

Special Leave of Absence

Introduction

This special leave policy deals with absence for compassionate or other personal reasons and not statutory entitlement which are detailed elsewhere, including:

- Maternity leave
- Adoption leave
- Paternity and parental leave
- Flexible working
- Public duties
- Union duties
- Time off for study and training

Special leave overlaps with the statutory right to reasonable time off for dependents.

Managing requests for special leave

Special leave may be granted by the Executive Heads without prior reference to the Multi Academy Trust (MAT) Board, having regard to the merits of the individual case, the circumstances and the needs of each school. The total period of paid absence ordinarily allowed in a 12 month rolling period does not exceed 5 days. In exceptional circumstances this may exceed 5 days but each individual absence should not exceed the period of absence ordinarily allowed for each specific absence.

Executive Heads should:

- Remind employees that they must apply for special leave, giving notice of at least 5 working days.
- Draw employees' attention to the leave of absence scheme as part of induction and also at the beginning of each school year;
- Remind all employees at appropriate intervals that they are expected to consider their responsibilities under their contracts of employment and how to reconcile them with family needs, in particular to try to plan in advance for the possibility that normal care arrangements may be disrupted (see *suggested notice below);
- Explain that if requests for special leave become frequent the Executive Heads may refuse requests because the frequency is incompatible with the needs of the academies;
- Invite employees to apply - at the beginning of the school year where possible, otherwise as soon as possible - for leave of absence for unavoidable religious ceremonies, so that plans for cover can be made in good time, on the understanding that the leave is only for religious ceremonies which have to be observed unavoidably and cannot be observed outside working hours – see below for further guidance.

*Suggested notice for staff

This notice explains to all members of staff the Trustees' position regarding requests for special leave during term time. Employees are obliged to attend for work under their contracts of employment. In the case of teachers, there is a statutory obligation to be available for work on the 195 days specified by the employer. For staff who are employed all year round and who are not based in a classroom will be required to take annual leave during school holidays. Academy term dates are published to staff in advance and are available on the internet.

Under the leave of absence scheme, Executive Heads have discretion to grant a limited amount of special leave in certain specific circumstances and subject to specified limits, subject to the needs of each academy. Any requests for special leave outside Executive Head's discretion are a matter for the MAT Board.

Employees with caring responsibilities are urged to plan in advance for the possibility that normal caring arrangements may be disrupted at any time, for example, if a child's school is closed unexpectedly.



In order for each academy to make arrangements for cover it would be helpful if any employees wishing to take special leave during term time for a religious ceremony which their religion requires them to observe unavoidably and which cannot be celebrated on the nearest weekend or out of school hours could apply to the Executive Heads for such leave at the beginning of the school year. If the exact date of the ceremony is not known at this stage, please indicate the approximate date.

Staff must not book or take holidays during term time. They must share this information with friends and family members, so that there can be no misunderstanding over 'surprise' holidays, for which the Trustees have decided that special leave will not be granted.

Special leave will only be considered for the exceptional circumstances outlined in the leave of absence scheme. Employees must apply for any special leave and seek approval in reasonable time from the Executive Heads, who will refer any request outside the guidelines to the Finance and Audit (F&A) Committee. This is particularly important when the request is one which the Executive Heads do not have discretion to grant and must refer to the Trustees. Staff should also be aware that any employee taking unauthorised leave will be in breach of contract, and that conditions of service provide for pay to be deducted in such cases. Breach of contract is also a disciplinary matter and disciplinary action may therefore be taken.

Time off for dependants – the law

Section 57A of the Employment Rights Act 1996 (as amended) provides that "An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary-

- a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted;
- b) to make arrangements for the provision of care for a dependant who is ill or injured;
- c) in consequence of the death of a dependant;
- d) because of the unexpected disruption or termination of arrangements for the care of a dependant; or
- e) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him."

There is an explicit statement that illness or injury includes mental illness or injury.

