

# **East Herts Council**

## **Absence Management Policy**

### **Policy Statement**

**Policy Statement No 1 (Issue No 3)  
July 2014**

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# **ABSENCE MANAGEMENT POLICY**

## **Policy Statement No 1 (Issue No 3) July 2014**

### **1.0 Introduction**

- 1.1 The Council aims to encourage all employees to maximise their attendance at work whilst recognising that employees will, from time to time, be unable to come to work for short and sometimes long periods of time.
- 1.2 Whilst recognising that employees may be prevented from working through ill health, the Council has a responsibility to maintain service delivery and minimise disruption. The Council is therefore committed to managing sickness absence and believes that it is the responsibility of the managers, employees and union representatives to work together to promote positive approaches to the management of sickness absence.
- 1.3 This policy relates to short-term and long-term sickness absences from work. Short-term is defined where employees are absent for short periods of time; long-term is defined as an absence from work which is 28 calendar days or more.
- 1.4 This policy links with the Council's Health & Safety Policy, the Stress Management Policy and the Policy and Procedure for Employing and Retaining People with Disabilities and sets out the Council's obligations to employees under the Equality Act 2010.
- 1.5 This policy is not intended for use where health, either mental or physical, leads to performance problems. These matters should be dealt with under the Council's Managing Performance Policy.
- 1.6 The Council is committed to promoting health and wellbeing, and encouraging employees to take action to improve their own health and wellbeing. This policy provides a fair and consistent framework for supporting staff that are absent due to sickness. Whilst the Council has a supportive approach, it aims to achieve a balance between the needs of the individual and the needs of the organisation.

## **2.0 Scope**

2.1 This policy applies to all Council employees except for Chief Officer level and above, where it should be used in conjunction with procedures set out in the Constitution.

## **3.0 Definitions of Absence**

### **3.1 Short Term Absence**

3.1.1 Short term absence is defined as any period of time where an employee is not at work due to illness for a period of up to four weeks in duration, from the first day of absence (including half days).

### **3.2 Long Term Absence**

3.2.1 Long term absence is defined as a period of time where an employee is absent from work due to illness for a continuous period of greater than 28 calendar days.

### **3.3 Other Absence**

3.3.1 There may be occasions where an employee is absent from work, which is not related to illness or incapacity. These absences should be recorded and managed in accordance with this policy.

3.3.2 Visits to a GP, dentists or other medical practitioner during the working day are covered within the Council's General Leave policy.

### **3.4 Unauthorised Absence**

3.4.1 Where an employee has claimed to be absent due to sickness, but it is subsequently identified that their absence is not sickness, it will be considered as unauthorised absence. This may result in loss of pay and disciplinary action.

## **4.0 Disability Absence**

4.1 Managers should ensure that they have regard to the Equality Act 2010 and the guidance on employing and retaining people with disabilities when managing the sickness absence of disabled employees.

- 4.2 Disabled employees should not be treated less favourably than other employees and reasonable adjustments should be made both in applying the policy and procedure and in enabling employees to remain in employment appropriate to the individual circumstances of the case.
- 4.3 Disability leave should be considered where a person needs time off every week, every few weeks, every few months or every year for medical appointments, treatments or rehabilitation relating to disability. Disability leave should not be counted towards trigger points.
- 4.4 Managers should consider any reasonable adjustments that are necessary to assist an earlier return to work, limit future absence and support the employee in achieving an appropriate level of attendance. Examples of reasonable adjustments could be:
- extending trigger points;
  - providing specialist equipment;
  - modifying days or hours of work;
  - modifying duties

## **5.0 Responsibilities**

### **Senior Management Responsibilities**

- CMT/DMTs are responsible for monitoring absence levels across service areas.
- DMTs are responsible for reviewing sickness actions that managers have taken to reduce absence levels.
- CMT/DMTs are responsible for promoting health and well-being for their relevant service area.

### **Employees Responsibilities**

- To look after their general health and wellbeing and seek medical or other support where necessary to minimise their sickness absence from work.
- To report sickness absence by 10am by telephone call on the first and each day of absence to their line manager providing details of the reason for sickness absence, the anticipated length

of absence and any work commitments that may need managing. Texting or emailing is not acceptable.

- To contact their line manager on a regular basis during periods of long term sickness absence to keep them informed of progress.
- To ensure that a self-certificate is provided for the first 7 days of absence and thereafter all further sickness absence is covered by a doctor's medical certificate (known as a statement of fitness for work).
- To co-operate fully with their manager, HR and the Council's Occupational Health provider
- Failure to inform the line manager of absence may lead to absence from work being considered as unauthorised absence, which may result in loss of pay and possible disciplinary action.

### **Managers Responsibilities**

- To ensure that all absences are reported to Human Resources.
- To conduct 'return to work' interviews after every period of sickness with the employee ideally on their first day back or within three days of the return to work. A record of the meeting should be made and retained on the employees personnel file.
- To ensure that policy and procedure are applied fairly and consistently with regard to individual circumstances of the case.
- To ensure that all employees within their area of responsibility are aware of the policy and procedure.
- To communicate openly and honestly with employees.
- To conduct any risk assessments where required in order to manage any health and safety issues in the workplace.
- To manage potential health issues proactively.
- To maintain regular contact with long-term absent employees.

