

# **NHSScotland Workforce**

## **Attendance Policy**

## 1. Attendance

### 1.1 Aim

1.1.1 To encourage attendance and support employees where health issues impact on their ability to be at work.

### 1.2 Scope

1.2.1 This policy applies to all employees. It also applies to workers i.e. bank, agency and sessional workers. References to employees should be taken to apply to workers unless otherwise stated.

1.2.2 Where health is impacting on performance please refer to the [Capability Policy](#)<sup>1</sup> or relevant policy for medical and dental staff.

1.2.3 Where the employee needs time off for other reasons there are a range of other policies available. Refer to your local supporting work life balance policies for more information.

1.2.4 This Policy is compliant with current legislation and will meet the aims of the [Public Sector Equality Duty](#)<sup>2</sup> of the [Equality Act 2010](#)<sup>3</sup>.

### 1.3 Definitions

1.3.1 **Disability** is defined in the Equality Act 2010 as a physical or mental impairment which has a substantial and long-term adverse effect on an individual's ability to carry out normal day-to-day activities.

1.3.2 **Industrial injury** is where an employee is injured or contracts a disease in the course of their work as detailed in [Section 22](#)<sup>4</sup> of the Agenda for Change Terms and Conditions of Employment Handbook. All other employees should refer to their own Terms and Conditions of employment.

1.3.3 **Long-term sickness absence** is a period of sickness absence which lasts for 29 calendar days or more.

1.3.4 **Medical exclusion** is where an employee is excluded from work because they may be at particular risk of ill-health or may be a risk to others e.g. a pregnant employee may be exposed to an infectious illness, or an employee is symptom free but is still considered to be infectious.

1.3.5 **Medical suspension** is where an employee is suspended from work as they are experiencing health related concerns which may mean they are a risk to themselves or others.

1.3.6 **Phased return to work** is where an employee returns on reduced hours or alternate duties to facilitate an earlier return to work following sickness absence.

1.3.7 **Reasonable adjustments** are changes to the work environment and / or working arrangements that allow people with disability to work safely and productively.

1.3.8 **Sickness absence** is where health causes an employee to be unable to attend work.

1.3.9 **Triggers** are prompts to initiate supportive intervention at either 4 separate episodes of absence or short term absences totalling 8 or more working days within a rolling 12 month period or for longer term absence 29 calendar days or more.

1.3.10 **Unauthorised absence** is where the absence notification or certification procedure has not been followed.

#### **1.4 Roles and responsibilities**

1.4.1 There are a range of standard expectations on all parties including HR, Trade Union representatives and Occupational Health which underpin all policies. Read more about standard [roles and responsibilities](#)<sup>5</sup>. In addition the following specific responsibilities apply to this policy:

##### **1.4.2 Line manager**

The line manager should:

- support the health, safety and wellbeing of employees recognising their duty of care
- take action to identify and reduce, where possible, underlying causes of sickness absence with a view to preventing ill-health
- ensure appropriate early intervention where ill-health arises to prevent the escalation of healthcare needs
- seek, consider and implement OHS and health professional advice where appropriate to support employee attendance. Provide feedback to employee where it is not possible to implement OHS recommendations
- update / record absences in a timely manner across relevant systems

##### **1.4.3 Employee**

The employee should:

- recognise personal responsibility to take reasonable care of their own health and wellbeing and ensure they are fit to work without detriment to themselves or others
- actively participate in the process to avoid delays
- communicate at the earliest opportunity any underlying health issues or other contributing factors which may impact on their attendance at work

##### **1.4.4 Occupational Health**

Occupational Health should:

- provide expert, impartial and timely advice in relation to how an employee's health issues impact on their attendance at work
- consider information provided from a variety of sources e.g. GP's, other agencies, job role to make sure that all relevant information is available concerning an employee's circumstances to advise managers accordingly
- advise on whether an employee may be considered as having a disability under the Equality Act 2010
- seek, identify and advise on appropriate solutions including reasonable adjustments based on information available and individual circumstances to enable employees to remain in work, return to work and maintain attendance

#### **1.5 Procedure**

##### **1.5.1 Absence Reporting**

1.5.1.1 Where an employee is unable to attend work due to sickness they must:

- advise their manager (or agreed alternative contact) before their normal start-time.

