

Workforce Directorate Policy W19 – Leave Policy
Chapter 3: Employment Break Procedure
includes Flowcharts, FAQ and Relevant Forms/Paperwork

The Trust recognises that employees may wish to take occasional breaks from employment. The Trust adopts the arrangements set out within the NHS Terms and Conditions of Service Handbook for the application of employment breaks.

Employment Breaks are not an automatic right; however the Trust commits to ensure that serious consideration is given to any request.

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Introduction

1. What is an Employment Break?

An unpaid break from work for a period between 3 months and up to a maximum of 5 years, taken as a single period or as more than one period.

2. When can I take an employment Break?

The Handbook in section 34.5 states *the scheme should provide for people to take a longer period away from work than that provided for by the parental leave and other leave arrangements.*

Section 34.6 sets out *the main reasons for which employment breaks can be used, including childcare, eldercare, care for another dependant, training, study leave or work abroad.* The Trust will consider other reasons on an individual basis.

Eligibility

3. Am I entitled to take an employment break?

In accordance with section 34.8 of the handbook *The employment break scheme should normally be open to all employees who have a minimum of 12 months of service.*

4. Can I take an employment Break whilst I am sick?

Employment breaks should not be used instead of sick leave and an employee cannot go directly from sickness absence to an employment break without first returning to work.

Where an employee who is off sick wishes to request an employment break please consult HR and Trust pensions department for further information as some alternatives (e.g. unpaid special leave) may be possible.

Length of Break

5. How long a break can I take?

The Agenda for Change handbook states in section 34.12 that *the minimum length of break should be three months and the maximum length of break should be five years.* (section 34.10). Where agreed in advance and subject to service needs, in accordance with section 34.11 *it should be possible to take breaks, either as a single period or as more than one period.*

When considering any request section 34.13 states *the length of any break should balance the needs of the applicant with the needs of the service.*

Application Process

6. How do I apply?

In accordance with the handbook section 34.9 *Applications should be submitted in writing and notice periods should be clearly stated in an agreement between the employee and employer.* See appendix B for the Trust Employment Break Application Form which should be submitted to your immediate line manager.

7. What notice of taking an employment break do I need to give?

Although it is recognised that an employment break may need to be used in urgent situations, it is expected that you will normally give 3 months' notice prior to the date you wish to begin your Employment Break.

8. Who approves my application?

Your line manager will review your application and if they are able to support it, final approval will be required by the appropriate Centre Manager or Head of Service.

9. How quickly will my manager respond?

It may be dependent upon the circumstances; however a final decision will be made at least 2 months prior to the date that the employment break is requested to commence. Where more than three months' notice of leave is given, discussions should start between the individual and the manager within 1 month of submitting the application.

Managers need to consider applications in the spirit of the purpose of this policy and the time that may be required to make arrangements for the break.

10. Can I extend my employment break or return early?

Section 34.14 of the handbook states *the scheme should have provision for breaks to be extended with appropriate notice, or for early return from breaks.*

Extending career breaks: Employees wishing to extend the agreed length of their career break will only be able to do so if cover arrangements may also be extended. Any extension must not exceed the 5 year maximum break.

Employees must give a minimum of 3 months' notice of their intention to extend their career break. Requests for an extension must be made in writing to their line manager, who will also need to respond in writing.

Where an extension is refused the employee has the right to request a review by their line manager's manager. The reviewing manager's decision will be final.

Returning early: Employees wishing to return earlier from their career break i.e. before the date of return; must first make a request to their line manager. They must provide 3 months' notice in writing of their intention to return early, setting out their reasons. The line manager must consider the practical implications including the cover arrangements that were put in place (if relevant) and respond to the employee in writing. A meeting between the line manager and employee is encouraged to discuss this in detail.

11. Can I request to take an Employment Break immediately following Maternity/Adoption Leave?

Yes, however, you must return to work at the end of your employment break for a period of at least 3 months in order to retain your entitlement to NHS rates of Maternity/Adoption Pay. You may be able to work on the Trust 'Bank' during an employment break that immediately follows maternity leave, however, you will still be required to return to substantive employment at the end of your employment break for a period of at least 3 months in order to retain your entitlement to NHS rates of Maternity Pay.

