

# **Health Education & Improvement Wales**

## **Special Leave Policy**

**Approved by:** Welsh Partnership Forum

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## 1. Policy Statement

The Core Principles of NHS Wales are:

- **We put patients and users of our services first:** We work with the public and patients/service users through co-production, doing only what is needed, no more, no less and trying to avoid harm. We are honest, open, empathetic and compassionate. We ensure quality and safety above all else by providing the best care at all times.
- **We seek to improve our care:** We care for those with the greatest health need first, making the most effective use of all skills and resources and constantly seeking to fit the care and services we provide to users' needs. We integrate improvement into everyday working, by being open to change in all that we do, which also reduces harm and waste.
- **We focus on wellbeing and prevention:** We strive to improve health and remove inequities by working together with the people of Wales so as to ensure their wellbeing now and in future years and generations.
- **We reflect on our experiences and learn:** We invest in our learning and development. We make decisions that benefit patients and users of our services by appropriate use of the tools, systems and environments which enable us to work competently, safely and effectively. We actively innovate, adapt and reduce inappropriate variation whilst being mindful of the appropriate evidence base to guide us.
- **We work in partnership and as a team:** We work with individuals including patients, colleagues, and other organisations; taking pride in all that we do, valuing and respecting each other, being honest and open and listening to the contribution of others. We aim to resolve disagreements effectively and promptly and we have a zero tolerance of bullying or victimization of any patient, service user or member of staff.
- **We value all who work for the NHS:** We support all our colleagues in doing the jobs they have agreed to do. We will regularly ask about what they need to do their work better and seek to provide the facilities they need to excel in the care they give. We will listen to our colleagues and act on their feedback and concerns.

They have been developed to help and support staff working in NHS Wales.

NHS Wales is about people, working with people, to care for people. These Core Principles describe how we can work together to make sure that what we do and how we do it is underpinned by a strong common sense of purpose which we all share and understand.

The NHS is continually under pressure to deliver more services, with better outcomes and maintain and increase quality against the backdrop of significant financial challenge, high levels of public expectation and with a population which is getting older and with increased levels of chronic conditions.

These principles have been developed to help address some of the pressures felt by staff in responding to these demands. They will re-balance the way we work together so we are less reliant on process and are supported to do the right thing by being guided by these principles when applying policies and procedures to the workforce.

As people working within the health service, we will all use them to support us to carry out our work with continued dedicated commitment to those using our services, during times of constant change.

The Principles are part of an ongoing commitment to strengthen the national and local values and behaviour frameworks already established across Health Boards and Trusts.

They have been developed in partnership with representatives from employers and staff side.

The Principles will be used to create a simpler and consistent approach when it comes to managing workplace employment issues.

## **2. Introduction**

This policy sets out the approach of HEIW to special leave and the procedure for dealing with applications for leave.

This policy is intended to ensure that HEIW complies with section 57A of the Employment Rights Act 1996, as amended by the Employment Relations Act 1999, which came into effect on 15<sup>th</sup> December 1999. These regulations provide a right for employees to request a reasonable amount of time off work to deal with unexpected or sudden emergencies and to make any necessary long-term arrangements; together with section 50 of the Employment Rights Act 1996, these regulations ensure that employees are allowed reasonable time off work to perform certain public duties.

In line with the Equality Act 2010, HEIW is committed to implementing the policy in a way which promotes the fair and equal treatment of all employees and eliminates discrimination on the grounds of race, disability, gender, gender reassignment, age, sexual orientation, religion and belief, language and human rights. It is the responsibility of managers and employees to ensure that they implement this policy/procedure in a manner that recognises and respects the diversity of the workforce and the different needs of all employees.

HEIW recognises the right of all employees subject to this policy to be treated fairly and with dignity and respect.

HEIW also recognises it has a legal duty to make any reasonable adjustments to the workplace, or to the way work is done, to ensure that a disabled employee is not substantially disadvantaged.

HEIW attaches considerable importance to assisting employees in balancing the responsibilities of their work with their domestic and family responsibilities. It is recognised that in the majority of instances these commitments can be planned and are therefore outside of the remit of this policy.