- make contact by telephone unless other contact arrangements have been agreed.
- only use a third party to report their absence in exceptional circumstances where it is not practicably possible for them to do so themselves

1.5.1.2 Where an employee becomes unwell during the working day, they must:

- contact the manager (or agreed alternative contact) before leaving work.
- if they are unable to do so, they should leave a message and make contact as soon as possible to ensure that the message has been received

1.5.1.3 For either of the circumstances above, the manager (or agreed alternative contact) and employee should discuss the nature of the illness, likely duration of absence, expected return to work date and arrangements for keeping in contact during the absence.

1.5.1.4 Where the employee fails to notify or provide appropriate certification this may result in a loss of pay and referral to other workforce policies.

## **1.5.2      Supportive contact during Sickness Absence**

1.5.2.1 The manager and employee must agree arrangements for contact during sickness absence including the method and frequency of contact.

1.5.2.2 These arrangements are intended to facilitate supportive conversations that can include:

- enquiring after the employee's health and wellbeing
- keeping the manager up-to-date with progress in relation to the employee's health
- planning for their return to work and identifying any support which might aid the employee in their recovery and return
- ensuring up to date information regarding the workplace is shared with the employee
- depending on the length of absence, include information regarding the employee's pay status
- highlighting sickness absence triggers that may involve use of the formal stages of this policy

1.5.2.3 When an absence has continued beyond 29 calendar days, the manager will normally arrange to meet with the employee. Where this is not possible or appropriate the discussion can be by telephone. A record of the discussion and any return to work plan agreed should be confirmed to the employee in writing within 7 calendar days. Standard invite<sup>6</sup> and outcome<sup>7</sup> letter templates will be used.

## **1.5.3      Absence Certification**

1.5.3.1 Where the absence lasts 7 calendar days or less an employee can self-certify.

1.5.3.2 Where an absence period lasts more than 7 calendar days, a medical certificate (e.g. a Fit Note / Med 3 or Med 10 certificate) issued by a General Practitioner or other Medical Practitioner is required. This must be provided to the manager as soon as possible. In cases where there are multiple Fit Notes these should cover the whole period of the medically certificated absence and be submitted to the manager in a timely manner for service delivery and pay purposes.

## **1.5.4      Injury at Work**

1.5.4.1 Where it has been determined that an employee's absence from work is due to an injury, disease or other health condition which are wholly or mainly attributable to their NHS employment the manager must ensure the appropriate documentation, including an incident report is completed, and where necessary the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) are complied with. The manager must record for payroll purposes that the absence relates to injury at work. Absences related to injury at work will not be counted towards calculation of paid sick leave the employee is entitled to within the 12 month period. The employee should also be advised of the potential entitlement to [NHS Injury Allowance](#)<sup>4</sup>.

1.5.4.2 The employee will be supported under the return to work provisions of this policy including the potential introduction of reasonable adjustments and consideration of any revisions to the absence triggers.

#### **1.5.5 Arrangements for Medical Exclusion following Infectious / Notifiable Disease**

1.5.5.1 While the employee is experiencing symptoms this should be recorded as sickness absence.

1.5.5.2 Where the control of infection advice requires the employee to remain off work for a period after symptoms subside, this period will be regarded as medical exclusion. The employee will be entitled to payment as if at work during this period. Medical exclusion will not count towards sickness absence triggers. The manager must record for payroll purposes that the absence is a medical exclusion / control of infection leave.

1.5.5.3 Alternatives to medical exclusion should always be considered e.g. working at home.

#### **1.5.6 Medical Suspension**

1.5.6.1 Medical suspension is a supportive action which applies where there is a health related concern that may mean that the employee is a risk to themselves or others. This can relate to physical or mental health issues. Suspension should be for the shortest period possible to allow a medical assessment to be undertaken. The employee will be entitled to payment as if at work during this period.