- To work alongside Human Resources and Occupational Health in managing absence.

## **Human Resources**

- To report accurate and reliable absence management information.
- To provide support, guidance and coaching as requested to managers in the implementation of this policy.
- To ensure that the policy and procedures are applied consistently across the Council.
- To advise and support managers on issues relating to disability related sickness.
- To implement a strategic approach to managing and reducing absence related costs to the Council.
- To provide support and guidance on risk and what steps can be taken to minimise or eliminate risk.

## **6.0 Notification and Certification of Sickness Absence**

- 6.1 Employees must contact their manager by telephone before 10.00am if they are absent from work due to illness, injury or any other health problem on every day of absence for the first 7 days of absence. If their manager is unavailable they should contact another member of the team. The employee must also confirm when the sickness started, how long they expect to be away from work and the reason they are sick. In exceptional circumstances, if the employee is too ill to notify their absence themselves then they can arrange for someone to do this on their behalf.
- 6.2 Employees must keep their line managers up to date if the reason for the absence changes or if the absence is expected to last longer than originally stated.
- 6.3 For each occasion of sickness absence, employees must complete a self-certification form for the first seven calendar days (including weekends and public holidays). Self certification forms should be countersigned by the line manager, who will forward the documentation to Human Resources.

- 6.4 If the absence continues beyond seven calendar days then the employee must keep their manager informed of the progress of their illness on at least a weekly basis and obtain doctor's certificates to cover every day of sickness (from day eight). In cases of continuing absence these should be consecutive. Employees must forward doctor's certificates immediately to their manager who in turn will forward these onto Human Resources.
- 6.5 Every absence must be certified and recorded to ensure correct payment of sick pay and to ensure that accurate records are maintained. Failure to comply with the certification and reporting procedures may result in loss of sick pay. Misleading or false statements may be dealt with under the Council's Disciplinary Policy.
- 6.6 If an employee is absent from work through sickness they must refrain from working elsewhere. If this situation were to arise it may be dealt with under the Council's Disciplinary Policy.

## **7.0 Sickness While on Holiday**

- 7.1 Employees who have taken leave and subsequently fall ill should contact their line manager on the first day of sickness by 10am and inform them fully of when they fell ill and will be likely to return. The sickness absence reporting procedure must then be followed when employees return from abroad to the UK.
- 7.2 Whether on leave in this country or abroad, holidays will be reimbursed for time off if it is certified as sickness by a Doctor, and the reporting procedures have been followed.

## **8.0 Monitoring and Recording Sickness Absence**

- 8.1 Human Resources are responsible for producing data for monitoring the sickness absence of all employees of the Council, based on information supplied from all services. Information on the number of staff absent due to sickness will be forwarded to each Director and Head of Service on a monthly basis along with notification of any absence which needs particular management attention due to its duration/regularity or pattern.
- 8.2 Each manager is required to monitor sickness absence levels within their team and take further action as necessary when trigger points are reached (see sections 10 and 11 below) and/or where there are concerns about an employee's absence levels. Heads of Service will



receive trigger reports from Human Resources which will be forwarded to the relevant managers for immediate action. Managers must check individuals records at all return to work meetings to ensure that appropriate action is taken.

## **9.0 Returning to Work**

9.1 Upon return to work following every period of sickness absence the manager should arrange to meet privately, in an appropriate place, with the employee to conduct a return to work interview. This should happen ideally on the first day back or at least within three days of the return to work. Please refer to Appendix C for Return to Work form.

9.2 These discussions are deemed to be informal and should raise any concerns around the individual's absence and attempt to resolve any issues before moving to formal procedures.

9.3 In general this discussion should be used to: -

- Discuss the cause of absence
- Discuss, where appropriate, the working environment and its effect on the individual's health
- Reassure the employee, where appropriate, that there are no concerns about the general level of absence
- Discuss, where appropriate, the general attendance record, and reinforce the Council view of the importance of good attendance

9.4 In the case of long-term sickness absence, the discussion should be used to allow consideration of any particular difficulties or concerns the employee may have relating to their return to work.

9.5 In agreeing support for returners to work, managers should consider whether a risk assessment is required or further advice is needed from Occupational Health and whether a phased return would be helpful. If the latter is required managers and employees should consider using untaken holiday if it would otherwise be lost, and managers may authorise up to 4 weeks phased return on temporary reduced hours on full pay. After 4 weeks, other alternatives should only be agreed after consultation with Human Resources.

9.6 In the case of short-term absence, the discussion should be used to ensure that self-certification forms are completed and processed as soon as possible.