HEIW supports its employees, at times of urgent and unforeseen need, by consideration of the provision of additional leave according to circumstance.

The situations that this policy is intended to deal with are:

- Emergency carers and dependant leave
- Unexpected crisis leave
- Bereavement leave

**Leave granted under this policy is not intended for long term or foreseeable domestic and family situations, which may be provided for in other ways, e.g. annual leave, unpaid leave, reduced working hours etc.**

The policy will also consider the awarding of reasonable time off to staff to enable them to undertake civil and public duties requiring them to be away from the workplace in the following circumstances:

- Time off for public duties
- Jury service
- Reserve and cadet forces
- Attending job interviews

(This list is not exhaustive)

Special Leave is not an entitlement; however, requests for special leave will be considered sympathetically in the light of individual circumstances and may be granted at the discretion of HEIW. It is important for employees to consider the needs of HEIW and to make every effort to make alternative arrangements wherever possible.

### **3. Scope**

This policy applies equally to all employees and aims to give clear guidelines to employees and managers when dealing with requests for paid and/or unpaid special leave.

There is no minimum service requirement to make a request for special leave.

This policy recognises that there are 2 types of special leave; unforeseen/unplanned need for personal reasons; and time off to perform public duties. Section 7 of the policy looks at the differential between the two distinct types of leave in detail.

## **4. Principles**

Managers should interpret the policy in a flexible and caring way. Managers will wherever possible and appropriate seek to grant requests for special leave, within the scope of the policy, bearing in mind workplace demands.

Treating all employees in a trusting and respectful manner, at such times, is good management practice, which can bring positive long-term benefits to the employment relationship, between the manager and the employee.

Employees will need to openly discuss with their manager the reasons and circumstances that have led to their special leave request. There should be an acknowledgment by the employee that special leave may only be granted by the agreement of their manager, in consultation with their Workforce & OD department, if appropriate.

This policy includes the provision for staff to be granted a period of paid or unpaid leave, dependent upon the circumstances. It is also important to stress that it is not necessary for employees to use up their annual leave entitlement before they can apply for special leave.

All special leave must be applied for and granted consistently throughout HEIW.

## **5. Responsibilities under the policy**

### **5.1 Line Managers**

Line managers are responsible for

- ensuring that employees are aware of the policy;
- all requests for paid and unpaid special leave are made on the relevant application form (appendix A);
- decisions about special leave requests are made on the basis of the employee's individual circumstances and are consistent with the policy;
- monitor the usage of special leave and where refused identify what alternatives have been offered;
- retaining relevant documentation within the employee's personal file;
- ensuring notification of any period of paid or unpaid special leave to payroll, including completion of the Electronic Staff Record (ESR) on Self Service where available;
- maintaining regular contact where appropriate with individual staff members;
- offering/signposting counselling as appropriate.

## **5.2 Employees**

Employees are responsible for:

- ensuring they are familiar with this policy;
- ensuring they have relevant and appropriate arrangements, including contingency arrangements to allow them to fulfil their contractual obligations;
- ensuring that they tell their employer as soon as possible the reason for their absence and how long they expect to be absent;
- ensuring all requests for paid and unpaid special leave are made using the relevant special leave application form (appendix A), having been discussed with their line manager.

## **6. Types of Leave**

### **6.1 Definition of paid leave**

The pay that an individual would normally have expected to receive for the shift(s) had they been in work.

### **6.2 Unpaid leave**

Leave taken when an employee's time off from work is not covered by existing benefits such as sick leave, annual leave and is not remunerated.

### **6.3 Time off in lieu**

Time that an employee who has worked additional hours (unpaid not overtime) over and above their contracted hours may take off from work with the agreement of their employer.

### **6.4 Annual leave**

Annual leave is paid time off from work granted by employers to employees to be used for whatever reason the employee wishes (see NHS Terms and Conditions of Service – Section 13)

### **6.5 Flexitime leave**

Leave to be taken from time built up as part of a formal or informal flexitime arrangement.