"Dependant" is defined as an employee's spouse or civil partner, child, parent, a person living in the same household at the employee (other than a tenant, lodger, boarder or employee). For the purposes of (a) and (b) above, a dependant also includes any person who reasonably relies on the employee for assistance on an occasion when the person falls ill or is injured or assaulted or to make arrangements for the provision of care in the event of illness or injury. For the purposes of (d) above it also includes any person who reasonably relies on the employee to make arrangements for the provision of care.

The rights do not apply unless the employee tells the employer the reason for absence as soon as reasonably practicable and, except where that cannot be done until after the employee has returned to work, tells the employer how long he or she expects to be absent.

The Act is silent on the question of pay, i.e. it does not specify that the time off must be paid or unpaid.

Reasonable time off for dependants – guidance on special leave

The legal right to reasonable time off for dependants (see above) is one of the various pieces of legislation to support parents and others with caring responsibilities in the context of a society where support from relatives is not necessarily available, where Government encourages parents to work and where people seek the advantages of paid employment.

Although the Act uses the phrase "entitled to be permitted by his employer" it does not specify that the permission has to be given in advance. However, the test of reasonableness is crucial and employees are not entitled to unreasonable time off. Therefore it is in the employee's interests to seek assurance as soon as practicable that the absence is regarded as reasonable and therefore covered by the statutory right.



There is no definition in the legislation of “reasonable”. However, employees have a duty under their contracts of employment to be available for work, unless they are sick or on maternity leave (or paternity leave, parental leave etc.). As part of that duty they should make arrangements for the regular care of dependants who need such care. Problems arise when these normal care arrangements are disrupted. The question at issue is whether it is reasonable to expect an employee to have alternative arrangements. Usually this question is asked when a child of an employee is too ill to go to school or to the childcare provider, and the employee has no relative or friend able to care for the child at home.

Reasonable time off is related to the time when the circumstances arise, hence the use of the terminology “when a dependant falls ill” rather than when a dependant is ill. There is specific provision for time off to make arrangements for the provision of care for a dependant who is ill or injured.

By its definition of a dependant the legislation also acknowledges that an employee may only be called upon to provide care in an emergency rather than on a regular basis and in respect of these dependants (who are likely to be adults) cannot be expected to have either normal or alternative care arrangements in place.

There has not been much case law on the interpretation of ‘reasonable’ in respect of time off for dependants. One employment tribunal case heard that both the normal care arrangements and the alternative care arrangements on which the employee had relied when normal care had been disrupted previously were unavailable on a particular day and found that the employee’s request for that day off work was reasonable, even though the unavailability of both arrangements was known in advance. “Unexpected” disruption or termination of arrangements for the care of a dependant is therefore not the same as “sudden”. Even if the disruption is known some time in advance the test of reasonableness may still be met. In this case the employee had alternative arrangements, so it offers no guidance on the reasonableness of time off when no alternative arrangements have been made.

However, the terminology of the legislation offers some guidance. It relates to the time when circumstances arise, by using the phrase “when a dependant falls ill” rather than when a dependant is ill. It also makes specific provision for time off to make arrangements for the provision of care for a dependant who is ill or injured, so it does not envisage that the right to reasonable time off will extend to caring for a dependant for the whole duration of the illness.

Government guidance states that an employer who feels that an employee is taking more time off than the employer can sustain should warn the employee that the level of time off is unacceptable.

As the leave of absence scheme allows Executive Heads to exercise their discretion to grant up to 3 days’ paid leave due to the illness of a member of the teacher’s immediate family, it implies that granting such leave would be reasonable. However, the leave of absence scheme as a whole is discretionary and subject to the needs of the school. The Executive Heads have to balance those needs with the circumstances of the employee, and with precedents and fairness, having regard to the maxim that good employees are an academy’s most valuable asset.

Death and funeral of a close relative

A close relative is parent, husband, wife, partner, brother, sister, child, grandparent, grandchild, parent/daughter/son-in-law.

Funeral of a close friend

The Executive Heads cannot grant extra time for travelling to the funeral of a close friend (as opposed to a close relative). It would be appropriate for the MAT Board (through its F&A Committee) to grant extra paid leave to take account of any time required for travel.

