

AUGUST 2020

CARERS' LEAVE

NHS EMPLOYERS' RESPONSE TO GOVERNMENT CONSULTATION

Overview

NHS Employers is the employers' organisation for the NHS in England. We help employers to develop a sustainable workforce, improve staff experience and be the best employers they can be.

Our response to the consultation on proposals to introduce a new leave for carers is based on collective views, feedback and suggestions received in response to an employer survey covering employers in the NHS in England.

Background

As part of the [carers' leave consultation](#), NHS Employers undertook its own survey to gather the views of employers in the NHS. We received 54 responses.

The NHS Employers survey focused on four areas:

1. Who should be eligible to take the leave
2. What the leave can be taken for
3. How the leave can be taken and the process for requesting leave
4. The costs and benefits to employers and employees.

Employers were asked their views on a proposal to introduce a new right which would allow qualifying employees to take a week of unpaid leave each year to provide care.

Consultation findings

Who should be eligible to take the leave?

We sought views on a range of relationships that should be considered for inclusion within the scope for carers' leave.

74 per cent of respondents supported the government's proposal to broadly align the dependant relationships under the right to time off for dependants.

However, roughly one quarter thought that 'someone else who reasonably relies on the employee for care' was not explicit enough, and the list should be extended to provide further clarity for employers. Respondents suggested extending the list to include individuals who had a parental responsibility, such as stepfamily members and foster carers. Respondents noted the importance of employers having the ability to account for the unique circumstances of the relationship between the individual and the person requiring care in being able to determine eligibility.

Only 40 per cent of respondents agreed with the government's proposal to restrict carers' leave to 'those who are caring for individuals with mental or physical problems, a disability, or issues related to old age where care is likely to last for a longer period of time, for example six months or a year.' Over 60 per cent of respondents disagreed with this approach with the majority opposing the suggested 'six months or a year' time frame. Many felt that some carers would be unable to meet the six-month time frame given the quick progression of some terminal illnesses. Other feedback included the need for eligibility for carers' leave to be determined on a 'need led' basis and not to be related to a confirmed diagnosis. This would allow employers to provide maximum flexibility to staff.

Views were sought on which conditions are considered appropriate for the purposes of accessing carers' leave

96 per cent of respondents were supportive of including conditions which qualify as a disability under the [Equality Act 2010](#) and all respondents were supportive of including terminal illnesses. However, there was less support (63 per cent) for the length of the condition being a determining factor.

Over half of the respondents provided examples of other conditions which they believe should be considered. These include:

- Managing cases of urgent domestic distress involving a dependent.
- Recovering from an operation for which a period of adjustment is required.
- Occasions when medical advice recommends a person should not be left alone for a period, for example after acute trauma.

- Shorter term circumstances where there is a profound impact on mobility or psychological health, for example following a car accident or stroke.
- Elder care.
- The ability to account for the effect of the condition, not just the diagnosis.

Considering the above, the ability to apply discretion to the eligibility criteria for the purpose of accessing carers' leave, would be welcomed.

We asked employers for views on the most appropriate qualifying period for carers' leave. Over half of respondents thought this should be a day one right with no qualifying period. This would allow employers to demonstrate a compassionate and supportive approach, noting that caring responsibilities can often be unpredictable.

What the leave can be taken for?

We sought employers' views on the government definitions outlining when carer's leave could be taken. 91 per cent of respondents agreed or strongly agreed with the government's proposals for when it can be taken.

78 per cent of respondents agreed or strongly agreed with the government's proposals to rule out general childcare as an option under the broad definition of caring. It was felt that the provision of childcare is already provided for by existing parental leave entitlements.

78 per cent of respondents disagreed or strongly disagreed that employees who are caring for individuals with short-term needs (less than six months) should be out of scope for carers' leave. This was primarily due to some illnesses not lasting six months or more, but still being debilitating enough to require care.

Considering this feedback, we would welcome a review of this criteria to include employees who are caring for individuals with shorter term needs (less than six months).

The process for taking the leave

Over half of the respondents agreed with the government's proposal to allow staff to self-certify for periods of carers' leave in the first instance.

Respondents who did not agree with this approach felt that requests should be first agreed with their line manager with the appropriate evidence provided to confirm the caring relationship and/or circumstances, for example from a GP, school or hospital.

