

Title of report: Mandatory Unpaid Leave

Decision maker: Chief executive

Decision Date: 21 January 2022

Report by: Assistant director, people

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose

To end the mandatory requirement for staff to take 2 days unpaid leave from 2022.

Recommendation(s)

That:

- (a) The requirement for staff to take two days mandatory unpaid leave is ended**

Alternative options

1. There are no alternatives to the recommendation. The chief executive has authority to determine the council's terms and conditions of employment and it is a function of employment panel to be consulted on overall terms and conditions of employment, including policies.

Key considerations

1. In 2013 the council entered into a collective agreement with the trade unions which mandated that staff would have two days unpaid leave each year. This was introduced as part of a range of measures to deal with a serious budget shortfall.

2. The scheme works by deducting the equivalent of two days' pay from staff salaries and then nominating two days, usually at Christmas, when staff have unpaid holiday. The deductions are taken in 12 instalments throughout the year.
3. The scheme is widely unpopular with staff and unions. The unpopularity of the scheme is a recurring theme in staff surveys and the trade unions regularly lobby for its removal, making the point that at a time when most staff work beyond their contracted hours, the notion of deducting pay throughout the year for unpaid leave is particularly jarring.
4. The scheme is difficult and resource intensive to administer and there have been a number of system errors which have resulted in incorrect payments being taken for large numbers of staff.
5. The council wants to be a good employer and wants to demonstrate that staff are valued. Having listened to staff the chief executive has consulted with the trade unions about removing the unpaid leave mandate.
6. For a minority of staff, the ability to take two extra days leave is more valuable than the pay they lose throughout the year. To mitigate any possibility of disappointment for a small number of staff, anyone who wishes to have two days unpaid leave can either apply for unpaid leave through the council's existing leave policy or they can take advantage of the holiday trading scheme which was put on pause at the start of the pandemic but will be re-launched in 2022.
7. The council's constitution gives the chief executive authority to take decisions relating to the terms and conditions of employment for staff and employment panel is a designated consultee.
8. Due to the pandemic consultation with employment panel has not been considered via a public meeting but by use of a remote meeting. The chairperson of the panel agreed that it is not necessary to hold an in person meeting because the role of the panel is to be consulted and the decision maker is the chief executive.

Community impact

9. Recruiting and retaining staff with essential skills and experience will ensure the council can meet all four of its priorities as set out in the Council's corporate plan. The areas where we have the greatest issues in terms of recruitment directly impact on the most vulnerable in the community – children's social care, adult social care and directly relevant support areas such as legal. Having the right staff in place ensures we can keep children and young people safe and give them a great start in life and enable residents to live safe, health and independent lives. This proposal will help the council recruit and retain excellent staff.

Environmental Impact

10. Whilst this decision will have minimal environmental impacts, consideration has been made to minimise waste and resource use in line with the council's environmental policy.

Equality duty

11. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
12. The council's human resources policies pay full regard to the council's responsibilities as set out in the public sector equality duty.

Resource implications

13. Staffing budgets currently include an assumption that staff costs are reduced by 2 days per year pro-rotta for the unpaid leave, across all directorates. Two days unpaid leave potentially equates to approximately £345k in savings for the council. However, staff who are term time only or working annualised hours contracts are exempt from the scheme. New starters do not have deductions in their first year in post and leavers are entitled to a refund of any deductions taken in the current year they leave. This means that in any year approximately 20% of staff are not having deductions and all these factors reduce the actual savings generated to under £300k.
14. The Council budget setting includes a 3% vacancy factor on staff costs, this is due to the turnover of staff which is currently running at 10%. An increase of the vacancy factor by 1% would create a saving of £347k on the staffing budgets. This would offset the cost of removing the mandatory unpaid leave.

Legal implications

15. The two unpaid days term, depending on the contract of employment is either an express term, incorporated by way of the collective agreement or implied by custom and practice.

16. To remove a term of employment requires information and consultation with staff and in this case the trade unions.
17. Any changes to the collective agreement must be agreed with the trade union. If agreed, for those staff who have an incorporation clause in their contract, the collective agreement automatically changes their contract.
18. For any employees who do not have the collective agreement incorporated into their contract of employment it is intended to still automatically apply the collective agreement. Although legally this would be a breach of contract it is hoped that the benefit this change provides will not cause employees to be aggrieved. Any concerns will be listened to and mitigation measures will be in place to ensure employees are not disadvantaged.
19. Contracts of employment should be updated to reflect the change.

Risk management

20.

Risk / opportunity	Mitigation
Some staff who value the two days off work, albeit unpaid, may feel aggrieved.	Staff who wish to have two days unpaid leave per year can apply through the council's current policy on an individual basis. The council also plans to launch an annual leave trading scheme in 2022 whereby staff will be able to purchase additional holiday.
Mandatory unpaid leave is written as an express term in some more recent contracts of employment. Some staff may feel aggrieved that an express term of their contract is not being honoured.	<p>The removal of the mandatory unpaid leave clause does not cause any detriment to staff. The council accepts that this is a change to contracts but it is a positive change.</p> <p>The trade unions have indicated that they will strongly support the proposal and will sign an agreement to reverse the original decision. This will give the council the formal mechanism to enforce this positive change on current and future contracts of employment.</p>

Consultees

21. Consultation has commenced with the trade unions and they are fully supportive of the proposal.

22. Consultation took place with employment panel on 20 December and the panel was supportive of the proposal.
23. It is intended that staff will be informed of the proposal at the all staff briefing with the chief executive on 21 December.

Appendices

None.

Background papers

None identified