

**Options to consider for the treatment of annual leave for  
for use by Local Authorities / other public sector bodies**

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## 1. Introduction

- 1.1. Any options adopted from this paper should be agreed with Trades Unions as a temporary measure during exigent circumstances, and do not form a precedent for the future.
- 1.2. In an emergency such as the one currently being experienced from the Covid 19 pandemic there may be a necessity to change the way we manage annual leave allocation to employees, and this guide is intended to outline the possible options, circumstances in which you might choose these options and considerations you will need to make in certain circumstances.
- 1.3. It is recognised that during such a situation, functions which are not identified as a core critical functions may have reduced service or stop service delivery altogether. Core critical functions should continue wherever possible, but it is recognised that they may be impacted by staff shortages. To ensure critical services remain operational, councils may need to treat staff in key critical functions differently from staff in non-critical functions, and this guidance sets out these situations accordingly.

## 2. Key or Critical worker status – Annual leave options

### 2.1. Removing the entitlement to take leave

- 2.1.1. In an emergency where staff may need to be working all of the time available managers will need to assess:
  - a) Whether a blanket “notice” that annual leave cannot be taken should be issued and what groups of staff / roles should be included in the ban. Whilst this should not be the default position it may be likely that during times of extreme staff shortages (as the pandemic increases this will have a greater impact on the number of well staff being able to attend work) any decision not to introduce a ban at the start may need ongoing review. Consideration will need to be given whether this applies to existing leave requests or only to new requests, and on what basis any selection for leave is made, and whether this could be open to challenge at a later date.
  - b) Specifically maintaining a ban for a prolonged period of time would be difficult to sustain, and is likely to lead to an increased amount of sickness absence. Options might include “rationing” leave, for example to a working week in a 3 month period, pro rata for part time, so that there is a greater ability to “spread” the opportunity to take leave on a roster basis, allowing everyone the chance to take some much needed down time.
  - c) In this scenario it may be necessary to allocate time to individuals to take leave which is driven by service requirements. Whilst this is not ideal it is a mechanism to ensure fair distribution of leave. If employees choose not to take the allocated time and remain in work managers must be satisfied they are not putting the employee at risk from a wellbeing perspective, particularly where those employees are front line and more vulnerable.
  - d) Where staff have already booked leave and want to take it this should be honoured where possible. Whilst it is unlikely that travel plans will continue as previously staff may still want to take the leave, and considerations of welfare and family circumstances may need to be made.
  - e) In the event however that all leave is cancelled and those who have booked leave are no longer allowed to take it, councils will need to consider how they will manage the volume of accrued leave across the workforce when the situation returns to normal.



- f) There may also be situation where part time employees move to a full time or increased contract for a prolonged period of time and this will have a knock on impact on their holiday entitlement for the period of increased hours when they return to their part time contract – and this should be expressed in the variation to contract document (even if this is an e mail confirmation under the current circumstances)

### **3 Non-critical or home workers**

#### Requirement to take leave

- 3.1 Some services will be deemed as non-critical, and where the staff are not deployed or redeployed into critical roles, it should be expected that these staff will continue to take leave as normal. Where leave is booked, in the main it should be taken, regardless of the fact that the employees' travel plans are likely to have changed. This will ensure that not only are councils safeguarding the wellbeing of those staff through supporting them to take adequate time off, they will also be managing the burden of a high volume of accrued leave as the situation returns to normal.
- 3.2 Where staff are at home on full pay and working, being kept fully engaged by the employer but not having any booked or requested leave, the council has choices about how long it continues with that arrangement before asking the employee to take leave on a compulsory basis. Some employees may feel that, as they would be unable to go away and take a proper holiday, taking leave at his time would be pointless and may carry on working without making a request for leave, storing up the entitlement for later in the year.

The wider impact of this needs to be considered however – when the situation returns to normal and travel / socialising restrictions are removed, there is likely to be a huge demand for leave just at the point when services are trying to re-establish normal business. It may be more sensible to set out a plan for non-critical staff to take leave now in a measured, evenly distributed way so that there is less disruption back at the later stage when everyone wants to book leave and inevitable clashes occur.