1.5.6.2 The manager must record for payroll purposes that the absence is a medical suspension.

1.5.6.3 Medical suspension will not count towards sickness absence triggers until a medical opinion confirms the employee should be absent from work for health reasons.

#### **1.5.7 Pregnancy Related Illness**

1.5.7.1 Sickness absence attributable to pregnancy will be managed in accordance with the attendance policy to facilitate a return to work as soon as possible with any necessary support or adjustment to duties during the pregnancy.

1.5.7.2 These absences are recorded in the normal way but will not be considered for the purposes of absence management triggers.

1.5.7.3 The employee will be supported in their return to work, following an individual risk assessment. This will include any alterations required.

1.5.7.4 Where a pregnant employee is absent from work due to sickness related to the pregnancy during the last 4 weeks before the expected week of childbirth maternity leave will normally commence on the day after the first day of absence.

#### **1.5.8 Planned Long Term Sickness Absence**

1.5.8.1 Sickness absence can be planned where it is known that an employee will be undertaking a programme of clinical treatment that will be debilitating for a recognised period of time, for example, surgery or chemotherapy.

1.5.9 The manager and employee will meet prior to the absence to agree dates and times for maintaining regular contact.

#### **1.5.10 Pay during Sickness Absence**

1.5.10.1 Pay during sickness absence is dependent on length of service. For all information on pay during sickness absence, including variation in exceptional circumstances, please refer to [Section 14<sup>8</sup>](#) of the Agenda for Change Terms and Conditions Handbook and the relevant Medical and Dental terms and conditions on the [Management Steering Group website<sup>9</sup>](#).

1.5.10.2 Workers have no entitlement to occupational sick pay but may have entitlement to [statutory sick pay<sup>10</sup>](#).

#### **1.5.11 Secondary Employment**

1.5.11.1 Employees have a duty to facilitate their recovery and return to work as soon as possible.

1.5.11.2 Where an employee undertakes other paid or unpaid work they must consider how continuing this work during their sickness absence will impact on their recovery and ability to return to work. Should an employee wish to consider undertaking other work during sickness absence they should seek advice from their manager prior to commencement.

1.5.11.3 Employees should be aware that undertaking secondary employment, during sickness absence may be considered fraudulent. Such cases may be referred to NHSScotland Counter Fraud Services (CFS) and could result in criminal proceedings and / or relevant conduct processes.

For further information on secondary employment refer to local safer pre and post employment checks policies.

#### **1.5.12 Sickness during Annual Leave**

When an employee becomes unwell during a period of previously arranged annual leave they can choose whether their period of illness is to be treated as sickness absence or as annual leave. If they wish the period of illness to be treated as sickness absence they are required to report this in line with normal notification and certification procedures. The employee will be deemed to have been on sickness absence rather than annual leave from the date of notification.

#### **1.5.13 Time away from home during Sickness Absence**

An employee who is absent from work due to sickness may decide to take time away from home for the purposes of recuperation. Time away from home will continue to be regarded and recorded as sickness absence where appropriately certificated. The agreed keeping in contact arrangements will continue to apply. Employees should be available to attend any

meetings required under this policy including Occupational Health appointments. In exceptional circumstances alternative arrangements can be agreed.

#### **1.5.14 Annual Leave entitlement during Long Term Sickness Absence**

Employees who are unable to use up their annual leave entitlement within a given leave year because of long term sickness absence will be entitled to carry over the remaining balance of their statutory holiday entitlement into the following leave year. The entitlement is based on the statutory holiday entitlement of 5.6 weeks leave (i.e. 28 days for a five day worker) as defined by the Working Time Regulations 1988 minus any annual leave and / or public holidays taken before sick leave began. Read circular [CEL17 \(2009\)](#)<sup>11</sup> for more information about annual leave entitlement during long term sickness absence.

