Fertility Treatment Guidance for Schools

This guidance is for line managers within Schools to set out how to manage sickness absences due to Fertility treatment.

Background on the statutory rights and our policy
The law does not provide employees with a statutory right to take time off, paid or unpaid, for fertility treatment. However, our policies provide that an employee will be entitled to up to 5 days paid leave in a 12 month period if the appointments can’t be arranged outside of school hours to undergo fertility treatment.

What is the female fertility treatment process?
The NHS outline the following steps for each cycle of treatment that a woman would undergo. Please note it may take repeated cycles to be successful and the treatment may vary depending on the clinic. Therefore you should be mindful and empathetic that the employee will need to attend a number of medical appointments before she conceives and will be feeling very anxious. Typical treatment will involve:

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<thead>
<tr>
<th>Step</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Medication is given for a period of two weeks to suppress the menstrual cycle. The meds are given as injection or nasal spray.</td>
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<td>2</td>
<td>When the menstrual cycle has been suppressed, a daily injection is given for 10-12 days to stimulate hormones and increase the egg supply.</td>
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<td>3</td>
<td>Ovaries are monitored. A final hormone injection is given 34-48 hours before eggs are collected.</td>
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<td>4</td>
<td>The eggs are collected under sedation. The process takes 15-20 minutes.</td>
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<td>5</td>
<td>The eggs are mixed with the sperm and the fertilised eggs grow in a laboratory for up to 6 days before they are implanted into the womb.</td>
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<td>6</td>
<td>Embryos are implanted into the womb. This isn’t normally done under sedation.</td>
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<td>7</td>
<td>Two weeks following implantation, a pregnancy test is taken.</td>
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What about male infertility?
Male infertility is reported to be the underlying reason for 1 in 3 fertility problems between both sexes. Male infertility can be caused by a variety of reasons and may be treated by medication or even surgery. If you are aware of a male undergoing such tests or treatment, you must be equally as sensitive and empathetic at this difficult time as he may need to undergo a series of medical appointments and possible surgical treatment.

What else do I need to consider during this process?
If you become aware of an employee undergoing fertility treatment you will need to ensure that you have a discussion with them as soon as possible. This discussion must be held privately and cover the employee’s individual circumstances and the support he or she may need in either undergoing fertility treatment themselves, or supporting their partner who is. This can cover taking time off for appointments or making adjustments, for example, providing a place for them to take a few minutes ‘time out’ if they feel distressed during the day. You should ensure that there is ongoing open communication between yourself and the employee for continued support for their wellbeing.

Whilst undergoing fertility treatment, medical advice may be given advising the employee to take it easy to help with conception. Therefore, requests may be made to alter working hours or duties for which you will need to assess on a case-by-case basis with advice and guidance from your HR Provider. You will also need to consider the affects on an employee whose partner is undergoing fertility treatment as this is equally an anxious time for them too and they may be required to be present at appointments, so you will need to give consideration to such requests.

At what point would the employee be considered as pregnant?
Although at step 6 it will be unknown whether the treatment has successfully resulted in a pregnancy, she will, from this stage of the process be protected from pregnancy and maternity discrimination without the need for a male comparator. This is because the 2008 case of Mayr v Bäckerei Und Konditorei Gerhard Flöckner ruled
that a woman is considered pregnant at the point of implantation until such point that a pregnancy test shows as negative.

If the implantation fails, the protected period, during which she must not be treated unfavourably, ends two weeks later.

**Would the employee have a right to time off for ante-natal appointments?**

Yes and this right will apply from step 6 onwards for both sexes.

**How should sickness absence be managed during IVF Treatment?**

Pregnancy-related illness (which may include illness in connection with the fertility treatment) during the protected period (Step 6 onwards) should be recorded separately from other sickness and disregarded when making decisions based on sickness absence levels i.e. trigger points within the Schools Health & Attendance policy.

At the earlier stages of the treatment (steps 1-5), the employee may be protected by provisions relating to Sex of the Discrimination Act. Guidance from the CIPD states:

“As only women can undergo IVF treatment, and any decision based on this is discrimination, then female employees in this situation are protected by the Discrimination Act at every stage. Therefore, It would be sensible to treat all IVF absence in the same way as pregnancy absence in dismissal and redundancy cases unless and until it is decided that the protection is limited to the advanced stages”

**What types of sickness absence could occur during fertility treatment?**

An employee undergoing fertility treatment may experience a variety of sickness absences that could be linked to their treatment which may include, but not be limited to:

- Side effects of medication
- Stomach pains
- Stress/low mood
- Headaches
- Bleeding
- Hot flushes and frequent need to urinate

If you are not sure whether the absence is linked to treatment, then you should seek verification but you must approach this in an extremely sensitive manner.

In the event there are long periods of absence or many occurrences of absence, you should speak with your HR provider for further guidance.

**Support for employees**

If you are aware of an employee undergoing fertility treatment you must be aware that this is a physically and mentally challenging time for both men and women alike because they will have gone through years of trying to conceive and have undergone many medical tests before commencing fertility treatment which may not always be successful. Therefore, it may support them if the School has an Employee Assistance Provider that you can refer them to. This will provide them with the opportunity to discuss their situation with them and obtain Counselling if needed.

There is also a network called Fertility Friends [http://www.fertilityfriends.co.uk/](http://www.fertilityfriends.co.uk/). This website has a forum whereby people who are undergoing or have had fertility treatment can join or start a discussion and provides a valuable network to link to support groups and professionals.