

**REPORT TO:** Cabinet

**MEETING DATE:** 8 November 2016

**BY:** Depute Chief Executive – Resources and People Services

**SUBJECT:** Revised Managing Attendance Policy

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## **1 PURPOSE**

- 1.1 To seek approval from Cabinet on amendments to the Managing Attendance Policy following consultation with the Joint Trades Unions and employees.

## **2 RECOMMENDATIONS**

- 2.1 That Cabinet approve the revised Policy, which is attached at Appendix 1, with effect from 1 January 2017, allowing time for communication of the revised Policy and initial training to take place.

## **3 BACKGROUND**

- 3.1 The current Managing Attendance Policy has been in place since 30 June 2014. When the Policy was approved by Cabinet, it was suggested that it be reviewed after a period of time.
- 3.2 In Autumn 2015, HR embarked upon a comprehensive and inclusive review as follows:

'User feedback' workshop: managers from a range of services invited to share experiences of existing policy.	Nov 2015
HR meeting with UNISON/EIS to hear experiences of existing policy.	Dec 2015
HR research: benchmarking other organisations' policies; comparison of sector / national sickness absence levels.	Jan-Feb 2016
CMT approved formal review process.	March 2016

'User feedback' workshop: managers' views sought on potential policy revisions.	April 2016
Legal advice sought on potential policy revisions.	May 2016
HR meeting with UNISON/EIS to discuss potential policy revisions.	May 2016
CMT approved consultative draft policy.	May 2016
Employee consultation	Jun–Sept 2016
TU consultations	July-Sept 2016
Revisions to policy in response to consultation	1 Sept 2016
Revised Policy discussed at JCC on 14 <sup>th</sup> September with agreement to discuss any remaining issues of concern again with Joint Trades Unions.	14 <sup>th</sup> Sept 2016
Meetings with local UNISON/EIS/SSTA representatives to discuss remaining concerns following JCC	27 <sup>th</sup> Sept 2016
Meeting with UNISON Representatives from Regional, Area and Local level; and EIS. Other TUs also invited.	26 <sup>th</sup> Oct 2016

3.3 The initial consultative draft policy included the following key policy changes, some of which were included to address concerns raised by Trades Unions about the existing policy:

- Removal of the use of the Disciplinary Policy to manage frequent short term absences not caused by an underlying health condition.
- Introduction of paid phased returns in specific circumstances.
- Introduction of an informal support stage instead of automatic monitoring the first time a trigger is met.
- Changes to the trigger for intervention so that the duration of absences, as well as the frequency of absences has a bearing.
- Changes to the duration of formal monitoring periods from 6 to 12 months, but with provision for an employee to be absent for a short period without progressing to the next stage. This is aimed at achieving sustained improvement without the employee having to achieve perfect attendance to avoid progressing through the stages of the policy.
- Inclusion of more information on the support offered by the Council to help improve employee health and wellbeing.

- Clearer guidance to management on making referrals to Occupational Health.
  - Fuller guidance to management on supporting long term absences.
- 3.4 During the consultation phase, the Joint Trade Unions were afforded multiple opportunities to engage with and contribute to the further development of the policy. Direct contributions have been made either locally and/or regionally by UNISON, EIS, SSTA, GMB and UNITE but we have had no response from UCATT.
- 3.5 Following extended consultation with both employees and Trades Unions, a number of further revisions were made to the revised policy.
- 3.6 The most significant revisions arising from the formal consultation phase were:

Increase cumulative day trigger by 2 days: from 8 to 10 days for the initial trigger and from 6 to 8 days for the 'in-monitoring' trigger.

Rationale for change: 8 days was set as the original trigger because the % working time missed for UK local government translates to 7 days for an ELC full-time employee; thus 8 days is above average. However, weekends are not included in the national statistics but count towards our trigger when they fall between sick days<sup>1</sup>. It is logical to increase the trigger by 2 days to address concerns raised by some employees and TUs about the use of calendar days: the higher trigger compensates for possible inclusion of a weekend.

Provide for a longer phased return (up to 6 weeks) in exceptional circumstances.

Rationale for change: most phased returns recommended by OH are 2-4 weeks which was reflected in our original draft. We acknowledge TU / employee comments that there may be circumstances, after a particularly serious / lengthy illness that a more gradual return, over a longer period is medically advised and there should be flexibility to permit this.

- 3.7 A further meeting took place with representatives from the Joint Trades Unions on 27<sup>th</sup> September when the remaining issues of concern as set out below were discussed:
- Trigger points and monitoring
  - Use of calendar days
  - Absences due to industrial injury
  - Abatement of leave
  - Conduct of support meetings as part of a routine return to work meeting.
  - Minor wording
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3.8 As a result of these discussions the following steps have been taken:

- Proposed wording changes have been adopted.
- The section on conducting support meetings has been amended.
- Clarification has been given, and will be emphasised in training and guidance, about the use of calendar days.
- Clarification has been given, and will be highlighted in guidance notes, about abatement of leave.

Whilst there is not agreement on all aspects discussed with Joint Trade Unions, there has been a full airing and consideration of their concerns, and amendments made in several areas.

At a further meeting on 26<sup>th</sup> October the Trades Unions present were asked how they would want their remaining position expressed in the Cabinet Report and this is set out below:

*UNISON and EIS are not in a position to recommend or agree to the new Managing Attendance Policy. Whilst we understand the position being promoted by HR we continue to have reservations regarding the impact on our members. This is unlikely to be resolved. If this policy is agreed then UNISON and EIS will carefully monitor its impact and respond accordingly.*

## **4 POLICY IMPLICATIONS**

- 4.1 If approved by Cabinet, the revised policy and associated guidance documents will replace the existing Managing Attendance Policy. This will be supported by a programme of line manager and shop steward workshops and briefings.
- 4.2 Transition arrangements for employees currently being managed under the current Policy would be put in place for transferring to the appropriate stage of the new Policy.
- 4.3 If not approved by Cabinet, the existing policy will remain in place.

## **5 INTEGRATED IMPACT ASSESSMENT**

5.1 The subject of this report has been through the Integrated Impact Assessment process. Whilst it is acknowledged that older employees and those with a disability are potentially more likely to be absent from work, the Managing Attendance Policy, as currently written, provides a framework for conversations to take place about support needed, and Occupational Health advice provided, including adjustments where appropriate, to assist with employee's attendance at work, in accordance with the Equalities Act 2010. Link to the IIA:

[http://www.eastlothian.gov.uk/downloads/file/11615/managing\\_attendance\\_policy\\_ia](http://www.eastlothian.gov.uk/downloads/file/11615/managing_attendance_policy_ia)

## 6 RESOURCE IMPLICATIONS

- 6.1 Financial – there are no direct financial consequences arising from the approval of the report recommendations. However, non-attendance at work due to ill-health has significant opportunity and financial costs to the organisation: in 2015/16 the cost of occupational and statutory sick pay (excluding ‘on-costs’) was approximately £3.25 million

It should also be noted that under the proposed policy, Business Units may incur additional costs if they are paying an employee for missed working hours during a phased return at the same time as paying other workers (e.g. supply, locums) to provide cover.

Personnel - HR will be required to dedicate resources to:

- (i) updating guidance, associated documentation (e.g. template letters);
- (ii) rolling out the new policy to managers/employees/shop stewards through briefings; and
- (iii) developing and delivering training workshops / briefings to managers/shop stewards.

This will be done within existing resources.