## **10.0 Maintaining Contact after the first 7 days of absence**

- 10.1 When an employee is absent from work for longer than 7 days sickness it is important that weekly contact is maintained between the manager and employee in order to ensure that the employee does not feel isolated, vulnerable or out of touch. The manager may need to reallocate work so that service delivery is maintained. The contact should be handled sensitively and the form of the contact should be agreed with the employee as appropriate. As a minimum the employee should keep their line manager informed throughout the period of absence, at least on a weekly basis.
- 10.2 It may be necessary, particularly in cases of long term sickness absence, to arrange to visit the employee at home, if the employee is in agreement. The home visit should be undertaken by their manager. At least five working days' notice will be given to an employee of such a meeting. The employee may request to be supported during this visit.

## **11.0 Unauthorised Absence**

- 11.1 It is the employee's responsibility to make sure they let their manager know at the earliest opportunity if they are unable to report for work and the reasons why. However where an employee fails to report for work, without informing their manager, it is important that the situation is investigated and the employee given an opportunity to explain. On the first day of absence the manager should make enquiries of colleagues to try and establish the reason for the absence. Failing this, all reasonable efforts should be made to get in contact with the employee to ask for an explanation for their non-attendance. If contact cannot be made please refer to the Council's Disciplinary policy.
- 11.2 If the employee gives their reason as sickness they should be reminded of the sickness reporting procedure and advised, if appropriate, that failure to follow the correct reporting procedures could result in disciplinary action being taken under the Council's Disciplinary Policy. Discussions with the employee regarding unauthorised absence should be documented in writing and placed on the employee's personal record file.

## **12.0 Occupational Health Referral**

- 12.1 Referral to the Occupational Health Unit is not a form of reprimand; neither does it imply that the Council doubts that an employee is genuinely sick. It is to ensure that managers have up to date information on an employee's medical condition and can take decisions in the light of that information in the interests of the employee and the Council.
- 12.2 This policy gives guidance on when it might be appropriate for managers to consider a referral to Occupational Health. However, all cases will be considered according to their individual circumstances and nothing in this policy should be read as restricting managers' right to request a referral of an employee to Occupational Health at any time.
- 12.3 If a manager thinks that it is appropriate to refer an employee to Occupational Health they should discuss the circumstances of the case with Human Resources in the first instance.
- 12.4 If a manager wishes to refer an employee to Occupational Health they should complete an occupational health referral form and send it to HR marked as confidential, who will arrange a consultation with the Occupational Health Adviser.
- 12.5 The role of Occupational Health is to be proactive, with the help of managers, to reduce the likelihood of injury or ill health and short and long-term sickness absence, by discussing the issues with staff at an early stage. The referring manager will receive advice from Occupational Health on the management of the case. This may include risk assessment advice in consultation with the Health and Safety Officer.

## **13.0 Access to Medical Records**

- 13.1 After the initial consultation, the Occupational Health Adviser may decide it is necessary to contact an employee's GP or specialist to gain further information. If so, they will request either verbally or in writing that the employee complete the Access to Medical Records Form, which will advise them of their rights under the Access to Medical Reports Act 1988. The employee should complete the form and advise whether or not they are prepared to give consent.
- 13.2 If the employee fails to return the consent form, it will be assumed that they have withheld consent. Employees should be made aware

that refusal to give consent could mean the Council might have to make a decision on an employee's capability or conduct with the medical advice available.

## **14.0 Frequent Short Term Sickness**

### **14.1 First Health Review Meeting**

14.1.1 An employee's sickness absence levels must be reviewed when one of the following trigger points is reached:

- 7 days sickness absence within any twelve-month period
- 3 separate periods of sickness in a 6 month period; **or**
- A pattern of absence which gives cause for concern, such as frequent absenteeism on a Monday or Friday, or avoiding particular work tasks

14.1.2 The manager must consider the trigger points above and if it is felt that there is a potential problem they should convene a First Health Review Meeting with the employee. The manager should write to the employee to invite them to the First Health Review Meeting, giving them at least five working days' notice (please contact HR for a template letter).

14.1.3 The aim of the First Health Review Meeting is to:

- Discuss the absence record.
- Explore the reasons for the absence and enable the Council to have an up-to-date understanding of the latest medical situation and prognosis.
- Confirm the expectation of an improvement in attendance.
- Identify areas for support.
- Discuss the need for a risk assessment.
- Consider whether there are any reasonable adjustments which could be made with regard to the employee's work.
- Set appropriate targets for improvements and an appropriate review period.
- Discuss the effect of past and future absences on the organisation.

14.1.4 The following outcomes must be considered:

- Advice may be sought from Occupational Health. It will not normally be necessary at this stage to refer the employee to

Occupational Health but if there is evidence of an underlying medical condition or cause for concern where a medical assessment would be helpful, a referral can be made.

- Reasonable adjustments such as changes in workload, work practices or work patterns may be identified.
- A review period should be set with a meeting arranged at the end of the review period to discuss their progress.
- The manager should issue a Verbal Warning.

14.1.5 The manager should write to the employee within 5 working days of the First Health Review Meeting, confirming the points discussed and actions identified. The employee will be informed of the improvements needed in their attendance and advised of the possible consequences if this is not achieved. Please contact HR for a template letter.