Employees can opt to use their annual leave entitlement during sickness absence. Requests for this should be raised with the manager.

#### **1.5.15 Return to Work**

1.5.15.1 When an employee returns to work following any sickness absence the manager and employee must have a return to work discussion as soon as possible and ideally within 2 working days of the employee's return.

1.5.15.2 The return to work discussion will take place with the manager or designated deputy. The expectation is that this is a face-to-face discussion. Telephone or video-conference facilities should only be used where the employee and manager are content that all other options have been fully explored.

1.5.15.3 The aim of the return to work discussion is to check that the employee is ready to return to work with any necessary revisions, amendments or support in place. It is also an opportunity to have a meaningful conversation about how the employee can be supported to maintain and improve their attendance. Any contributing health and wellbeing factors e.g. dependency issues, stress, work-related impacts, should be explored using the relevant policy.

1.5.15.4 The [Return to Work Discussion Form](#)<sup>12</sup> will be used to inform and record the discussion.

1.5.15.5 The manager and employee should discuss and agree arrangements taking into account any professional advice e.g. from the employee's GP or from OHS. This may include a phased return to work and / or other adjustments that should, where possible, be considered and discussed prior to an employee's return to work. Subsequent meetings may take place following the employee's return to review the effectiveness of any support mechanisms.

#### **1.5.16 Phased Return to Work**

1.5.16.1 Where a phased return to work has been recommended this should be accommodated to support the employee returning to work at the earliest opportunity. It also enables an assessment of the employee's fitness to commence normal working hours and duties. The employee will receive payment in line with the agreed terms and conditions during the phased return.

#### **1.5.17 Referrals to Occupational Health Service**

##### **1.5.17.1 Self-Referral**

1.5.17.2 Employees can self-refer to OHS for any health matters relating to or affecting their work. Any report resulting from a self-referral is confidential unless the employee

consents to it being shared with their manager. Read the [guide to Occupational Health Service referrals](#)<sup>13</sup> for more information.

#### 1.5.17.3 Management Referral

1.5.17.4 Managers can also refer employees to OHS in order to support the employee with health matters relating to or affecting their work and to enable OHS to provide advice to the manager. Managers must use a template management referral form if this is provided by their OHS provider.

1.5.17.5 The content and reasons for the referral must be discussed with the employee prior to this being progressed to OHS. In exceptional circumstances where this is not possible, the manager must advise the employee that the referral is being progressed and share the referral with the employee.

1.5.17.6 The employee should be advised that failure to consent to a management referral or engage with Occupational Health may result in the manager making decisions based on limited information.

#### 1.5.18 Formal Procedure

1.5.18.1 Absences can be frequent short term absence, long term absence or a combination of both. Supportive discussions will already have taken place through contact during the absence period, at the return to work meeting and / or at any subsequent meetings.

1.5.18.2 The formal process may be appropriate where support mechanisms have been unsuccessful in improving attendance, there is a continued pattern of absence and / or the absence management triggers indicate this is required.

1.5.18.3 The focus of the formal process will be to give an employee further support to help them to achieve the expected attendance level. The formal process involves three stages and the key steps are shown in the [Attendance Policy flowchart](#)<sup>14</sup>.

1.5.18.4 The discussion and actions taken during the formal stages will depend on the employee's individual circumstances. Whilst it would normally be the case that each stage of the process would be followed sequentially, there may be circumstances where it is appropriate to enter the process at Stage 2 or 3. Where it has been agreed that there is no possible return to work for an individual, it may be appropriate to enter the process at Stage 3.

1.5.18.5 In attendance cases involving [Workers](#)<sup>15</sup>, consideration should be given as to whether any support mechanisms are possible and appropriate. Where this is not possible the case should be progressed to Stage 3 of the process.

1.5.18.6 The employee must be advised of all formal stage meetings and review meetings in writing, using the appropriate standard letter template. A minimum of 7 calendar days' notice will be given. If the employee is unable to attend and the rationale offered is considered reasonable, another date will be given with a minimum of 7 calendar days' notice. If an employee is absent from work, this does not necessarily prevent them from attending any meetings, unless advised otherwise by Occupational Health.