## 7 BACKGROUND PAPERS

### 7.1 Appendix 1

Revised Managing Attendance Policy

<b>AUTHOR'S NAME</b>	Zoe McFadzean Louise Lissaman
<b>DESIGNATION</b>	HR Business Partner HR Advisor
<b>CONTACT INFO</b>	<a href="mailto:zmcfadzean@eastlothian.gov.uk">zmcfadzean@eastlothian.gov.uk</a> / 6772 <a href="mailto:llissaman@eastlothian.gov.uk">llissaman@eastlothian.gov.uk</a> / x7638
<b>DATE</b>	27 <sup>th</sup> October 2017



**This Policy applies to all employees.**

**Section**

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# **Managing Attendance Policy**

**DATE**

## **1. Introduction**

- 1.1 East Lothian Council values the contribution of its employees and is committed to maximising regular, reliable attendance at work in the interests of providing efficient, cost-effective and high quality services.
- 1.2 The Council provides a range of resources to promote the health and wellbeing of its workforce.
- 1.3 We recognise that employees become ill and, as a consequence, may need time off work to get better. The Council will provide all reasonable support to employees to assist their timely and sustainable return to work following a period of sickness absence. This Policy outlines the resources and practical steps available to managers to support employees who are sick or returning to work after a period of ill health.
- 1.4 However, ultimately, employees are contracted and paid to attend work. Where an employee is unable carry to out the required duties of their role or cannot sustain an acceptable level of attendance, either because of frequent absences or a long-term absence, the Council may dismiss the employee. The process by which a decision to dismiss an employee may be reached is described in this Policy.
- 1.5 This Policy outlines the responsibilities on managers and employees in relation to attendance at work and provides a framework for consistently managing sickness absence to ensure that employees are appropriately supported and that the financial and operational impact on services is minimised.
- 1.6 The Council recognises its statutory obligations and will comply with relevant legislation, including that in relation to health and safety and equalities.

## **2. Scope of Policy**

- 2.1 This Policy applies to all employees. For the purposes of this Policy, Head Teachers and other appropriate promoted teachers are Line Managers.
- 2.2 This Policy is based on the assumption that reported sickness absence is genuine. Where there is an indication that reported sickness absence may not be genuine, or where an employee fails to comply with the provisions of this Policy or local arrangements e.g. for sickness reporting, or where the employee's conduct causes or contributes to their absence through ill-health, the matter will be investigated and dealt with under the Council's Disciplinary Procedure.



### 3. Key Responsibilities

#### 3.1 **Employees are responsible for:**

- Attending work unless prevented from doing so by sickness. Absences for other authorised reasons e.g. annual leave, must have prior line management approval. In certain circumstances, described in the Special Leave Policy, paid or unpaid special leave may be available.
- Looking after their health and wellbeing and seeking medical attention or other support to minimise their sickness absence from work.
- Ensuring they understand and comply with the provisions of this Policy.
- Raising promptly any concerns about the impact of their job on their health.

#### 3.2 **Line managers are responsible for:**

- Maintaining and applying effective systems to record, report and monitor sickness absence and ensuring employees know what is expected of them in relation to attending work.
- Treating information regarding an employee's health confidentially and dealing with employees in a sensitive and supportive manner.
- Proactively and consistently managing sickness absence, in accordance with this Policy, to ensure a consistent approach and to minimise the impact on their area.

#### 3.3 **Service Managers are responsible for:**

- Ensuring that line managers understand the Council's policies and procedures in relation to attending work and apply them fairly, consistently and robustly.
- Monitoring levels of sickness absence in their area and intervening where necessary to improve sickness absence levels.

#### 3.4 **Heads of Service are responsible for:**

- Setting expectations for effective attendance management across their service.
- Monitoring overall levels of sickness absence in their service and intervening where necessary to improve sickness absence levels.
- Chairing capability or attendance management hearings (or nominating another senior officer to do so).

#### 3.5 **Human Resources are responsible for:**

- Ensuring an effective attendance management Policy, that complies with the relevant legislation, is in place.
- Advising and supporting managers on the appropriate implementation of this Policy or guiding them towards other policies or action where appropriate.
- Providing high-level data on absence levels across services.

## 4. Supporting Health & Wellbeing

- 4.1 The Council engages the service of an Occupational Health Service that promotes employee health by providing advice and guidance to managers and to employees. Referral to Occupational Health is not a sanction and is good managerial practice in many circumstances to aid decision-making in relation to an employee's health and work. This Policy details the points at which a referral to Occupational Health is required or desirable. This is also summarised in Appendix 1.
- 4.2 The Council provides a range of other resources to promote the health and wellbeing of Council employees, which managers should consider and promote to employees, particularly those who are unwell or experiencing difficulties in the workplace or in their personal lives.
- 4.2.1 **Healthy Working Lives:** a range of health initiatives detailed on ELNet and promoted around the Council.
- 4.2.2 **Employee Assistance Programme:** This is a free, confidential and independent resource to help employees balance work, family and personal life. Available any time, any day, by phone, e-mail or online, the service provides information, resources, and counselling on a range of issues. Employees may access the service directly, in confidence. In addition, with a member of employee's consent, managers can make a direct referral to the service. Further information, including referral forms for managers, is available on ELNet.
- 4.2.3 **Physiotherapy Service:** Managers may make a referral to Midlothian Physiotherapy, either for treatment or for workplace assessments where an injury was caused at work or a condition is exacerbated by work; the cost is met by the referring service. Individual employees can also access physiotherapy privately with Midlothian Physiotherapy and benefit from reduced rates.

## 5. Routine Management of Sickness Absence

### 5.1 *Employees are required to:*

- 5.1.1 Telephone their Line Manager or the designated person in their section to inform them that they will not be at work, as soon as they are aware that they are too unwell to attend work, and, in any case within one hour of normal start times, unless impossible to do so. Notification of absence by e-mail, text or voicemail is only acceptable in cases where the employee's manager is unavailable. However, the manager or appropriate representative will phone the employee as soon as possible to clarify the circumstances of their absence. NB: Local sickness notification procedures may apply in some business units which should be adhered to.
- 5.1.2 Telephone their Line Manager, if they continue to be off, on the 4<sup>th</sup> and 7<sup>th</sup> calendar day of their absence, in order to give an update on their medical condition and likely time scale for return. If the 4<sup>th</sup> or 7<sup>th</sup> day falls on an ELC non-working day, the next working day is acceptable. If the employee is unable to make contact themselves, they may appoint another person to act on their behalf.
- 5.1.3 Complete a self-certificate (Appendix 2) for absences of up to 7 days. Note that teachers are only obliged to complete a self-certificate when the absence is greater than 3 days, but Head Teacher's may choose to use the self-certificate to record the return to work meeting (see 5.2.5 below).
- 5.1.4 Provide a GP "Statement of Fitness to Work" ("Fit Note") from the 8<sup>th</sup> calendar day of absence onwards. It is important that an employee sends the GP "Fit Note" to their Line Manager as soon as they receive it. Failure to do this without good reason, within one week of either (i) the end of self certification, or (ii) the end of the cover period of a previous "Fit Note" may result in an absence being regarded as unauthorised and pay may be deducted, once the circumstances have been established. Disciplinary procedures may also be invoked. See section 10 for further information on "Fit Notes".
- 5.1.5 Remain in regular contact with their Line Manager, at a frequency to be agreed between both parties.
- 5.1.6 Advise their Line Manager by telephone as soon as a date of return is known.
- 5.1.7 Follow the reporting and certification procedures to be entitled to Occupational Sickness Allowance and Statutory Sick Pay. Failure to do so may result in the employee's pay being stopped and the absence being deemed as unauthorised. Disciplinary procedures may also be invoked.
- 5.1.8 Attend Return to Work meetings and other absence meetings as requested by their Line Manager, and discuss any health issues that are likely to impact on their attendance or performance at work.
- 5.1.9 Attend Occupational Health appointments when requested to do so.
- 5.1.10 Seek appropriate help, advice and support in relation to any health condition impacting on their ability to attend work.

