

Shared Parental Leave and flexible working

Pay and Conditions Circular (AforC) 3/2015

Summary

This Pay and Conditions circular informs employers of textual amendments to the NHS terms and conditions of service handbook (Agenda for Change) to incorporate:

- the recent introduction of Shared Parental Leave;
- general amendments to ensure continued compliance with equalities legislation and consistency with good practice.

The amendments to the NHS terms and conditions of service handbook, detailed in this circular, will be published in amendment number 35. Pay circular (AforC) 1/2015, published alongside this one, contains details of changes to pay. Pay circular (AforC) 2/2015 contains changes to redundancy.

Action

1. The revised Section 34, Flexible working arrangements and Section 35, Balancing work and personal life, which are attached to this circular, apply from 1 April 2015.
2. Employers should ensure that their local policies are in line with the new provisions.
3. A full list of the textual changes to the Handbook is in the Annex to this circular.

Effect of this amendment

4. Details of the changes made effective by this circular are in the Annex attached.

Enquiries

5. Employees must direct personal enquiries to their employer.
6. Employers should direct enquiries to: AgendaForChange@nhsemployers.org
7. Copies of this circular can be downloaded from: www.nhsemployers.org

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8. A copy of the NHS terms and conditions of service handbook can be downloaded from the NHS Employers website at the following web address:
<http://www.nhsemployers.org/your-workforce/pay-and-reward/nhs-terms-and-conditions/nhs-terms-and-conditions-of-service-handbook>
9. Prior to the establishment of NHS Employers in November 2004, responsibility to inform the NHS of changes to pay and allowances rested with the Department of Health. Changes were published in Advance Letters. Copies of Advance Letters going back to 2000 may be obtained from the national archives website at the following web address:
<http://www.webarchive.org.uk/wayback/archive/20060506120000/http://www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/AdvancedLetters/fs/en.html>
10. For Advance Letters prior to 2000, please contact the Ministerial Correspondence and Public Enquiries Unit, Department of Health, at the following web address:
<http://www.info.doh.gov.uk/contactus.nsf/memo?openform>

Issued by:



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NHS Employers

Annex

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NHS Terms and Conditions of Service Handbook, amendment number 35

The changes made effective by this circular are listed below.

Title Page:

“Pay and Conditions Circular (AforC) number 2/2015” is changed to **“Pay and Conditions Circular (AforC) number 3/2015”**.

Section 15: Maternity pay and leave

The heading above paragraph 15.66 is “Information about statutory maternity/adoption and paternity leave and pay.” It is changed to **“Information about statutory maternity/adoption leave, Shared Parental Leave and paternity leave and pay”**.

Paragraph 15.66: line 3: the words **“Shared Parental Leave”** are inserted after the words “maternity/adoption”.

Section 34: Flexible working arrangements

Paragraph 1: the last sentence is deleted.

A new paragraph 2 is inserted as follows:

“In considering the provisions of this Section employers should also have regard to the provisions in Sections 2 or 2(a) (England and Wales), Maintaining round the clock services and Annex A3: Principles for harmonised on-call arrangements.”

All following paragraphs are re-numbered.

The existing paragraph 2 is:

“Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff, staff with dependants and job applications under the Equality Act and staff returning from maternity leave (see Section 15).”

It is changed to:

“Employers are required to consider flexible working options for all staff in the workplace for example:

- **disabled staff and staff with health conditions;**
- **staff returning to work following maternity/paternity leave, parental leave; adoption leave or Shared Parental Leave;**
- **staff in need of temporary changes to their employment arrangements, for example, following a domestic crisis, bereavement or sickness absence.”**

A second sentence is added to the existing paragraph 7 as follows:

“All jobs should be considered for flexible working; if this is not possible the employer must provide written, objectively justifiable reasons for this and give a clear, demonstrable operational reason why this is not practicable.”

The existing paragraph 8 is deleted.