- 3.3 For example councils could consider options such as requiring staff to take a pro rata per month leave entitlement for the period (so if there is a 28 day entitlement in the year staff will need to take 7 days (1/4 of the leave entitlement) in the first 3 months, either as long weekends or as a block). This enables leave to be used, provides “down time” for employees working from home and ensures some leave is left to take at personal discretion as required for the rest of the year. This could be continued for as long as the situation lasted. The current LGA guidance is clear in that under the current circumstances councils have a legitimate business case for allocating leave in a different way than normal, and this should be clearly set out to all staff who fall into a category where councils wish to enforce this approach.

### **4 Other workers where there is no work available**

- 4.1 There may be a small number of workers who fall into neither category above – i.e. they are not critical and deployed on the front line (and for any number reasons cannot be), neither can they work from home, either due to the nature of the work they undertake, lack of work at this time or lack of technology to support home working.
- 4.2 It is hoped that the numbers affected by this situation would be limited, but for example some staff in areas such as library facilities, cafes and museums and art galleries, cultural, leisure and heritage centres are all likely to have limited ability to work from home and are likely to be in locations which are closed for the foreseeable future, and unlikely to have skills available for redeployment (although this should not be automatically discounted, and should be explored wherever possible)



- 4.3 It should be made clear that it is the responsibility of the employer to find work, and if this is not possible in some situations there may be no alternative than to allow the employee to be at home ON FULL PAY for the period until the situation changes and work of a suitable nature can be provided or they can return to their normal work.
- 4.4 You may require these staff to take an amount of annual leave for the period they are at home, to “offset” some of the time. It would be unfair however to require these staff to take all their leave, and the same options such as those proposed for home workers should be used as a proportionate response.

## 5 Furlough

- 5.1 The government support to allow employers to “furlough” staff currently is not applicable in the Local Government environment except in very specific circumstances. The option to furlough staff (i.e. put them on a reduced wage for a period of time which allows the employee to still be paid for 80% of their salary and for this to be reclaimed by the employer) is intended as a mechanism to avoid redundancy or job loss – so specifically where businesses have closed and do not have income to pay staff, the furlough scheme is designed to keep people “employed” rather than redundant and thereby limits the impact on individuals. This will not be the case for most local government employees who have salaries backed by the government and are, one expects, able to return to work once the current situation ends and unlikely to be otherwise redundant. Furlough therefore is not a mechanism to manage employees who are at home without work.

Exceptions to this may be situations where there is a traded service, and the employees are likely to be redundant if the service is not trading, and may apply more to third party contracted services in the local government environment.

## 6 Returning to BAU

- 6.1 In the coming months councils will need to consider how they return to a new normal, and begin to allow staff to take leave again following a period of change. Some of the options and considerations will need to include:
- a) Providing managers with fair processes for allocating the amounts of accrued leave in teams to enable them to still deliver services. Simply taking a “first come first serviced” approach is unlikely to work and is likely to cause tensions in potentially already fractured teams. It may be useful to ask all staff to put in their leave requests for the next 18 months so that proper planning and scheduling can take place, with perhaps staff expressing 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> choices.
  - b) Doubtless the amount of carry over of leave will need to be reviewed, as well as the timescale and a plan for taking amounts of leave in the subsequent year to ensure this does not become a rolling “legacy” issue. The Working Time (Coronavirus) (Amendment) Regulations 2020 will amend the Working Time Regulations 1998 to create an exemption relating specifically to the coronavirus outbreak, allowing employees to carry over 4 weeks leave into the next two leave years. Most local government staff receive more than the statutory minimum leave, so arrangements will need to be broader in scope to manage this.
  - c) You may decide in some situations to pay for some or all of the untaken leave. In some services the cost of doing this may be mitigated against the cost of purchasing agency cover, but services will need to make a strong business case for payment to some staff and not others to avoid allegations of discrimination and unfairness if this offer is not made to all employees – the cost of which may be prohibitive.



- d) If you don't already operate with a staggered leave year, consider introducing something based on birth date or start date in the future months to "even out" the peak times for leave, help with carry over and provide some cushioning from the impact of high volume leave requests at leave year end.