- 5.2 Managers are directly responsible for managing sickness absence, in particular:**
- 5.2.1 Ensuring that employees fully understand this Policy as well as any other Council requirements for reporting, recording and monitoring sickness absence and have local systems in place to manage sickness, including identifying when employees have hit a trigger requiring intervention under this Policy.
- 5.2.2 Ensuring that policies and procedures for managing sickness absence are routinely, consistently and fairly applied to all employees.
- 5.2.3 Ensuring that all their employees are fully aware of the sickness absence procedures used in their Business Unit: e.g.
- When to phone in
  - Who to phone
  - How often to phone in
  - The consequences of not following these procedures.
- 5.2.4 Ascertaining the following information from an employee when they are off sick:
- Why the employee is unable to attend work
  - How long the employee expects to be absent
  - Whether the employee intends to seek a GP appointment
  - Date, time and to whom the absence was notified if it was not the manager.
- 5.2.5 Conducting return to work meetings with employees after every sickness absence, however short, including for partial days missed. The self-certificate form at Appendix 2 includes a section to record the return to work meeting. Managers should ensure that they discuss, in a supportive, informal manner, the following:
- The reason for the absence;
  - Any actions to be taken upon return to work;
  - If appropriate, observations about the frequency / pattern of the employee's absence, including, if relevant whether the employee is approaching a trigger point under this Policy;
  - If appropriate, whether there are any supports to be considered, or other action that the manager and/or employee may take to improve attendance in future.
- 5.2.6 Monitoring individuals' and Business Unit sickness absence records.
- 5.2.7 Treating health issues sensitively and supportively, including exploring whether any of the resources in Section 4 might help the employee, as appropriate.
- 5.2.8 Ensuring that referrals to Occupational Health are submitted in a timely way, at the point they are required, in accordance with this Policy.
- 5.2.9 Ensuring that sickness absence returns are submitted promptly to payroll to ensure that absences are properly recorded to allow Sickness Allowance and Statutory Sick Pay is processed in a timely way.

## 6. Managing frequent absences

6.1 Frequent absences are disruptive and costly to services and have a detrimental impact on work colleagues. This section describes the Council's approach to managing frequent absences which aims to support employees to improve their attendance to acceptable levels. Where this proves not to be possible, and following the stages outlined below, a decision may be made to dismiss the employee.

6.2 The initial trigger point for management intervention is:

3 absences of any length, in any rolling 12 month period<sup>1</sup>  
or  
2 absences totalling 10 calendar days or more<sup>2</sup>, in any rolling 12 month period

6.3 All sickness absences, whatever their length or cause (except pregnancy-related), are considered when deciding whether an employee has reached the trigger point.

6.4 A flowchart can be found at the end of this section which gives an overview of the stages of formal intervention, the detail of which is described below.

### 6.5 Informal Stage – Sickness Absence Support Meeting

6.5.1 On the first occasion in their employment with East Lothian Council that an employee reaches the trigger point, the Line Manager will hold a Support Meeting. It is acceptable for the Support Meeting to take place during the routine return to work meeting, provided sufficient time is allowed to address all relevant issues adequately; where this is not possible, a separate meeting should be held. At the Sickness Absence Support Meeting, the Line Manager will:

- Notify the employee that their level of sickness absence is a cause for concern and that they have reached the trigger point for intervention.
- Explore any factors relating to the employee's health and their ability to attend work on a regular and reliable basis.
- Reiterate the Council's Managing Attendance Policy, explaining in particular that Stage 1 monitoring will commence if the employee reaches the trigger point again at any point in the future.
- Discuss other relevant issues, including any the employee wishes to raise.

6.5.2 The Line Manager will complete a Support Meeting form (Appendix 3), which once signed by the employee and the manager will be kept locally and copied to HR.

6.5.3 In the course of their employment with East Lothian Council, only one Support Meeting will be held; where an employee subsequently reaches the trigger point, taking account of absences in any 12 month rolling period, Stage 1 of this Policy will be invoked.

<sup>1</sup> See Appendix 6 on how to determine a rolling 12 month period.

<sup>2</sup> See Appendix 6 on how to determine the number of calendar days missed.

## 6.6 Stage 1

6.6.1 When an employee, who has previously had a Support Meeting, or who has previously been on monitoring, reaches the trigger point again, the Line Manager will meet the employee and will:

- Notify the employee that their level of sickness absence is a cause for concern and that they have reached the point for formal intervention, under Stage 1 of this Policy.
- Explore any factors relating to the employee's health and their ability to attend work on a regular and reliable basis.
- Reiterate the Council's Managing Attendance Policy.
- Explain to the employee that their attendance will be subject to formal monitoring for 12 months from the date of their return to work after the latest absence.
- Explain that Stage 2 of the Policy will be invoked if the employee is absent during the monitoring period on two separate occasions, or for a single absence of 8 or more consecutive calendar days.
- Discuss other relevant issues, including any the employee wishes to raise.

6.6.2 The Line Manager will complete a Stage 1 Monitoring form (Appendix 4), which should be signed by both the employee and the manager. The form will be retained locally and a copy will be given to the employee and to HR.

6.6.3 It is acceptable for Stage 1 to be invoked at the routine return to work meeting, provided sufficient time is allowed to address all relevant issues adequately; where this is not possible, a separate meeting should be held.

6.6.4 When an employee reaches the end of the monitoring period with acceptable attendance, the Line Manager will notify them that formal intervention has ended, but that, if attendance falls below acceptable levels again, formal intervention will recommence, at the appropriate stage taking account of the previous history. HR must be consulted if considering any point in the policy other than Stage 1.

## 6.7 Stage 2

6.7.1 When, during Stage 1 monitoring, an employee is absent on two separate occasions, or for a single absence of 8 or more consecutive calendar days, the manager will hold a meeting with the employee at which s/he will follow the same steps as for Stage 1. Consideration should be given as to whether a referral to OH is appropriate. The manager will also complete a Stage 2 Monitoring form (Appendix 4), which should be signed by the employee and the manager. The form will be retained locally and a copy will be given to the employee and to HR.

6.7.2 It is acceptable for Stage 2 to be invoked at the routine return to work meeting, provided sufficient time is allowed to address all relevant issues adequately; where this is not possible, a separate meeting should be held.



6.7.3 When an employee reaches the end of the 12 month monitoring period with acceptable attendance, the Line Manager will notify them that formal intervention has ended, but that, if attendance falls below acceptable levels again, formal intervention will recommence, at the appropriate stage taking account of the previous absence history. HR must be consulted if considering any point in the policy other than Stage 1.

## 6.8 Stage 3

6.8.1 When, during Stage 2 monitoring, an employee is absent on two separate occasions, or for a single absence of 8 or more consecutive calendar days, the manager will refer the employee to the Council's Occupational Health service for advice, having first discussed the reason for the referral with the employee.

6.8.2 On receipt of the Occupational Health report, the Line Manager will arrange to meet the employee, giving 5 working days' notice. The employee may be accompanied by a Trade Union Representative, colleague, friend or family member.

6.8.3 At the Stage 3 meeting, the Line Manager will:

- Explore any factors relating to the employee's health and their ability to attend work on a regular and reliable basis, using the Occupational Health report as a basis for the discussion.
- Notify the employee that their level of sickness absence is of an increasing cause for concern, re-iterate the Council's Managing Attendance Policy, and inform the employee that they have reached Stage 3 of the Policy.
- Explain to the employee that their attendance will be subject to formal monitoring for 12 months from the date of the Stage 3 meeting.
- Explain that if, during the Stage 3 monitoring period, the employee is absent on two separate occasions, or for a single absence of more than 8 consecutive calendar days, a further referral will be made to the Council's Occupational Health provider before moving to Stage 4 of formal management intervention.
- Discuss other relevant issues, including any the employee wishes to raise.

6.8.4 Following the meeting, the Line Manager will write a letter to the employee to record and confirm the outcomes of the discussion, sending a copy to HR.

6.8.5 When an employee reaches the end of the 12 month monitoring period with acceptable attendance, the Line Manager will notify them that formal intervention has ended, but that, if attendance falls below acceptable levels again, formal intervention will recommence, at the appropriate stage taking account of the previous history. HR must be consulted if considering any point in the policy other than Stage 1.

