

**Agenda Item No:**

**Report No:**

**Report Title: Annual Leave**

**Report To: Employment Committee**

**Date: 12 October 2009**

**Ward(s) Affected: All**

**Report By: Head of Business Services**

**Contact Officer(s): John Clark, Head of Business Services**

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**Purpose of Report:**

To seek changes in the way that annual leave is managed to reflect recent changes in the statutory holiday entitlement rules.

**Officers Recommendation(s):**

- 1 That the Annual Leave Policy at Appendix A is adopted.

**Information**

- 1 Recent changes to the statutory holiday entitlement and the rules surrounding it mean that we need to review how we manage our existing leave arrangements. Appendix A is a proposed policy statement on how we manage annual leave from now on and the reasons behind that statement are set out in the following paragraphs. The Corporate Management Team has considered the issues involved and the recommendations are those that it feels are the most operationally suitable.
- 2 This report and the policy statement are only about annual leave. It does not apply to any other form of leave such as flexitime or compassionate leave, and those sort of time off arrangements do not count towards the statutory holiday entitlement. All figures quoted are for full time staff. Part time staff get holiday entitlement pro-rata for their contractual hours.
- 3 Special statutory rules exist for holiday relating to staff on long-term sick or on maternity leave. These have not been replicated here, but the Personnel Department will make any necessary changes to the related policies.

**Holiday Entitlement**

- 4 All staff get a holiday entitlement based on their grade and length of service as follows:

	Basic	After 5 years service
Scale 1-4	24	29
Scale 5-6	26	29
All grades above Scale 6	28	29

- 5 These figures include the concessionary and extra statutory leave referred to in the NJC for Local Government Services.
- 6 In addition all staff are entitled to bank or public holidays. Because the Council's leave year starts on 1 April each year, bank or public holidays could be 6, 8 or 10 days in any leave year, depending when Easter falls.

### **Statutory Holiday Entitlement**

- 7 As from 1 April 2009 all staff are entitled to 28 days statutory holiday entitlement. The statutory figure can include bank holidays so all our staff receive in excess of the statutory amount e.g. 24 days plus 6,8 or 10 bank holidays for a Scale 2 employee with less than 5 years service.
- 8 The statutory entitlement is made up of two separate elements introduced by separate regulations. Unhelpfully, slightly different rules apply as to how those two elements can be treated and none of these rules apply to any contractual holiday entitlement (anything over 28 days). But for the purposes of this report they can be regarded as one.

### **Carrying Holiday Forward**

- 9 Statutory holiday may not be carried forward. For example, someone who has an entitlement of 32 days including bank holidays, but has only taken 26 days at the end of March, may only carry forward 4 days, not 6 i.e.  $32 - 28 = 4$ .
- 10 Technically the Working Time Regulations do not require workers to take their holiday, nor that their employers must ensure they do so. However, annual leave is seen in the regulations as a health and safety issue. An accident at work or a stress related illness for someone who had not taken their holiday entitlement could easily lead to a claim that we, as an employer, had not met our health and safety obligations. Therefore, it is recommended that all staff must take at least the statutory number of holiday days a year.
- 11 For some years the maximum number of days that we have said can be carried forward has been 5, for one year only (unless a formal leave banking agreement is in place). However, there has been no monitoring of this and departments have been working ever more flexible arrangements. Although most staff took their full entitlement, last year there were examples of 10 days and more being carried forward.
- 12 Because of the rules around statutory holiday, in a normal year with 8 bank holidays, the maximum that could be allowed to be carried forward in future is 9 days (29 days + 8 bank holidays – 28 statutory). However it is recommended that a limit of 5 days maximum is set.

### **Leave Banking**

- 13 We have a leave banking scheme that allows staff to bank as many days as are wanted for up to 5 years in order that they can plan for a significant absence occasionally. I am not aware of any current leave banking agreement in place with any member of staff, but I do regard it as an important benefit that we

should continue to promote. With the new rules it is recommended that we set a limit of up to 5 days a year for a maximum of 5 years on the scheme.

- 14 Only staff with a formal leave banking agreement in place would be allowed to carry leave forward across more than one year e.g. someone who carries forward 5 days leave, but does not use it in the current year may not carry it forward again to the following year.

### **Payment for Leave**

- 15 Statutory holiday cannot be replaced by a payment in lieu, unless the employment is terminated. Over the last 2 years we have paid 10 staff for untaken holiday unrelated to sickness or maternity absence. And since the maximum paid was for 6 days, it is unlikely we paid for any statutory holiday entitlement. However, this can only be done in future for days over the statutory minimum, but there is no requirement for us to do it at all. In view of the Council's financial position and the health and safety aspects relating to holiday, it is recommended that we no longer pay for untaken holiday.

### **Timing of Holiday**

- 16 In the absence of any agreement to the contrary, workers should give notice equal to twice the length of the holiday that he or she wishes to take. We are not obliged to give that holiday and it can be refused by giving counter-notice equivalent to the length of the holiday requested. An employer can prevent such individual requests, but it cannot prevent someone from taking the leave to which he or she is entitled in that holiday year.
- 17 We have no rules or guidelines in place on this and we do not have a suitable agreement in place to change the statutory rules either. Either we should apply the statutory rules or we should put a suitable agreement in place. If the agreement option is preferred we need to set what our own rules would be.
- 18 It is recommended that we apply the statutory rules from now on unless there are exceptional circumstances when the Head of Department may overrule the requirement for notice

### **Appendices**

Appendix A – Annual Leave Policy

**Annual Leave Policy**

1. All staff must take, as a minimum, the statutory number of holiday days a year. This is currently 28 days a year. Bank or Public holidays taken during the year count towards that figure.
2. The maximum number of days that may be carried forward to the next leave year is 5.
3. Untaken leave that is not carried forward will be lost.
4. The Council will maintain a leave banking scheme where staff may bank leave carried forward under (2) each year for up to 5 years. Details are set out in the Leave Banking Scheme, but any member of staff wanting to take advantage of the scheme must request to do so before the first days are carried forward.
5. Untaken leave will not be paid for. (Note: there is an exception for untaken statutory leave for staff whose employment is terminated at the end of sickness absence).
6. All requests for annual leave must be made by giving notice equal to twice the length of the holiday requested e.g. if 2 days holiday is wanted, at least 4 working days notice must be given.
7. Managers may refuse requests for annual leave made as in (6) by giving counter-notice equivalent to the length of the holiday requested e.g. if 2 days holiday is requested, it may be refused by giving at least 2 days notice.
8. Heads of Department may agree to overrule the requirements of (6) above in exceptional circumstances. This may be delegated to individual managers where necessary. Once leave has been agreed, Heads of Department only may refuse that leave, again only in exceptional circumstances.