which are outside of the Trust. Where the interview is for another role within the Trust reasonable paid time off will be given.

Where an employee's job has been identified as "at risk" then reasonable paid time off should be given for seeking alternative employment or making arrangements for training.

2.8 Public Duties

Legislation requires employers to allow employees reasonable time off for certain activities, including:-

- a magistrate (also known as a justice of the peace)
- a local councillor
- a school governor
- a member of any statutory tribunal (eg an employment tribunal)
- a member of the managing or governing body of an educational establishment
- a member of the a school council
- a member of the Environment Agency
- a member of the prison independent monitoring boards
- a trade union member (for trade union duties)

For information on time off for trade union duties please refer to the Trust Recognition Agreement on the staffzone

<http://www.shropscommunityhealth.nhs.uk/content/doclib/10561.pdf>

There is no legal requirement that time off for public duties should be paid.

The Trust considers it reasonable to allow up to 10 days paid leave per year for public duties. Unpaid leave may be considered if the need for time off is substantially in excess of this. Each case needs to be examined on its merits, relative to other duties being undertaken and the requirements of the service. The Human Resources Department should be contacted if there are any queries arising from this.

Where claims can be made against these bodies in respect of loss of earnings, the employee should inform their manager. Employees are expected to claim their entitlement which will be made up to normal earnings by the Trust.

2.9 Court Service

Most court service is for jury service, but employees may also be called as witnesses. Managers cannot refuse to release staff for jury service but can request that the employee apply for a postponement in exceptional circumstances where their absence would have a serious detrimental impact on the service.

2.9.1 Jury Service

An employee should not suffer loss of normal earnings when required to attend jury service. However, employees are expected to claim all of their legal entitlement, this figure is then made up to normal earnings by the Trust. It is important that the employee is made aware of their responsibility to claim the maximum amount available.

2.9.1.1 Payment

Employees who serve on a jury are entitled to claim from the summoning authority the following:-

- Travelling and subsistence allowances
- Payment for loss of earnings up to certain specified limits

2.9.1.2 Procedure

- The employee must notify their Line Manager immediately they receive the jury summons. The Manager should complete the appropriate sections of the Certificate of Loss of Earnings Form (which will be sent to the employee with their jury service letter) to certify full loss of earnings and pass a copy to Payroll. The completed form must be taken by the employee to court on their first day of jury service. The Line manager should consult Pay Services for further advice.
- The employee must claim from the court authorities for travelling, subsistence and full loss of earnings for the day(s) in question.
- The court authorities will provide a statement giving details of payments made against the claim and the Manager should ask to see this.
- If the claim for loss of earnings is disallowed either totally or partially, the payment should be made up to the level of normal earnings. This should not be done if the employee fails to claim for loss of earnings from the court authorities.

2.9.2 Court Appearance as a Witness

The same procedure is applied to compulsory attendance as a witness at a court or tribunal.

Where the court or tribunal appearance is made in the context of their employment by the Trust, it is treated as part of normal duties and therefore is

not subject to the above provisions. Travel and subsistence expenses are paid where appropriate.

3. Military Training and Service (Volunteer Reserve Forces)

Unit Commanding Officers, on behalf of the Ministry of Defence (MOD), write directly to the employers of all new members of the Voluntary Reserve Forces (VRF) and existing Volunteer Reservists when they re-engage. This is to ensure that the employer is aware that they have an employee in the VRF and to tell them about the associated benefits, rights and obligations.

Regular reservists are former full-time servicemen and women who may be still be liable for service under certain circumstances once they have left the regular forces.

Volunteer reservists (who are part of the **Volunteer Reserve Force**) (VRF) are members of the Royal Naval Reserve, Royal Marines Reserve, the Territorial Army and the Royal Auxiliary Air Force. They train and serve alongside the Regular Forces during their spare time, but they may also be called up (mobilised) for a period of full-time service.

Employees who are members of the Reserve Forces have a responsibility to inform their line manager of their voluntary role, to ask for leave for training if required and to notify them if they are to be mobilised.

3.1 Military Training

The Trust's policy is to grant one week's special leave to employees in the ancillary forces or reserves who undergo training, with service pay being made up to normal earnings.

Where the training is more than one week's duration employees should take part of their annual holiday leave. If the requested leave creates workforce shortage problems, the Manager may wish to contact the Commanding Officer, as frequently there are alternative camp dates available.

3.1.1 Procedure

- The employee should support their request for leave to their Line Manager for agreement with the notice of military training.
- No payment of salary or wages is made for the period of special leave. On return to work, the employee should produce a certificate signed by the appropriate military authority giving the amount of pay and allowances received during training.

- This payment is then made up to the normal level of earnings.

3.2 Military Service - Mobilisation

Reservists joining before 1 October 2014

These reservists can only be mobilised in certain circumstances, for example in response to imminent national danger, if warlike operations are in preparation or progress, or for the protection of life and property outside the UK. They can choose whether to transfer to new terms applying to reservists joining on or after 1 October 2014 which set out below.

Reservists joining on or after 1 October 2014

Reservists joining on or after 1 October 2014 can be called out for any purpose for which members of the regular armed forces may be used and also from that date the maximum period for which reservists may be mobilised increased from nine to twelve months. The twelve month period of mobilisation covers training, deployment, and recuperation after service.

In most cases the Armed Forces use a process known as 'Intelligent Selection' to identify the most appropriate people for call out. This allows Reservists to be selected according to their individual skills and specialisations and allowing a unit to take into account a Reservist's personal and employment circumstances

A reservist can only be mobilised if a 'call-out order' is in place. Where no call-out notice has been issued, the Trust does not have to agree to a request from an employee for leave related to their reservist duties. Where a call-out notice has been issued, the reservist is legally required to comply with it. However this is subject to deferral, revocation and exemption provisions. Line managers should contact HR for further advice.

4. Attendance at work during exceptional circumstances (including during inclement weather)

This relates to exceptional circumstances such as bad or inclement weather, local or national petrol shortages, and difficulties with public services or utilities that may prevent or hinder staff attending work as usual.

Staff should make every effort to attend work at their normal starting time. If due to the circumstances above, and despite their best efforts, a member of staff is delayed, they will not be financially penalised.

The employee should contact their Line Manager by telephone as soon as possible to discuss the situation and options.

If, after efforts have been made to reach their usual place of work, the employee is unable to do so, where appropriate, an employee can use other NHS premises.

The options available include:

1. Sharing transport with colleagues.

2. Accrued flexi-time may be used (where formal flexi time is in place).
3. Employee may take a day's annual leave.
4. Time owing is carried forward and worked within one working month.
5. Where appropriate, and with Line Managers agreement, employees may work from home.
6. Exceptionally, if none of the above are appropriate then by agreement with the Line Manager and employee may receive normal pay.

The assumption is made that the vast majority of staff will make every effort to attend, in which case it would not be reasonable for the manager to withhold payment arbitrarily. Discussion should take place between the parties when normal work has resumed.

Entirely at the manager's discretion, and subject to the needs of the Service, staff who have travel difficulties may be sent home early from work without detriment if the situation worsens.

5. Other Situations

Situations other than those outlined above may arise, where the employee will not qualify for paid time off. The expectation is that annual leave entitlement, TOIL or flexi-time should be used in these circumstances, but where this is not possible consideration should be given to granting unpaid leave of absence up to a maximum of five days.

Managers must record any unpaid leave on ESR self-service, in addition to the record on the personal file.