### **6.6 Parental leave**

Leave for eligible employees to look after their child's welfare, e.g. look at new schools (NHS Terms and Conditions of Service Section 35)

## **7. Different types of Special Leave**

### **7.1 Unplanned/Times of unforeseen need**

#### **7.1.1 Emergency carers and dependant leave**

A dependent is someone who is married to, is a civil partner, or a partner (whether opposite or same sex) “a near relative” or someone who lives at the same address as the employee. A relative for this purpose includes: children, parents, parents-in-law, adult children, adopted adult children, siblings (including those who are in-laws), uncles, aunts, grandparents and step relatives or is someone who relies on the employee in a particular emergency (NHS Terms and Conditions of Service Section 35.4).

This enables employees to take action, which is necessary to deal with an unexpected or sudden problem concerning a dependant and to make necessary long-term arrangements e.g.:

- if a dependant falls ill, or has been injured, or assaulted;
- to make longer term care arrangements for a dependant who is ill or injured;
- to deal with an unexpected disruption or breakdown of care arrangements for a dependant;
- to deal with an unexpected incident involving a child during school hours.

It should be noted that this does not include any situations, which are pre-planned or where the employee has prior knowledge of the arrangements. In these instances, special leave will not apply, and the expectations will be for the employee to make alternative arrangements such as requesting annual leave.

Usually no more than 3 days may be granted per episode, or no more than 6 days paid leave pro rata in any rolling 12-month period, as other types of leave may be taken to extend the period of absence. As an alternative or in addition to the above, “home working” may be an option in some circumstances.

#### **7.1.2 Unexpected crisis leave**

There may be times when employees may need to deal with situations not mentioned in the policy but are nevertheless considered important enough to affect the ability of the employee to attend work and which may be resolved by limited time off. An example of such a situation may be the need to deal with urgent unexpected house repairs, or following a burglary or flood. Usually no more than 1 day will be granted to deal with the initial crisis. This type of leave is not meant for example to await delivery of a household item, or awaiting a pre-arranged engineer to call as these would not be regarded as emergencies.



### **7.1.3 Bereavement**

An employee will be allowed to take a reasonable amount of time off, for bereavement, in the following circumstances:

- Death of an immediate family member or partner (apart from a child for which an employee has had primary caring responsibility). Normally from the day of death up to and including the day of the funeral. (In some circumstances this may be a significant period of time and in these circumstances discussions will need to be held between the employee and manager in a sensitive manner about the amount of leave required).
- Death of a child for which an employee has had primary caring responsibility. Section 23 of the NHS Terms and Conditions of Service Handbook provides for two weeks leave. In line with the bullet point above, a significant period of time off in excess of two weeks may be required and appropriate conversations will need to be held on an ongoing basis between the employee and manager in a sensitive manner about the amount of ongoing special leave required and flexibility and support for the employee on their return to work. Section 23 also provides further detail regarding the wider provisions of support for employees in such difficult circumstances.
- Death of extended family member. Normally the day of the funeral but, dependent upon the circumstances of each individual case.
- Death of close friends; normally unpaid leave or alternatively annual leave or flexi-leave should be taken wherever possible.

### **7.1.4 Medical Appointment**

Reasonable time off for medical and dental appointments is covered in the All Wales Sickness Absence Policy.

## **7.2 Planned Time Off**

### **7.2.1 Time off for public duties**

Individuals have the right to reasonable paid time off work to carry out certain public duties and services. These rights will vary depending on the type of work, and what the duty or service is. When contemplating undertaking such roles, staff should discuss this with their line manager and together they should consider the likely impact this will have on their work attendance and the needs of the service.

Individuals are allowed reasonable time off work for public duties (up to 18 days pro rata) if they are one of the following:

- a magistrate, sometimes known as a justice of the peace

- an elected local councillor
- a member of a police authority
- a member of any statutory tribunal (e.g. an Employment Tribunal, Fitness to practice hearings)
- a member of the managing or governing body of an educational establishment
- a member of the General Teaching Council for Wales
- a member of the Natural Resources Wales
- a member of the prison independent monitoring boards

Individuals requesting time off for public duties need to discuss these arrangements with their line manager in a timely manner, confirming the nature of the duties and the amount of time to be taken.