If I do not return to work for the Trust or another NHS employer for 3 months, do I need to repay the difference between the Statutory Maternity/Adoption Pay and the NHS rates paid? Yes, if you do not return to work for the Trust or another NHS employer you will be required to repay the difference.

Terms of an Employment Break

12. Can I undertake paid employment whilst on an employment break?

In section 34.7 of the handbook it states *People on employment breaks will not normally be allowed to take up paid employment with another employer, except where, for example, work overseas or charitable work could broaden experience. In such circumstances written authority from the employer would be necessary.*

13. What needs to be agreed before I take my employment break?

Section 34.15 states that *all breaks should be subject to an agreement between the employer and applicant before the break begins. The agreement should cover:*

- *the effect of the break on various entitlements related to length of service;*
- *a guarantee that, if the applicant returns to work within one year, the same job will be available, as far as is reasonably practicable;*

- *if the break is longer than one year, the applicant may return to as similar a job as possible; (See If my employment break is longer than a year, what job will I return too?)*
- *return to work at the equivalent salary level, reflecting increases awarded during the break;*
- *the notice period required before the return to work should be two months if the break is less than a year and six months if the break is more than a year;*
- *arrangements for keeping in touch during the break; (see Do I need to come into work during my employment break?)*
- *requirements on the applicant to keep up to date with their relevant professional registration needs, including attendance at specified training courses and conferences, and any assistance the employer may give in the support of this; (see Do I need to come into work during my employment break?)*
- *training arrangements for re-induction to work; (see Do I need to come into work during my employment break?)*
- *any other conditions required either by the employer or the applicant;*
- *NHS pension arrangements during the break. (see What happens to my Pension during my Employment Break?)*

14. Do I have to resign to take an employment break?

No, in accordance with the handbook section 34.16 *applicants should not have to resign to take an employment break, although there will be a change to the contract of employment.*

15. Do I need to come into work during my employment break?

Prior to the commencement of your employment break you must agree arrangements with your manager to :-

- Keep in touch
- Maintain your professional registration
- Maintain training requirements including local re-induction arrangements for your return.

However, it is the responsibility of the employee, not the line manager or HR to ensure that these arrangements are followed through and recorded. For those employees who need to maintain their professional registration it is important that they practice their profession during the period of the career break and within 2 years for the purposes of re-validation. The line manager needs to know from the employee that this has been achieved i.e. undertaking temporary Bank duties.

16. Does the period of the break count as continuous service?

In section 34.17 of the handbook it states that *the period of the break should count toward continuous employment for statutory purposes.*

Further section 34.18 states that *other provisions depending upon length of service, i.e. contractual redundancy payments, leave entitlements etc, should be suspended for the period of the break.*

17. What happens if an organisational change occurs during my employment break that impacts upon my role?

In the event of organisational change affecting your post during the period of the break, the Trust will keep you informed and consult with you in line with the relevant Trust policy particularly if the change significantly affects the role you left.

You will be consulted again as part of your planned return to work at the end of your employment break, and it is important that you start discussions with your manager in advance of your return.

Pension Arrangements

18. What happens to my Pension during my Employment Break?

If you are a member of the NHS Pension Scheme you may request as part of the Employment Break application process to continue to make employee contributions to the NHS Pension Scheme whilst taking an unpaid Employment Break.

Payments will be made by the Trust for up to a maximum of 6 months. You are then responsible for **both the employee and employer contributions** for the remainder of the employment break (up to a maximum contribution period of 18 months).

You would be required to set up a standing order for the required amounts before the break commences to be paid on a monthly basis on 15th of each month of the break. Any late payments would result in the pension record being closed as no arrears are allowed to accrue. Together with your manager, you are advised to liaise with the Trust's Pensions Manager before commencing an Employment Break to establish the effect of the proposed break on your NHS Pension Scheme benefits. If you take a non-pensionable break you will lose your full death in service benefits during the period of the employment break. However, a reduced payment based on the service at the members date of death would be payable.

If you wish to continue to make payments into the NHS Employment Pension Scheme during your employment break you must advise your line Manager as part of your application and, together with your manager, you must contact the Pensions department to discuss further.