1.5.18.7 Where expected attendance levels are not achieved and due process has been followed this may result in dismissal.

#### 1.5.19 Stage 1

1.5.19.1 At the Stage 1 Absence Management meeting, the manager will meet with the employee to:

- discuss how the employee can be supported to improve their attendance
- advise the employee of the impact of their attendance on the organisation and service delivery
- discuss any health professional advice already received and consider if further advice is required
- seek advice including any proposed reasonable adjustments and / or support initiatives in line with OHS advice and The Equality Act 2010
- discuss and set an appropriate standard of attendance on the basis of absence management triggers taking account of the need to make any adjustment to the standard e.g. to comply with the provisions of the Equality Act 2010
- discuss the potential impact of the employee working overtime, additional hours or additional employment and whether a period of working basic hours would support the employee to maintain good health. Further advice from HR and Occupational Health should be sought
- discuss and agree the monitoring and review arrangements for the agreed standard of attendance
- advise the employee that if the required improvement is not achieved, there will be further progression through the formal procedure and this could ultimately lead to dismissal

1.5.19.2 Reasonable adjustments must be explored for employees covered under the Equality Act. These might include:

- adjustments to the workplace and / or workstation
- reduction in working hours
- redesign or modification of duties

1.5.19.3 The manager must confirm the agreed level of attendance, timescale for review and any supportive actions agreed to the employee in writing within 7 calendar days of the meeting, using the [standard letter template](#)<sup>16</sup>.

1.5.19.4 It may be agreed that there will be one or more review meetings to discuss progress and agree any further support required. The date(s) of this / these meetings may be brought forward in the event that the employee's absences have exceeded the required standard of attendance prior to the date of the review meeting.

1.5.19.5 The outcome of the stage 1 final review meeting will be one of the following:

- the employee has met the required attendance levels set and no further action is required
- the employee has not met the attendance levels set due to extenuating circumstances and improved attendance is anticipated therefore the review period is extended
- the employee has not met the attendance levels set and the matter is progressed to Stage 2

1.5.19.6 At the final Stage 1 review meeting the outcome and next steps will be discussed. Where the required improvement has not been achieved during the agreed timescale and the manager has concluded that there is a need to progress to the next stage, the evidence and rationale for this decision will be discussed with the employee. Where the employee has been advised that an extension of the review period is appropriate, they should be advised that should the required attendance level not be achieved, the matter will be referred to Stage 2.

1.5.19.7 The outcome of all Stage 1 review meetings will be confirmed to the employee in writing within 7 calendar days, using the [standard letter template](#)<sup>17</sup>.

## 1.5.20 **Stage 2**

1.5.20.1 Stage 2 meetings will follow the same format as Stage 1 meetings, with any updated or new documentation / information. There will be a review of previously identified support measures including any proposed reasonable adjustments and / or support initiatives in line with OHS advice and The Equality Act 2010. This will involve a review of ongoing supports and whether alternative and / or additional adjustments including redeployment are appropriate. Account will be taken of any further OHS advice received.

1.5.20.2 Reasonable adjustments must be explored. These will normally include:

- adjustments to the workplace and / or workstation
- reduction in working hours
- redesign or modification of duties
- redeployment in line with local redeployment policies

1.5.20.3 The manager must confirm the agreed level of attendance, timescale for review and any supportive actions agreed to the employee in writing within 7 calendar days of the meeting, using the [standard letter template](#)<sup>18</sup>.

1.5.20.4 Following any interim reviews, a final review meeting will be arranged. The outcome of the Stage 2 final review meeting will be one of the following:

- the employee has met the required attendance level set and no further action is required
- the employee has not met the attendance level set due to extenuating circumstances and improved attendance is anticipated therefore the review period is extended. If the required improvement is not achieved after the extended timeframe, the matter may be progressed to Stage 3
- the employee has not met the attendance level set and the matter is progressed to Stage 3

1.5.20.5 At the final review meeting the outcome and next steps will be discussed. Where the required improvement has not been achieved during the agreed timescale and the manager has concluded that there is a need to progress to the next stage, the evidence and rationale for this decision will be discussed with the employee.