## 6.9 Stage 4

6.9.1 When, during Stage 3 monitoring, an employee is absent on two separate occasions, or for a single absence of 8 or more consecutive calendar days, the manager will refer the employee to the Council's Occupational Health service for advice, having first discussed the reason for the referral with the employee.

6.9.2 On receipt of the Occupational Health report, the Line Manager will arrange to meet the employee, giving 5 working days' notice. The employee may be accompanied by a Trade Union Representative, colleague, friend or family member.

6.9.3 At the Stage 4 meeting, the Line Manager will:

- Notify the employee that their level of sickness absence remains at an unacceptable level and that Stage 4 of this Policy has been reached.
- Taking account of all relevant factors, including the Occupational Health report, explore with the employee the following options, if appropriate:
  - Redeployment on medical grounds (see section 13).
  - Ill health retirement (see section 14).
- Inform the employee that, if for whatever reason, neither of those options are to be pursued in a timely manner, an Attendance Management Report will be submitted to the Head of Service (or other nominated senior officer), which may result in an Attendance Management Hearing being convened.
- Ensure that the employee understands that this may lead to them being dismissed either on the grounds of capability due to ill health, or on the grounds of persistent absenteeism resulting in unacceptable levels of attendance at work.

6.9.4 Following the meeting, the Line Manager will write a letter to the employee to record and confirm the outcomes of the discussion.

## 6.10 **Attendance Management Hearing**

6.10.1 If the Head of Service decides, on the basis of an Attendance Management Report, to convene an Attendance Management Hearing, the employee will receive a copy of the report and at least 5 working days' notice of the date of the hearing.

6.10.2 The employee may be accompanied by a Trade Union representative, family member or friend to the hearing and will be given the opportunity to state their case in response to the report and issues.

6.10.3 If an employee is dismissed following an Attendance Management hearing they will have the right of appeal, the process for which will be explained in the dismissal letter.



## 7. Managing long-term absences

7.1 Where an employee is off sick or is expected to be off sick, for a continuous period of 28 calendar days or more, this should be considered to be a long-term absence.

7.2 In this situation the Line Manager should:

- Keep in touch with the employee at appropriate regular intervals, in a manner agreed with the employee, including arranging to meet with them if appropriate, and / or having regular telephone contact.
- Hold a case management review discussion with HR no later than 8 weeks after the start of the absence, and at regular agreed points thereafter.
- Consider, at appropriate points, whether a referral to Occupational Health is necessary. A referral would normally be needed when an employee is sick for 6 weeks with no imminent date for a return to work; further referrals should be made for updates as necessary. See Appendix 1 for further advice.
- Meet the employee, at the earliest opportunity, following receipt of an Occupational Health report, to discuss its contents, including any adjustments or other recommendations made by OH that might facilitate the employee's return to work. The employee may be accompanied by a Trade Union representative, colleague or family member at this meeting.
- Decide on whether adjustments are reasonable in the context of the role and service, taking advice from HR as necessary, and explain to the employee what measures can or cannot be implemented. Section 12 provides further advice on adjustments in the context of the Equality Act (2010).
- Keep under review the sustainability of the absence taking account of all relevant factors, including the impact on the service provision, the impact on other work colleagues, the time scales for a return to work, the likelihood of the employee being able to fulfil the duties of their role in the future.
- Write to the employee to confirm agreed outcomes following meetings.

7.3 Where the Line Manager has recently obtained Occupational Health advice and taking account of all relevant information, the manager reaches the view that **either**:

- (i) the absence is becoming unsustainable; **or**
- (ii) it is reasonable to believe that the employee will be unable to return to their substantive role;

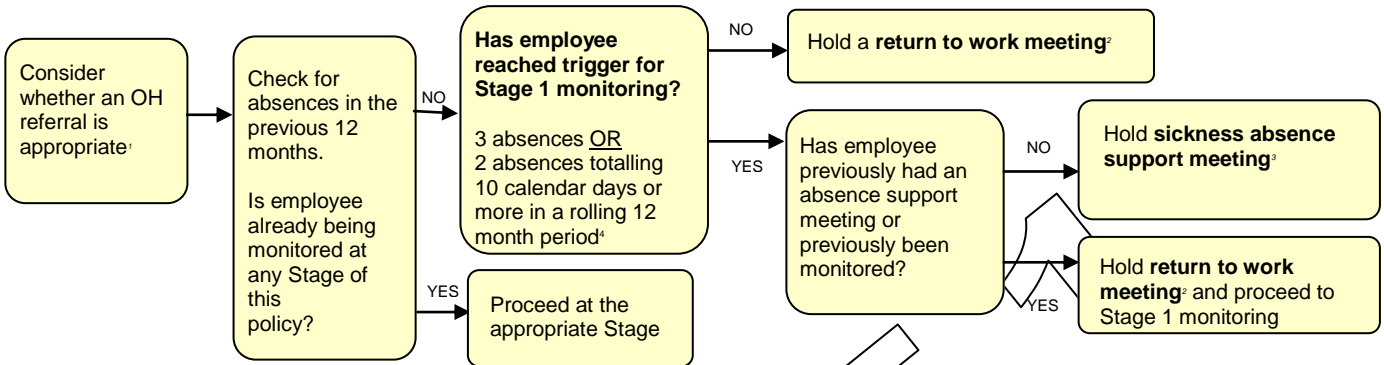
the manager should discuss with the employee whether ill-health retirement and/or medical redeployment might be options (see sections 13 & 14). If neither of these are realistic possibilities, the Line Manager will prepare an Attendance Management Report and ask the Head of Service (or other nominated senior officer) to consider convening a Hearing, at which a decision to dismiss the employee may be made in line with Stage 4 of this Policy.

- 7.4 Long-term absences vary significantly in duration and complexity, and decisions on the sustainability of an absence should be made on a case by case basis taking account of all relevant factors about the individual's health, prognosis and the impact on the service.  
A Line Manager may decide to ask the Head of Service to consider convening a Hearing at any time, depending on the circumstances of the case, and even if the employee has continuing eligibility to Occupational Sick Pay and / or Statutory Sick Pay.
- 7.5 The Line Manager may seek advice on the case from their HR Adviser at any time, and must consult HR before exploring ill-health retirement, medical redeployment (see sections 13 & 14), or proceeding to an Attendance Management hearing.
- 7.6 If an employee is dismissed following an Attendance Management hearing they will have the right of appeal, the process for which will be explained in the dismissal letter.

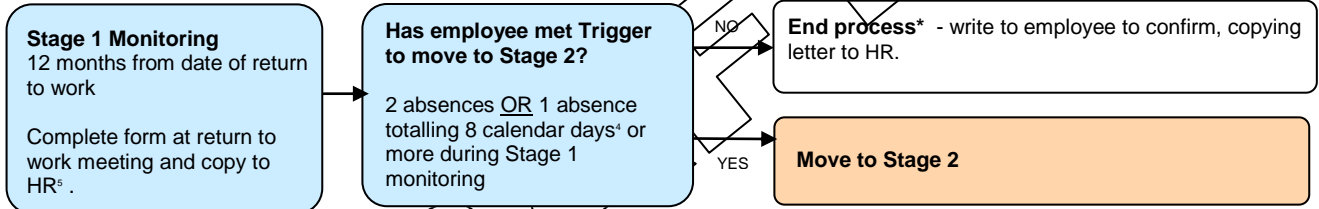
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# MANAGING FREQUENT ABSENCES