14.1.6 An appropriate review period should be set. If at the end of this period of review the employee has reached a sustained acceptable level of improvement, monitoring should revert back to informal arrangements with return to work meetings occurring in the event of further absences. This should be confirmed to the employee in writing (please contact HR for a template letter). Where there is no improvement in attendance, a Second Health Review Meeting should be convened.

## **15.0 Second Health Review Meeting**

15.1 The manager should write to the employee to invite them to a Second Health Review Meeting, giving them at least 5 working days' notice and informing them of their right to be accompanied by a trade union representative or work colleague. Managers should seek advice from Human Resources before convening a Second Health Review Meeting. Please contact HR for a template letter.

15.2 The manager should be accompanied at the Second Health Review Meeting by an HR Officer. It is their role to advise on procedure, ensure consistency and equity of treatment and ensure that the letter setting out the decision of the meeting is sent to the employee. The HR Officer may also take notes at the meeting unless the manager decides that an additional note-taker should be present.

15.3 The Second Health Review Meeting will reaffirm the issues discussed at the First Health Review Meeting and the following outcomes must be considered:

- Advice may be sought from Occupational Health.
- Reasonable adjustments such as changes in workload, work practices or work patterns may be identified.
- A review period should be set with a meeting arranged at the end of the review period to discuss their progress.
- The manager (with delegated authority to issue warnings) should issue a **First Written warning** at this second meeting. A copy of the warning will be kept on employee's personnel record file but should be disregarded after twelve months of satisfactory attendance.

15.4 The manager must write to the employee within 5 working days of the Second Health Review Meeting confirming the points discussed and actions identified and of the improvements needed in their attendance and advised of the possible consequences if this is not achieved. The letter should also include details of any warning issued, along with the employee's right to appeal. An appropriate review period should be set. Please contact HR for a template letter.

15.5 If at the end of this period of review the employee has reached a sustained acceptable level of improvement, this should be confirmed to the employee in writing (please contact HR for a template letter). However, if the employee's attendance deteriorates again within 12 months of the warning being issued, the manager can re-start the formal procedure at the next level (e.g. if a Second Health Review Meeting has already been held and a First Written Warning issued, the manager can start at the Third Health Review Meeting).

15.6 If there is still no improvement in absence levels by the end of the review period then the manager will refer the case to the Head of Service to convene a Third (and final) Health Review meeting.

## **16.0 Third Health Review Meeting**

16.1 If the employee's line manager is a Head of Service the Third Health Review Meeting will be held by another Head of Service. If the employee concerned is a Head of Service, the First, Second and Third Health Review Meetings will all be held by the Service Director. For the purposes of this policy 'Head of Service' will be used to describe the person holding this meeting.

16.2 The Head of Service should write to the employee to invite them to a Third Health Review Meeting, giving them at least 5 working days' notice and informing them of their right to be accompanied by a trade union representative or work colleague. Heads of Service must

seek advice from Human Resources before convening a Third Health Review Meeting. Please contact HR for a template letter.

- 16.3 The Head of Service should be accompanied at the Third Health Review Meeting by an HR Officer. It is their role to advise on procedure, ensure consistency and equity of treatment and ensure that the letter setting out the decision of the meeting is sent to the employee. The HR Officer may also take notes at the meeting unless the Head of Service decides that an additional note-taker should be present. The manager should also attend the meeting to present the management case.
- 16.4 The Third Health Review Meeting will reaffirm the issues discussed at the Second Health Review Meeting and the following outcomes must be considered:
- Advice may be sought from Occupational Health.
  - Reasonable adjustments such as changes in workload, work practices or work patterns may be identified.
  - A review period should be set with a meeting arranged at the end of the review period to discuss their progress.
  - The Head of Service should issue a **Final Written Warning** at this second meeting. A copy of the warning should be kept on employee's personal record file but should be disregarded after twelve months of satisfactory attendance.
- 16.5 The Head of Service must write to the employee within 5 working days of the Third Health Review meeting confirming the points discussed and actions identified and of the improvements needed in their attendance and warned of the possible consequences if this is not achieved. The letter should also include details of any warning issued, along with the employee's right to appeal. An appropriate review period should be set. Please contact HR for a template letter.
- 16.6 If at the end of this period of review the employee has reached a sustained acceptable level of improvement, this should be confirmed to the employee in writing (please contact HR for a template letter). However, if the employee's attendance deteriorates again within 12 months of the warning being issued, the Head of Service can restart the formal procedure at the next level (e.g. if a Third Health Review Meeting has already been held and a First and Final Written Warning issued, the Head of Service can start at the Capability Review Hearing).

16.7 Ultimately if there is still no improvement in attendance the Head of Service will need to consider the employee's employment position. Where two formal warnings have been issued and these have resulted in no sustained improvement in the employee's attendance then a Capability Review Hearing should be convened. Please contact HR for a template letter. Please see Section 18 regarding Capability Hearings.

