

Human Resource Policy changes – Changes to Annual Leave Accrual and Carry-Forward Arrangements

Purpose of the report:

For the People, Performance and Development Committee to review and approve proposed changes to Surrey County Council's Annual Leave Policy.

Recommendations:

It is recommended that the People, Performance and Development Committee agrees to the proposed changes to Surrey County Council's Annual Leave Policy specifically regarding the accrual of annual leave when officers are absent due to sickness, the facility for them to take such leave during subsequent years and codification of the restrictions which apply to transferring annual leave between employers. The revised policy for the Committee's approval can be found at Annex 1.

Introduction:

1. Developments in case law over the past few years have introduced a clearly-defined right for employees to continue accruing annual leave during a period of sickness and prevents employers from requiring staff to take holidays during a period of sickness.
2. In reviewing the Annual Leave Policy, officers have noted a facility that allows employees to transfer annual leave entitlements while moving between employers within local government. It is proposed to remove the facility in question, as it is not consistent with current management practice in Surrey County Council or other employers within the sector.

Annual leave policy

Key Issues and Amendments

3. The current annual leave policy of the Council allows the carry-forward of "*up to half of the annual leave entitlement*" to the "*following leave year*". That approach is incompatible with recent case law which has established a right for employees to carry forward their basic statutory leave entitlement (i.e. 20 days per annum)



for more than one leave year if sickness has prevented them from making use of it.

4. Recent decisions by the Courts have indicated that the expectation is for employers to allow the relevant carry-forward for between 15 and 18 months.
5. The current policy states that employees can reclaim annual leave that has been lost to sickness but does not clarify that they are legally entitled to cancel pre-booked periods of leave if an accident or illness disrupts their plans prior to the commencement of such a period. Making that distinction could be useful in certain situations, particularly with regards to accidents that may disrupt holiday plans without resulting in the employee's absence from work.
6. The current policy states that "*statutory annual leave continues to accrue during periods of sickness absence*". As all Council employees have a contractual leave entitlement that is in excess of the statutory minimum, the provision in question introduces a distinction in the rate of annual leave accrual. However, the above distinction is not applied in practice, as annual leave entitlements are calculated by the Payroll system at the beginning of the leave year.
7. Similarly, the Payroll system calculates carry-forward balances at the end of the leave year. A limit of 15 or 18 months could be applied together with a requirement for managers to request manual adjustments to be made. However, such adjustments would represent an administrative burden, are unlikely to yield significant savings to the Council and can even exacerbate operational pressures through incentivising affected employees to request leave at the beginning of the year. Furthermore, manual adjustment requests could create employee relations difficulties with management being perceived as lacking in compassion and 'penalising' a member of staff for having experienced health issues.
8. The current policy provides a facility for employees to transfer annual leave entitlements between local government employers. There is no legal requirement for the Council to offer that facility to its employees, and in fact it is not applied in practice in either SCC or the wider sector. Accounting for annual leave transfers would be very difficult to co-ordinate with employers who do not have such arrangements in place, and could also create additional costs to the Council. Employees leaving the organisation receive payment in lieu of any untaken leave outstanding on their last day of service- the current policy already has a relevant provision in place.
9. The People, Performance and Development Committee is therefore invited to agree amendments to the Council's Annual Leave Policy. These include abolishing the facility to transfer leave entitlements between employers and the sickness-related distinction in annual leave accrual rates, confirming the entitlement to cancel pre-booked periods of leave when an employee falls ill and extending the validity of leave entitlements carried forward until the end of the second leave year after the absence has taken place (e.g. an employee who had



not taken any leave in early 2016 and was sick from March until December of that year would be able to carry forward 20 days of leave, which they would be able to take until 31.12.2018).

Financial and value for money implications

10. It is expected that the proposed amendments to the Policy will not result in any discernible financial impact to the Authority. There is a notional cost associated with increasing the rate of annual leave accrual during periods of sickness but, as described above, this is already happening in practice; that logic can also be applied to the extension of the carry-forward arrangements by an additional nine months.

Equalities and Diversity Implications

11. There are no specific equality implications from the adoption of the proposed new policy apart from the possibility of some disability-related absences receiving slightly more advantageous treatment with regard to leave accrual/carry forward than they would under current provisions.

Risk Management implications

12. The proposed policy revision aligns Council policy with recent developments in employment law, thereby reducing the risk of the Council receiving legal claims for unfair dismissal and other relevant reasons (e.g disability discrimination).

Next steps

- 13. Publish Surrey County Council’s revised Annual Leave Policy on s-net
- 14. Engage with managers, employees, HR advisors and Trade Union representatives to disseminate the revised policy and embed it into employment practice.

Report contact: Prodromos Mavridis, Senior HR Advisor – Policy and Engagement

Contact details: E-mail: prodromos.mavridis@surreycc.gov.uk, Telephone: 02085417891

Annexes:

Annex 1 – Surrey County Council’s Annual Leave Policy

Sources/background papers:

The proposed changes have been developed through consultation between HR and other officers of the Council, principally in Legal Services, Data Operations, and Payroll/Employee Services.

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