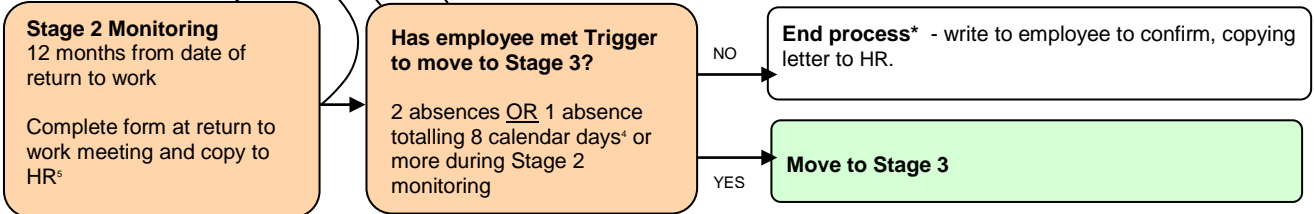
## After every absence



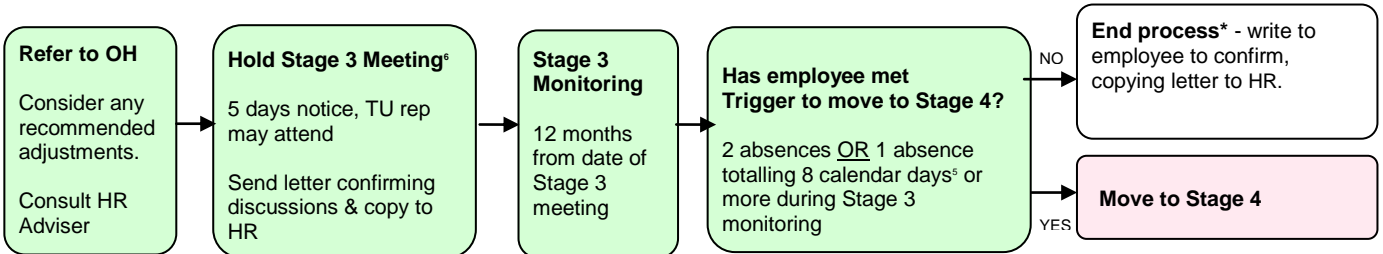
## Stage 1



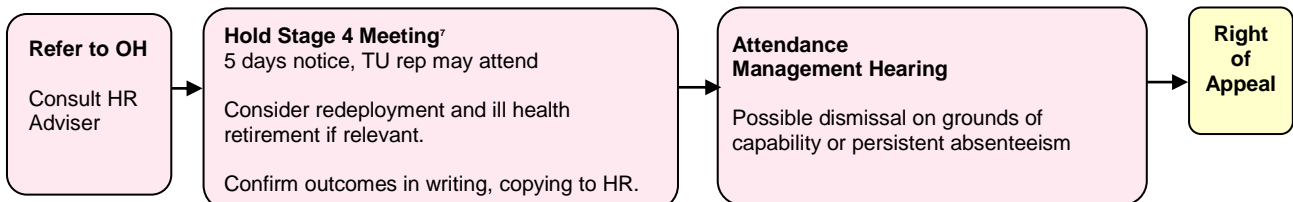
## Stage 2



## Stage 3

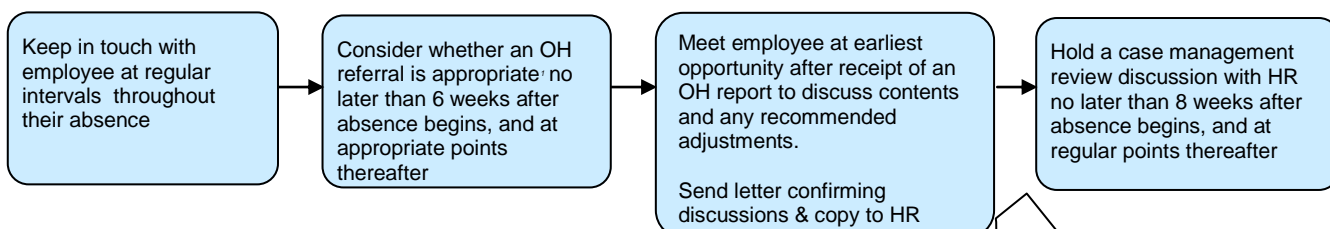


## Stage 4

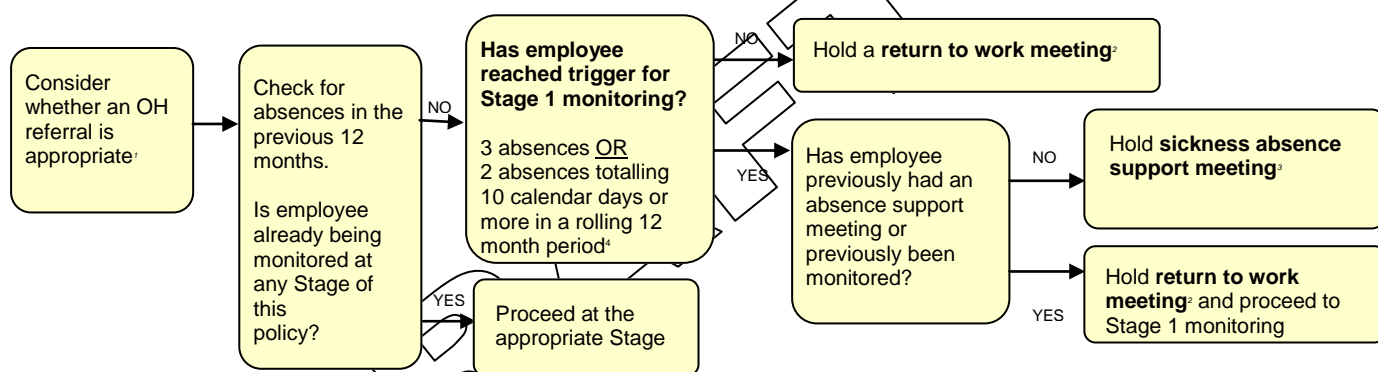


## MANAGING LONG TERM ABSENCES

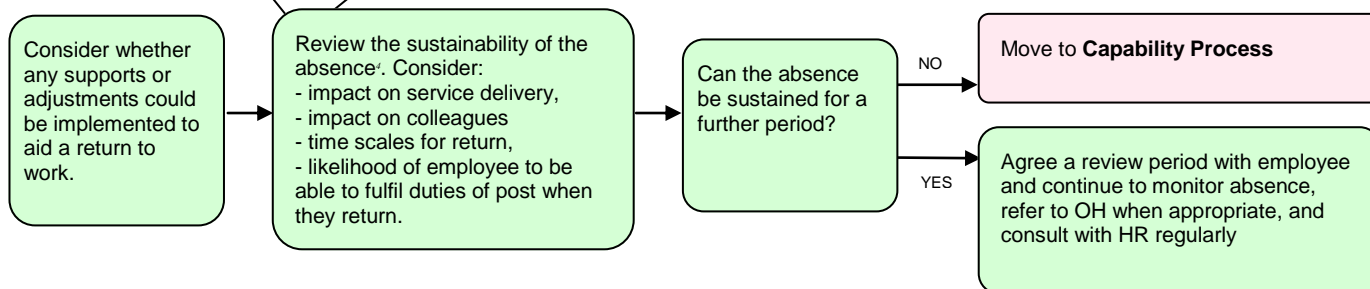
### Absence reaches 28 days or more



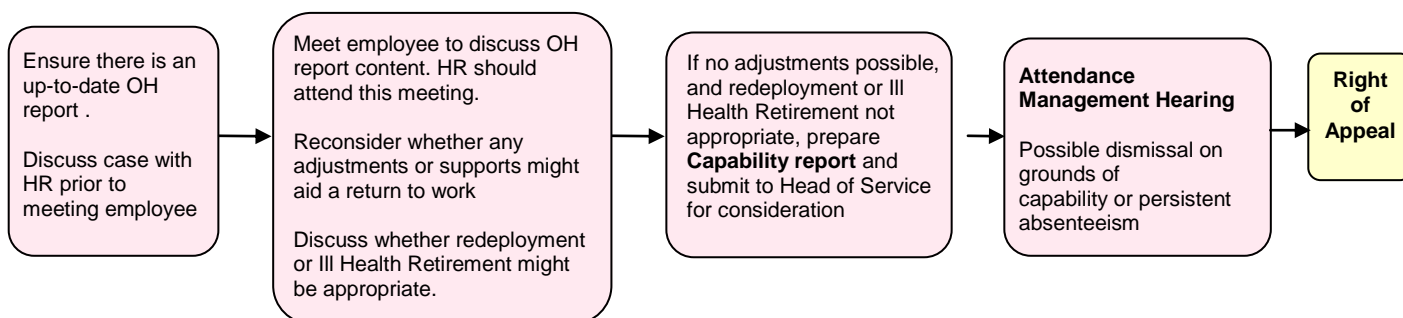
### Employee returns to work following long term absence



### Continuing Absence with no known return date



### Capability Process



<sup>1</sup>See Appendix 1 of policy for advice on when to refer to OH.

