



# STEP Academy Trust

## Discretionary Leave Policy

Date of Policy: January 2019

Review: October 2021

### Introduction

STEP Academy Trust Board of Trustees has agreed this Policy and as such, it applies to all Academies within the Trust.

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### 1. Scope

This policy should be read in conjunction with other relevant documents (eg the Burgundy Book, the Green Book) which cover the terms and conditions of specific groups of staff. Nothing in this document overrides those particular provisions.

### 2. Principles of Application

- 2.1 The Working Time Regulations 1998 and S.1 of the Employment Rights Act 1996 deal with an employee's statutory and contractual rights to paid holidays ('annual leave'). Other sections deal with the right to time off for particular reasons (eg public duties) and the legislation has been amended to incorporate EC provisions on Dependency Care. Notwithstanding these statutory provisions, there is no *general* right to time off or for that time to be paid. It is normally granted at the discretion of the employer and in STEP Academy Trust, the policy is determined by the Board of Trustees.
- 2.2 It is recognised that there will be occasions when a member of staff could face an emergency or an unforeseen circumstance outside of work that needs their urgent attention and they will need to request time off to deal with the immediate crisis. If there is no provision for dealing with such situations it will increase their anxiety and only serve to make a bad situation even worse. Therefore, all staff will be made of aware of the provisions of this policy; of what to do if they wish to request time off and what their responsibilities are in these situations.

- 2.3 Any staff member is at liberty to request time off and they are entitled to have such requests given reasonable consideration. The purpose of this policy is to provide a framework of guidance to enable requests to be dealt with in a reasonable and consistent way. Each case will be judged on its own merits and circumstances. The granting of time off in one case will not necessarily set a precedent for other cases.
- 2.4 Line managers receiving an application for time off will be required to keep a formal detailed record of the request including a description of the circumstances and whether or not the request was granted in accordance with the framework of the policy (*see separate request pro-forma*).
- 2.5 The Headteacher (or Executive Headteacher/Executive Lead if it is the Headteacher requesting time off) or Line Manager has the delegated decision as to whether to grant time off and whether it should be paid or unpaid. Appeals against the Headteacher/Line Manager / Executive Headteacher/Executive Lead's decision should be made via the Grievance procedure. Decisions will be applied in a fair and consistent way.
- 2.6 Any abuse of the policy will be dealt with under the Trust's Disciplinary procedure.
- 2.7 In exercising their discretion, the Headteacher/Line Manager and Executive Headteacher/Executive Lead will give full consideration to all the circumstances of the case, including (where appropriate) the personal relationship of the person affected and conditions of service of the member of staff. Teachers and support staff whose holiday periods are defined by school holidays may need to be granted discretionary leave during term time. Any costs of supply cover for time off granted under this policy will have to be met from the Trust's budget.

### **3. Headteacher/Line Manager Responsibilities**

- 3.1 All Headteachers/Line Managers should acquaint themselves with the provisions of the Trust's Discretionary Leave policy.
- 3.2 On receiving a request for time off the Headteacher/Line Manager will meet with the member of staff as soon as is practicable and with due regard to the timing of the intended absence. They will discuss the circumstances of the request, gather all the necessary information and document the outcome of the meeting. Whether the request has been granted and whether or not it will be paid will be communicated, normally in writing, within one working day of the decision. Decisions to make payment for discretionary leave is at the absolute discretion of the Headteacher/Line Manager.
- 3.3 Any appeal against a decision not to grant to time off, or not to pay the time off, must be made to Governors/Trustees via the Grievance Procedure. Where the staff member indicates their intention to appeal the Headteacher/Line Manager will provide them with a copy of this procedure. They will also provide the Governor/Trustee appeal panel with relevant information relating to the consideration of the original request and the reason for its refusal. When the Grievance procedure has been completed, the appeal stage panel decision will be final.
- 3.4 The Headteacher/Line Manager will ensure that there are proper records of the consideration of all requests for time off and that a copy is placed on the individual's personal file on each occasion. This will include retrospective consideration in cases of emergency (see 4.4.below).

