



ROCHDALE
METROPOLITAN BOROUGH
COUNCIL

**LOCAL AUTHORITY POLICY RELATING TO:
ANNUAL LEAVE IN SCHOOLS**

FOR STAFF EMPLOYED IN SCHOOLS

January 2013

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This policy was consulted and agreed via Service Consultative Group (SCG) and Teacher Association representatives on 10th December 2012 (SCG) and 12th December 2012 (Teacher Association).

Governing Bodies of community and voluntary controlled schools with delegated powers are required to adopt this procedure. Governing Bodies of voluntary aided and Foundation schools are required to adopt either an appropriate diocesan procedure, this procedure or draw up their own for formal consultation with the recognised Trade Union representatives.

1. INTRODUCTION

The Working Time Regulations 1998 stipulate that all staff have the right to accrue paid annual leave. There are a number of different contractual entitlements for school based staff maintained by Rochdale Metropolitan Borough Council in relation to annual leave, and there has been a recent legislative ruling in relation to annual leave, so it was felt appropriate to issue some guidance and reminders to schools.

In the main this document relates to support staff in schools. Teachers are employed under the School Teachers Pay and Conditions Document and therefore have a different type of employment contract.

It is recommended that schools adopt a clear protocol for employees to follow in respect of making request to take leave from their annual entitlement and/or discretionary leave requests, a sample protocol can be found at appendix A.

2. STATUTORY ANNUAL LEAVE

In line with national legislation the minimum statutory annual leave entitlement that UK workers are entitled to is 5.6 weeks, inclusive of the eight statutory national holidays. Statutory national holidays will be known from this point forward as statutory holidays.

3. ROCHDALE COUNCIL CONTRACTUAL LEAVE ENTITLEMENT

Within Rochdale LA, the minimum contractual annual leave entitlement for a full-time (5 days) worker is 23 days plus 8 statutory holidays, in total 31 days which is in excess of the minimum required. This entitlement rises up to 33 days plus 8, in total 41 after 5 years continuous local government service as detailed below.

Support staff on all year round (AYR) contracts

The annual leave entitlement in a full year is as described below:

Staff with less than 5 years continuous local government service

Salary range	Days' leave
Up to and including spinal column point 28	23
Over point 28 – up to and including point 40	25
Over point 40	28

Staff with over 5 years continuous local government service

Salary range	Days' leave
Up to and including spinal column point 28	28
Over point 28 – up to and including point 40	30
Over point 40	33

The above entitlement does not include the 8 statutory holidays (statutory holidays) which occur throughout the year. Statutory holiday's days should be taken as they occur.

4. ANNUAL LEAVE – ALL YEAR ROUND EMPLOYEES

All staff on All Year Round contracts are permitted to take annual leave at any time during the leave year which commences on 1st April in any year, subject to the needs of the service.

Those employees starting or leaving employment during the leave year will be entitled to leave proportionate to the time of the month when an employee starts or leaves the school. Employees leaving the school may be entitled to a payment in lieu of any untaken leave, subject to the approval of the Headteacher or ask to take leave during their notice period.

Employees will be paid at their normal rate of pay for all authorised absences on annual leave.

Where employees are all year round, it is recommended that at least 50% leave is used during school term time, to effectively manage service provision during school closure periods.

Headteachers may also request from their staff, at the commencement of the annual leave year, details of when they would like to take their annual leave throughout the year. This may assist with planning for cover and project work throughout the year.

5. STATUTORY LEAVE AND SICKNESS

In a recent case (Stringer v. HMRC) regarding statutory annual leave and sickness, a judgement was made in relation to statutory leave and accrual of sickness absence. The judgement states that statutory annual leave accrues during sickness absence; statutory annual leave can be taken whilst a worker is off sick; and a worker who is prevented from taking statutory annual leave because of sickness must be allowed to take annual leave at a later time.

As a result of the Stringer v. HMRC case the guidance as to how this should be implemented is detailed below.

The following provisions will apply to all staff:-

- (a) Requests for transfer-over of a proportion of the annual leave entitlement from one leave year to the next will be considered where exceptional circumstances prevent the taking of all the annual entitlement before the end of the current leave year.
- (b) An employee wishing to carry over leave should make an application to the Headteacher by the end of the first working week in March. The Headteacher shall be permitted to authorise the carry over of up to 10 days' leave on a non-cumulative basis provided the statutory minimum leave period is satisfied.
- (c) Applications for over 10 days shall be made to the Resources Committee for consideration and authorisation provided the statutory minimum leave period has been satisfied. The Governing Body could delegate this authority to the Headteacher who should then report to the Resources Committee with details on a regular basis.
- (d) Normal carry over arrangements apply to employees who are on sick leave. These employees should apply to carry over any unused leave by the end of the first working week in March as above. **Headteachers are responsible for reminding employees on sick leave that this provision applies.** Employees who are absent on long-term sickness who do not apply to take their annual leave before the leave year-end, who do not provide the required amount of notice to request leave or to carry over any unused leave will lose their entitlement.
- (e) As above it should also be noted that employees who are absent on long-term sickness can still apply to take annual leave during their absence in the normal manner. Employees who go into half pay will be reminded of this provision at that time by the payroll provider.