<sup>2</sup>See Paragraph 5.2.5 of policy for advice on conducting return to work meetings. Complete manager's section of self-certificate form at Appendix 2.

<sup>3</sup>See Paragraph 6.3 of policy for advice on when a sickness absence support meeting should be held. Complete form at Appendix 3.

## 8. Sick Pay

- 8.1 The amount of occupational sick pay an employee may be eligible for depends on their length of service and is contained in the Statement of Particulars sent to every employee at the start of their employment with the Council.
- 8.2 Periods of absence due to a work-related injury or illness may result in the employee continuing to be paid an industrial injury allowance (calculated on the same qualifying criteria as occupational sick pay) following the expiry of sick pay.

## 9. Annual Leave

### 9.1 Teachers and Music Instructors:

- 9.1.1 When sickness absence coincides with school holidays, the employee may accrue compensatory leave as per the SNCT handbook.

### 9.2 All Other Employees:

- 9.2.1 If an employee falls sick during a period of annual leave, sickness absence may supersede annual leave, i.e. the annual leave can be claimed back, provided the employee:

- follows the normal sickness reporting procedures at the time they become ill, reporting in to their manager even if they were not due to have been at work that day; **and**,
- submits a GP 'fit note' covering the annual leave being claimed back.

- 9.2.2 An employee may not use annual leave instead of sickness absence unless they have followed local arrangements to book the annual leave. In practice this means that employees cannot take annual leave at the last minute as an alternative to reporting in sick, but may choose to book annual leave if they wish to cover a period of predictable sickness absence (e.g. a pre-planned operation).

- 9.2.3 When employees are off sick in excess of 3 months, East Lothian Council abates annual leave entitlement to reflect actual service given, or to the statutory minimum of 28 days (pro rata for part-time workers), whichever is greater. This is in accordance with National Agreements on pay and conditions. Leave is abated even if the absence spans two leave years, in which case entitlement for both leave years will be abated as above.

## 10. Fit Notes

- 10.1 A GP Statement of Fitness for Work ("fit note") is intended to focus on what someone may be able to do at work rather than what they cannot do. It advises:

*"Not fit for work"* – this means that the GP has assessed the employee as having a health condition that prevents them from working for the stated period of time; **or**

*“May be fit for work taking account of the following advice”* – this means that the GP’s assessment of the employee is that their condition does not necessarily stop them from returning to work, if adjustments can be accommodated.

- 10.2 The “fit note” is intended as a guide for the employer. It is for the Line Manager to determine whether the advice can be accommodated, although every reasonable attempt should be made to do so.
- 10.3 If a GP’s recommendations cannot be accommodated to allow the employee to return to work, their absence would continue and advice should immediately be sought from Occupational Health.
- 10.4 If they feel well enough, an employee can return to work before their “fit note” expires provided they have notified their Line Manager in advance; sometimes, in these circumstances, a risk assessment and / or Occupational Health referral may be required before a return to work. Further advice is available from HR.

## **11. Phased Return to Work**

- 11.1 Following a long-term sickness absence, a phased return to work, whereby the employee works fewer than their contracted hours for a defined period, may help the employee return to work.
- 11.2 Every attempt will be made to permit a phased return provided it has a medical rationale and subject to the service being able to accommodate the arrangement. The line manager will discuss the proposed arrangements with the employee and confirm whether amended working hours / pattern can be accommodated.
- 11.2 During the period of the phased return, the employee’s contracted hours must be covered by a combination of the following, as appropriate, and must be determined before the start of the phased return:
- Hours worked.
  - Paid special leave (see 11.3).
  - Paid annual leave.
  - Unpaid special leave.
- 11.3 An employee will be eligible for paid special leave, for a maximum of 4 weeks, when the following conditions are met:
- The phased return is recommended by Occupational Health or a GP.
  - The employee retains entitlement to full occupational sick pay for the period for which paid special leave is sought.
  - The employee is able to return for a minimum of 50% of their substantive hours at the start of the phased return period, and can steadily increase to 100% of their contracted hours over 2-4 weeks.
- 11.4 If an employee has exhausted their entitlement to full occupational sick pay, payment will be made only for the hours worked, although annual leave may be used, instead of unpaid leave, to accommodate the reduction in hours.

- 11.5 Exceptionally, and following discussion with HR, a phased return may last up to 6 weeks but eligibility for paid special leave will be as described in 11.3.
- 11.5 Where a phased return is being undertaken, the Line Manager must complete a “Temporary Change to Working Hours” form (Appendix 5), a copy of which must be sent to HR.
- 11.6 At the end of the phased return to work, the employee should resume their substantive working hours. If, for any reason, this proves not to be possible, advice must be sought from Occupational Health and consideration should be given to whether the employee wishes to reduce their working hours on a substantive basis and whether this can be accommodated. At this stage, it may also be appropriate to consider other options, depending on the circumstances, for example, redeployment to an alternative role, a further period of sickness absence, ill-health retirement or proceeding to an Attendance Management Hearing.

## **12. Equality Act (2010) & Reasonable Adjustments**

- 12.1 Where an employee’s health condition falls within the remit of the Equality Act (2010), the Line Manager should seek advice from Occupational Health on how they might support the employee in the workplace. This may include making “reasonable adjustments” relevant to the employee’s condition. Reasonable adjustments may be required long-term, or on a short-term basis, for example, to facilitate a period of recovery or rehabilitation. The need for adjustments should be reviewed at appropriate intervals.
- 12.2 Recommendations made by a GP or by Occupational health for adjustments must be given full and careful consideration although there is no automatic requirement for them to be implemented if they are not considered to be “reasonable”. Where a manager decides that the adjustments cannot reasonably be accommodated within their operational area they should discuss this, in the first instance with HR before explaining the justification to the employee.
- 12.3 The Line Manager should confirm to the employee, in writing, what adjustments have been agreed, how long they will last, how and when they will be reviewed and, if appropriate, the rationale for being unable to implement any adjustments.

## **13. Medical Redeployment**

- 13.1 Occupational Health may advise, at any point, that an employee is not able to return to their substantive post, but may be able to carry out alternative duties in a different role. In this case, the employee is in a medical redeployment situation and four weeks would be allowed to identify a suitable alternative post.
- 13.2 If a suitable alternative post is identified, the employee will be offered the post on a trial basis for four weeks. During the trial period, the employee will remain on the grade and terms and conditions of their substantive post, funded by their substantive Business Unit. If the redeployment becomes permanent, the employee transfers to the new business unit on the grade and terms and conditions of the new post.



- 13.3 If no suitable alternative post is identified, or a trial period is unsuccessful, the employee will be considered to be at Stage 4 of this Policy and an Attendance Management Report will be submitted to the Head of Service (or nominated officer). This may lead to a decision being made at a Hearing that the individual may be dismissed on the grounds of capability due to ill health. There is a right of appeal against dismissal in these circumstances.