#### **4. Staff Responsibilities**

- 4.1 All staff should acquaint themselves with the provisions of the Trust's Discretionary leave policy.
- 4.2 Staff will be expected to have taken steps to avoid requesting time off wherever practicable. This is particularly relevant where there is a possibility of the need for time off to re-occur. Examples of this would include:
- medical appointments (whether one-off or part of ongoing treatment);
  - care of dependants.
- 4.3 Unless there are exceptional circumstances preventing the staff member from doing so, all requests for time off must be made in advance so as to give the Headteacher/Line Manager/Executive Headteacher/Executive Lead a chance to consider the request before the intended absence is incurred. As much detail as is reasonable should be provided to assist the Headteacher/Line Manager/Executive Headteacher/Executive Lead in considering the circumstances of the request.
- 4.4 If an unexpected emergency does arise and the staff member is unable to let the Headteacher/Line Manager/Executive Headteacher/Executive Lead know before taking the leave, they must let them know as soon as is practicable, by telephone if necessary. On their return to work they will need to account for the time off in the same way as they would normally have done had the time off been planned. The Headteacher/Line Manager/Executive Headteacher/Executive Lead will meet with the employee upon their return to discuss if the discretionary leave is to be paid or the time is to be made up or unpaid.
- 4.5 If the staff member wishes to appeal against the Headteacher/Line Manager/Executive Headteacher/Executive Lead's decision they must do so in writing using the Grievance procedure, as soon as is practicable after the decision is known.

#### **5. Categories of Discretionary Leave**

The following is a list of typical circumstances where requests for time off may be received. It is not intended to be either exhaustive or prescriptive. The Trust will monitor the granting of all discretionary leave in order to assist in a periodic review of its policy and for consistency of application.

- Care for a dependant, close relative or partner in cases of sudden illness, bereavement or other family emergency.
- Appointments that cannot be arranged outside normal working hours (eg medical screening, emergency medical treatment, serious domestic problems, court attendance).
- Interview for job.
- Formal public ceremonies (graduation of employee or close relative).
- Public examinations.
- Public duties/service.
- Jury service.
- Parliamentary candidates and elections.
- Participation in major sporting events.
- Volunteer member of HM forces.
- Religious observance.
- Moving home.

## 6. Considerations for Granting Time Off

The following national provisions currently exist and are incorporated in to this policy.

### 6.1 Teachers (Burgundy Book Section 6)

- External examinations: paid leave for duties in connection with these in certain circumstances.
- Jury service: paid leave entitlements should be comparable with other local authority officers.
- Trade Union Facilities time: will be paid or unpaid depending on activity (also statutory provision).
- Other circumstances: such as participation in Parliamentary elections, national representation in sport

### 6.2 NJC Staff (Green Book Section 7)

- Public duties: paid leave for jury service, serving on public bodies, undertaking public duties.
- Medical screening: paid leave for the purpose of cancer screening.
- Special leave: paid or unpaid additional leave may be granted in special circumstances at the discretion of the Trust.

### 6.3 Local School Provision

The following guidance will be used when considering requests for time off in addition to the national provisions above. As a general rule the Trust will grant five days paid leave in any 12 month period. Exceptionally the period may be extended by up to a further 10 days' paid leave or three months' unpaid leave.

Time allowed	Category/circumstances
Time off: up to one day's absence per occasion	<p>For: emergency medical/dental appointments, medical out-patients attendance, family bereavement or serious domestic problem, court attendance, interview for appointment (<i>in some circumstances eg senior level appointment, this may run into a second day</i>), house removal, formal public ceremonies such as graduations, investitures etc.</p> <p>In situations where the timescales involved are beyond the employee's control further discretionary leave may need to be considered.</p> <p>Staff whose holiday periods are not defined by school holidays (e.g. staff employed all year round) could be asked to take annual leave for such absences.</p>
Time off: up to five days absence in any one year	To obtain nursing or other appropriate assistance for a relative living with the member of staff, to make funeral arrangements where no one else is available, for special days of religious observance.
Time off: more than five days absence	May be granted in cases of serious family illness, bereavement or an emergency where the continued attendance of the member of staff is essential.