## **17.0 Long Term Sickness Absence**

17.1 Long term sickness absence occurs when an employee is absent for a continuous period of 28 calendar days.

17.2 A First Long Term Health Review Meeting, with the employee, will be arranged by the manager if the employee absence levels have met the 28 day trigger or sooner if appropriate. The manager should confirm the invitation to the meeting in writing giving the employee at least 5 working days' notice. Please contact HR for a template letter. If the employee is unable to attend a meeting in the workplace then it may be appropriate to hold the meeting at the employee's home or other mutually agreed location.

17.3 The main aims of the First Long Term Health Review Meeting are as follows:-

- To consider the employee's current state of health.
- To explore the reason for the absence and consider any other underlying factors.
- To establish the likely duration of the sickness absence.
- To discuss the employee's expectations of returning to work.
- To consider any potential impediments to an early return to work.
- To provide information on the appropriate external support services.
- To discuss whether there are any additional areas of support that could be offered to the employee.
- To consider whether the absence is related to a disability and therefore should be dealt with in accordance with the Council's duties under the Disability Discrimination Act.
- Where necessary, and in accordance with the procedure, refer the employee to Occupational Health for medical advice and support.
- To agree how contact will be maintained during the absence.

17.4 At this meeting the manager should issue a Verbal Warning. A copy of the warning will be kept on employee's personnel record file but



should be disregarded after twelve months of satisfactory attendance.

- 17.5 The manager must write to the employee within 5 working days of the First Long Term Health Review Meeting confirming the points discussed and actions identified. Please contact HR for a template letter.
- 17.6 Where it is expected the absence will be on-going, advice should be sought from Occupational Health. The purpose of gaining Occupational Health advice will be to provide an indication of the likely duration of the employee's absence, recovery period and whether any steps can be taken to help the employee make a successful return to work.
- 17.7 Depending on advice received from Occupational Health, managers with the advice of Human Resources, if necessary, may agree one or more of the following options:-
- Continue to Monitor – Manager to keep in contact with the individual to consult and consider arrangements for their return.
  - Return to Work on Normal Full Duties – When an employee's GP or Occupational Health states that the employee is fully fit to return to work. The Manager must arrange a return to work meeting with the employee.
  - Rehabilitation – An employee may be experiencing difficulties in undertaking the full range of tasks or coping with the work situation and in these cases managers and Human Resources should consider whether there are any ways the employee can return to their current job and whether any adjustments may be required. These could include; phased returns/modified duties, reduced or changes in hours or changes in work practices.
  - Redeployment – Suitable alternative positions may be considered where appropriate, although the Council will not be obliged to create new positions for this purpose. Please see the Redeployment Policy for further information.
  - Investigation into whether employee may be eligible for ill health retirement – Please refer to Section 22.
- 17.8 A Second Long Term Health Review Meeting should be held to review the employee's progress. This meeting should be attended by the employee's line manager and Human Resources. The employee is entitled to be accompanied by a work colleague or trade union representative. The manager should confirm the

invitation to the meeting in writing giving the employee at least 5 working days' notice. Please contact HR for a template letter. If the employee is unable to attend a meeting in the workplace then it may be appropriate to hold the meeting at the employee's home or other mutually agreed location.

- 17.9 The manager must be accompanied at the Second Long Term Health Review Meeting by an HR Officer. It is their role to advise on procedure, ensure consistency and equity of treatment and ensure that the letter setting out the decision of the meeting is sent to the employee. The HR Officer may also take notes at the meeting unless the manager decides that an additional note-taker should be present.
- 17.10 At this meeting the manager (with delegated authority to issue warnings) should issue a **First Written Warning**. A copy of the warning should be kept on employee's personnel file but will be disregarded after twelve months of satisfactory attendance.
- 17.11 The manager must write to the employee within 5 working days of the Second Long Term Health Review Meeting confirming the points discussed and actions identified. The letter should also include details of any warning issued, along with the employee's right to appeal. Please contact HR for a template letter.
- 17.12 A Third Long Term Health Review Meeting should be held before agreeing future actions in relation to the employee's employment with the Council. This meeting should be attended by the employee's manager, Head of Service and HR Officer. The employee is entitled to be accompanied by a work colleague or trade union representative. The Head of Service should confirm the invitation to the meeting in writing giving the employee at least 5 working days' notice. Please contact HR for a template letter. If the employee is unable to attend a meeting in the workplace then it may be appropriate to hold the meeting at the employee's home or other mutually agreed location.
- 17.13 At this meeting the Head of Service shall be able to issue a **Final Written Warning**. A copy of the warning should be kept on employee's personal record file but should be disregarded after twelve months of satisfactory attendance.
- 17.14 The Head of Service must write to the employee within 5 working days of the Third Long Term Health Review Meeting confirming the points discussed and actions identified. The letter should also

include details of any warning issued, along with the employee's right to appeal. Please contact HR for a template letter.

- 17.15 Referral to a Capability Hearing for long term absence should take place when advice from Occupational Health has been received and taken into account. All reasonable options for support and individual adjustments to the work place should have been considered and appropriate action taken, where ill health redeployment is being actively considered and where two formal warnings have been issued. Please refer to Section 22.