1.5.20.6 The outcome of all Stage 2 review meetings will be confirmed to the employee in writing within 7 calendar days, using the [standard letter template](#)<sup>19</sup>.

## 1.5.21 **Stage 3**

1.5.21.1 Where the required level of improvement is not achieved, a Stage 3 hearing will be convened.

1.5.21.2 The Stage 3 hearing panel will consist of a Chair with the authority to dismiss in line with the scheme of delegation and an HR representative. To ensure impartiality, panel members must have had no prior involvement in the case. The Stage 3 Hearing will normally include:

- the employee
- a Trade Union Representative or work colleague
- the line Manager

- the HR representative supporting the manager

### 1.5.22 Process

1.5.22.1 The Chair will be responsible for ensuring that all parties are advised in writing of the arrangements and provided with the management statement of case no later than 14 calendar days prior to the hearing. The letter must advise that the hearing may result in termination of employment. The [standard letter template](#)<sup>20</sup> is used.

1.5.22.2 Should the employee wish to provide a written statement of case, this should be submitted no later than 7 calendar days before the hearing and will be shared with all other parties.

1.5.22.3 In reaching a decision about the appropriate outcome of the hearing the following matters will be taken into consideration:

- the attendance record of the employee
- the content and outcome of the supportive discussions and formal management of the employee's absence(s)
- current Occupational Health reports including any health professional advice.
- whether there is a diagnosis of an underlying medical condition
- what adjustments have been considered and put in place and if any requested adjustments were not supported, the rationale for this
- what opportunity has been given to improve
- the likelihood of improvement in the foreseeable future
- the needs of the service and work difficulties created by the absence

1.5.22.4 Before termination of employment is considered all reasonable adjustments and other options should have been explored.

1.5.22.5 Any decision to terminate employment should not be based on sick pay status.

1.5.22.6 In Stage 3 cases involving [Workers](#)<sup>15</sup>, if the required level of attendance is not met and continued engagement with the organisation is not appropriate the individual will be offered no further shifts / work.

### 1.5.23 Outcome

1.5.23.1 The outcome of the hearing and the rationale for the decision which has been made will be confirmed in writing by the Chair within 7 calendar days, using the [standard letter template](#)<sup>21</sup>. If the decision has been based on limited medical information, due to an employee not consenting to or attending Occupational Health appointments, this will be documented in the outcome letter. Contractual notice of termination will be stated and accrued annual leave paid in line with [CEL 17 \(2009\)](#)<sup>12</sup>. The right to appeal within 14 calendar days will also be stated.

1.5.23.2 Potential outcomes at Stage 3 are:

**1.** It is considered that the employee will be able to achieve and maintain the required levels of attendance within their current role within a reasonable period of time. The required levels of attendance, timescale for review and any supportive actions should be agreed and implemented as per the earlier stages, with the Stage 3 Hearing being adjourned until an agreed date for review.

**2.** Where it is considered that such improvement is not likely to be achieved and maintained, it may be considered that permanent redeployment would be appropriate as an alternative to dismissal, with the consent of the employee. Redeployment should only be considered where there is a likelihood of a suitable alternative role. Redeployment to another post will only be an option where such a post exists or is in the process of being created within a reasonable period. If such a decision is reached, the provisions of the Redeployment Policy should be used, with the Stage 3 Hearing being reconvened should there be a failure to secure suitable alternative employment within timescale set out in Redeployment Policy.

**3.** It may be that, having considered both of the above options, termination of contract is the only remaining option.

In attendance cases involving [Workers](#)<sup>15</sup>, if the required levels of attendance are not achieved and continued engagement with the organisation is not appropriate, the individual will be offered no further shifts / work.

