



Joint guidance on work-life balance in sixth form colleges

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Joint Guidance on Work-Life Balance in Sixth Form Colleges

This document is a result of discussions in the National Joint Council for Sixth Form Colleges. It aims to set out the ways that Sixth Form Colleges can balance a positive approach to working arrangements with the needs of colleges as providers of education. It recognises that it is in the interests of colleges to adopt policies that allow employees to balance their working lives with their personal needs and responsibilities. Nevertheless, it is recognised that many colleges already have their own arrangements in this respect and that in many areas it is sensible for individual colleges to find their own solutions. The overall message is that flexibility in the area of working arrangements is encouraged wherever it is not detrimental to the needs of the college.

Guidance is provided in the following areas:

- ▶ Parental leave (*page 1*)
- ▶ Maternity support/paternity leave (*page 4*)
- ▶ Adoption leave (*page 6*)
- ▶ Time off for dependants (urgent family leave) (*page 7*)
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Parental Leave

Statutory Entitlements (The Default Scheme)

The Employment Relations Act 1999 provides a number of rights in relation to Parental Leave (details of these rights are provided in the Maternity and Parental Leave Regulations 1999). Often referred to as the 'fallback' or 'default scheme' these are the minimum rights to which employees are eligible without a collective or workforce agreement. These *minimum* rights are:

- 13 weeks leave for all employees with continuous service of one year or more (18 weeks for parents of disabled children).
- The leave to be unpaid.
- To be taken in units of one week (one day for parents of disabled children).
- No more than 4 weeks to be taken in any one year.
- Notice of at least 21 days required, giving the dates when the leave is to start and finish. It need not necessarily be in writing.

- For parents of children born or adopted on or after 15th December 1999, the employee's right to take the leave lasts until the child's fifth birthday or until five years have elapsed following placement in the case of adoption.
- For parents of children born or adopted between 15th December 1994 and 14th December 1999, the employee's right to take the leave lasts until 31st March 2005 or until the child's 18th birthday if this is sooner, in the case of adoption.
- Parents of disabled children are able to use their leave over a longer period, up until the child's 18th birthday.
- The employer can postpone the leave for no longer than six months after the beginning of the period that the employee originally wanted to start his or her parental leave, if it considers that the employee's absence would unduly disrupt the business.
- No postponement can be made where the request is to take parental leave immediately after the birth or adoption of a child.
- At the end of parental leave an employee is guaranteed the right to return to the same job as before or, if that is not practicable, to a similar job which has the same or better status, terms and conditions as the old job; where the leave taken is for a period of four weeks or less¹ the employee will be entitled to go back to the same job.

Clearly the default scheme is the basic minimum set of rights to which employees are entitled. Good practice suggests that Sixth Form Colleges will provide rights over and above the minimum where this is possible without jeopardising the effective operation of the college concerned. Each college will wish to decide on the particular elements to include in its own parental leave scheme. Set out below are suggestions in this respect.

Parental leave during term time

Parental leave is for parents, adoptive parents and guardians to care for their children. Parental leave policies recognise the complexity of reconciling particular work patterns with responsibilities for young children. They provide a framework to agree time away from work to enable employees to participate more fully in their children's lives and support their development.

Although there may be periods when it is essential that teachers and support staff are present in college, to a certain extent this will depend upon the individual circumstances of each college. Therefore, where the needs of the employee and the college can be matched colleges are advised to make every

¹ An employee will only be able to take more than four weeks in any one year if the college has agreed to it i.e. has conferred a right over and above that provided by the 'default scheme'.

effort to comply with requests for parental leave during term time and not to postpone the leave unless to grant it would unduly disrupt the business². Colleges should be aware that they will need to have objective justification for any postponement.

Paid parental leave

As it is felt unlikely that many parents will take parental leave if it is unpaid, colleges may wish to consider whether some or all of it should be paid.

Eligibility for parental leave

Both mothers and fathers, whether they are the natural or adoptive parents, can qualify for parental leave, provided they are employees. They must be named on the child's birth certificate or they must have, or expect to have, parental responsibility under the law³ for the child. The parents of a child do not have to be living with the child in order to qualify for parental leave but the leave must be to care for the child.

In some cases parental responsibility will have been given to someone other than a natural or adoptive parent, such as a guardian. If an individual has acquired parental responsibility for the child, he or she can qualify for parental leave.