## 6.4 Other Time Off

Study Leave	One day's leave for each examination paper leading to a relevant professional qualification. To a Maximum of 5 days.
Jury Service	A member of staff receiving a summons to serve on a jury must inform the Headteacher/Line Manager/Executive Headteacher/Executive Lead who will grant the leave of absence unless an exemption is secured. All staff should claim the financial loss allowance from the court. An equivalent amount will subsequently be deducted from their pay. Where the absence of the member of staff would cause special difficulties, it is possible for the employee to approach the local Clerk of the Court for the attendance to be deferred for a period but it should be noted that the final decision on this will rest with the Courts.
Appointment to Public Service	The Trust's policy is to grant up to 10 days for people appointed to public office (e.g., as a Justice of the Peace, Local Government Councillor, or any other agreed form of public duty) unless a longer period is specified in law.
Parliamentary Candidates and Elections	The Trust has agreed that a member of staff who is a prospective parliamentary candidate may be granted up to three weeks absence without pay immediately before the election, plus one day's paid leave on the day of the election. Staff who assist candidates at parliamentary elections may be granted one day's unpaid leave to carry out their official duties on the day of the election.
Volunteer Members of H.M. Forces	The Trust's policy is to grant up to two weeks' paid leave of absence in any school year to staff who are volunteer members of the Non-Regular Forces, to attend the Summer Camp, where this cannot be arranged during a school vacation.
Leave for Religious Festivals and Holy Days	Many religions or beliefs have special festival or spiritual observance days. Staff may request leave in order to celebrate festivals or attend ceremonies or observe mourning periods. Headteachers/Line Managers should consider such requests sympathetically where it is reasonable and practical to do so. <i>(see further notes in 6.5 below)</i>
Trade Union Facility time	Where the employer recognises specific trade unions for collective bargaining purposes, officials of those organisations are entitled to paid time off in order to perform trade union duties. They are also entitled to time off for the performance of trade union activities. Any time granted under this paragraph will be managed in accordance with the employer's Trade Union Facilities Agreement.

## 6.5 Religious Observance

### 6.5.1 The Employment Equality (Religion or Belief) Regulations 2003

These regulations make it unlawful for employers to discriminate against employees, in any aspect of the employment relationship from recruitment through to termination on the basis of their religion or belief. The Equality Act 2006 and 2010 amended the regulations to extend its protection to discrimination on the basis of non-religion or non-belief.

The regulations do not say that employers must provide time and facilities for religious or belief observance in the workplace.

### 6.5.2 Religious Observance in the Workplace

The Trust should seek to support workers with their religious or belief observance through the sensitive application of mainstream HR policies and procedures.

### 6.5.3 Flexible Working

Consideration of flexible working arrangements may enable Headteachers/Line Managers/ Executive Headteacher/Executive Lead to accommodate workers who want to balance their work and religious or belief observance. This can range from prayer breaks during the day to observe prayer times or allowing some employees to work flexibly in order to leave early on a Friday to observe the Sabbath. Employees must make out their case for any changes to working patterns, including the impact on service delivery and on colleagues.

Guidance from the Department of Trade and Industry (DTI) and from the Advisory and Conciliation Service (ACAS) make it clear that paid time off does not have to be granted for religious observance and any alteration to working patterns must be in keeping with business needs.

### 6.5.4 Leave for Religious Festivals and Holy Days

Many religions or beliefs have special festival or spiritual observance days. Employees may request leave in order to celebrate festivals or attend ceremonies or observe mourning periods. Headteachers/Line Managers/ Executive Headteacher/Executive Lead should sympathetically consider such requests where it is reasonable and practical to do so. Employees can use a combination of annual leave; unpaid leave; flexi leave or toil leave in order to attend festivals or spiritual observance days. Such requests should not be unreasonably refused.

### 6.5.5 Religious Fellowship and Prayer

Groups of employees may wish to be allowed to meet for fellowship and prayer. Such meetings are expected to take place within employees own time, or through the use of flexi-leave or toil, with the agreement of the Headteachers/Line Managers/ Executive Headteacher/Executive Lead, subject to the needs of the service.

## 7. Deductions from Pay

Where the time off granted is unpaid, the deduction from salary will be at the following rates:-

- Teaching staff: 1/365<sup>th</sup> of the annual salary for each day's absence;
- All other staff: 1/5<sup>th</sup> of a normal week's pay for each day's absence.

## **8. Policy Review**

This policy will be reviewed on an annual basis. The Headteachers/Line Managers/Executive Headteacher/Executive Lead will monitor the granting of time off and make recommendations to governors, as appropriate. Any changes will be brought to the attention of all staff.