Without imposing any obligation on an individual who has been allowed paid time off for public duties, such individual is encouraged to refrain from then claiming or accepting any fee or allowance for undertaking that public duty. For the avoidance of doubt, in this context, 'fee or allowance' is not intended to cover any subsistence payment or re-imbursement of expenses incurred in the performance of the public duties.

### **7.2.2 Job Interviews**

Requests for leave to attend job interviews within the NHS or Welsh Government's Health and Social Care Department will not be unreasonably refused. However, HEIW may insist that annual leave is taken to attend interviews outside of the NHS rather than special leave granted.

### **7.2.3 Jury Service/Court Witnesses**

Individuals will continue to be paid by HEIW for any period of jury service or court attendance as a witness that they are required to undertake. The individual should discuss with their line manager whether or not they will continue to be paid as normal during the period of jury service, and consequently, whether they will need to make a loss of earnings claim to the Court.

Individuals should provide documentary evidence of the request for jury service/court attendance as a witness and discuss with their line manager in a timely manner.

Employees must be aware that if the court advises that they are not required for court service on any given day or if the court finishes early the employee must contact work and agree working arrangements for the period.

Alternative arrangements to cover this e.g. home working / annual leave may be agreed through discussion with their line manager.

#### **7.2.4 Reserve and Cadet Forces**

Staff must discuss any proposal to join the Territorial Army (TA) or Reserve Forces with their manager in order to establish the likely time commitment required and seek their agreement before doing so.

Leave for annual camp and arrangements for “call up” are covered in the All Reserve Forces – Training and Mobilisation Policy (2016).

#### **7.2.5 Fertility Treatments**

It is recognised that infertility can cause considerable distress and HEIW is supportive of employees who may decide to undertake fertility treatment.

HEIW will provide limited paid leave for this purpose, where the request is supported by documentary evidence, from the employee’s GP or consultant/specialist.

As fertility treatment can be a lengthy process, managers should discuss with the employee concerned, the likely duration of their treatment, together with the number of occasions and where possible dates, when they are likely to need time off work, to attend hospital for their fertility treatment appointments.

It should be noted that following implantation, in law the employee will be considered to be pregnant and as such should be treated as pregnant and the normal pregnancy provisions applied.

HEIW will provide an employee who is to receive fertility treatment, with normally up to three days paid leave and a period of agreed unpaid special leave, in any rolling 12-month period. Each case should be treated on its own merits and alternative arrangements may also be considered, e.g. annual leave.

Where an employee experiences side effects or ill health as a result of their fertility treatment, which renders them unfit for work, such absences must be reported, certified and recorded in accordance with the sickness absence policy.

#### **7.2.6 Wales for Africa**

Requests for leave to attend initiatives as part of the “Wales for Africa” programme will be given fair consideration where not covered in local policies.

**For more information, visit**  
**[wales.gov.uk/topics/sustainabledevelopment/walesforafrica](https://wales.gov.uk/topics/sustainabledevelopment/walesforafrica)**

**8. Appeals**

An individual who considers HEIW has failed to comply with the provisions described previously in this policy should refer to the appeal process within HEIW's Grievance Policy and Procedure.

**9. Training and awareness**

All staff will be made aware of this policy upon commencement with HEIW. Copies can also be viewed on HEIW's Intranet or obtained via the Workforce and OD department and/or line manager.

**10. Equality**

HEIW recognises and values the diversity of its workforce. Our aim is to provide a safe environment where all employees are treated fairly and equally and with dignity and respect. HEIW recognises that the promotion of equality and human rights is central to its work both as a provider of healthcare and as an employer. This policy has been impact assessed to ensure that it promotes equality and human rights.

**11. Data Protection Act 1998**

All documents generated under this policy that relate to identifiable individuals are to be treated as confidential documents, in accordance with HEIW's Data Protection Policy.

**12. Freedom of Information Act 2000**

All NHS Organisations' records and documents, apart from certain limited exemptions, can be subject to disclosure under the Freedom of Information Act 2000. Records and documents exempt from disclosure would, under most circumstances, include those relating to identifiable individuals arising in a personnel or staff development context. Details of the application of the Freedom of Information Act within HEIW may be found in HEIW's publications scheme.