The following sentence is added to the existing paragraph 9:

“Employers should make reference to the ACAS Code of Practice and guidance in this respect which can be found at www.acas.org.uk”

The existing paragraph 11 is deleted and replaced with a new paragraph 11 which is:

“Employers will need to ensure that their flexible working policies and procedures operate fairly and transparently and do not advantage any group of staff over another.”

The existing paragraph 12 is deleted and replaced with a new paragraph which is:

“Applications and outcomes and records should cover all information necessary to ensure that there is equitable access to flexible working.”

The existing paragraph 13 is:

“Application and outcomes, from both employer and employees, should be recorded and kept for a minimum of one year.”

It is changed to:

“Application and outcome records should be monitored and analysed in partnership with local staff side representatives, and data used to review and revise policies and procedures to ensure their continuing effectiveness and equity of access.”

Section 35: Balancing work and personal life

Paragraph 1 is:

“NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments. This form of leave should cover a wide range of needs from genuine domestic emergencies through to bereavement and should take into account all religion or belief obligations and associated activities.”

It is changed to:

“NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments. This form of leave should cover a wide range of needs including but not limited to, parental responsibilities, genuine domestic emergencies and bereavement, and should take into account all religion or belief obligations and associated activities. All forms of leave should have regard to legal requirements and the need to ensure equity of access across all equality strands.”

Paragraph 3: a second sentence is added:

“Any leave will need to be agreed by employees’ line managers and any disputes handled according to the relevant local policies.”

Paragraph 4: line 4: the word “**children**” is added after “a relative for this purpose includes”.

Paragraph 5 is:

“This should be a separate provision from either maternity or maternity support leave and should provide a non-transferable individual right to at least 18 weeks’ leave. Leave is normally unpaid, but may be paid by local agreement.”

It is changed to:

“This should be a separate provision from either maternity or maternity support (paternity) leave, adoption and Shared Parental Leave and should provide a non-transferable individual right to at least 18 weeks’ leave. Leave is normally unpaid, but may be paid by local agreement.”

Paragraph 6 is:

“Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 14 (18 in cases of adoption or disabled children).”

It is changed to:

“Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 18.”

Paragraph 7 is:

“Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways, by local agreement. Parental leave can be added to periods of maternity support or maternity leave.”

It is changed to:

“Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways, by local agreement. Parental leave can be added to periods of maternity support (paternity) leave, maternity leave, adoption leave and Shared Parental Leave.”

New paragraphs 11 and 12 and two new headings, are inserted as follows:

Shared parental leave

Eligible employees have a statutory right to request shared parental leave (SPL). Employers should have appropriate policies in place to deal with leave requests in line with the ACAS guidance on Shared Parental Leave.

Statutory pay during Shared Parental Leave

To qualify for statutory pay the employee and their partner must first meet certain qualifying conditions as described in the relevant legislation. Details of the qualifying conditions can be found on the www.gov.uk.

All following paragraphs are renumbered.

The existing paragraph 14 is:

“In addition, employees may be entitled to take up to twenty six weeks’ of additional maternity support (paternity) leave if their partner has returned to work, the leave can be taken between 20 weeks and one year after the child is born or placed for adoption.”

It is changed to:

“In addition, employees with babies born or children adopted before 5 April 2015 may be entitled to take up to twenty six weeks’ of additional maternity support (paternity) leave if their partner has returned to work, the leave can be taken between 20 weeks and one year after the child is born or placed for adoption.”

Existing paragraph 15: the link (<http://www.direct.gov.uk/en/employment/index.htm>) is changed to **www.gov.uk**

Existing paragraph 18 is:

“Employees who are not eligible for the two weeks of occupational maternity support (paternity) pay may still be entitled to statutory paternity pay subject to meeting the qualifying conditions. Details of the qualifying conditions can be found on the (<http://www.direct.gov.uk/en/employment/index.htm>)”

It is changed to

“Employees who are not eligible for the two weeks of occupational maternity support (paternity) pay may still be entitled to statutory paternity pay subject to meeting the qualifying conditions described in the relevant legislation. Details of the qualifying conditions can be found on the www.gov.uk”

Existing paragraph 19 is:

To qualify for statutory pay in the additional maternity support (paternity) leave period, the employee and their partner must first meet certain qualifying conditions. Details of the criteria and the notification requirements can be found on the (<http://www.direct.gov.uk/en/employment/index.htm>)

It is changed to

To qualify for statutory pay in the additional maternity support (paternity) leave period, the employee and their partner must first meet certain qualifying conditions as described in the relevant legislation. Details of the criteria and the notification requirements can be found on www.gov.uk

Existing paragraph 22: the following words are added at the end:

“ . . according to legislation. This also covers the right to unpaid time off to accompany a pregnant woman to appointments for eligible employees.”