6. EMPLOYEES WHO BECOME SICK WHILST ON ANNUAL LEAVE

Where an employee becomes ill during a period of annual leave, they may be entitled to claim the leave lost due to sickness absence in certain circumstances i.e. where they have reported their sickness absence in line with the school's Management of Sickness Absence Policy **and** on production of a Doctors certificate for the period. The School will not be liable for any costs incurred during this process. Should any member of staff be taken ill while on annual leave, they should contact the Headteacher as soon as is practicable.

7. TEACHERS

Teachers nationally do not have a contractual entitlement to paid annual leave or a specified annual leave year. However teachers are entitled to 28 days (5.6 weeks) of statutory annual leave under the Working Time Regulations 1998. This is not an additional entitlement to annual leave on top of the current school closure arrangements. Therefore, the entitlement to statutory annual leave can be offset by any periods of school closure, whether they occur before or after the period of sickness. Where there is insufficient school closure time to allow the statutory annual leave to be taken, employers should allow the teacher to carry forward the leave to be taken in a school closure.

When a teacher commences sick leave the amount of 'leave' a teacher has had in the current leave year will be established by the amount of school closure periods that have already occurred during the leave year. If this exceeds the entitlement to statutory annual leave there will be no further entitlement.

8. SUPPORT EMPLOYEES ON TERM TIME ONLY (TTO) CONTRACTS

Individual schools determine whether they required their TTO staff to work on contracts of 44 weeks or contracts of 45 weeks throughout the year. These options should be discussed between the Headteacher and staff or determined by the schools requirements.

Staff employed to work 44 weeks

These TTO staff are required to work 38 weeks and 4 days in each school year. As 38 weeks currently represents a school year, the remaining 4 days should be worked during the school holiday period at the discretion of the Headteacher. The 44 week calculation includes holiday payment of 5 weeks and 1 day for annual, statutory and other national holidays. Staff with 5 years or more continuous local authority service would be entitled to all the school holidays and would furthermore be entitled to take an additional half day during normal term time by arrangement with the Headteacher (pro rata to hours worked).

Staff employed to work 45 weeks

These TTO staff are required to work for 38 weeks, a school year, plus 1 week and 3 days during school closure periods at the discretion of the Headteacher. The reduction from 4 days to 3 days is due to a higher holiday entitlement for working 45 weeks instead of 44 weeks. Staff with 5 years or more continuous local authority service are required to work 38 weeks a school year, plus 1 week during school closure. Due to a higher holiday entitlement following 5 years of continuous service staff will be entitled to 1 days leave during term time at the discretion of the Headteacher. Alternatively ½ days leave can be taken during term time with the other ½ day taken from the additional week worked during the school closure (pro rata to hours worked).

Staff employed to work 46 weeks – as above but they are entitled to 2 days leave during term time at the discretion of the Headteacher.

Staff employed to work 47 weeks – as above but they are entitled to 2½ days leave during term time at the discretion of the Headteacher.

9. PART TIME STAFF

Part Time Workers (Prevention Less Favourable Treatment) Regulations 2000, entitle a part time worker to the same paid holidays on a pro-rata basis as a full time worker. This includes the right to statutory holidays. Leave entitlements and statutory holiday entitlements are pro-rata to hours worked for part time staff.

10. ANNUAL LEAVE/STATUTORY HOLIDAYS AND MATERNITY LEAVE, PATERNITY LEAVE AND ADOPTION LEAVE – SUPPORT STAFF

Employees continue to be entitled to annual leave throughout ordinary and additional maternity leave, known as statutory maternity leave (SML) period, and paternity and adoption leave.

For the duration of the maternity leave period a woman's entitlement to annual leave will remain unaffected. Therefore, the Council's/School's local scheme as detailed will continue to apply for all employees.

Any statutory days which fall during the maternity leave period will be added to the employees annual leave entitlement and can be taken either before or after the Maternity Leave, normally during a school closure period (if there aren't enough days then the entitlement will need to be calculated).

11. ANNUAL LEAVE/STATUTORY HOLIDAYS AND MATERNITY LEAVE, PATERNITY LEAVE AND ADOPTION LEAVE – TEACHING STAFF

Teachers have a statutory right of paid leave under the Working Time Regulations (WTR). The current entitlement is 28 days (5.6 weeks).

NB. This is not an additional entitlement to annual leave on top of the current school closure arrangements. For this purpose a year would commence 1st September (commencement of a new academic year).

12. UNPAID LEAVE

Unpaid leave deductions will be made from salary at the next appropriate point. Where unpaid leave is taken on a Friday or Monday appropriate deductions for a proportion of the weekend will also be made, in line with local agreements.