## **18.0 Capability Review Hearing**

- 18.1 Where there are continuing concerns regarding short term absences and a final written warning has been given, or in the case of long term absence options to enable the employee to remain in their current employment have been unsuccessful or are inappropriate and a Final Written Warning has been issued, the employee will be asked to attend a Capability Review Hearing.

- 18.2 The purpose of the Capability Review Hearing will be to consider whether there are any further actions that the Council can take to assist the employee in continuing their employment or whether employment should be terminated due to the employee's inability to undertake their duties effectively because of their absence.

- 18.3 The Capability Review Hearing should be convened by the Service Director. If the employee is a Head of Service, a Director who has not been previously involved will conduct the hearing. The employee must be given 10 working days' notice in writing of the date of the hearing and should be advised that they have the right to be represented by a trade union representative or work colleague. The employee must also receive a copy of the management statement of case with this letter. Please contact HR for a template letter.

- 18.4 The Capability Review Hearing may result in one of the following outcomes:

- Further support with a date set for review
- Dismissal (the Head of HR must be consulted on any decision to dismiss)
- Ill Health Retirement or Compassionate Retirement in accordance with the rules and procedures of the Local Government Pension Scheme and Retirement Policy

18.5 The employee will be informed of the decision in person and also in writing within 3 working days of the hearing. Please contact HR for a template letter.

18.6 If there is medical evidence that an employee is no longer fit to fulfil the requirements of the job, the Council reserves the right to terminate employment before the expiry of contractual sick pay.

18.7 Where decisions have been made to terminate employment on the grounds of ill health the employee has the right to appeal against the decision. Please refer to the Appeals Policy.

## **19.0 Requirement to Provide a Doctor's Fit Note**

19.1 Employees who are undergoing close monitoring of absence may be asked to provide a fit note from the first day of each absence period. If, as a result of this requirement, the employee incurs a cost this will be refunded, normally through expense claims process.

## **20.0 Reasonable Adjustments**

20.1 Under the Equality Act 2010 if an employee, their GP or the Occupational Health Adviser advises the Council that the reason for absence is related to a disability, then the manager must make any possible readjustment to the duties or working environment in order to meet the needs of the individual and therefore increase attendance.

20.2 Advice can be sought from Human Resources as to how reasonable adjustment can be made to a job or environment. Guidance on reasonable adjustments is also set out in the Policy and Procedure for Employing and Retaining People with Disabilities.

## **21.0 Redeployment**

21.1 Where the Occupational Health Adviser or GP recommends that the employee is unfit for the duties of the individual's post, but may be able to undertake alternative work, suitable vacancies should be explored into which the employee may be redeployed.

21.2 HR will monitor vacancies over a 3 month period to identify a suitable alternative post in accordance with the Redeployment Policy. If this does not prove possible, management should convene a Capability Review Hearing.

## **22.0 III Health Retirement**

- 22.1 In rare cases, Occupational Health may advise that an employee is permanently unfit for work. In such situations it will be necessary for the employee to sign a consent form to pursue retirement on ill health grounds so that the required advice can be obtained from two medical sources, one of which will be the Occupational Health Unit.
- 22.2 In situations where an employee disputes the need for ill health retirement, the case will have to be heard in a Capability Review Hearing in order to obtain a dismissal.

## **23.0 Stress**

- 23.1 Managers have a duty of care for their staff and have an important role in identifying and reducing stress in the workplace, whether the primary cause of stress is work related or not.
- 23.2 Guidance can be obtained from Human Resources if stress is identified as a factor in employee absence and managers should also refer to the Stress Management Policy. When stress is identified as a factor in an employee's absence, the Stress Management Policy should be followed in conjunction with the Absence Management Policy.
- 23.3 Managers should consider whether to involve Occupational Health and, if appropriate, counselling can be arranged through Human Resources or obtained directly by the employee through self-referral using the Employee Assistance Programme.

## **24.0 Employee Assistance Programme (EAP)**

- 24.1 The EAP is a confidential advice, information and counselling service that is available to all employees. The EAP can provide specific advice and guidance to employees who are experiencing ill health. Further details can be found on the intranet.

## **25.0 Dismissal**

- 25.1 Employees that have frequent and persistent absence may be dismissed on the grounds of SOSR (Some Other Substantial Reason). Managers in such cases must be clear on absence levels and consequences of dismissal. Advice and support will be given by the relevant HR officer.

**26.0 Appeal**

26.1 All employees have the right to appeal against dismissal in accordance with the Council's Appeals Policy.

**27.0 Policy Review and Amendment**

27.1 This Policy shall be reviewed after three years or sooner in line with legislation and best practice to reflect the best possible level of support and management.

### Guide to Capability Hearings

The purpose of a Capability Review Hearing is for a senior manager to review the individual circumstances of a case, including the support, guidance and formal warnings that have been provided. The Capability Review Hearing will consider whether there are any further actions the Council can take to assist an employee in continuing their employment or whether employment should be terminated due to the employee's incapability to undertake their duties effectively because of ill health. A decision to dismiss can only be taken as outcome of a Capability Review Hearing.