Illness of a member of staff’s immediate family

Visits to (rather than nursing) a terminally ill person in the UK or Europe can normally be arranged at weekends or during school holidays, and, depending on the prognosis and the timing of school holidays, can also be arranged during holidays if the person lives further away. If death is imminent it would be appropriate to grant leave of



absence during the working week, up to a maximum of 10 days. If the illness is not terminal any leave beyond that granted under the Executive Heads discretion should be unpaid.

Time off for medical appointments etc.

Employees are expected to arrange appointments with doctors and dentists outside working hours. It is acknowledged that this may not be possible when the appointment is with a hospital consultant, although where possible employees should seek an appointment during a school holiday or out of school hours. However, when this is not possible (because of the urgency of the medical condition) then the employee should be given paid time off to attend the appointment. Likewise when an employee needs to see a doctor or dentist urgently and an appointment is not available outside school hours paid time off should also be granted; it is “an urgent personal reason, which could not have been foreseen”.

Weddings

Time off for weddings is not a right.

Executive Heads do not have discretion to grant leave of absence for employees' own weddings. Employees are expected to arrange their own weddings at weekends or during school holidays and not to seek any time off work for the wedding or the honeymoon. Executive Heads are advised to ensure that this expectation is fully understood, employees' requests for time off during term-time for their own weddings are highly likely to be denied by the MAT Board, even in cases when weddings are arranged not by the bride and groom but by their families.

Employees should be invited, wherever practicable, to advise close relatives planning a wedding that contracts of employment in schools do not enable employees in academies to take annual leave during school terms, so that they would have to apply for special leave to attend a wedding taking place during academy hours, and that the result of such an application would depend on the needs of each academy. This could therefore lead to a request for leave of absence being denied.

An application for absence in excess of 3 days must be referred to the F&A Committee of the MAT Board, as the Executive Heads do not have discretion to grant more than the day of the wedding, and up to 2 days for travelling if necessary.

Executive Heads do not have discretion to grant special leave for rehearsals for weddings.

Religious ceremonies and religious worship

Religious ceremonies may, or may not, form part of a religious festival. Some important religious festivals may not include ceremonies but may nonetheless require observance; others may not require observance or will be celebrated on the nearest weekend to the due date.

There may be differences in the importance attached to particular ceremonies or festivals between different branches of the same religion. The MAT's information is that the following will require observance unavoidably:

- Yom Kippur (Jews)
- Jewish New Year (Orthodox Jews)
- Eid-ul-Fitr and Eid-ul-Adha (Muslims)
- Divali (Hindus)
- either the Birthday of Guru Nanak or Baisakhi/Vaisakhi (according to the particular branch of Sikhism)
- Birthday of Emperor Haile Selassie I (Rastafarians).

Paid leave of absence should therefore be granted for the day on which these unavoidable religious observances (1 paid and 1 unpaid for Eid) fall if that day is during a school term and not at a weekend or school holiday. Executive Heads are advised to invite employees to apply for leave of absence at the beginning of the school year if possible, otherwise as soon as possible, so that plans for cover can be made in good time.

In some academies, it can be predicted that a significant number of employees, or of a particular category of employee, will request leave of absence for a religious ceremony which their faith requires them to observe. If granting leave of absence to all of those employees would lead to real problems in the running of each academy, then the MAT Board is advised instead to consider changing the term dates as permitted by the resolution of the former Education and Lifelong Learning Advisory Team in 2001 which refers specifically and only to a "demonstrable need on the ground of religious observance". The Advisory Team decided that this reason was sufficiently compelling to allow academies to depart from the standard term dates. Where the religious affiliations of employees reflect those of pupils, changing term dates would accommodate the needs of both.

Before changing an academy's term dates, a MAT Board should consult both parents and staff and should consider:

- how to achieve the least possible disruption to children's education.
- the need to give plenty of notice – this should be at least 2 terms – to all involved, parents and staff, because of the impact on childcare arrangements and holiday bookings.