13. CASUALS

Since 1st April 2009, all UK workers have been entitled to 5.6 weeks (inclusive of the eight statutory national holidays) paid annual leave per year pro-rata to their hours worked. This is in line with the Working Time Regulations 1998 (as amended) and includes casual workers.

Casual workers have entitlements to annual leave, similar to contracted workers. It is important that schools are aware of their obligations in relation to payment of annual leave, where they employ casual workers directly apposed to using agencies.

For individuals who work casual or irregular hours it is easier to calculate the holiday entitlement that accrues (that is accumulates) as hours are worked. The holiday entitlement of 5.6 weeks is equivalent to 12.07 per cent of the hours that a casual worker works. This percentage is because:-

5.6 weeks holiday divided by 46.4 weeks* multiplied by 100 = 12.07%

*The 5.6 weeks are excluded from the calculation as a worker would not be present during the 5.6 weeks in order to accrue annual leave therefore 52 weeks minus 5.6 weeks is 46.4 weeks.

Headteacher should ensure that records are maintained as to how many hours each casual worker has worked and use the following formula to calculate the number of hours holiday entitlement accrued:

**Number of hours worked x 12.07 then divided by 100
= number of hours leave accrued**

For example, a casual worker who has worked 10 hours would be entitled to 72.6 minutes' paid holiday, i.e.; 10 hours x 12.07 = 120.7 divided by 100 = 1.21 hours = 72.6 minutes. In effect therefore the holiday entitlement is just over seven minutes for each hour worked.

Headteachers responsibilities in managing this process, where they employ their own casual staff, are to: -

- Record individual's hours and the annual leave entitlement accrued if not taken at the time of the claim and agree with individuals when they wish to take holiday and implement arrangements for time off
- Be aware that some employees may wish for their accrued holiday to be paid at the end of each piece of work that they do. In these situations you must ensure that individuals do have a break from work whilst in receipt of holiday pay. Wherever possible arrangements should be made for casual workers to take paid leave
- Ensure that you know if your casual employees are working elsewhere within the Local Authority or within another organisation and if so, discuss with them the need to manage their time to be within legal limits (48 hours per week)
- Ensure that any casual employees who are also working elsewhere for Rochdale Council are not receiving holiday pay from the other area(s) of work whilst they are working for you as this clearly contravenes the requirements of the Working Time Regulations for individuals to have paid breaks from their work

The casual employees will need to: -

- Ensure that their line manager/Headteacher keeps an accurate record of the hours that they have worked and agree any holiday arrangements with their line manager/Headteacher
- Tell their line manager/Headteacher if they work elsewhere, particularly if this is with another area of Rochdale Borough Council
- Manage their working time within legal limits
- Understand that holiday entitlement accrues on a maximum of full time equivalent hours worked each week, irrespective of where these hours are worked within the Local Authority
- Submit claims for the payment of annual leave in situations where it has not been possible to take paid leave

14. DISCRETIONARY LEAVE

Annual leave entitlements should not be confused with discretionary leave. Discretionary leave is at the discretion of the Headteacher/Governors and it should be remembered that it is a request and not an entitlement and the needs of the school have to come first. Additional information can be found in the schools discretionary leave policy.

15. **FURTHER INFORMATION/ADVICE**

Further information/advice is available from:-

Schools HR

- Katie Barnes – 01706 925169 or katie.barnes@rochdale.gov.uk
- Alison Aspinall – 01706 925194 or alison.aspinall@rochdale.gov.uk

HR Shared Services

- Kate Moore – 01706 925196 or kate.moore@rochdale.gov.uk

LEAVE PROCEDURE

It is recommended that schools adopt a clear procedure for employees to follow in respect of making request to take leave from their annual entitlement and/or discretionary leave requests. It is also recommended that all procedures are clearly communicated to staff.

As a minimum the following process should be adopted:-

- request should be made in writing (on leave cards where appropriate)
- request should clearly state the start date/end date and length of absence being requested from the workplace
- request should be submitted to the Line Manager or Headteacher request should be submitted in advance of the leave being required. We would advise a minimum notice period is requested by of staff in relation to requests for annual leave (for example 4 weeks notice except in exceptional circumstances). The provision of notice for annual leave allows a school to effectively plan for the employee's absence from the workplace and make appropriate cover arrangements. Where an employee makes a request for annual leave, but fails to provide the relevant notice, the leave request can be declined. If this is towards the end of the annual leave year, it may result in the employee being unable to take their remaining annual leave entitlement for that year. This is based on a case law decision from *Lynchs v Mitie*.

Leave where this procedure has not been observed should only be considered in exceptional circumstances based on the situation presented.

Staff should be reminded that requests are made subject to the needs to the school which must come first. It is recommended that staff make any requests in good time in order that sufficient time is available to consider any requests made.

The same procedure will be followed in relation to requests for discretionary leave, in addition to a decision with regards to whether the leave is approved with or without pay. In exceptional circumstances alternative arrangements may be agreed i.e. allowing the person to work the time back.

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