Returning to Work

19. Am I required to give notice of my return-to-work date?

A provisional return to work date should be agreed prior to your leave date. You are required to write to your line manager to confirm your return-to-work date within the timescales below:-

- Employment Break less than 12 months – 2 months' notice
- Employment Break more than 12 months – 6 months' notice

20. If my planned break is less than a year?

In accordance with section 34.15 of the handbook *'if the applicant returns to work within one year, the same job will be available, as far as is reasonably practicable'*.

21. If my employment break is longer than a year, what job will I return too?

On receipt of your notice to return; your manager/team leader will discuss with you the current vacancy situation and together identify vacant posts or other work options to facilitate the return; where appropriate, arrangements will be made for you to be placed on the Trust redeployment register.

22. What if there isn't a suitable vacancy?

Where no vacancy arises your Employment Break may continue for a further period by mutual agreement.

23. What happens if I turn down a post offered?

If you choose not to accept a reasonable alternative job offer your employment will be deemed to have terminated on the last day of the agreed Employment Break.

24. After I have returned to work, how soon can I reapply for a further employment break?

You must return to work for at least a period of 12 months before a further application will be considered.

25. What if I decide not to come back to work?

If you decide not to return to work your normal contractual notice will apply.

26. What if I leave the Trust having undertaken development funded opportunities?

If I leave the Trust before completion of any development opportunities that have been funded by the Trust (except if my contract is terminated by the Trust for reasons other than on the grounds of dismissal for misconduct), I undertake to repay in full the proportion of fees contributed by the Trust. This may be waived by the Trust if I move to another agency deemed acceptable e.g. another NHS employer. (for more information see the Trust development procedures).

If I leave the Trust within a 2 year period following the completion of any development funded by the Trust (except if my contract is terminated by the Trust for reasons other than on the grounds of dismissal for misconduct), I will undertake to repay: 1/24 of the Trusts contribution for each month remaining of the 2 year period. This may be waived by the Trust if I move to another agency deemed acceptable by the Trust e.g. another NHS employer.

27. What happens if I do not return to work on the agreed return date?

Failure to agree a date in advance with your manager could result in you losing the right to return to work and you may be deemed to have terminated your employment with the Trust on the last day of your agreed Employment Break. You may, of course, apply for any suitable vacancies within the Trust via the normal recruitment processes.

Applications Refused

28. If my request is refused will I be provided with an explanation as to why?

Yes, section 34.19 states *Applicants should be entitled to a written reason for the refusal of any application.*

29. If my application is refused, can I appeal?

In accordance with the handbook (section 34.20), *applicants may resort to the grievance procedure if a request for a break is refused.*

You are encouraged to discuss this with the manager concerned to understand the decision in more detail. Should you remain dissatisfied with the outcome you should consider raising a grievance under the Trust's Grievance Procedure at formal stage 2.

