

Report to the Cabinet

Report reference: C-048-2009/10
Date of meeting: 16 November 2009



Portfolio: Performance Management
Subject: Managing Absence Procedure
Responsible Officer: Paula Maginnis (01992 564536).
Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

That, as requested by the Joint Consultative Committee, the Council adopts the Managing Absence Procedure attached at Appendix 1.

Executive Summary:

The Managing Absence Procedure has been updated in the light of issues raised during the Managing Absence - Myth Busting Sessions and recent case law.

Through the sessions managers were informed of a number of changes to Council policy when managing absences cases, for example contact with staff on long-term absence, recording absence, Occupational Health referrals and challenging Occupational Health responses.

There has also been a significant employment case that has recently been to the Court of Appeal, House of Lords and European Court of Justice regarding workers absent from work on long term absence and the impact on annual leave.

Members are asked to consider these changes.

Reasons for Proposed Decision:

The Procedure provides a consistent approach for managers when dealing with short and long term absences.

Other Options for Action:

The Cabinet could decide not to agree the Policy or substitute it with another approach.

Report:

1. Due to an increase in the absence figures in 2008/2009 the Corporate Executive Forum agreed that a programme of Managing Absence - Myth Busting sessions took place and that it was mandatory for all managers. Over 100 managers attended the sessions.
2. Through the sessions managers were informed of a number of changes to Council policy when managing absences cases, for example contact with staff on long-term absence,

recording absence, Occupational Health referrals and challenging Occupational Health responses. The Managing Absence Procedure has now been updated to reflect these changes which can be found in Sections 4, 6, 8 and 14.

3. In addition to these changes, there has been a significant employment case that has recently been to the Court of Appeal, House of Lords and European Court of Justice regarding workers absent from work on long term absence and the impact on annual leave.

4. Guidance from the Chartered Institute of Personnel and Development (CIPD) on how the employers should apply the ruling states that:

(a) Workers while on sick leave can accrue 20 days paid holiday;

(b) Workers must be allowed to take this holiday on their return to work;

(c) if national rules do not allow paid leave during sick leave it is permissible the worker can take the leave at another time;

(d) it is not lawful that the right to annual leave is lost at the end of a leave year where the worker has been on sick leave;

(e) where the employment relationship is terminated, workers are entitled to take the leave or to any pay in lieu of the holiday which was not taken due to illness; this is the case even where the worker was on sick leave for all or part of the leave year; and

(f) accrued statutory holiday not taken due to sickness can be taken at a later date – even if it is during the next leave year.

5. There are issues which were not resolved by this ruling and remain outstanding. It is likely that the Procedure will require further amendments at a later date. The Procedure has been updated to reflect these changes and can be found in Section 5.

6. There are a number of guidance procedures for managers and employees that will be updated in accordance with the changes highlighted in this report.

7. The Leader and Deputy Leader will be required to familiarise themselves with the Managing Absence Procedure and attend the relevant training in their role as line manager (deputy line manager) for the Chief Executive and/or the Deputy Chief Executive/Chief Officers in their absence.

Resource Implications:

No additional resources are required.

Legal and Governance Implications:

As an emanation of the state the Council must apply the EC ruling otherwise individuals can enforce the provisions through the national courts and tribunals.

Safer, Cleaner and Greener Implications:

N/A.

Consultation Undertaken:

N/A.

Background Papers:

CEF Report of 30 September 2009.

JCC Report of 15 October 2009.

Impact Assessments:

Risk Management

It is acknowledged that the case law has dealt with very specific issues, however, by taking into account these developments when reviewing the Managing Absence Procedure the Council can be seen to take these issues seriously by taking immediate steps to comply with the developments.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?

What equality implications were identified through the Equality Impact Assessment process?

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?