CONTINUOUS SERVICE ARRANGEMENT FOR EMPLOYEES TRANSFERRING BACK TO THE COUNCIL

The NJC has recently agreed a change to the continuous service provisions for employees who are covered by the Green Book.

The existing arrangement is that where an individual is transferred to an organisation that is not covered by the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999, e.g. Capita, their continuous local government service is protected if it is a TUPE transfer. However, if a person who transferred to Capita voluntarily applies for a job back with the Council, their continuous service is broken and they start on the minimum annual leave and occupational sick pay entitlement.

The NJC agreement changes this arrangement for employees who have returned to local government service since 1st April 1997. NB The calculation of the resulting benefits e.g. annual leave only takes effect from 1 April 2002.

This means that where an employee returns to the Council within 5 years of the original transfer without a break between employment with the organisation to which they were transferred, and the date of return to the Council, all previous continuous service (including the service under the TUPE transfer) will be recognised for calculating the following: -

- Annual leave
- Occupational maternity leave/pay
- Occupational sick pay

Notes

- If there is a gap in service between the 2 employments of more than one calendar week (running from Sunday to Saturday) – continuity is broken and the individual is treated as a new entrant to local government.
- If there is a series of TUPE transfers, the 5 year time limit applies from the date of the original TUPE transfer out of the Council.
- These provisions also apply to transfers which arise as a result of legislation e.g. Social Services Inspectorate transferring to OFSTED
What do managers need to do?

If a member of your team has returned to the Council in the circumstances outlined above:-

- Check if the individual has returned within 5 years of the original transfer out of the Council.
- Check if there has been a break in service of 1 week or more.
- If the transfer is after 5 years or there has been a break, confirm that the individual's entitlements are based on service since rejoining the Council.
- If the transfer is within 5 years, without a break, act on the guidance below for annual leave and notifying Payroll.

Annual Leave

The annual leave entitlement for the period from 1 April 2002 should be recalculated based on the total length of continuous service. For those employed on an April to March leave year, this means for those with 5 years continuous service, an extra 5 days for the full year etc.

As the Council was only notified about this change in March 2003, there is not time for individuals employed on an April – March leave year to take any additional leave by 31 March 2003. So, on a one-off basis, for this year only and for affected individuals only, the normal rules on a maximum of 3 days carry forward of leave will be waived, to allow for the re-calculated entitlement to be carried forward into 2003/2004.

For individuals employed on a January-December leave year, the recalculation is pro rated for the 9-month period from 1 April 2002 to 31 December 2002; the revised full year entitlement would have started on 1 January 2003 and needs to be added to their entitlement.

For advice and guidance on how to calculate leave if necessary, please contact your local Human Resources team or Personnel Administration at Capita.

Notification to Payroll

Write to Payroll giving the following information for each affected employee: -
- Name and NI number
- Date of return to the Council
- Start date of continuous local government service, including time employed under TUPE transfer.
- Dates (if appropriate) individual has been off sick since 1 April 2002.

This is important because occupational sick pay is based on total continuous local government service, and Payroll may need to recalculate sick pay for
some individuals. Also Payroll will need to be aware of total length of continuous service if an individual applies for maternity provisions.

Other Provisions

Other provisions relating to redundancy, notice periods and unfair dismissal claims are unaffected by this NJC agreement.

Redundancy
Where an employee returns voluntarily to local government, this is regarded by statute as a break in service for redundancy purposes. This means that if a person who returned was subsequently made redundant, their entitlement would be based on service since rejoining the Council.

Notice Provisions
Under the Green Book provisions, continuous service is calculated on the basis of service with the current employer, ie since rejoining the Council.

Unfair Dismissal
Protection from unfair dismissal required one year’s service with the current employer ie since rejoining the Council.

Further guidance should be obtained from your local Human Resources Team or Personnel Admin, Capita.

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