Existing paragraph 29: the following words are added at the start:

“For adoption placements up to 4 April 2015 “

Existing paragraph 30 is:

Reasonable time off, to attend official meetings in the adoption process, should also be given.

It is changed to

Reasonable paid time off, to attend official meetings in the adoption process, should also be given according to legislation. This also covers the right to unpaid time off to attend pre-adoption meetings for eligible employees.

A new paragraph 39 is added as follows:

“Employers will need to ensure that their leave policies and procedures operate fairly and transparently and do not advantage any group of staff over another.”

All following paragraphs are renumbered.

Existing paragraph 39 is:

“All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff representatives.”

It is changed to:

“All applications and outcomes should be recorded, and records should cover all information necessary to ensure that there is equitable access to leave provisions. Each leave provision, including applications for and decisions about, should be annually reviewed by employers in partnership with local staff representatives.”

Existing paragraph 40 is:

“Applications and outcomes should be monitored annually, in partnership with local staff representatives.”

It is changed to:

“Applications and outcomes should be recorded and monitored in partnership with local staff side representatives, and data analysed and used to review and revise policies and procedures to ensure their continuing effectiveness and equity of access.”

Existing paragraphs 41 and 42 are deleted.

Section 34: Flexible working arrangements

General

- 34.1 NHS employers, in partnership with staff organisations, will develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives.
- 34.2 In considering the provisions of this section employers should also have regard to the provisions in Sections 2 or 2(a) (England and Wales), Maintaining round the clock services and Annex A3: Principles for harmonised on-call arrangements.
- 34.3 Employers are required to consider flexible working options for all staff in the workplace, for example:
- disabled staff and staff with health conditions;
 - staff returning to work following maternity/paternity leave, parental leave, adoption leave or Shared Parental Leave;
 - staff in need of temporary changes to their employment arrangements, for example, following a domestic crisis, bereavement or sickness absence.
- 34.4 New working arrangements should only be introduced by mutual agreement, whether sought by the employee or the employer.
- 34.5 Flexible working should be part of an integrated approach to the organisation of work and the healthy work/life balance of staff.
- 34.6 Policies for flexible working should be made clear to all employees.
- 34.7 Employers should develop policies on flexible working which, as far as is practicable, should include:
- part-time working, where a person works to a pattern and number of hours by mutual agreement;
 - job sharing, where two or more people share the responsibilities of one or more full-time job(s), dividing the hours, duties and pay between them;
 - flexi-time, where employees can choose their own start and finish time around fixed core hours;
 - annual hours contracts, where people work a specific number of hours each year, with the hours being unevenly distributed throughout the year;
 - flexible rostering, using periods of work of differing lengths within an agreed overall period;

- term-time working, where people work during the school term but not during school holidays;
- school-time contracts;
- tele-working, where people work from home for all or part of their hours with a computer or telecommunication link to their organisation;
- voluntary reduced working time, where people work reduced hours by agreement at a reduced salary;
- fixed work patterns where, by agreement, days off can be irregular to enable, for example, separated parents to have access to their children and flexible rostering;
- flexible retirement.

34.8 Flexible working arrangements should be available to all employees. All jobs should be considered for flexible working; if this is not possible the employer must provide written, objectively justifiable reasons for this and give a clear, demonstrable operational reason why this is not practicable.