#### **1.5.24 Long Term Sickness Absence – Case Review with Occupational Health**

1.5.24.1 Where there is a single period or recurrent periods of long term absence and there is no indication of a return to work within a reasonable time period it may be appropriate to arrange an absence [case review meeting](#)<sup>22</sup> with Occupational Health. This will ensure that all possible support mechanisms have been considered to facilitate a return to work.

1.5.24.2 The case review will normally include:

- the employee
- a Trade Union Representative or work colleague
- the line Manager
- the HR representative supporting the manager

The outcome of this meeting will be confirmed in writing using the [standard letter template](#)<sup>23</sup>.

#### **1.5.25 Ill-health Retirement**

1.5.25.1 In cases where the employee is a member of the NHS pension scheme, they may be eligible to apply for retirement on the grounds of ill-health. This should be discussed with the employee. It is the employee's responsibility to apply for ill-health retirement pension benefits. This will usually follow a discussion with Occupational Health.

1.5.25.2 The employee must be made aware that the decision to terminate employment is not linked to or subject to ill-health retirement. The decision to support retirement on ill-health grounds lies with the [Scottish Public Pensions Agency](#)<sup>24</sup> (SPPA) and not the employer.

1.5.25.3 The ending of employment will not necessarily be delayed in order for a pension application to be made and processed. It is therefore important to make clear that employees should not delay making a pension application once appropriate medical advice has been received and / or the decision to terminate employment is made.

1.5.25.4 Further information about applying for ill-health retirement is available from [SPPA](#)<sup>24</sup>.

#### **1.5.26 Terminal Illness Benefits**

1.5.26.1 Where an employee is terminally ill and is a member of the NHS pension scheme they may be eligible to apply to receive their pension benefits as a one-off, tax-free lump sum payment. The employee will be supported by their manager and an HR representative whilst they consider what is the best option for them. This should be considered at the earliest opportunity.

### 1.5.27 **Appeal Hearing Process**

1.5.27.1 Employees will have the right of appeal at all formal stages of this policy. An appeal at the first formal stage will be a [paper-based appeal](#)<sup>25</sup> and will not involve attendance at a hearing. The appeal will be [acknowledged in writing](#)<sup>26</sup>, and will advise who will consider the appeal. The outcome will be provided in writing using the [standard letter template](#)<sup>27</sup>.

1.5.27.2 At stages 2 and 3, the appeal panel Chair, in accordance with the scheme of delegation, will be responsible for identifying membership of the appeal hearing panel.

1.5.27.3 The Chair will also be responsible for ensuring that all parties are advised in writing of the arrangements, no later than 14 calendar days prior to the hearing, using the [standard letter template](#)<sup>28</sup>.

1.5.27.4 The employee and the Chair of the attendance hearing are required to provide a written statement of their case. These should be submitted no later than 7 calendar days before the hearing and will be shared with all other parties.

1.5.27.5 It is the responsibility of any party calling witnesses to inform them of the arrangements for the hearing.

6.5.21.7 There will not be a delay in implementing management decisions pending an appeal, but they may subsequently be amended or reversed as a result of an appeal hearing.

### 1.5.28 **Outcome**

1.5.28.1 Following the hearing the Chair will write with the outcome of the appeal hearing to the employee and copied to all relevant parties. This should include the rationale behind any decisions taken in response to the employee's grounds for appeal. The letter will be issued within 7 calendar days following the appeal hearing, using the [standard letter template](#)<sup>29</sup>.

1.5.28.2 The outcome of the appeal will be final.

### 1.5.29 **Grievances / Bullying and Harassment Complaints**

1.5.29.1 Where an employee raises a grievance or bullying and harassment complaint during implementation of the formal attendance process, it may be temporarily suspended in order to deal with the grievance / complaint. Where the grievance / complaint and attendance case are related, however, it may be appropriate to deal with both issues concurrently.

