

Shaw Trust Direct Payments Support Services

Information Sheet 10: Staff Leave and Sickness

Sheet Outline:

- Introduction to the Working Time Regulations
- Annual leave
- Maternity, paternity and parental leave
- Other leave and entitlement to time off work
- Managing staff sickness

Outcome:

- To increase awareness of leave and sickness legislation

Introduction to the Working Time Regulations

(Source: ACAS: www.acas.org.uk)

What are the rights to time off under the Working Time Regulations?

The Working Time regulations provide rights to:

- a limit of an average 48 hours a week on the hours a worker can be required to work, though individuals may choose to work longer
- four weeks' paid leave a year
- 11 consecutive hours' rest in any 24-hour period
- a 20 minute rest break if the working day is longer than six hours
- a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

Who do the Working Time Regulations apply to?

The Regulations apply to all workers, including the majority of agency workers and freelancers.

Do young workers have special rights under the Working Time Regulations?

Yes. The rights of young workers - those over the minimum school leaving age but under 18 - differ in the following ways:

- a limit of eight hours working time a day and 40 hours a week
- not to work between 10pm and 6am or between 11pm and 7am (except in certain circumstances)
- 12 hours' rest between each working day
- two days' weekly rest and a 30-minute in-work rest break when working longer than four and a half hours.

Can a worker complain to an employment tribunal if they are denied rights under the Working Time Regulations?

Yes. Workers may complain to an employment tribunal if they are being denied rest periods, breaks or the paid annual leave entitlements. Working time and night work limits are enforced by the Health and Safety Executive and Local Authorities.

Employees may complain to an employment tribunal of unfair dismissal, regardless of their length of service, if they are dismissed for exercising rights under these regulations; and workers who are not employees may complain that they have suffered a detriment if their contracts are terminated for this reason. Both employees and workers who are not employees are also protected from other detrimental action or deliberate inaction by their employer.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/employment-legislation/working-time-regs/index.html>

Annual Leave

(Source: ACAS: www.acas.org.uk)

How much annual leave are workers entitled to?

Most workers - whether part-time or full-time - are legally entitled to four weeks' paid annual leave. Additional annual leave may be agreed as part of a worker's contract.

A week's leave should allow workers to be away from work for a week - i.e. it should be the same amount of time as the working week. If a worker does a five-day week, he or she is entitled to 20 days leave. If he or she does a three-day week, the entitlement is 12 days leave. Employers can set the times that workers take their leave, for example for a Christmas shutdown. If

a worker's employment ends, he or she has a right to be paid for the leave time due and not taken.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/employment-legislation/working-time-regs/index.html>

Is there a right to have bank holidays off?

No. There is no statutory right to have bank holidays off as paid leave. They may be part of the four weeks leave - some employment contracts deal with bank holidays separately. Workers must give their employer notice that they want to take leave.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/bank-public-holidays/index.html>

Maternity, Paternity and Parental Leave

(Source: ACAS: www.acas.org.uk)

Who qualifies for maternity leave?

To qualify for maternity leave, a woman must tell her employer by the end of the 15th week before the expected week of childbirth:

- that she is pregnant;
- the expected week of childbirth by means of a medical certificate if requested;
- the date she intends to start maternity leave. This can normally be any date which is no earlier than the beginning of the 11th week before the expected week of childbirth up to the birth.

An employer must then write to the employee, within 28 days of her notification, setting out her return date. The employee can change this date if she gives her employer 28 days' notice. If an employee wishes to return to work early while on maternity leave she must give her employer eight weeks notice. This applies to women whose babies are due on or after 1 April 2007.

What rights does a woman have while on maternity leave?

During the 26 weeks maternity leave, she is entitled to benefit from all her normal terms and conditions of employment, except for remuneration (monetary wages or salary). At the end of it, she has the right to return to her original job. If a redundancy situation arises, she must be offered a suitable alternative vacancy if one is available. If the employer cannot offer suitable alternative work, she may be entitled to redundancy pay.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html>

What is additional maternity leave?