***Where a decision to dismiss an employee is being considered, managers must ensure that the following alternatives to dismissal have been considered first:***

- Return to work – Normal full duties
- Rehabilitation – Adjustments to current job
- Phased Return/Modified Duties
- Reduction or change in hours
- Changes in Work Practices
- Ill Health Redeployment

#### ***When should a Capability Review Hearing for Frequent Short Term Absence take place?***

Advice in the form of a referral from the Occupational Health Adviser has been sought, received and taken account of, and  
2 written warnings have been issued during the Formal Support & Monitoring stage, and  
There has been no sustained and satisfactory improvement in the employee's attendance record, and  
All reasonable options for support and individual adjustments to the job have been have been considered and implemented where appropriate.

#### ***When should a Capability Review Meeting for Long term Absence take place?***

- Advice from Occupational Health has been sought, received and taken account of; and
- 2 written warnings have been issued during the Formal Support & Monitoring stage.

- Where ill health redeployment has been actively considered and or pursued.
- All reasonable options for support and individual adjustments to the work have been considered and where appropriate action taken.
- A Capability Review Hearing may (but not exclusively) take place if the Occupational Health Adviser has certified a case that the employee should be considered for Ill Health Retirement or Compassionate Retirement. It should not be necessary for example in “ask to go” retirements.

### **Roles and Responsibilities in a Capability Review Hearing**

#### ***Director***

- Chair the meeting to ensure that it is conducted in accordance with the recognised format. In particular the Director must ensure that the employee has the opportunity to make as full a statement as possible in response to the Management Statement of Case.
- Ask any questions of clarification on the statements presented by either management or the employee.
- Make a decision as to the outcome of the Capability Hearing.

#### ***Head of Service***

The Head of Service will be required to prepare a Management Statement of Case which describes what support and guidance has been provided from Return to Work meetings, Health Review meetings and referral to the Occupational Health Unit. Support in compiling the Management Statement of Case is available from Human Resources.

At the meeting the Head of Service’s role will be to:

- Present the case in a chronological order.
- Respond to any questions the employee and/or their representative may have about the matters described in the Management Statement of Case.
- Respond to any questions the Director may have on the Management Statement of Case.
- Ask questions of the employee who is subject to the proceedings based on the statement (s) they have made.

#### ***Human Resources***

- Provide procedural advice where necessary (Including ensuring appropriate notification and correspondence are issued).
- Draft correspondence letter confirming the outcome of the hearing on behalf of the Director



### **Scheduling a Capability Review Hearing**

- Ensure that the employee is given at least ten working days' notice in writing of the date of the hearing-taking place.
- Ensure the employee is advised that they are entitled to be accompanied by a Work Colleague or Trade Union Representative at the Capability Review Hearing.
- The employee receives a copy of the Management Statement of Case at least ten calendar days before the hearing.

### **Capability Hearing Order of Events**

1. The Director hearing the case will introduce all those present and briefly explain their roles.
2. The Director will explain the reason why the hearing is being held.
3. The Head of Service will present their case.
4. The Director will invite the employee and/or their representative to ask questions of the Head of Service and others present whose information is relevant to the Management Statement of Case. The HR Officer will also be given the opportunity to ask questions.
5. The Director may then ask questions of the Head of Service and others present.
6. The employee and/or their representative will then present their case
7. The Director will invite the Head of Service to ask questions of the employee subject to the proceedings. The HR Officer will also be given the opportunity to ask questions.
8. The Director may then ask questions of the employee and/or their representative.
9. The Head of Service and the employee and/or their representative will then be asked if they wish to make any concluding remarks.
10. The Director will then close the meeting to consider the matter, advised by the HR Officer.
11. The decision will be confirmed to the employee, in writing, within 3 working days including details of their right to appeal (please contact HR for a template letter). If the decision can be made on the day the employee will also be notified verbally.

## ***What are the possible outcomes of a Capability Review Hearing?***

- **Further Formal Support with a date set for review** - The Director may refer the case back to the Head of Service for further investigation into the employee's absence record and or supportive actions that might be reasonably undertaken. In these circumstances a further Health Review meeting should be scheduled to review the progress, **OR**
- **Dismissal/Ill Health Retirement/ Compassionate Retirement** - The Director may make the decision to dismiss the employee; if they do so they must ensure that their recommendation to dismiss is fair and legal.

### **Director's Checklist – How can I ensure that the recommendation to dismiss is fair and legal?**

Directors should consider the following:-

- The nature of the illness
- Has medical advice been sought on issues such as the nature of the illness, the likelihood of it recurring or some other illness arising and the length of the absences and the periods of good health between them?
- Has it been shown that the employee's health situation is having an adverse effect on their ability to perform their duties efficiently?
- Is the employee's health situation having an adverse impact on work colleagues and service delivery?
- Has consideration been given to the alternatives to dismissal such as reasonable adjustments or redeployment?
- The Council's need for someone else to undertake the work.
- The adoption and exercise of the Council's policy and procedure on absence management.
- An assessment of the individual case, on its own merits
- Is the Council clear what benefits (if any) the employee is eligible for under the Local Government Pension Scheme?
- Has the employee and their representative, if applicable, been consulted fully?