30. Who will hear my Grievance?

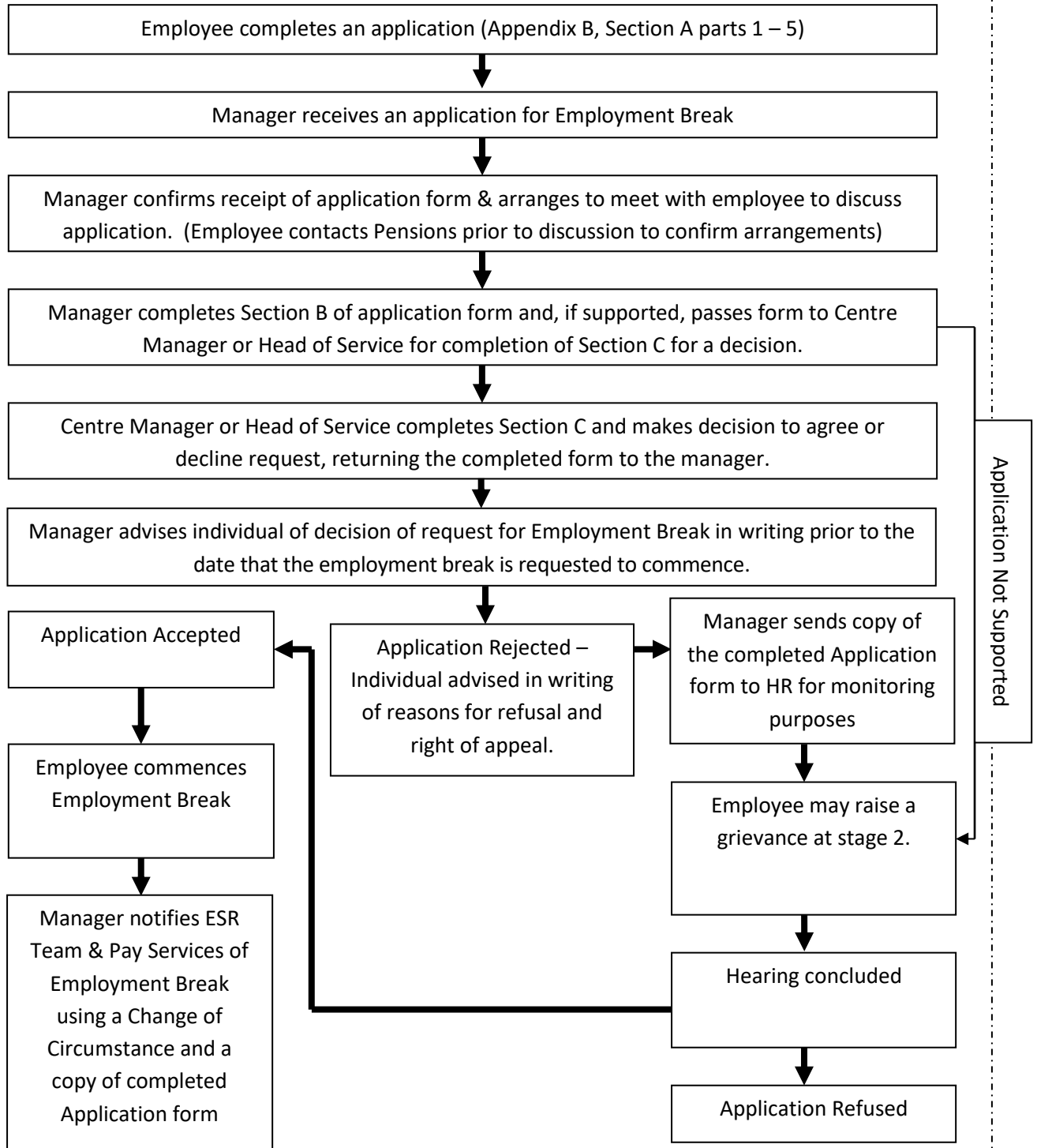
An independent manager should hear the appeal. The original manager who made the decision may be present at the meeting. You may also invite a trade union or professional body representative or work colleague to attend the meeting. The manager who chairs the meeting will write to you to confirm the outcome of the meeting within 7 calendar days.

Retention of Records

31. Where will the paperwork associated with my request be stored?

In accordance with section 34.21 *all records of applications and decisions should be kept for a minimum of twelve months.* These will be stored on your personal file as they form part of your record of employment and will be retained in accordance with the Trust Retention of Records Procedure.

Appendix A: Steps for managing employment breaks



Appendix B
Employment Break - Application form
W19 Employment Breaks

Please discuss your request to take an Employment Break informally with your manager before completing Section A of the form in block capitals. Return the completed form to your manager who will check the form and complete Section B. On behalf of the Trust you have jointly agreed an undertaking to fulfill the conditions laid down in the Trust's Employment Break Scheme.