The NJC recognises, however, that there may well be circumstances where an employee has an unofficial parental responsibility for a child. Colleges are advised to be flexible in considering whether it would be appropriate to confer the right to parental leave to such employees. This could include, for example, long-term foster parents, step-parents or grandparents.

Patterns of parental leave

The default scheme requires parental leave to be taken in units of one week and no more than 4 weeks to be taken in any one year. Colleges should consider whether a more flexible system could better meet the needs of both parents and colleges. For example, in some circumstances, it may be easier to accommodate the odd day or two or shorter working days. Or, cover might be more easily arranged for periods longer than one week.

² Note, there is no provision to postpone where the employee has given notice to take parental leave immediately after the time the child is born or is placed with the family for adoption.

³ 'parental responsibility' has the meaning given by section 3 of the Children Act 1989.

Notice Requirements

The statutory notice period for taking parental leave is 21 days and the employee must give the dates when the leave is to start and finish. The notice does not have to be in writing.

Colleges may wish to consider allowing the partners of pregnant women to take parental leave without the usual notice requirements immediately before the birth if desired. In addition, colleges may wish to consider allowing such partners to take up to one week's parental leave immediately before the birth if desired. Clearly this right would be qualified with the proviso that it is dependent upon the ability to match the needs of the employee with those of the college.

Maternity Support/Paternity Leave

Statutory Entitlements

Paternity Leave (from April 2003)

- 2 weeks paid paternity leave within 8 weeks of the child's birth.
- Payment at the same rate as SMP (from April 2003 £100 per week (or 90% of average weekly earnings if this is less)).
- Fathers to notify their employer of their planned date of leave in the 15th week before the week the baby is due.
- Fathers to complete a simple self-certificate to confirm their eligibility.
- Fathers who choose can take leave from the date of birth of the child, whether this is early or late.
- When a couple adopts, they can choose who takes adoption leave and who paternity leave.
- Fathers must have 26 weeks qualifying service with their employer.

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In addition:

- The Employment Rights Act 1999 provides the right to reasonable time off to provide assistance on an occasion when a dependant gives birth (see 'Time off for dependants' above).
- The Maternity and Parental Leave Regulations 1999 allow fathers with one year's continuous service to take parental leave at the time of the birth with 21 days notice of the expected week of childbirth and the length of the leave requested (see Parental Leave above)

Contractual Entitlements

From April 2003, clauses in the Conditions of Service handbooks for both Support Staff and Teaching Staff will enhance the rights available under statute, in the following way:

- The contractual scheme will entitle staff to the first week of their paternity leave at full-pay rather than at the statutory level of pay, which is the equivalent of SMP (from April 2003, £100 per week).

Leave for the purposes of supporting a woman around the time of the birth and to help care for a baby in the early days of its life is most often taken by the father and is commonly known as paternity leave. The statutory scheme (above), including the contractual scheme (above), are paternity leave schemes.

Leave may also be given to a nominated carer: the person nominated by the mother to assist in the care of the child and to provide support to the mother at the time of the birth. This could be a partner (including same sex partner) of a pregnant woman, or another relative or friend. This is commonly known as maternity support leave. Colleges may wish to consider developing a scheme of maternity support leave if they do not have one already.

Colleges should consider the interaction between the entitlements to maternity support leave, parental leave and dependants leave.

The contractual entitlement above will supersede any less favourable local agreements that colleges currently have in place in relation to paternity leave.

Adoption Leave

Statutory Entitlements

From April 2003 adoption leave and pay will be available to parents for the first time. The key features of the scheme will be:

- Adoption leave and pay for employees in relation to a child newly placed for adoption where the adopter is notified by an approved adoption agency of being matched with a child on or after 6th April 2003.
- If the adopter is matched with a child before 6th April 2003, and the child is placed on or after 6th April 2003, the parent will have the right to take adoption leave and pay.
- The right to leave for the same length of time as maternity leave. As of April 2003 this will be 26 weeks paid adoption leave and 26 weeks unpaid adoption leave (one year in total).
- Paid at the same flat rate of pay as maternity leave (from April 2003 this will be £100 per week (or 90% of average weekly earnings if this is less)).
- Adoptive parents to notify their employer of the planned date of leave when matched with a child.
- Available to only one parent. The other parent should be eligible for paternity leave.
- Available to parents adopting children from within the UK or overseas.
- 26 weeks qualifying service with the employer needed.

