

## **REPORT OF THE POLICY REVIEW WORKING GROUP**

### Introduction

This report brings forward to Council the implications of three new measures which need to be reflected within Council policy:

- a new duty to take reasonable steps to prevent sexual harassment;
- a new right to leave for carers; and
- the right to request flexible working arrangements

The new duty to take reasonable steps to prevent sexual harassment requires the development of a new policy for the Council. Further guidance will become available as The Equality and Human Rights Commission's (EHRC) technical guidance on sexual harassment and harassment at work is due to be updated to reflect the new duty, setting out the steps that employers should take. In the meantime, as a minimum, employers should be introducing policies and procedures dealing with harassment and bullying, making these available to staff and supporting them to speak up about sexual harassment, along with providing relevant, regular training to staff members. A draft policy on harassment, sexual harassment and bullying is attached at Appendix A.

With regard to the new right to leave for carers, the Council has previously updated its leave policy to include provisions on compassionate, emergency and dependents leave which included to a great extent those who are carers. The leave policy requires a modest adjustment to correspond to the requirements of the new duty and an amended version is attached to this report at Appendix B. The Working Group has identified some minor policy duplication between the Leave Policy and the Absence Management Policy and the opportunity has been taken to tidy that up by removing any duplication. The revised Absence Management Policy is attached at Appendix C. The working Group has considered amalgamating the two policies on Leave and Absence Management but on balance feels that absence management, sickness and return to work protocols are worthy of their own policy.

The changes to the rules on flexible working came into force on 6 April 2024 and are contained in the Employment Relations (Flexible Working) Act 2023 and the Flexible Working (Amendment) Regulations 2023. Briefly the changes are that employees can now make two flexible working requests in any 12 month period, requests have to be dealt with within two months unless an extension is agreed and employers are not able to refuse a request until they have 'consulted' with the employee. A draft policy reflecting the changes is attached to this report at appendix D

An outline of the new provisions is set out below:

### New duty to take reasonable steps to prevent sexual harassment

New legislation has been passed to introduce a duty for all employers to take reasonable, proactive steps to prevent sexual harassment of employees in the course of their employment. This comes into force in October 2024, applying to protect workers against unwanted conduct of a “sexual nature” and to all genders. Claims for breach of this duty may be made in the Employment Tribunal but must be attached to a claim for sexual harassment, this is not a free-standing claim.

The Worker Protection (Amendment of Equality Act) Act will increase an employer's obligations to protect its employees against sexual harassment. Currently, there is a potential legal defence to a harassment claim if an employer can demonstrate they have taken all reasonable steps to prevent it from happening. The new legislation takes this further by putting a legal obligation on employers to take proactive steps to prevent sexual harassment.

Employers breaching the new duty could be subject to enforcement action by the Equality and Human Rights Commission and/or an uplift of up to 25% in any compensation awarded if a tribunal finds that an employee has been subjected to sexual harassment and the employer failed to take reasonable steps to prevent it. Employers should be introducing and updating where necessary policies and procedures dealing with harassment and supporting staff to speak up about it, along with providing relevant training to staff members.

### New right to leave for carers

Currently there is no specific right for carers to take leave. The new legislation giving effect to new rights for carers came into effect on 6 April 2024.

Carers will be entitled to at least a week of unpaid leave in each year, as a day one right. The leave can be taken by employees to provide or arrange care for a dependant with a long-term care need. A “dependant” for these purposes will mean a spouse/civil partner, child or parent, someone who lives in the same household as the employee (other than as a tenant or lodger) or someone who reasonably relies on the employee to provide or arrange care. See here our article here for detail on the changes due to take effect.

Employers should consider putting their own policies in place to address the needs of unpaid carers taking into account the new developments in this area and training their managers to deal with such leave requests.

### Flexible Working

Arrangements surrounding flexible working changed on 6 April 2024. The changes are contained in the Employment Relations (Flexible Working) Act 2023, and the Flexible Working (Amendment) Regulations 2023.

From that date Council employees became able to make a statutory request to make permanent changes to their contract from their first day of employment. The effect of this is that from the first day of employment employees can ask the Council for changes to how long, when and where they work.

Employees will be able to make two requests in any twelve-month period, rather than the previous single request per year. In addition, the Council is required to make a

decision on the request within two months of receiving it. Previously it was three months.

As an employer, the Council must manage these requests in a reasonable manner and can only reject a request for one of eight business reasons. These are

- it will cost the Council too much;
- the Council cannot reorganise the work among other staff;
- the Council cannot recruit more staff;
- there will be a negative effect on quality;
- there will be a negative effect on the Councils' ability to meet demand;
- there will be a negative effect on performance;
- there's not enough work for the employee to do at the times they've requested to work; or
- there are planned changes to the Council, for example, known proposals to reorganise or change the way the Council operates and the request will not fit with those plans.

### **Recommendation**

- a) To note the report of the Policy Working Group;
- b) To approve the policy on Harassment, Sexual Harassment and Bullying at appendix A to the report as an interim measure and to delegate to the Clerk in conjunction with the Policy Working Group to further review the policy once further guidance on this matter is received.
- c) To approve the amended Leave Policy at Appendix B to take account of the new right to leave for carers.
- d) To approve the amended Absence Management Policy which reflects the removal of previous duplication with the Leave Policy.
- e) To approve the policy on flexible working.