Employees with 26 weeks' continuous service by the beginning of the 14th week before the expected week of childbirth are entitled to an additional 26 weeks' maternity leave. During this period their contract of employment continues but with limited terms and conditions. This means a woman can be away from her job on maternity leave for around 52 weeks in total.

When an employer writes to the employee - setting out her return date - they will assume that, if she is eligible for additional maternity leave, she will be taking it. If an employee wishes to change the return date she must give 28 days' notice.

The Work and Families Act 2006 removes the length of service requirement for additional maternity leave. The Act also extends the notice period an employee must give an employer before returning to work to eight weeks. The new regulations come into force on 1 October 2006 but apply to employees with babies due on or after 1 April 2007.

For further information see the Department of Trade and Industry website at <http://www.dti.gov.uk/employment/workandfamilies/index.html>

What rights does a woman have at the end of additional maternity leave?

At the end of additional maternity leave a woman is entitled to return to her original job or, if this is not reasonably practicable, to a suitable alternative job. If the employer cannot offer suitable alternative work, she may be entitled to redundancy pay.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html>

What is paternity leave and who qualifies?

Employees who:

- have or expect to have responsibility for the child's upbringing;
 - are the biological father of the child or the mother's husband or partner;
- and

- have worked continuously for their employer for 26 weeks ending with the 15th week before the baby is due or the end of the week in which the child's adopter is notified of being matched with the child can choose to take either one week or two consecutive weeks' paid paternity leave (not odd days).

When must paternity leave be taken?

Paternity leave must be completed:

- within 56 days of the actual date of birth of the child; or
- if the child is born early, within the period from the actual date of birth up to 56 days after the first day of the week in which the birth was expected.

Employees have the right to return to the same job after paternity leave. Most employees are entitled to Statutory Paternity Pay (SPP) from their employers.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page17139.html>

What is parental leave and who qualifies?

Employees who have completed one year's service with their employer are entitled to 13 weeks' unpaid parental leave for each child born or adopted. The leave can start once the child is born or placed for adoption with the employee or as soon as the employee has completed a year's service, whichever is later. It may be taken at any time up to the child's fifth birthday (or until five years after placement in the case of adoption). Parents of disabled children can take 18 weeks up to the child's 18th birthday.

What rights do employees have while on parental leave?

Employees remain employed while on parental leave and some terms of their contract, such as contractual notice and redundancy terms, still apply. At the end of parental leave they have the right to return to the same job as before or, if that is not practicable, a similar job which has the same or better status, terms and conditions as the old job. Where leave is taken for a period of four weeks or less, the employee is entitled to go back to the same job.

Wherever possible, employers and employees should make their own agreement about how parental leave will work in a particular workplace. Such agreements can improve upon the key elements set out above but they may not offer less. Employees can complain to an employment tribunal if their employer prevents or attempts to prevent them from taking parental leave.

They are also protected from dismissal or detrimental treatment for taking or seeking to take it.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page18480.html>

Who is entitled to adoption leave and pay?

Adoption leave and pay are available to:

- individuals who adopt; and
- one member of a couple where a couple adopt jointly (the couple must choose which partner takes adoption leave).

The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may be entitled to paternity leave and pay. Statutory Adoption Pay (SAP) is paid for up to 26 weeks and is the same as the standard rate of Statutory Maternity Pay - £108.85 a week or 90 per cent of average weekly earnings if this is less than £108.85.

To qualify for adoption leave, an employee must:

- be newly matched with a child for adoption by an adoption agency; and
- have worked continuously for their employer for 26 weeks ending with the week in which they are notified of being matched with a child for adoption.

The Work and Families Act 2006 extends the SAP period from 26 to 39 weeks. The new regulations come into force on 1 October 2006 but apply to adoptions where the child is expected to be placed for adoption on or after on or after 1 April 2007.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page16191.html>

Other Leave and Entitlement to Time Off Work

Do pregnant women get time off to attend antenatal classes?