34.9 There should be a clear procedure for application for flexible working, agreed by employers and local staff representatives. Employers should make reference to the ACAS Code of Practice and guidance in this respect which can be found at www.acas.org.uk

34.10 All people with flexible working arrangements should have access to standard terms and conditions of employment, on an equal or pro-rata basis, unless different treatment can be justified for operational reasons.

Monitoring and review

34.11 Employers will need to ensure that their flexible working policies and procedures operate fairly and transparently and do not advantage any group of staff over another.

34.12 Applications and outcomes and records should cover all information necessary to ensure that there is equitable access to flexible working.

34.13 Application and outcomes records should be monitored and analysed in partnership with local staff side representatives, and data used to review and revise policies and procedures to ensure their continuing effectiveness and equity of access.

Section 35: Balancing work and personal life

General

- 35.1 NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments. This form of leave should cover a wide range of needs including, but not limited to, parental responsibilities, genuine domestic emergencies and bereavement, and should take into account all religion or belief obligations and associated activities. All forms of leave should have regard to legal requirements and the need to ensure equity of access across all equality strands.
- 35.2 Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practises, and this Section should be seen as operating in conjunction with other provisions, particularly the Employment Break Scheme, Flexing Work Positively and the Caring for Children and Adults Sections.
- 35.3 Arrangements should be agreed between employers and local staff representatives. Any leave will need to be agreed by employees' line managers and any disputes handled according to the relevant local policies.
- 35.4 A dependent is someone who is married to, is a civil partner, or a partner (whether opposite or same sex) "a near relative" or someone who lives at the same address as the employee. A relative for this purpose includes: children, parents, parents-in-law, adult children, adopted adult children, siblings (including those who are in-laws), uncles, aunts, grandparents and step relatives or is someone who relies on the employee in a particular emergency.

Forms of leave: parental leave

- 35.5 This should be a separate provision from either maternity or maternity support (paternity) leave, adoption leave, and Shared Parental Leave (SPL), and should provide a non-transferable individual right to at least 18 weeks' leave. Leave is normally unpaid, but may be paid by local agreement.
- 35.6 Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 18.
- 35.7 Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways, by local agreement. Parental leave can

be added to periods of maternity support (paternity) leave, maternity leave, adoption leave, and Shared Parental Leave.

- 35.8 Notice periods should not be unnecessarily lengthy and should reflect the period of leave required. Employers should only postpone leave in exceptional circumstances and give written reasons. Employees may also postpone or cancel leave that has been booked with local agreement.
- 35.9 During parental leave the employee retains all of his/her contractual rights, except remuneration and should return to the same job after it. Pension rights and contributions shall be dealt with in accordance with NHS Superannuation Regulations. Periods of parental leave should be regarded as continuous service.
- 35.10 It is good practice for employers to maintain contact (within agreed protocols) with employees while they are on parental leave.

Shared Parental Leave

- 35.11 Eligible employees have a statutory right to request Shared Parental Leave. Employers should have appropriate policies in place to deal with leave requests in line with the ACAS guidance on Shared Parental Leave.

Statutory pay during Shared Parental Leave

- 35.12 To qualify for statutory pay the employee and their partner must first meet certain qualifying conditions as described in the relevant legislation. Details of the qualifying conditions can be found on the www.gov.uk.

Maternity support (paternity) leave and pay and ante-natal leave

- 35.13 This will apply to the father of the child (including adoptive fathers), the mother's husband or partner (whether opposite or same sex), or nominated carer.
- 35.14 NHS organisations have scope for agreeing locally more favourable arrangements where they consider it necessary, or further periods of unpaid leave.

Maternity support (paternity) leave

- 35.15 All employees are entitled to two weeks' of ordinary maternity support (paternity) leave which can be taken around the time of the birth or the placement of the child for adoption.