The above are the statutory minimum rights that colleges must give their employees. Colleges may wish, however, to introduce their own adoption leave schemes. These could confer similar rights to those available under the occupational maternity schemes.

Other issues that colleges may wish to consider include the following:

- Prospective adoptive parents may need time away from work for meetings with social services, the adoption agencies and the child before adoption takes place.

- Once adoption has taken place, the parents need time to settle the child. Ideally they should have the option of both leave and/or different or reduced working hours.
- Prospective adoptive parents may be given very short notice of when the child will be placed, and procedures need to take this into account.

Time off for dependants (urgent family leave)

Statutory Entitlements

The Employment Relations Act 1999 has inserted provisions into the Employment Rights Act 1996 regarding time off for dependants. The main elements of the statutory scheme are:

- The right to reasonable time off work to deal with the following situations:
 - a) To provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,
 - b) To make arrangements for the provision of care for a dependant who is ill or injured,
 - c) In consequence of the death of a dependant,
 - d) Because of the unexpected disruption or termination of arrangements for the care of a dependent, or
 - e) To deal with an incident, which involves a child of the employee, and which occurs unexpectedly in a period during which an educational establishment that the child attends is responsible for him.
- No minimum service required to qualify for the leave.
- The leave to be unpaid.
- A dependent is defined as the employee's:
 - spouse,
 - child,
 - parent, or
 - person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder.

continued.....

- For the purposes of a) and b) above the definition of a dependent *also* includes, any person who reasonably relies on the employee:
 - for assistance on an occasion when the person falls ill or is injured or assaulted, or
 - to make arrangements for the provision of care in the event of illness or injury.
- For the purposes of d) above, the definition of a dependent *also* includes any person who reasonably relies on the employee to make arrangements for the provision of care.

The above are the minimum statutory rights to which all employees are entitled. In addition, the Teachers and the Support Staff Conditions of Service Handbooks include, at paragraphs 17 and 16 respectively, the following provision:

'Additional leave, with or without pay, may be granted in special circumstances at the discretion of the college'.

Clearly many individual colleges will have their own policies and procedures in this area. Colleges will need to look at the interaction of these with the statutory requirements and are encouraged also to be flexible with regard to enhancing the statutory minimum. A reasonable enhancement of legal entitlements can contribute to a workplace culture of caring for employees. Colleges may wish to consider, for example:

- Extending, or being more specific, about the definition of dependant to ensure that all similar close relationships are covered, including lesbian and gay relationships.
- Extending the right to wider categories of absence. For example, college policies may extend the statutory rights to cover situations which might not strictly fall under the statutory definition of emergency, and include the right to additional time, paid or unpaid, away from work than that strictly required to comply with the law.
- Providing paid leave to employees covering some element of the leave, should there be no current arrangement or procedure already in place.
- Exercising a degree of discretion on the enhancement of legal rights. This is helpful in tailoring rights to leave to the circumstances of the case (for example, the need to arrange/travel to funerals abroad). However, colleges will need to consider how such discretion can be exercised fully.

Time off for fertility treatment

Statutory Entitlements

There is no specific legal right to have time off for fertility treatment.

However.....

About one in six couples need medical help to have a child. This may involve taking time off for appointments or treatment. In a few instances, many visits may be necessary over a lengthy period of time. Fertility problems can be very stressful. Treatment may include counselling sessions.

The need for fertility treatment only affects a small minority of employees at any one time, but for them it is a major issue. Unlike most other medical treatments, employees with fertility problems may have difficulty getting the necessary time off. Their partners may have even greater difficulties getting away from work to attend appointments together.

Colleges may wish to formulate a policy for time off for fertility treatment. This could include an element of paid as well as unpaid leave.

Time off for religious observances

Statutory Entitlements

There is no *specific* legal right to time off for religious observances. Nevertheless:

- Article 9 of the Human Rights Act covers freedom of thought, conscience and religion, and may cover the right to reasonable time away from work for religious observance.
- The Equal Treatment in Employment Directive will prohibit direct and indirect discrimination on grounds of religion when it is implemented in December 2003. Indirect discrimination would arise where employer policies on leave of absence particularly disadvantage some religious groups in comparison to others. Discrimination on grounds of religion may also amount to race discrimination, in which case it would be prohibited under the Race Relations Act 1976.