Designating the day of a religious festival a training day is not an option, because those employees observing that festival could claim that they have been deprived of the opportunity of training on that day and have therefore suffered unlawful discrimination on the grounds of their religion. Nor is it legal to give an academy an extra day's holiday, because statutory regulations require academies to open for pupils for 380 sessions (190 days).

The MAT Board has discretion to grant additional days either with salary or without. They also have discretion to grant leave of absence, with salary or without, for festivals or ceremonies which adherents of the faith regard as important but which are not absolutely obligatory. To enable employees with religious faith fully to practise their religion, members of the authority's Standing Advisory Council on Religious Education recommend Local Governing Bodies/Trust Boards to go beyond the current leave of absence scheme by granting employees leave of absence for the most important religious festivals in addition to those where observance is regarded as unavoidable. This discretion is for the MAT Board to exercise through the appropriate committee or to authorise the Executive Heads to act by formal delegation. The Executive Heads do not have that discretion under the leave of absence scheme and must obtain authorisation from the MAT Board to exceed the scheme's provisions.

The F&A Committee is advised to grant paid leave when an employee wishes to attend the ordination (or equivalent) of a member of his or her immediate family and unpaid leave for attendance as a delegate to the General Synod or parallel religious assembly.



It is recommended that in exceptional circumstances, when pilgrimage is required of a believer and cannot be undertaken during school holidays, unpaid leave should be granted because of the religious duty attached to it. (Pilgrimage to Mecca is required of every Muslim at least once in his or her lifetime and pilgrimage to the Golden Temple at Amritsar of Sikhs likewise).

There is no legal requirement to provide time or facilities in the workplace for religious or belief observance. If a room is available and its use for prayer would not disrupt the work of the academy, it would be good practice to permit such use. However, academies must be careful to ensure that there is no direct or indirect discrimination or perception of unfairness between different employees in giving such permission.

There is some useful general guidance in a publication from ACAS, although it does not deal specifically with academies.

Secondments

Prolonged leave of absence from each academy at the employee's request to allow him or her to work for another school, academy or organisation is usually called secondment and the employee returns to his or her job at the end of the secondment. Secondments which last more than a couple of years may cause problems of reintegration into an academy on the employee's return, so the relevant committee of the MAT Boards are advised to consider very carefully any request to be absent for more than a year or 2 at a time. They are advised to review the arrangement annually and to provide for the employee to keep in touch with the academy, possibly through attendance at training days.

Agreed leave must be confirmed to the employee in writing. The letter to the employee should explain clearly the terms of the leave and that the employee will return to his or her substantive job at the academy when the leave or 'secondment' comes to an end, so that there is no room for misunderstanding on either side.

Usually the leave of absence for secondment is unpaid, because the employee receives a salary from the academy or organisation to which he or she is seconded, but there have been instances in which the employee is granted paid leave, with each academy being reimbursed the employee's salary costs by the other school, academy or organisation concerned. Academies should check what is proposed when secondment is first requested and should seek advice as necessary from their HR provider.

Other very urgent and special personal reasons which could not reasonably have been foreseen

A maximum of 3 days applies to each occasion on which leave is granted. There is no annual or termly limit, but all requests for special leave of absence are to be considered with regard to the merits of the individual case and the needs of each academy.

Moving house

Time off for removals is not a right, and if an employee is not constrained by completion dates and can arrange to move at a weekend or during a school holiday the employee should do so.



Attendance at Examination Board Meetings

If the MAT Board grants paid leave for this, the fees must be paid to the relevant academy, in recognition of the fact that the employee would otherwise be paid twice for the same period of employment and in order to pay for cover in the employee's absence.

Employees seeking to work part-time for other organisations

Some employees may request leave to undertake part-time work, such as OFSTED inspectors or School Improvement Partners, or examiners for external examining bodies. This is a matter for the appropriate committee of the MAT Board to determine. If the MAT Board grants paid leave, the employee should pay any fees received to the academy, in recognition of the fact that the employee would otherwise be paid twice for the same period of employment and in order to pay for cover in the employee's absence. If part of a fee relates to work outside the employee's contract with each academy (for example, for preparation undertaken in the employee's own time) the MAT Board may agree that an appropriate proportion of the fee may be retained by the employee.