All pregnant employees are entitled to time off with pay to keep appointments for antenatal care made on the advice of a registered medical practitioner, midwife or health visitor. Antenatal care may include relaxation classes and parent-craft classes. Except for the first appointment, the employee must show the employer, if requested, a certificate from a registered medical practitioner, midwife or health visitor, confirming the pregnancy together with

an appointment card or some other document showing that an appointment has been made. For further information visit the DTI website:

<http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html>

Do employees have the right to time off in a family emergency?

Yes. All employees are entitled to a reasonable time off work without pay, to deal with an emergency involving a dependant. For example, if a dependant falls ill or is injured, if care arrangements break down, or to arrange or attend a dependant's funeral.

For further information visit the DTI website:

<http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page19475.html>

Do employees have the right to work flexibly?

Parents of children under the age of six or disabled children under the age of eighteen have the right to apply to their employer to work more flexibly. The request can cover hours of work, times of work and place of work and may include requests for different patterns of work.

The request must be made in writing and the employer has a statutory duty to consider the request seriously and to refuse it only if there are clear business grounds for doing so. Employees making applications for flexible working have the right to be accompanied at the meeting by a fellow employee.

The Work and Families Act also introduces a new right for carers of adults to request to work flexibly. This is effective from **6 April 2007**. The definition of carer is an employee who is or expects to be caring for an adult who:

- is married to, or the partner or civil partner of the employee; or
- is a near relative of the employee; or
- falls into neither category but lives at the same address as the employee.

The “near relative” definition includes parents, parent-in-law, adult child, adopted adult child, siblings (including those who are in-laws), uncles, aunts or grandparents and step-relatives.

The Department of Trade and Industry's website has detailed guidance on the new regulations covering parents and carers at

<http://www.dti.gov.uk/employment/workandfamilies/index.html>

For information about entitlement for other leave and time off go to <http://www.acas.org.uk/index.aspx?articleid=865>

Managing Staff Sickness

(Source: ACAS: www.acas.org.uk)

Short-term sickness

Short-term sickness is by far the most common form of absence (accounting, on average, for around 80%). Short-term sickness usually takes the form of:

- minor one-off absences: for example, toothache, colds, muscular sprains and strains, migraines etc; and
- minor absences that occur more regularly: for example, an employee may be off with minor strains/injuries etc four times in a year or may be off every few weeks with a migraine.

Managing short-term absence

As an employer you should build up the following picture of an employee's short-term sickness:

1. **within an hour of their normal start time** the employee should speak to you or their line manager on the phone. They should explain why they are absent and the nature of the problem. This also gives you the chance to check if:
 - there are any concerns they have about their illness
 - they need to update you on any jobs they are working on
2. if they return **within seven days** they fill in a self-certificate which briefly explains the nature of their absence
3. if they are absent for **seven days or more** you receive a certificate from their doctor giving the reason why they cannot go to work
 - you **keep in touch with the employee by phone** while they are absent
 - you hold a **return-to work interview** with the employee
 - you **communicate regularly** with the employee when they return to check there are no ongoing problems.

What can I do if a pattern of short-term sickness emerges?

Frequent absence may indicate general ill health which requires medical investigation and, if continued, may indicate work stress or lack of capability to do the job. Individuals should be encouraged to seek proper medical attention to establish any underlying health problem. It may also be helpful to discuss whether there are domestic difficulties or problems with the job.

Long-term sickness

Long-term sickness is one of the most difficult problems for management to tackle. Large organisations are usually better placed to cover these problems through more flexible working. In small organisations (or where the absentee fills a key position) it is not always so easy. Do you:

- replace the worker in order to get the job done?
- aid the sick person's recovery by guaranteeing their job security?

Whether you are in a large or small organisation you will want to assess what impact the long-term sickness is having. Ask yourself:

- just how much damage is being caused by this absence? Is there an immediate crisis; or could the organisation afford to continue for some time without a replacement, with some re-organisation?

How do you deal with long-term sickness?