Time away from work may be needed by employees whose religious duties are not covered by weekends and the current statutory bank holidays. This can include days off for festivals, time away from work during the day for prayer, and adjusting working time to accommodate periods of fasting (e.g. reducing the lunch hour and enabling an earlier departure from work).

Enabling employees to respect their religious observances is an important component of any equal opportunities policy, and contributes to attracting a diverse workforce.

In light of the above colleges may wish to establish policies for allowing staff time off for religious observances. Issues that they may wish to take into account include:

- Time off for religious observance can be planned in advance. Policies need to establish reasonable notification periods.
- Some religions require their adherents to make pilgrimages, which may in turn lead to requests for extended leave under this heading.
- Some religious events occur on different dates each year.
- Reference to the policies in recruitment literature may assist colleges in improving recruitment among ethnic minority staff.
- Where the need for breaks during the working period is for prayer, the college might consider providing access to quiet facilities where this can take place.
- It might be possible for time off for prayer to be made up through, for example, shorter lunch breaks, or earlier or later working times, bearing in mind the requirements for breaks in the Working Time Regulations⁴.
- It should be remembered that depth of religious belief varies between individuals. Simply because some employees of a particular faith may not wish to celebrate certain festivals this should not be used as the reason for denying time off to celebrate these festivals for other employees of a similar faith.

Working Times and Patterns

⁴ Workers have a right to work no longer than 48 hours per week and to 11 hours rest per day, a day off each week, an in-work rest break if the working day is longer than six hours, and four weeks paid leave per year.

Statutory Entitlements

There are no specific entitlements to flexible working patterns, however colleges will wish to bear in mind the need to treat staff equally. Specifically they will wish to ensure that any arrangements are in accordance with:

The Sex Discrimination Act 1975

- Unreasonable refusal to consider requests for part-time work for women returning from maternity leave may contravene the SDA.

The Disability Discrimination Act 1995

- Provides the right for disabled people to work reduced hours or to work a different work pattern if they require this to carry out the job, and it is a reasonable adjustment to the job.

The Working Time Regulations 1999

- Relevant to flexitime - need to be aware of the WTR regarding breaks and the number of hours worked over a particular period.
- Relevant to average/annualised hours – must take account of the relevant parts of the WTR regarding breaks and the number of hours worked in any particular period.
- Relevant to swapping hours⁵ - must take account of the relevant parts of the WTR regarding breaks and the number of hours worked in any particular period.

The Part-Time Workers Regulations 2000

- Part-time employees must not be treated less favourably than a comparable full-time employee under the Part-Time Workers Regulations 2000.

The Education sector has a high percentage of annualised hours, term-time working and part-time working. This allows colleges to meet the unique demands of the sector and can be to the benefit of staff, particularly those with child care responsibilities. However, the NJC for Sixth Form Colleges recognises the importance of allowing as many staff as possible to get a better balance between paid work and other life priorities. It is therefore recommended that, when reviewing working time and patterns, colleges should explore all types of 'non-standard' working arrangements including changes to working hours, changing the time when work is carried out, job-share, flexitime and flexible working patterns.

Colleges will note that paragraphs 17 and 16 respectively of the Teachers and the Support Staff Conditions of Service Handbooks, i.e.

⁵ This is where employees are able to exchange hours with colleagues doing the same type of work at different times of the day.

'Additional leave, with or without pay, may be granted in special circumstances at the discretion of the college'

can be used to provide for a greater work-life balance for staff who wish to take leave other than for family/dependency related reasons e.g. sabbaticals, the 'holiday of a lifetime', study, etc.

In addition to the statutory requirement not to unreasonably refuse an employee's request to return part time after maternity leave, colleges should give consideration to applications for flexible working for such staff.

The effect of changing hours on the pension and leave entitlement of the employee should be made clear to the employee.

It may not be possible to accommodate all requests to change working times and patterns. However, colleges are advised to give sympathetic consideration to such requests, notwithstanding that any changes would have to fit in with the service needs of the college. Colleges may wish to accommodate temporary changes to working times and patterns either to trial the effectiveness of changes or to meet specific circumstances.