## **Request for Discretionary Leave Form**

This can be obtained from your school office.

## **Appendix 1: FAQ's – Leave for the purposes of care of dependants**

Note: The following information is based on the amended legal provisions set out in Ss.57A&B of the Employment Rights Act 1996. These changes allowed the EC Parental Leave Directive to be incorporated into UK domestic law.

### **What is the right to time off for dependants?**

The right to time off for dependants is the right for employees to take a reasonable amount of unpaid time off during working hours to take action in certain circumstances. These are where a dependant is involved in an incident (eg at school), or dies; where a dependant's care arrangements are unexpectedly interrupted or terminated; to provide assistance where a dependant falls ill, gives birth or is assaulted; or to make arrangements for the care of a sick or injured dependant.

### **Who counts as a 'dependant' for the purposes of the right to time off for dependants?**

For the purposes of the right to time off for dependants, a dependant is an employee's spouse, civil partner, child or parent or another person who lives in the same house as the employee other than as a tenant, boarder, lodger or employee. In addition, it includes anyone who reasonably relies on the employee for assistance or to make arrangements for care when that person falls ill or is injured or assaulted, and anyone who relies on the employee to arrange the provision of care.

### **What requirements are there on an employee to inform the employer that he or she is taking time off for dependants?**

In order to qualify for the right to time off for dependants, an employee is required to inform the employer as soon as is reasonably practicable of the reason for his or her absence. The employee must also tell the employer for how long he or she expects to be absent, but is not, the Employment Appeal Tribunal held in [Qua v John Ford Morrison Solicitors \[2003\] IRLR 184 EAT](#), required to provide daily updates on the situation where it involves more than one day's absence.

### **Are employees paid for time off for dependants?**

Employees have no statutory right to be paid for time off for dependants. Whether or not they are paid will be dependant on the discretion of the employer, or the terms of the contract.

### **Does the right to time off for dependants include time off to care for a sick child?**

The Government guidance on the subject states that if an employee's child comes down with, for example, chicken pox, it is envisaged that time off for dependants will cover time to deal with the immediate care of the child, including visiting the doctor if necessary, as well as time to make longer-term care arrangements. The right will not entitle the employee to time off to look after the child until he or she recovers. In [Qua v John Ford Morrison Solicitors \[2003\] IRLR 184 EAT](#) the Employment Appeal Tribunal emphasised that the right to time off for dependants does not include the right to time off to provide care beyond a reasonable amount necessary to deal with the immediate crisis.

### **Does the right to time off for dependants include time off for sickness absence caused by grief?**

No. In [Forster v Cartwright Black \[2004\] IRLR 781 EAT](#) the Employment Appeal Tribunal held that grief-induced sickness absence is not time off that is necessary 'in consequence of the death of a dependant'. The phrase extends only to such matters as time off to make funeral arrangements, register the death and apply for probate. If grief triggers a medical condition, this will be dealt with by reference to the Sickness Absence procedures.

**What protection is there for employees with regard to the right to time off for dependants?**

An employee can present a claim to an employment tribunal if the employer has unreasonably refused him or her time off for dependants. Employees also have the right not to be dismissed or subjected to any detriment for exercising their right to time off for dependants. No qualifying period of employment is necessary to pursue a claim of unfair dismissal in these circumstances.

**Are employees entitled to paid time off to organise or attend a funeral?**

There is no statutory right to paid time off to organise or attend a funeral. Some employers will have a compassionate leave policy that provides for paid time off to organise or attend a funeral. Such policies often give a discretionary rather than a contractual right to time off. However, if the right is contractual, employees will be able to rely on it to take paid time off for this purpose.

There is a statutory right under s.57A of the Employment Rights Act 1996 to a reasonable amount of time off during working hours in order to take action that is necessary in consequence of the death of a dependant. A dependant is an employee's spouse, civil partner, child or parent; or a person living in the same household other than by reason of being a tenant, lodger, boarder or employee. DBERR guidance provides that time off for making funeral arrangements or attending the funeral of a dependant would be covered by this provision. It is important to note that there is no right to be paid during the time off. This would be a matter for agreement between the employer and employee.