

Delegated Decision

06 March 2024

Introduction of Carers Leave Policy



Report of Corporate Management Team

Report of Paul Darby, Corporate Director of Resources

Electoral division(s) affected:

None

Purpose of the Report

- 1 Following the introduction of the Carer's Leave Act 2023, the Council's new policy in relation to Carers Leave will come into force from 6 April 2024 which ensures the council is compliant with the new legislation.

Executive summary

- 2 The Council is committed to supporting employees with caring responsibilities, it has an established Carer's network of 86 members, this network is a peer support group provides support and signposting as well as information and guidance on a wide range of services designed to help Carer's.
- 3 The Carers Leave Policy is designed to provide employees with the flexibility to address care giving responsibilities while maintaining a fulfilling professional life. This policy acknowledges the various care giving roles employees may undertake, such as caring for a child, spouse, parent, or another dependent.
- 4 The Council is a supportive employer and already supports carers via:
 - (a) Managers taking a supportive approach through informal arrangements on an individual basis with employees. Feedback from the carers network was that carers found their individual line managers supportive in relation to their caring responsibilities.
 - (b) Flexible working requests are available to all employees.
 - (c) Hybrid working and flexi time supports employees with their care giving responsibilities.
 - (d) The facility to buy additional annual leave.

- (e) Compassionate leave is available for use in emergency care.
- 5 Currently carer's leave is offered through these existing flexible policies in consultation between the individual employee and line manager.
- 6 In May 2023, the Carer's Leave Act received Royal Assent, this decreed a new statutory right to take one week (hours an employee is expected to work in a week) of unpaid leave per year to provide or arrange care as a day one right.
- 7 On 11 December 2023, draft secondary legislation entitled the Carer's Leave Regulations 2024 set out detail relating to the Act and confirmed that legislation would come into force on 6 April 2024.
- 8 The carers leave policy enhances our current flexible working options and ensures that the Council is compliant with the legal requirements of the new carer's leave regulations that are due to come into force on 6th April 2024.

Recommendation(s)

- 9 It is recommended that:
- The Carer's Leave Act 2023 is noted;
 - The Carer's Leave Regulations 2024 is noted;
 - The Council's proposed Carers Leave Policy (Appendix 2) is agreed.

Background

- 10 The Carers Leave Policy is a response to the legal provisions set forth which mandates employers to provide leave for employees with caregiving responsibilities. The key legal requirements under the Carer's Leave Regulations 2024 are:
- (a) From 6 April 2024, employees will have the statutory right to one week's unpaid leave each year to care for a dependant.
 - (i) The legislation will cover employees in England, Wales and Scotland.
 - (ii) To be entitled to the provision, employees need to be providing long-term care to a dependant. Long term is defined as a physical or mental illness or injury that requires, or is likely to require, care for more than 3 months.
 - (iii) It will be available from the first day of employment.
 - (iv) Employees will not need to provide evidence of how the leave is used or who it is used for.
 - (v) The notice period an employee needs to give to take the leave is twice as many days as the period of leave requested in advance of the earliest day of leave, to a minimum of three days.
 - (vi) Notice does not need to be given to the employer in writing.
 - (vii) Employees can take up to one week of leave every 12 months and can either take this as a whole week off or take individual days or half days throughout the year.
 - (viii) Employees taking Carers Leave will have the same employment protections as associated with other forms of family related leave. This includes protection from dismissal or detriment as a result of having taken the leave.
 - (ix) The leave cannot be denied, but it can be temporarily postponed if it is reasonably expected that the operation of the employer would be unduly disrupted if the leave was allowed during the requested period. In this scenario, the Council must write to the employee setting out the reasons for the postponement and agreed dates the employee can take carer's leave.
- 11 If an employee needs to care for more than one person, they cannot take a week of carer's leave for each dependant. They can only take

one week every 12 months. They can use the week of leave on more than one dependant.

- 12 Draft legislative scrutiny took place on 21st February 2024 and while the details are unlikely to be changed, it is important to note that the above relates to draft regulations which have still to be formally adopted by Parliament.
- 13 To ensure that the Council is ready for the new change in the law, a draft policy has been produced to ensure employees have access to the new statutory entitlement at the time that the Regulations come into effect. The draft policy will also support the managers of Durham County Council in complying with the legal obligations as set out under The Carer's Leave Regulations 2024.
- 14 Consultation with the Carers Network has taken place and the following feedback was incorporated:
 - (a) The policy should be a standalone policy so that it is easily identifiable to carers who require it.
 - (b) To include signposting to other policies which may be more appropriate for the carers needs, depending on the situation or requirements.
- 15 The Carers Network suggested that Carers Leave should be paid, this was not incorporated as:
 - (a) Current legislation states that the leave is unpaid.
 - (b) There would be an increased financial cost to the council.
 - (c) Current legislation would dictate the council would not need the employee to provide evidence of how the leave is used or who it will be used for, the risk of abuse is minimal due to the unpaid nature of the leave. If the leave was to be paid the risk of abuse would substantially increase.