## **What are the two possible reasons for dismissal under the Absence Management Policy?**

**1 – Capability Dismissal:** 'Capability' can include any assessment by reference to health or other physical or mental reasons, as well as reference to skills and aptitudes. Consequently, should an employee's ill health mean that they are unable to continue to undertake their duties; East Herts Council may terminate their employment.

**2 - Dismissal for Some Other Substantial Reason** – This reason (SOSR) may be relevant in health cases where there has been frequent intermittent absence. In these cases, the primary reason for dismissal is not related to the employee's incapability on health grounds, but is related to the employee's inability to undertake their duties because they are not at work often enough. The manager hearing the case should be very clear about the reason(s) for absence and the consequent reason for dismissal in such cases.

### **Director Checklist for Terminations**

- Confirm the decision in writing
- Ensure the employee is aware of the appeal procedure
- Confirm the employee's correct period of notice
- Confirm whether the employee is due any outstanding annual leave
- Ensure that the leavers form is completed so that pay is stopped following the employee's final date of employment.
- Ensure all leaver's details are forwarded to Serco pension department.
- Investigate whether there are any external support mechanisms that may help the employee.
- Ensure that an accurate record of the action taken been recorded.

## Example of Management Statement of Case

To be completed by the Head of Service

### STATEMENT OF CASE REGARDING *<Insert Employee's Name>*

#### CASE TO ANSWER & STATEMENT OF CASE

*<Insert Employee's Name>* has been employed by *<Insert department>*, at *<Insert location>*, in the position of *<insert job title>* and works *<Insert Hours Worked>* hours a week. *<Insert Name of employee>* has been employed for a total of *<Insert number>* of years with East Herts Council.

***\*Outline the sickness record and cause for concern***

#### **Background - Example**

*<Details of roles and responsibilities of Service area and effects of employee's absence on colleagues/service delivery>*

#### **Health History**

*<Detail the chronology of events, quoting dates absence started, Return to Work Meetings, Health Review meetings, referral to Occupational Health Unit and the advice given, support measures, action plans, Doctor's reports, risk assessments and any additional supporting evidence. Please refer to appendices where appropriate and relevant to the case>*

#### **Current situation**

*<Detail where the chronology of events has brought you up to and any adjustments that have taken place>*

*<Detail any difficulties with managing the service in the employee's absence and what arrangements have been made to cover absent shifts/working arrangements>*

*<Detail what if any adjustments have been made to the current job. What support has been offered through supervision, Return to Work meetings, Health Review meetings, Risk Assessments and Support Services>*

#### **Situation Regarding Sick Pay**

**<Detail the situation regarding both statutory and contractual sick pay>**

**Conclusion**

<Detail the Occupational Health Adviser's view point and the management decision regarding the employee's future employment with the Council i.e. consideration be given to the termination of the employee's contract on the grounds of ill health>

**This Statement of Case should be prepared and provided to the employee 10 days in advance of the Capability Review Hearing.**

**RETURN TO WORK INTERVIEW/DISCUSSION FORM**

**\*\* CONFIDENTIAL \*\***

Return to work interviews/discussions must be conducted after every period of absence and where possible managers should carry this out between one-three days when an individual returns; this does not necessarily have to take place on a face to face basis and can be conducted by telephone where managers/employees cover a wide geographical area.

Please refer to the **Manager - Returning to Work Guidelines/Absence Management Policy** for more information on how to hold a return to work discussion.

Date of discussion	
Method of discussion	Face to Face <input type="checkbox"/> Telephone <input type="checkbox"/>
<b>EMPLOYEE DETAILS</b>	
Full Name:	
Directorate/ department:	
Job Title:	
<b>RETURN TO WORK DISCUSSION</b>	
Start date of absence	
Date of return	
Reason for absence	
<ul style="list-style-type: none"> <li>• Update on employee health</li> <li>• Medication/changes to be made to workload and for how long</li> <li>• Adjustments to be made</li> </ul>	

Is the employee pregnant? Yes  No

**Please note that pregnancy related absence will be discounted towards trigger points.  
Please contact HR for further information.**

Does the employee consider themselves to have a disability? Yes  No

**If the absence is related to a disability please contact HR**

Is there a need to refer to Occupational Health Yes  No

**PLEASE CONTACT YOUR HR OFFICER TO VERIFY THE FOLLOWING;**

Has the employee met the corporate trigger points in a rolling 12 month period?

- 7 days sickness absence within any 12 month period
- 3 separate periods of sickness absence in a six-month period
- A pattern of absence which gives cause for concern such as frequent absenteeism on a Monday or Friday, or avoiding particular work tasks

Yes

If yes, please refer to the absence management procedure.

No

If yes to the above question please state what stage within the Absence Management Procedure, the employee is within?

Has the employee been made aware of future actions in accordance with the Absence Management Procedure if they are absent again in the near future?

Yes

No

Details of support offered to employee (actions agreed, including timescales)

I understand that this information will be used for the purposes of recording and monitoring sickness absence.

Signed Employee

Date

Signed Manager		Date
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Updated May 2014