However, the impact of requiring evidence should be balanced against its value. The additional pressure placed upon professionals within other public services, such as teachers and GPs, would need to be carefully considered. Concerns on low uptake levels were raised should staff be required to provide evidence. By way of contrast, individuals can

self-certify the first seven days of any sickness episode with those lasting longer than seven days requiring proof.

Nearly all respondents felt that the week of unpaid leave should be accessible as a mixture of individual full and half days to provide as much flexibility to staff as possible. The mandating of full days or a block of leave may mean an employing organisation has to put in place backfill arrangements, for which there is a cost. It is more common for shorter periods of absence to be more easily managed. Respondents also felt that employees should be required to give notice, where possible, ahead of taking a period of carers' leave. However, given the mixed responses on the process for taking the leave, we would suggest that this may be something which should be decided locally by each employing organisation.

The cost and benefits to employers and employees

We sought views on what benefits respondents thought providing access to carers' leave would bring. Nearly all respondents agreed that the main benefits would be:

- a better work-life balance for staff
- increased staff engagement
- support to health and wellbeing of staff
- reduced sickness absence rates.

Some respondents also confirmed the following:

- benefit to the reputation of the organisation (seen as a good employer)
- increased staff productivity
- staff may be loyal to the organisation, and
- improved recruitment and retention rates.

Views were also sought on the challenges organisations may need to respond to following the introduction of carer's leave. Respondents provided the following feedback.

- With existing staff shortages, there may be instances where applications for carer's leave cannot be approved to ensure safe staffing levels are maintained.
- Cost of backfill where organisations deem this appropriate.
- Loss of earnings staff will experience given that the proposal is for a week of unpaid leave.
- Risk of a lack of uptake given the proposal is for a week of unpaid leave.

- Risk of employees taking other paid types of leave such as sickness absence to cover caring commitments.
- Respondents were concerned that the current proposals may trigger some resentment and low staff morale since only one week of leave is being offered. Dependents with a long-term illness or a terminal illness often require round the clock care and a week of leave would not stretch far enough.

Conclusions and recommendations

We expect the introduction of carers' leave to be welcomed by employers and staff within the NHS. This would allow staff to better balance their work and home lives without the need to rely on other, inappropriate, leave types such as annual leave or sick leave to provide caring duties for their dependants. However, there are concerns that the current proposals do not go far enough; in particular, it is felt that the eligibility criteria are limiting and may not reflect all circumstances, such as end of life care. The ability for employers to use local discretion on this aspect would be important.

Further reflections on aligning this to other leave types and providing a statutory payment would be strongly encouraged. There are concerns that the potential loss of earnings will prevent staff from choosing to take it and access inappropriate leave types to fulfil their caring duties, such as sick leave and annual leave. Additionally, we would highlight the messaging this sends to those individuals balancing work and caring duties and whether a week of unpaid leave is the right approach. This is particularly highlighted given the recent [government's response](#) to its consultation on neonatal leave and pay, where the length of statutory pay will be capped at 12 weeks.

Respondents supported the **government's** proposed conditions on care and felt these to be appropriate. However, respondents felt there was further scope to extend this list. For example, to include elder care or acute trauma where the impact of an individual's injuries is considered more short term. There was overwhelming support to not include general childcare arrangements since other leave types already provide for this. We believe employing organisations should have discretion to consider each condition on a case by case basis along with the personal circumstances of the employee.

Respondents supported the proposal to introduce carer's leave as a day one right and strongly agreed with the approach to allow staff to take leave as a mixture of full and half days, maximising flexibility for staff and employers. This would ensure that carer's leave is being used appropriately and only when it is needed.

There is no doubt that the introduction of carers' leave will bring about many positives for NHS organisations and their employees, however, the risks identified within this response will need careful consideration to ensure there are no unintended barriers to uptake.

NHS Employers

NHS Employers is the employers' organisation for the NHS in England. We help employers to develop a sustainable workforce, improve staff experience and be the best employers they can be.

Our practical resources and expert insights help make sense of current and emerging healthcare issues, to keep employers up to date with the latest thinking and ensure they are informed and equipped to support the NHS workforce.

We generate opportunities to network and share knowledge and we actively seek the views of workforce leaders to make sure their voice is front and centre of health policy and practice.

We also lead the national collective relationships with trade unions on behalf of the NHS and the Secretary of State for Health and Social Care.

Further information

For more information about the work in this report, please contact the Employment Relations team at NHS Employers.

Email: EmploymentRelationsSupport@nhsemployers.org

Phone: 0113 306 3000