## References

<sup>1</sup> NHSScotland Workforce Capability Policy

<https://workforce.nhs.scot/policies/capability-policy-overview/>

<sup>2</sup> Public Sector Equality Duty

<https://workforce.nhs.scot/about/principles-and-values/>

<sup>3</sup> Equality Act 2010

<https://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>4</sup> NHS Injury Allowance, Section 22 of the Agenda for Change Terms and Conditions Handbook

<https://www.msg.scot.nhs.uk/wp-content/uploads/AfC-Handbook-Master-Scottish-Sept-2019.pdf>

<sup>5</sup> Roles and Responsibilities

<https://workforce.nhs.scot/about/roles-and-responsibilities/>

<sup>6</sup> Attendance Policy : long term sick meeting invite letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-long-term-sickness-meeting-invite-letter/>

<sup>7</sup> Attendance Policy :long term sick meeting outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-long-term-sickness-meeting-outcome-letter/>

<sup>8</sup> Section 14 of the Agenda for Change Terms and Conditions Handbook

<https://www.msg.scot.nhs.uk/wp-content/uploads/AfC-Handbook-Master-Scottish-Sept-2019.pdf>

<sup>9</sup> Management Steering Group Website

<https://www.msg.scot.nhs.uk/pay/medical>

<sup>10</sup> Statutory Sick Pay

<https://www.gov.uk/statutory-sick-pay>

<sup>11</sup> CEL 17 (2009)

[https://www.sehd.scot.nhs.uk/mels/CEL2009\\_17.pdf](https://www.sehd.scot.nhs.uk/mels/CEL2009_17.pdf)

<sup>12</sup> Attendance Policy : return to work form

<https://workforce.nhs.scot/supporting-documents/form/attendance-policy-return-to-work-form/>

<sup>13</sup> Attendance Policy : Guide to Occupational Health Service referral

<https://workforce.nhs.scot/supporting-documents/guides/attendance-policy-guide-to-occupational-health-service-referrals/>

<sup>14</sup> Attendance Policy : flowchart

<https://workforce.nhs.scot/supporting-documents/flowchart/attendance-policy-flowchart/>

<sup>15</sup> Guide to the application of NHSScotland Workforce Policies to workers

<https://workforce.nhs.scot/supporting-documents/guides/guide-to-the-application-of-nhsscotland-workforce-policies-to-workers/>

<sup>16</sup> Attendance Policy : Stage 1 outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-stage-1-outcome-letter/>

<sup>17</sup> Attendance Policy : Stage 1 final review outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-stage-1-final-review-outcome-letter/>

<sup>18</sup> Attendance Policy : Stage 2 outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-stage-2-outcome-letter/>

<sup>19</sup> Attendance Policy : stage 2 final review outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-stage-2-final-review-outcome-letter/>

<sup>20</sup> Attendance Policy : Stage 3 hearing invite letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-stage-3-hearing-invite-letter/>

<sup>21</sup> Attendance Policy : Stage 3 hearing outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-stage-3-hearing-outcome-letter/>

<sup>22</sup> Attendance Policy : case review meeting invite letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-case-review-meeting-invite-letter/>

<sup>23</sup> Attendance Policy : case review meeting outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-case-review-meeting-outcome-letter/>

<sup>24</sup> Scottish Public Pensions Agency, Ill-health Retirement

<https://pensions.gov.scot/nhs/retiring-nhs/ill-health-retirement>

<sup>25</sup> Attendance Policy : Stage 1 paper based appeal form

<https://workforce.nhs.scot/supporting-documents/form/attendance-policy-stage-1-paper-based-appeal-form/>

<sup>26</sup> Attendance Policy : paper based appeal acknowledgement letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-paper-based-appeal-acknowledgement-letter/>

<sup>27</sup> Attendance Policy : paper based appeal outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-paper-based-appeal-outcome-letter/>

<sup>28</sup> Attendance Policy : appeal hearing invite letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-appeal-hearing-invite-letter/>

<sup>29</sup> Attendance Policy : appeal hearing outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/attendance-policy-appeal-hearing-outcome-letter/>