#### **14. Ill-health Retirement**

- 14.1 Ill-health retirement can only be considered where an employee is a member of the relevant local government or teaching pension fund. This option will not be pursued as an option unless the employee is in agreement. An employee can instigate consideration of ill-health retirement at any time but it would not normally be explored by the Council unless the employee was absent long-term or had reached Stage 4 of this Policy.

- 14.1.1 **Lothian Pension Fund Members:** a referral is made by the Line Manager to the Occupational Health physician, who will assess whether the employee meets the superannuation criteria for ill health retirement. If the criteria are met, the OH physician will issue the Council with a Certificate of Permanent Ill-Health and the Line Manager and an HR Adviser will thereafter meet with the employee to advise that, on those grounds, their employment is being terminated. The employee will receive pay in lieu of statutory notice (up to a maximum of 12 weeks) and payment for any accrued leave not taken. Further information is available at [www.lpf.org.uk](http://www.lpf.org.uk).

- 14.1.2 **Scottish Teachers' Superannuation Scheme Members:** must apply directly to the Scottish Public Pensions Agency for consideration to be given to ill-health retirement. Further information is available at [www.sppa.gov.uk](http://www.sppa.gov.uk).

#### **15. Accidents at Work**

- 15.1 If an employee suffers an injury whilst carrying out their work duties, they, or someone acting on their behalf must report the accident to their Line Manager immediately. It is essential that details of the accident are recorded on the Council's electronic health and safety incident recording system, RIVO.

- 15.2 Absences caused by a work-related injury or illness will be taken into account for sickness absence triggers.

#### **16. Secondary Employment & Sickness Absence**

- 16.1 Employees who have other jobs outside the Council may be subject to investigation under the appropriate Disciplinary Procedure if they work for financial gain whilst receiving sick pay from the Council.

- 16.2 An employee who has another job (or jobs) outside the Council may be referred to Occupational Health to determine whether the other employment is impacting on their fitness for work at East Lothian Council.



## **17. General**

- 17.1 Employees may, if they wish, be accompanied to all formal sickness absence meetings (stages 3 and 4 and hearings) by a Trade Union representative or another person of their choice such as a friend or family member.
- 17.2 Employees will normally be given five working days' notice of meetings.
- 17.3 Formal meetings will be followed up by a letter, within 10 working days, to the employee confirming the outcomes of the meeting.
- 17.4 Employees who fail to co-operate with the provisions of this Policy, including failing to attend an appointment with the Council's Occupational Health provider, without good reason, may be deemed to be in breach of the terms and conditions of their employment and the relevant Disciplinary Procedure may be invoked.

## **18. Policy Review**

This Policy will be reviewed and amended from time to time by the Service Manager – HR & Payroll following appropriate consultation with the recognised Trades Unions.

**Head of Council Resources**  
**Month and Year**

**DRAFT**

## Appendix 1

### The Role of Occupational Health (OH)

Occupational health is a specific branch of medicine that deals with the impact of health on work, and work on health. OH professionals are specialists in this field of medicine and are used by the Council to provide advice on work-related health issues.

### Referring an Employee to Occupational Health

Referrals to OH are made so that Line Managers can obtain professional advice on issues such as sickness absence, fitness for work, time scales for a return, workplace assessments and adjustments. Line managers must discuss with the employee the reasons they are making a referral prior to making it.

Line managers should make an immediate referral to OH when:

- An employee has reported sick with stress, anxiety, depression or a related condition;
- An employee has raised concerns about a health issue impacting on their performance or capability at work.

Line managers should consider making an immediate referral to OH, when:

- An employee is not absent but has disclosed to their Line Manager that they are suffering from stress, anxiety, depression or a related condition;
- An employee has been diagnosed with a musculoskeletal condition or has sustained a musculoskeletal injury, regardless of whether the employee is absent from work;

Line managers should also make referrals, in accordance with this Policy i.e. when:

- An employee who is being managed under Stage 2 of the Policy has triggered a move to Stage 3.
- An employee who is being managed under Stage 3 of the Policy, has triggered a move to Stage 4.
- An employee has, or is likely to have, a long-term absence (greater than 28 calendar days). Referrals should be made at appropriate intervals, depending on the circumstances, and the first referral should normally be made where an employee has been absent for 6 weeks and there is no imminent return to work.
- Advice is needed on the impact of an individual's health on their ability to do their work.

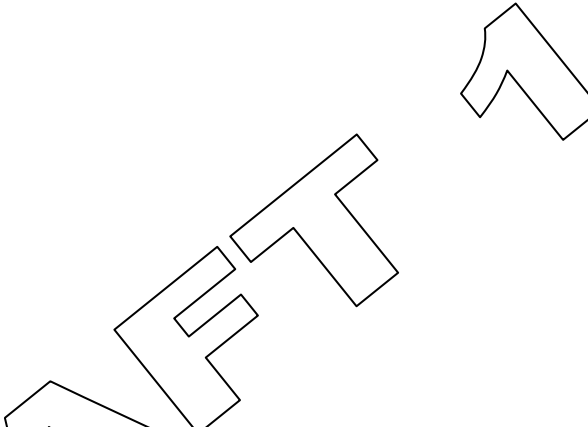
Whilst OH may make recommendations on possible adjustments, it is the Line Manager's role to consider whether the adjustments are reasonable in the context of the service. Where necessary, managers should consult HR as to the reasonableness of any recommended adjustments.

## Managing Attendance Policy Sickness Absence Self Certification Form

APPENDIX 2



1. Employee Details			
Employee Name			
Job Title			
Employee Number			
Business Unit			
2. Duration of Sickness or Injury			
Date & time illness began <small>(including non-working days)</small>	Date fit for work <small>(including non-working days)</small>	Who did you notify at the Council that you would be off work sick?	How (e.g. telephone) and when (date and time) did you notify the Council that you would be off work sick?
3. Details of Sickness or Injury			
<u>Reasons for absence</u> (please be specific - "illness", "unwell", "sick" are not sufficient)			
<u>Describe symptoms</u>			
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<u>Was this absence caused by an injury at work?</u> <small>(Full details of the injury must have been reported separately to supervisor)</small>		Yes <input type="checkbox"/>	No <input type="checkbox"/>
<u>Did you attend hospital?</u>		Yes <input type="checkbox"/>	No <input type="checkbox"/>
<u>Did you visit a GP or Health Centre?</u>		Yes <input type="checkbox"/>	No <input type="checkbox"/>
<u>Did you receive medication prescribed by a doctor or recommended by a pharmacist? If yes, does the medication cause any side-effects that could affect your ability to do your job e.g. to drive or operate machinery safely?</u>			
		Yes <input type="checkbox"/>	No <input type="checkbox"/>
4. Declaration			
I confirm that the information given above is true and accurate, and understand that to give false or misleading information may result in disciplinary action which may amount to dismissal.			
<b>Signed</b> <small>(Employee)</small>		<b>Date</b>	

5. To be completed by supervisor	
I confirm that this absence has been recorded on the sickness absence return to Payroll	
If absence was caused by an injury at work, I confirm the accident has been recorded on RIVO.	
I confirm that I have held a 'return to work' meeting with the employee and note the issues discussed below.	
	
I have checked whether any action is appropriate in accordance with the Managing Attendance Policy and I am:	
Holding a Support Meeting <sup>3</sup> and sending the relevant form to HR	
Commencing Stage 1 Monitoring and sending the relevant form to HR	
Commencing Stage 2 Monitoring and sending the relevant form to HR	
Making a referral to Occupational Health for advice <sup>4</sup>	
Other – please specify	
<b>Signed</b> (Supervisor)  <b>Print name</b>	<b>Date</b>
6. To be completed by Service Manager (or designated officer)	

<sup>3</sup> Only **one** support meeting may be held for any employee during the course of their employment with ELC. If you do not know whether the employee has previously had a support meeting, please check with HR.

<sup>4</sup> Appendix 1 of the Managing Attendance Policy sets out when a referral to occupational health is compulsory and also when it is recommended.