If you are dealing with an employee who is on long-term sick absence you will want to consider the following:

- In the opinion of the worker's general practitioner/medical consultant, or of the organisation's doctor, when will a return to work be possible?
- Would a phased return – working part-time or flexible hours – help the employee to get back to work?
- Will there be a full recovery or will a return to the same work be inadvisable?
- Could the employee return if some assistance were provided? Could some re-organisation or re-design of the job speed up a return to work?
- Is alternative, lighter or less stressful work available, with re-training if necessary
- Is there a requirement under the Disability Discrimination Act 1995 to make a reasonable adjustment?

To manage long-term absence:

- Keep in regular contact.
- Use occupational health and seek medical advice.
- Be clear about arrangements for sick pay.
- Conduct return to work interviews.
- Develop a 'getting back to work' programme.
- Dismiss fairly (after a proper investigation).

When you contact a GP or consultant for a medical opinion on an employee's health, make sure you tell them what the employee's job entails before asking any questions.

Always keep the employee fully aware of his or her position. Knowing there is a job to go back to can help relieve anxiety. In some cases, it may be appropriate to simply keep in touch with the employee and give them the time they need to recover. This is particularly true where there is a possibility that the illness has job-related causes.

Can I dismiss an employee while on long-term sickness?

Only as a last resort once all other options have been considered. Before making a decision, think about all the factors mentioned earlier – such as reasonable adjustment, flexible working, job design, a phased return to work, etc. You may have to satisfy an employment tribunal as to the fairness of your decision.

After long absences, particularly those caused by work-related accidents, there is often a fear of returning to work. An understanding approach, coupled perhaps with part-time working at first, can help build up confidence and a return to normal performance. If the job can no longer be kept open, the employee should be told. You may find it helpful to seek advice from the Disability Service Teams whose addresses can be obtained from Jobcentre Plus offices.

You must, as a minimum, follow the statutory dismissal and disciplinary procedures if you wish to dismiss an employee.

How can I help an employee return to work after a long absence?

Employees are often understandably anxious about returning to work after a long absence. They may have lots of questions to ask you. For example:

- Has the working environment changed? If the sickness was work-related they may be concerned about using the equipment. Have you reviewed your risk assessment?
- Could you make reasonable adjustments? If they are disabled, or have become disabled, you are required to make reasonable adjustments to help them back to work
- What do my colleagues know about my absence? Reassure the employee that all discussions and paperwork about their illness have remained strictly confidential. Ask the employee how they wish to handle the subject of their absence with colleagues or in team meetings etc.

Employees need to be reassured that you have given some thought to their return to work. Talk to the employee and their colleagues and work out a 'getting back to work' programme. This might involve:

- Shorter hours in the first few weeks or flexible hours.
- Catching up on any new developments within the organisation.

- Training on new equipment or new processes/procedures.
- A friendly chat about what's been going on at work – for example, any social events they may have missed or that are coming up.

What can I do about stress and mental health problems?

Stress and mental health problems are common causes of sickness absence – particularly long-term sickness. The Health and Safety Executive (HSE) has developed a set of 'management standards' to help employers tackle stress. They identify the six chief causes of stress as:

- The demands made on employees.
- The level of control employees have over their work.
- Nature of the relationships.
- The support employees receive from managers and colleagues.
- The clarity of an employee's role within the organisation.
- The way that change is managed.

The HSE has also developed a risk assessment to help you identify the kind of stress people are most likely to experience in your business. It can be found at www.hse.gov.uk. The ACAS Advisory Booklet Stress at Work can help you meet the HSE stress standards and can be accessed at:

<http://www.acas.org.uk/index.aspx?articleid=782>

Mental health problems can be very difficult to diagnose. They may be caused by stress, by bullying or by depression brought on by a combination of factors affecting an employee at work and at home.

Try and be understanding. A counsellor can help to explore the deeper emotional problems associated with mental ill health. For further advice on mental health issues contact NHS Direct on 0845 4647 (www.nhsdirect.nhs.uk) or the Mental Health Foundation on 020 7803 1100 (www.mentalhealth.org.uk/).

Speak to your Support Officer for further information and support about any aspect of staff leave or sickness.