

EAST AYRSHIRE COUNCIL

JOINT NEGOTIATING COMMITTEE FOR TEACHING STAFF – 10 FEBRUARY 2011

SICKNESS ABSENCE AND ANNUAL LEAVE ENTITLEMENT

Joint Report by Executive Director of Finance and Corporate Support and
Executive Director of Educational and Social Services**1. PURPOSE**

- 1.1 To advise the Joint Negotiating Committee (JNCT) of changes to the Sickness Absence Management Policy for Teachers to take account of the European Court of Justice (ECJ) and House of Lords rulings in *Stringer v HMRC* and ECJ ruling in *Pereda v Madrid Movilidad SA*.

2. BACKGROUND

- 2.1 The Working Time (Amendment) Regulations 2007 increased the statutory leave entitlement to 28 days with effect from 1 April 2009 (pro rata for part time workers). This includes 8 UK public and bank holidays.
- 2.2 As a consequence of the European Court of Justice (ECJ) and House of Lords ruling in *Stringer v HMRC* and the ECJ ruling in *Pereda v Madrin Movilidad SA*, the Council's Policies and Conditions of Service relating to sickness absence and leave require to be reviewed to ensure compliance with the following key points:
- Employees will accrue statutory leave during any period of sickness absence, whether paid or unpaid;
 - Employees may choose to take paid leave during sickness absence, however if they decide not to do so, they must be allowed to take leave on their return, even if this is a new leave year, subject to statutory entitlement of 28 days;
 - Where employees are sick during a period of annual leave, the annual leave is not lost and must be granted for a different period which, if necessary, may be out with the relevant leave year. This is subject to the statutory entitlement of 28 days.
 - Employees whose employment terminates after a period of long-term sickness are entitled to receive payment in lieu of their outstanding statutory leave entitlement.
- 2.3 The *Stringer* and *Pereda* cases only concern employees' statutory leave entitlement (28 days for full time employees) and do not apply to any contractual entitlement in excess of 28 days. Employers are free to determine the conditions which apply to leave entitlement in excess of 28 days. For example, employers can decide not to permit the carry forward of any leave in excess of 28 days into new leave year.

- 2.4 Statutory leave, in the context of these cases, include both annual and public holiday leave entitlement subject to the statutory paid leave of 28 days for full time employees.
- 2.5 The Council's Sickness Absence Management Policy defines long term absence as continuous absence from work of 4 weeks or more (28 days). The provisions of this report relate to employees on long term sickness absence.
- 2.6 The normal sickness absence certification and notification arrangements will continue to apply.
- 2.7 A report has been submitted to Cabinet advising of the impact on Local Government Employees', Chief Officers' and Craft Operatives' sickness allowance and annual leave taking into account the above rulings.

3. PROPOSED CHANGES

- 3.1 The principal changes to Teacher's sickness allowance and annual leave entitlement as a result of the above rulings are:
- Teachers who have been on long term sickness absence are entitled to the statutory paid leave of 28 days for full time employees. Pro rata arrangements apply to part-time employees and those employed for any part of the leave year.
 - Teachers who are ill for continuous period of at least 4 weeks within the summer vacation accrue credit of 2 days compensatory leave entitlement for each complete week that is lost.
 - Teachers who are ill for a period of at least 2 weeks duration incorporating at least 1 week of any other vacation will accrue credit of 2 days compensatory leave entitlement for each full week lost.
 - A maximum of 10 such days compensatory leave entitlement may be accrued in any one leave year but such days are not in addition to statutory leave.
 - Whether, due to sickness absence, a Teacher who has not received the statutory leave entitlement, which may include any compensatory leave, within a leave year will receive the appropriate balance of leave to ensure that they receive their full statutory leave provision for that leave year.
- 3.2 Employees on long term sickness absence who do not return to work prior to leaving the Council's service, for whatever reason, are entitled to receive a payment in lieu of their accrued but untaken statutory leave entitlement.

4. COMMUNICATIONS

- 4.1 A relevant PER Circular will be circulated and revised Employee Guide and Managers Guide applicable to all Council employees will be issued taking account of the above rulings.

5. FINANCIAL IMPLICATIONS

- 5.1** Any additional cost resulting from the proposed changes to the Sickness Absence Management Policy for Teachers will be met from within existing departmental budgets.

6. POLICY/LEGAL IMPLICATIONS

- 6.1** The proposed changes will ensure that the Council meets its legislative requirements as an employer and continues to follow best practice guidelines. The proposals meet the pursuit of continuous improvement and Best Value and the guided principles of the Community Plan.

7. COMMUNITY PLANNING IMPLICATIONS

- 7.1** There are no community planning implications.

8. RECOMMENDATIONS

- 8.1** The Joint Negotiating Committee is asked to note the changes to the Sickness Absence Management Policy for Teachers to take account of the European Court of Justice (ECJ) and House of Lords rulings in *Stringer v HMRC* and the ECJ ruling in *Pereda v Madrid Movillidad SA*.

Alexander McPhee
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1 February 2011

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LIST OF BACKGROUND PAPERS

Nil

Any person wishing further information should contact Martin Rose, Head of Human Resources (Telephone 01563 576092) or Andrew Sutherland, Head of Service: Schools (Telephone 01563 576126).