- 35.16 In addition, employees with babies born or children adopted before 5 April 2015 may be entitled to take up to twenty six weeks of additional maternity support (paternity) leave if their partner has returned to work, the leave can be taken between 20 weeks and one year after the child is born or placed for adoption.
- 35.17 To qualify for additional maternity support (paternity) leave the employee and their partner must first meet certain qualification criteria. Details of the qualifying conditions and the notification requirements can be found on www.gov.uk

Occupational pay during maternity support (paternity) leave

- 35.18 There will be an entitlement to two weeks' occupational ordinary maternity support (paternity) pay. Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity pay entitlements. The employee will receive full pay less any statutory paternity pay receivable. Only one period of occupational maternity support (paternity) pay is ordinarily available when there is a multiple birth.
- 35.19 Eligibility for the two weeks of occupational maternity support (paternity) pay will be 12 months' continuous service with one or more NHS employer at the beginning of the week in which the baby is due.
- 35.20 Employees who are not eligible for the two weeks of occupational maternity support (paternity) pay may still be entitled to statutory paternity pay subject to meeting the qualifying conditions described in the relevant legislation. Details of the qualifying conditions can be found on www.gov.uk

Statutory pay during maternity support (paternity) leave

- 35.21 To qualify for statutory pay in the additional maternity support (paternity) leave period, the employee and their partner must first meet certain qualifying conditions as described in the relevant legislation. Details of the criteria and the notification requirements can be found on www.gov.uk

Rights during additional maternity support (paternity) leave

- 35.22 Employees who are entitled to additional maternity support (paternity) leave/pay will be entitled to take up to 10 keeping in touch days during the course of the additional maternity support (paternity) leave period. The criteria for keeping in touch days is set out in Section 15 and is based on those used for statutory maternity leave and pay.

35.23 Employees who have taken additional maternity support (paternity) leave will have the right to return to the same job under their original contract and on no less favourable terms and conditions.

Ante natal leave

35.24 Reasonable paid time off to attend ante-natal classes will also be given according to legislation. This also covers the right to unpaid time off to accompany a pregnant woman to appointments for eligible employees.

Adoption leave and pay

35.25 All employees are entitled to take 52 weeks' adoption leave.

35.26 There will be entitlement to paid occupational adoption leave for employees wishing to adopt a child who is newly placed for adoption.

35.27 It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.

35.28 Where the child is below the age of 18 adoption leave and pay will be in line with the maternity leave and pay provisions set out in this agreement.

35.29 Eligibility for occupational adoption pay will be 12 months' continuous NHS service ending with the week in which they are notified of being matched with the child for adoption. This will cover the circumstances where employees are newly matched with the child by an adoption agency.

35.30 If there is an established relationship with the child, such as fostering, prior to the adoption, or when a step-parent is adopting a partner's children, there is scope for local arrangements on the amount of leave and pay in addition to time off for official meetings.

35.31 For adoption placements up to 4 April 2015, if the same employer employs both parents, the period of leave and pay may be shared. One parent should be identified as the primary carer and be entitled to the majority of the leave. The partner of the primary carer is entitled to occupational maternity support leave and pay.

35.32 Reasonable paid time off, to attend official meetings in the adoption process, should also be given according to legislation. This also covers the right to unpaid time off to attend pre-adoption meetings for eligible employees.

35.33 Employees who are not eligible for occupational adoption pay may still be entitled to statutory adoption pay (SAP) subject to the qualifying conditions.

Keeping in touch during the adoption leave period

35.34 Employees will be entitled to keep in touch days (KIT days) in line with the maternity leave and pay provisions as set out in Section 15 of this agreement.

Leave/time off for domestic reasons

35.35 This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.

35.36 These provisions should cover all employees.

35.37 Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.

35.38 If the need for time off continues, other options may be considered, such as a career break.

35.39 Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.

35.40 Appeals against decisions to decline an application for leave should be made through the grievance procedure.

Monitoring and review

35.41 Employers will need to ensure that their leave policies and procedures operate fairly and transparently and do not advantage any group of staff over another.

35.42 All applications and outcomes should be recorded, and records should cover all information necessary to ensure that there is equitable access to leave provisions. Each leave provision, including applications for and decisions about, should be annually reviewed by employers in partnership with local staff representatives.

35.43 Applications and outcomes should be recorded and monitored in partnership with local staff side representatives, and data analysed and used to review and revise policies and procedures to ensure their continuing effectiveness and equity of access.