Disability Leave Procedure

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| Version Control | Changes Made | Author |
| Version 1 – April 2023 |  | HR/OD |

Introduction

Westmorland and Furness Council is committed to equality of opportunity, both in the provision of services and in our role as a major employer. We believe that everyone has the right to be treated with dignity and respect. We are committed to, and will work towards, the elimination of unfair and unlawful discrimination against disabled people to ensure equal treatment in all our procedures, practices and access to council services.

This procedure enhances the support and assistance available to disabled employees. This document sets out what disability leave is, when it is available and the procedure for applying for it. Any employee who considers that the following procedure has been unfairly or incorrectly applied may address the matter under the council/school’s grievance procedure. Abuse of the disability leave procedure will be dealt with in accordance with the council/school’s disciplinary procedure. The impact and progress of the disability leave procedure will be reviewed in order to assess its effectiveness from both a personal and organisational perspective.

[Scope](http://www.intouch.ccc/elibrary/Content/Intranet/536/671/5053/6001/41410105256.doc)

This scheme applies to all permanent and fixed term council/school employees covered by the Green and Burgundy book, casual workers and volunteers, including people engaged to work for the council through agenciesandis not dependent on the number of hours worked.

It is expected that governing bodies of all community and voluntary controlled schools would adopt this procedure. Foundation and voluntary aided schools and academies are encouraged to do the same.

**Principles**

Disability leave is paid time off work which may be granted where an employee is absent as a result of their disability, but for reasons other than sickness. As a guideline, up to 10 days disability leave in a rolling 12 month period may be granted (pro rata for part time employees), however it may be appropriate to increase this dependant on individual circumstances. In such cases advice must be sought from the HR Portal/HR Provider.

The effect of impairment depends on the individual and their circumstances. To accommodate this requires some flexibility, therefore disability leave may be taken on a planned and unplanned basis and taken in different ways – once a week, a block of time or perhaps as periods of part time working.

Disability leave is distinct from sick leave and other time off work provisions. Disability leave should not be counted for attendance management purposes.

Eligibility

All employees who are disabled under the definition of the Equality Act 2010 are entitled to disability leave. There is no qualifying period for any employee wanting to be considered for disability leave.

The Equality Act 2010 states that a disabled person who has a physical or mental impairment, which has an adverse effect on their ability to carry out normal day to day activities. The effect must be substantial (that is, more than trivial or minor), adverse and long-term (that is lasting or likely to last for more than 12 months, or for the rest of the life of the person concerned).

The definition is much wider than many expect, including impairments such as:

* Mental health conditions
* Learning difficulties e.g. dyslexia, dyspraxia
* Significant mobility difficulties
* Respiratory conditions e.g. asthma
* Cardiovascular diseases e.g. heart disease
* Multiple sclerosis, epilepsy
* Cancer, HIV
* Hearing or sight impairments

In order to be considered for disability leave employees must declare to the council/school that they are disabled.

Process

When an employee declares that they are disabled and wishes to be considered for disability leave they will be referred to the council/school’s occupational health provider for advice and guidance regarding appropriate adjustments that might be made to the workplace and/or job.

Upon receipt of the outcome from occupational health referral, the line manager will arrange to meet with the employee to discuss the content of the report and what disability leave is appropriate.

To assist in determining what leave and/or reasonable adjustments are required it may be appropriate to seek further medical advice and involvement from the

* Council/school’s occupational health advisor
* HR Portal/HR provider
* Disability employment advisor at the Job Centre
* Employee’s GP/specialist

The employee may be accompanied to the meeting by a trade union representative or work colleague should they so wish. Where disability leave is considered appropriate, the employee and line manager should discuss the need for planned leave and the likelihood of unplanned leave.

Planned Leave

Planned disability leave will be agreed in advance between the employee and line manager. Such planned leave may for example be a number of days over each year or a block of time that a disabled employee needs to take time off for treatment or assessment related to their disability. This does not replace the provision of time off for medical screening.

Planned leave may include paid time off for:

* Counselling/therapeutic treatment
* Recuperation and rehabilitation following an operation/treatment
* Planning and implementation of adjustments to the workplace/job
* A phased return to work or period of time off work for a newly disabled employee

Agreement must be reached between the line manager and employee with regard to the number of days planned leave required, if any.

Where disability leave is agreed, it will be reviewed on an annual basis to assist in planning. These reviews will be supportive and confidential. Employees may be accompanied to the meeting by a trade union representative or work colleague should they so wish.

Employees whose impairment or circumstances change throughout the year may request a meeting to review their planned disability leave (or other reasonable adjustments) at any time.

Unplanned leave

The line manager and employee should also discuss the likelihood of any unplanned leave, taking into consideration previous disability related absences and any improvement or deterioration (actual or anticipated) in the employee’s condition. It may be possible to identify reasonable adjustments, which would counteract the need for unplanned disability leave.

Unplanned leave may include circumstances such as:

* Breakdown of usual arrangements at work (e.g. malfunction or aid/adaption etc)
* Breakdown of usual arrangements which make it difficult to get to work (e.g. care breakdown and in the absence of an accessible alternative)

Where unplanned disability leave is required employees must notify their line manager. Contact must be made with the line manager prior to the start of their shift (no later than 1 hour from the normal start time). They should provide the reason for the absence and indicate, where possible, when they expect to return.

Reasonable adjustments should be made wherever possible to counteract the need for disability leave, for example it may be necessary for an asthma sufferer to have disability leave in the summer when pollution levels may be high. However, it may also be possible in many cases to make arrangements for the employee to work from home on these days or work on other days thereby reducing the need for such leave. Flexibility, co-operation and a reasonable approach are key.

For all instances of disability leave the employee must complete a special leave form upon their return to record their absence accordingly.

Where a manager / head teacher is unsure about implementing any aspect of this procedure, they should seek advice from the HR Portal or from their HR provider.

Part Time/Part Year Staff

A **part time** employee’s disability leave is based on the legal principle of a ‘pro-rata’ entitlement. This means that leave is calculated according to the proportion of hours that a part-timer works compared to a full time employee (standard 37 hours per week), not by the days of the week on which the part-timer works.

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| --- | --- | --- | --- | --- |
| Weekly working hours | X | Total Disability leave | = | Pro rata Disability Leave |
| 37 |  |

Similarly, a **part year** employee (eg term time), will have a ‘pro rata’ disability leave according to the number of weeks actually worked in proportion to the number of weeks an equivalent full-year employee with the same service actually works (ie full year less their leave entitlement).

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| --- | --- | --- | --- | --- |
| Part-year actual working weeks | X | Total Disability leave | = | Pro rata Disability Leave |
| Full year actual working weeks  (ie full year less service-based leave entitlement) |  |

Entitlements will be expressed in hours and employees who work both part time and part year will require both pro rata calculations as follows:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Weekly working hours | x | Part-year actual working weeks | x | Total Disability leave | = | Pro rata Disability Leave |
| 37 | Full year actual working weeks  (ie full year less service-based leave entitlement) |

For Schools

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| --- | --- |
| Name of School: |  |
| Date by which School have adopted procedure: |  |
| Signature of Chair of Governors |  |