**13. Records management**

All documents generated under this policy are official records of HEIW and will be managed and stored and utilised in accordance with HEIW's Records Management Policy.

**14. Monitoring**

An accurate record of all special leave requests should be maintained on the Electronic Staff Record (ESR), to enable the organisation to consider whether there any issues that

may be contributing to unintended discrimination. This information must be capable of being disaggregated by each of the protected characteristics and routinely collected, analysed and reported on to ensure that the process is fair and equitable for all individuals and groups, and to demonstrate that HEIW is meeting its employment equality monitoring duties.

## 15. Review

This policy will be reviewed in two years time. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

Date:	Version:	Amendment:
25/06/2019	24	<p>In line with paragraph 6.2 of the Framework Agreement for the Reform of Agenda for Change, partnership discussions have taken place and an additional section 23 of the NHS Terms and Conditions of Service developed which will apply in England and Wales. To this end, an amendment has been agreed to the All Wales Special Leave policy as follows:-</p> <p><u>Paragraph 7.1.3 – Bereavement – to include an additional bullet point 2:-</u></p> <p>Death of a child for which an employee has had primary caring responsibility. Section 23 of the NHS Terms and Conditions of Service Handbook provides for two weeks leave. In line with the bullet point above, a significant period of time off in excess of two weeks may be required and appropriate conversations will need to be held on an ongoing basis between the employee and manager in a sensitive manner about the amount of ongoing special leave required and flexibility and support for the employee on their return to work. Section 23 also provides further detail regarding the wider provisions of support for employees in such difficult circumstances.</p> <p>This has been agreed with Trade Unions and ratified at the Welsh Partnership Forum Business Committee on 13 June.</p> <p><b>Andrew Davies, Policy and Development Manager, NHS Confederation</b></p>

## **Appendix A – Application for special leave**

***Please note that if your organisation is using ESR self-service then special leave should be recorded through this mechanism***

<b>Health Education &amp; Improvement Wales</b>	
<b>Application for special leave</b>	
<b>Personal Details</b>	
Full name:	
Employee number:	
Position:	
Organisation (Department):	
Work base:	
Contact telephone number:	
<b>Circumstances of leave</b>	
Emergency carers & dependant leave – Section 7.1.1 of policy (please give details)	
Unexpected crisis leave – Section 7.1.2 of policy (please give details)	
Bereavement – Section 7.1.3 of policy (please give details)	
Time off for public duties – Section 7.2.1 of policy (please give details)	
Interviews – Section 7.2.2 of policy (please give details)	
Jury service/Attendance at court as a witness – Section 7.2.3 of policy (please give details)	
Fertility Treatments – Section 7.2.5 of policy (please give details)	

Wales for Africa – Section 7.2.6 of policy (please give details)	
Other reason (please specify)	
<b>Number of days requested</b>	
Total number of days requested:	
From (date):	
To (date):	
<b>Signed:</b>	<b>Date:</b>
<b><u>To be completed by Line Manager</u></b>	
Special leave granted (this episode):	Yes / No
Is the special leave paid or unpaid?:	Paid / Unpaid
Number of days granted:	
Number of days granted (in last 12-month period)	
From (date):	
To (date):	
If not granted, please give reason:	
<b>Signed:</b>	<b>Date:</b>
<b>Name:</b>	
<b>Position:</b>	

**Copy to be placed on employee's personal file. This form can be completed retrospectively as long as permission for the special leave has been granted verbally.**

### Legislation

The right to request Special Leave is covered by a raft of legislation including:

- Trade Union and Labour Relations (Consolidation) Act 1992
- Criminal Justice and Public Order Act 1994
- Employment Rights Act 1996
- Human Rights Act 1998
- Public Interest Disclosure Act 1998
- Public Interest Disclosure Act 2013
- Employment Relations Act 1999
- The Gender Recognition Act 2004
- Crime and Disorder Act 1998
- Employment Act (Dispute Resolution) Regulations 2004
- The Equality Act 2010

The Equality Act 2010 provides a cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all; to update, simplify and strengthen the previous legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.