Carer's Leave Policy

- 16 The Carers Leave Policy produced by Durham County Council (Appendix 2) outlines the following:
 - (a) The criteria for eligibility, discussing who qualifies to take carer's leave;

- (b) The level of entitlement that an employee has to carer's leave should they be eligible. Carer's leave is available to all employees from day one of employment;
 - (c) The notice period an employee is required to give to take the leave;
 - (d) The circumstances in which carer's leave can be temporarily postponed if it would unduly disrupt the operation of the Council;
 - (e) The policy also highlights that employees have access to various other flexible working arrangements such as additional annual leave, flexitime and the option to make flexible working requests. Additionally, employees may be eligible for reasonable time off to address unforeseen matters or emergencies related to caring responsibilities, as outlined in the Council's Compassionate Leave Policy.
- 17 In line with current legislation employees will not need to inform their manager of their intention to take carers leave in writing although they may do so if they wish. Employees can make a verbal request to their manager to take the leave.
- 18 Payroll and employee services have been consulted and 'carers leave' on MyView will be set for recording purposes on 26th March 2024.
- 19 Managers are responsible for recording any leave on MyView by selecting the reason type as carers leave under the 'other absence type' and entering the dates.

Next Steps

- 20 An overall communications plan / approach has been proposed as follows:

Action	Date
Consultation with Trade Unions	7 March 2024
Inform the Carers network of the final draft policy.	7 March 2024
Final policy to trade unions for information.	26 March 2024
Publication of the policy on the Intranet and the Schools Portal	1 April 2024
Internal Communications to launch via the news articles on the intranet and school's portal	5 April 2024
Article in Buzz to ensure accessibility to the wider workforce and non-digital employees	1 April 2024

Action	Date
Briefings for Managers – to be incorporated into T4/T5 Manager forums	April 2024 onwards
Article in carers week communication	June 2024

Conclusion

21 The Carers Leave Policy at Durham County Council enhances our commitment to employee wellbeing and ensures our compliance with the legal framework.

Background papers

- [Carers Leave Act 2023](#)
- [The Carers Leave Regulations 2024](#)

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Appendix 1: Implications

Legal Implications

The Carer's Leave Act 2023 has amended the Employment Rights Act 1996, adding sections 80J to 80N. Under section 80J(1), the Secretary of State is required to create regulations that entitle an employee to be absent from work in order to provide or arrange care for a "dependant" with a "long-term care need" (defined in section 80J(2)). The Carer's Leave Act itself imposes no duties on employers, but instead requires the Secretary of State to create regulations relating to carer's leave that are in line with the Act.

In compliance with the Act, the Secretary of State has created regulations entitled the Carer's Leave Regulations 2024, which will come into force on 6 April 2024. The regulations entitle an employee who has a dependant with a long-term care need to take one week's unpaid leave per twelve-month rolling period for the purposes of providing or arrange care for that dependant. This is known as 'carer's leave'. Carer's leave does not need to be taken on consecutive days. The minimum amount an employee can take is half a day and the maximum is one week.

Regulations 11 and 12 provide legal protection to employees who use, seek to use, or who are interpreted as being likely to use their statutory right to carer's leave. Employees must not be subject to detriment in connection to their carer's leave. Employees must not be dismissed or made redundant for a reason that is connected to their carer's leave. Additionally, Section 80N of the Employment Rights Act 1996 (as amended by the Carer's Leave Act 2023) allows the employee to make a complaint to an Employment Tribunal should they feel that their employer has unreasonably postponed or attempted to prevent them from taking their carer's leave.

It is considered legally necessary for the Council to implement the proposed Policy in order to ensure that the new requirements under the Carer's Leave Regulations 2024 are met.

Finance

N/A

Consultation

To be sent to Trade Unions for consultation on 7 March 2024.

Equality and Diversity / Public Sector Equality Duty

N/A

Climate Change

N/A

Human Rights

N/A

Crime and Disorder

N/A

Staffing

The implementation of this policy will support staff who have dependants with long-term care needs and enhances employee wellbeing.

Accommodation

N/A

Risk

Failure to implement the policy could lead to a multitude of legal action (such as claims for detrimental treatment, unfair dismissal claims and other claims which can be brought by an employee pursuant to the Equality Act 2010) being taken against the Council. The list of claims cited within are not intended as an exhaustive list.

Procurement

N/A