Section A - To be completed by the employee:			
Part 1 - Personal Details			
First Name:		Surname:	
Employee No:		Commencement Date with Trust:	
Ward/Department:		Job Title:	
Hours per week:		Employment status: (please circle)	Permanent / Fixed term to ___/___/___ (date)
Band/Grade:		Home Telephone No:	
Home Address (including postcode):			
Part 2 - Employment Break dates requested			
I wish to request an Employment Break: (please give details of the reason for the break)			
I would like to commence my Employment Break on: ___/___/___			
AND			
<u>Either</u> - I intend to return to work on: ___/___/___			
<u>Or</u> - I understand I am required to give 2 / 6* months' notice of my intention to return to work.			
*(delete as appropriate)			
Where possible I am giving my manager at least 3 months' notice of my request for an Employment Break.			
Part 3 – NHS Pension Contributions			
I am a member of the NHS Pension Scheme and wish to continue to make employee contributions to the scheme during my Employment Break. I have liaised with the Trust's pension advisor and request that the Trust makes employers contributions (up to a maximum of 6 months) in accordance with the NHS Pension Regulations:			
YES NO N/A* (delete as appropriate)			
I understand that prior to my leave commencing, it is my responsibility to make provisions with the payroll department for the employee contribution payments to be made and maintained during my unpaid employment break. I accept that should I fail to maintain payment of the agreed contributions this will affect my pension provisions.			
* Not applicable			

Part 4 – Employment Break conditions

I agree to: (delete as appropriate)*

- to undertake at least weeks paid work per annum at the Trust, as agreed with my manager*
- not to work for another organisation during the period of the Employment Break*
- to give the Trust the required notice of my intention to return to work.
- if I decide not to return, I will write to my manager immediately, giving 3 months’ notice, (except where the employment break is 3 months in duration, where normal contractual notice will apply).
- if I leave the Trust before completion of any development opportunities that have been funded by the Trust (except if my contract is terminated by the Trust for reasons other than on the grounds of dismissal for misconduct), I undertake to repay in full the proportion of fees contributed by the Trust. This may be waived by the Trust if I move to another agency deemed acceptable e.g. another NHS employer. (for more information see the Trust development procedures) * (delete if not applicable)
- if I leave the Trust within a 2 year period following the completion of any development funded by the Trust (except if my contract is terminated by the Trust for reasons other than on the grounds of dismissal for misconduct). I will undertake to repay: 1/24 of the Trusts contribution for each month remaining of the 2 year period. This may be waived by the Trust if I move to another agency deemed acceptable by the Trust e.g. another NHS employer. * (delete if not applicable)
- In the event of a repayment being required for any developmental opportunities as outlined above, I undertake to make such a repayment on receipt of an invoice from the Trust or agree to it by means of a deduction from my final salary, in which case I will be informed by my manager, of the amount prior to the deduction being made. * (delete if not applicable)
- I understand there is no guarantee that the post to which I return will be exactly the same as that in which I am currently employed .
- I agree to repay my NHS maternity / adoption pay if I do not return to work* (delete if not applicable)
- Other conditions to be agreed with manager (detail):

Part 5 – Declaration

I have received and read a copy of the Trust Employment Break Procedure and associated FAQs) and confirm my agreement to requirements and the above conditions.

Signed :		Date:	
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Section B - To be completed by the manager:

I confirm I have discussed with the above employee the* request to take an Employment Break. The employee* meets the requirements set out in the Trust Employment Break Procedure. I understand all of the employment break conditions (including any NHS Pension Employer Contributions): It is therefore my decision to:

Support the employee's* application

OR

Not to support the employee's* application (reasons to be documented in writing to the employee – retain on personal file)

The employee's* Employment Break will begin on: ____/____/____ and end on: ____/____/____ (if known)

This is expected to last for ____ years ____ months.

Reason(s) for Employment Break: *(complete only if needed to supplement the employee's rationale above).*

I have read the Employment Breaks policy and my commitments to the employee. I will also maintain contact and keep the employee informed of any developments, staff meetings etc.

Name (Print):		Job Title:	
Signed:		Date:	

Section C - To be completed by Centre Manager/Head of Service:

This application is Agreed / Not Agreed* - Please give reasons:

Name (Print):		Job Title:	
Signed:		Date:	
Is this a revised application?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Date copy of this form and change of circumstance form sent to ESR:	

Line Manager Action:

Please retain a copy of the signed documentation and a copy of the change to the contract of employment on the employee's file and send the Application for Employment Break to ESR with a copy of the change to the contract of employment. Please note if the commencement of the Employment Break changes a new Application for Employment Break must be completed and a further copy of the change to the contract of employment sent to ESR to advise indicating that this is a revised application.