Employees providing services for other academies

The MAT Board may ask an employee to work temporarily in another academy as part of a service-level agreement whereby a providing academy supports a receiving academy, and the providing academy charges the receiving academy for those services. In such cases the employee is not on leave or secondment, but is simply working elsewhere at the MAT Board's direction.

Time off for study or training

There is a separate procedure for the statutory right to request time off for study or training in respect of training not provided or required by the academy.

Employees and academies may make other arrangements about study or training outside the statutory procedure. There is advice to Trustees in the leave of absence scheme.

Armed forces - reservists

Volunteer members of the Armed Forces Reserves (including commissioned officers accredited to cadet units) should try to arrange their annual training during school holidays. However, if this is not possible, then they should be granted paid leave for the fortnight's training.

For reservists called up for active service, the Reserve Forces Act allows the Ministry of Defence to compensate companies for the loss of key employees and allows them to apply for an exemption or deferral.

Employees dissatisfied with decisions about leave of absence

Representation should be made to the MAT Board.

Summary

Part 1 of the scheme – Executive Heads discretion

REASON FOR ABSENCE	PERIOD OF ABSENCE ORDINARILY ALLOWED	APPROVED WITH SALARY OR WITHOUT
Death and funeral of a close relative	Up to 3 days, plus up to 2 days for travelling or funeral arrangements if necessary	With salary
Funeral of a close friend	Up to 1 day	With salary
Illness of a member of staff's immediate family	Up to 3 days	With salary
Medical appointments	Appointment time only (hospital and emergency)	With salary
Wedding of close relative or friend	1 day plus up to 2 for travelling if necessary	With salary
Attendance at a religious ceremony where staff religion requires it unavoidably	Up to 1 day per year; Additional days as necessary and if agreed	With salary Without salary
Secondment	See commentary	Without salary
University Graduation Ceremony of staff or of staff's immediate family	1 day plus up to 2 days for travelling	With salary
Other very urgent and special personal reasons which could not reasonably have been foreseen	Up to 3 days	With salary
Moving house	Up to 2 days if relocating and up to 1 day in other circumstances.	With salary
Attendance at own child's school productions, assemblies or workshops	Up to a maximum of one event per child per year	Without salary
Interview for other post	As may be necessary and reasonable	With salary
To participate as an amateur in national, regional or county matches or competitions	Up to 3 days per term	With salary
To participate in musical performances at the highest professional levels	Up to 3 days per term	With salary
Study and examination leave: (i) For Open University Degree	Up to 10 days in any 3 year period plus the days of the Examination	With salary
(ii) For part-time degree or degree equivalent	Up to 10 days over the normal period of the course, plus the days of the examinations	With salary
(iii) Other professionally relevant examinations	The days of the examinations	Without salary
To give lectures and talks away from school within the UK at the invitation of the educational bodies	As may be reasonable	With salary



Attendance at Examination Board Meetings (i) Chief and Deputy Chief Examiners/Moderators (ii) Assistant Examiners/Moderators	Up to 10 days per annum Up to 5 days per annum	With salary* With salary* *with the Board reimbursing the school
Attendance at annual training camp as voluntary member of the Armed Forces Reserves or as a Commissioned Officer accredited and/or posted to the cadet units of one of the 3 services.	2 weeks, or the duration of the period of training whichever is the less, in any 1 full year	With salary
Attendance at approved in-service training and professional development activities	5 days	With salary
To stand as a candidate at a Local Government Election	1 day (polling day)	Without salary

Part 2 of the scheme – MAT Board’s decisions

The F&A Committee are responsible for decisions about leave which are not within the Executive Heads discretion, including applications for special leave from the Executive Head, so that any appeals can be heard by the MAT Board. In urgent cases when a meeting of the Committee cannot be convened in time, the Executive Heads should refer the request to the Chair of the MAT Board.

Last reviewed: July 2020
Next review date: July 2023