I note the contents of this form and I am satisfied that the appropriate action is being taken.

**Signed**  
(Service Manager or designated officer)

**Date**

**Print name**

Retain form locally and offer a copy of the form to the employee for their records.



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## Managing Attendance Policy Record of Support Meeting



<b>Employee Details</b>			
Name			
Employee Number			
Job Title			
Business Unit			
Manager's Name			
<b>Record of Absences leading to Support Meeting</b>			
Date from	Date to	No. of calendar days (count all days, including non-work days, from first to last work day missed)	Reason
<b>What trigger has been reached?</b> (tick one)		<b>Date of meeting</b>	
3 absences in 12 months			
2 absences amounting to 10 calendar days or more			
<b>Summary of Discussion</b>			
<p>The following issues should be discussed: reason for meeting; the nature of the absences and any on-going issues that might affect attendance; the Managing Attendance Policy and implications for employee; whether an Occupational Health referral is required. The issues discussed, including those raised by the employee, should be recorded below</p>			
<p>I acknowledge that the sickness absence recorded above has led to this Support Meeting. I understand that no further Support Meetings will be held if I reach the Council's trigger point in the future, and that Stage 1 of the Attendance Management Policy will be invoked.</p>			
<b>Signed (Employee)</b>		<b>Date</b>	
<p>I confirm that I have held a Support Meeting with the above employee in accordance with the Attendance Management Policy.</p>			
<b>Signed (Manager)</b>		<b>Date</b>	
<b>Copy to employee and email to HR mailbox</b>			

## Managing Attendance Policy



### Absence Monitoring Form – to be used at Stage 1 and Stage 2

Employee Details							
Name							
Employee No.							
Job Title							
Business Unit							
Record of Absences leading to Stage 1 or 2 Monitoring (most recent first)							
Date from	Date to	No. of calendar days (count all days, including non-work days, from first to last work day missed)	Reason				
Start of Monitoring <small>(date of return to work after most recent absence)</small>		End of monitoring <small>(12 months)</small>	Stage reached <small>(tick one)</small>				
			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Stage 1</td> <td style="width: 50%; padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;">Stage 2</td> <td style="padding: 5px;"></td> </tr> </table>	Stage 1		Stage 2	
Stage 1							
Stage 2							
Summary of Discussion							
<p>The following issues should be discussed: reason for meeting; nature of the absences; any on-going issues that might affect attendance; the Managing Attendance Policy and implications for employee; whether an Occupational Health referral is required; whether any adjustments have been considered to support the employee. Other issues discussed, including those raised by employee, should be recorded below.</p>							
DK							
<p>I acknowledge that my attendance at work will be monitored for 12 months and understand the triggers that will lead to progression to the next stage of the Council's Managing Attendance Policy. I have raised any relevant matters with my Line Manager.</p>							
<b>Signed (employee)</b>			<b>Date</b>				
<p>I confirm that I have held a Stage 1 or 2 meeting (as indicated above) with the above employee in accordance with the Council's Managing Attendance Policy.</p>							
<b>Signed (manager)</b>			<b>Date</b>				

Print name

A scanned copy of this form should be emailed to [hr@eastlothian.gov.uk](mailto:hr@eastlothian.gov.uk) on completion and a copy should be given to the employee for their records.

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## Temporary Change to Working Hours for Phased Returns

To be completed prior to all Phased Returns to Work



**Employee Name** \_\_\_\_\_ **Employee Number** \_\_\_\_\_

**Note**  
 A phased return, which will normally be for 2-4 consecutive working weeks, will comprise of hours worked by the employee (minimum 50% of substantive hours) plus any combination of the following to make up to full substantive hours: paid special leave; annual leave; unpaid leave.

To qualify for paid special leave, the employee must:

- (i) return on no less than 50% of their substantive hours;
- (ii) build up to 100% by the end of the phased period;
- (iii) be eligible for full occupational sick pay for the whole period to be covered by paid special leave.

Line Manager must check eligibility for full sick pay with Payroll before agreeing to paid special leave.

In exceptional circumstances, a phased return may be for up to 6 weeks, but paid special leave is only payable for a maximum of 4 weeks. Thereafter unpaid leave or annual leave may be used.

**Date Range of Phased Return:** \_\_\_\_\_

Please ensure that the hours in columns B, C, D & E add up to the hours in column A.

		A Substantive Hours	B Temporary hours worked	C Paid hours (special leave)	D Paid hours (annual leave)	E Unpaid hours
<b>Week 1</b>	S					
	M					
	T					
	W					
	T					
	F					
<b>Week 2</b>	S					
	M					
	T					
	W					
	T					
	F					
<b>Week 3</b>	S					
	M					
	T					
	W					
	T					
	F					
<b>Week 4</b>	S					
	M					
	T					
	W					
	T					
	F					

**Continue overleaf**

<b>Week 5</b>	S					
	M					
	T					
	W					
	T					
	F					
	S					
<b>Week 6</b>	S					
	M					
	T					
	W					
	T					
	F					
	S					

<b>Manager's Name</b>		
<b>Manager's Signature</b>		<b>Date</b>
<b>Employee's Signature</b>		<b>Date</b>

Line Manager to keep a copy of completed form and email a scanned copy to [hr@eastlothian.gov.uk](mailto:hr@eastlothian.gov.uk). HR should be notified of any subsequent amendments. A copy may be given to the employee for their records.

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### Trigger Points

The initial trigger for intervention is 3 absences or 2 absences amounting to 10 calendar days or more in any rolling 12 month period.

The Stage 1, 2 or 3 trigger to progress to the next stage is 2 absences or a single absence of 8 calendar days or more in any rolling 12 month period.

### What is a rolling 12 month period?

To identify a 12 month rolling period you look back 12 months from the date of the start of the most recent absence.

#### **Example 1**

*Phil is absent from 31 May 2016 for 3 days. His manager looks back over the previous 12 months i.e. to 1 June 2015 and identifies that Phil was also absent for 1 day in December 2015 and for 3 days in September 2015.*

*Phil has therefore had 3 absences in the 12 month period so has reached the initial trigger. He has not previously had a Support Meeting under the Attendance Management Policy, so his line manager holds this meeting with him now.*

#### **Example 2**

*Phil is absent again for 7 days from 8 January 2017. His manager looks back over the previous 12 months i.e. to 9 January 2016 and recalls that Phil was absent for 3 days from 31 May 2016.*

*The initial trigger has been reached again because Phil has had 2 absences, amounting to 8 days or more. He has previously had a Support meeting with his manager so this time, at the Return to Work meeting, his manager starts Stage 1.*

### Why do we use calendar days?

Calendar days are used to provide a fair comparison of the relative proportion of the working week missed by an employee regardless of their working pattern. To determine how many calendar days have been missed, count all days from the first working day missed to the last working day missed, including weekends or non-work days. An employee may notify their manager that they are fit for work on non-work days if that is the case. If this is done and the employee is subsequently off sick for the same reason when they are next due in work, the absences will be deemed to be connected and continuous; where the reasons for the absences are different, they will be deemed to be separate occasions. The self-certificate(s) will determine the dates and reasons for the absences, except for teachers absent for up to 3 days, in which case the reasons notified to the Line Manager will be used.

#### **Example 1**

*Joe works Mon, Weds and Thurs. He is off all of one week and Monday of the following week. He has been absent for 8 calendar days.*

#### **Example 2**

*Freda works full-time and is off Thurs, Fri and Mon. She has been off 5 calendar days.*

#### **Example 3**

*Jodie works every Sat and Sun. She is off sick Sat and Sun one week and phones in on Monday to say she is recovered. She is at work the following Sat as normal. She has been absent for 2 calendar days.*

#### **Example 4**

*Brendan also works every Sat and Sun. He is off Sat and Sun one week and Sat of the following week, returning to work on the Sun. He has been absent for 8 calendar days.*