

**NHS Wales**  
**Overtime payments and pay during annual leave**  
**Key points and FAQs**  
**August 2021**

**Main Communication Message**

The Welsh Partnership Forum has agreed a framework to enable Health Boards and NHS Trusts in Wales to correctly interpret the calculation of annual leave pay.

The NHS terms and conditions of service (paragraph 13.9) state that when you take holiday, it should be paid as if you are at work.

*'Pay during annual leave will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Pay is calculated on the basis of what the individual would have received had he/she been at work.'*

This has not historically included regularly worked overtime but following recent case law, employers now agree this should include overtime.

The national discussions that have taken place clarify how NHS employers should interpret section 13.9 of the NHS terms and conditions of service. It is now accepted that employers should include regularly worked overtime and additional standard hours in the calculation of pay when staff are on annual leave.

It has been agreed that a corrective payment based on the last 2 ½ years of overtime worked will be made to NHS Wales staff. This corrective payment will be based on overtime paid during the period 1 October 2018 – 31 March 2021. The corrective payment will be paid at a rate of 13% of all overtime and additional hours payments received during this period.

All current employee's and those that have left after the 31 March 2020 and are eligible employees will receive the corrective payment in their August 2021 pay.

There are complexities with delivering a technical solution within ESR to enable the application of ongoing payments i.e., from 1 April 2021. Employers and trade union partners have discussed the specific arrangements for making the ongoing payments from 1 April 2021 and two further lump sum payments will be made during the 2021/22 financial year to ensure payments can be made on an ongoing basis and the FAQs set out the details of when these payments will be made.

The FAQs cover a range of areas to clarify aspects of the payment and any specific queries regarding the payment not covered in the FAQs should be directed to payroll team at [NWSSP.EATpay@wales.nhs.uk](mailto:NWSSP.EATpay@wales.nhs.uk) .

## **Frequently Asked Questions**

### **Who is eligible to receive a corrective payment?**

To be eligible for a payment employees must:

- be employed by an NHS Wales employer during the period 1 October 2018 to 31 March 2021; and
- **have received overtime payments** in the financial year 2018-2019 (Between 1 October 2018 and 31 March 2019), 2019-2020 (1 April 2019 to 31 March 2020) and/or 2020-2021 (1 April 2020 to 31 March 2021).

### **What is the value of the corrective payment?**

The corrective payment will be based on the 2 ½ years of overtime worked during the period 1 October 2018 – 31 March 2021. The corrective payment will be paid at a rate of 13% of all overtime and additional hours payments received during this period.

### **Does this apply to bank or agency shifts?**

No, this settlement just relates to overtime which was worked during the dates noted above.

### **In England, individuals have to work four sessions in either of the financial years covered by their agreement to be eligible, is this the case in Wales?**

No, in Wales, it has been agreed in partnership that the agreement on the corrective payment includes everyone who was paid any overtime between 1 October 2018 and 31 March 2021. This 2 ½ year timeframe is also longer than that used for the settlement in England.

### **How much will I receive as a corrective payment?**

That depends on how much overtime was paid during the period. A 13% multiplier will be applied to any overtime that was paid in the period 1 October 2018 and 31 March 2021

### **Is the corrective payment subject to Tax and NI?**

Yes, all arrears are subject to Tax and National Insurance, it will depend on your personal circumstances, and whether these arrears take you into the next tax bracket. With arrears they are taxed at the point they are paid not when they are earned, this is a HMRC requirement.

### **Is the corrective payment subject to Pension contributions?**

The payment is not subject to pension contributions as overtime is not classed as pensionable pay.

**An NHS employer has been paying some employees overtime during statutory annual leave. How will this affect the employee's payment?**

NWSSP Payroll will adjust any corrective payments to take account of pay during annual leave that has already been made for overtime.

**How will employees know that they are eligible?**

Employees will be notified through the receipt of the corrective payment in their August 2021 pay.

**Will part-time employees be entitled to a corrective payment?**

Yes, eligible part time employees who have worked more than their contracted hours and have received additional pay, which has not been included in their annual leave will be entitled to a corrective payment.

**Will employees still be eligible for a corrective payment if they have worked irregular shift patterns?**

Yes, if an employee meets the eligibility criteria, they will receive a corrective payment.

**What happens if an employee left employment in the NHS before 31 March 2021?**

If an individual was employed during the period 1 October 2018 and 31 March 2021 but left the NHS before 31 March 2021, they will still be eligible for the corrective payment. Current employees and those who have left after 1 April 2020 will be paid automatically through their pay in August 2021, but leavers prior to the 1 April 2020 will need to apply for the payment by sending an email to [NWSSP.EATpay@wales.nhs.uk](mailto:NWSSP.EATpay@wales.nhs.uk). Applications should be received by 31 December 2021.

**What happens if an employee has moved employers (in NHS Wales)?**

Payments will be processed by payroll where the original work was undertaken and may mean that an employee receives a payment from multiple organisations. Further information for those impacted, including any process requirements, will follow in due course.

**What if an employee has changed their [pay] banding over the last two years?**

Changes to roles or pay bandings should not affect eligibility to receive a corrective payment. The calculations will be based on the value of payments made for either overtime or additional standard time worked at the time and recorded on the Electronic Staff Record (NHS national payroll system).

**An employee was paid overtime in September 2018 but not after. Will they be eligible for a corrective payment?**

No, only employees who have been paid overtime or additional standard time in the financial year 2018-2019 (Between 1 October 2018 and 31 March 2019), 2019-2020 (1 April 2019 to 31 March 2020) and/or 2020-2021 (1 April 2020 to 31 March 2021) will be eligible to receive a corrective payment.

**An employee has recently changed jobs and no longer does regular additional work. Will they be eligible for a corrective payment?**

Only employees who have been paid overtime or additional standard time in the financial year 2018-2019 (Between 1 October 2018 and 31 March 2019), 2019-2020 (1 April 2019 to 31 March 2020) and/or 2020-2021 (1 April 2020 to 31 March 2021) will be eligible to receive a corrective payment.

**What happens if an employee leaves employment after 31 March 2021, but before payments are made?**

If an employee was eligible to receive a corrective payment, they will still be eligible for a payment. Payroll will be making arrangements to process payments in these circumstances.

**An employee retired (or retired and returned) from the NHS before 31 March 2021. Will they be eligible for a corrective payment?**

Yes, employees who have been paid overtime or additional standard time in the financial year 2018-2019 (Between 1 October 2018 and 31 March 2019), 2019-2020 (1 April 2019 to 31 March 2020) and/or 2020-2021 (1 April 2020 to 31 March 2021) will be eligible to receive a corrective payment.

**What do employees do if they believe they are eligible, but they do not receive a payment?**

In the hopefully rare circumstances, where an employee does not believe that their overtime payments and any corrective payment has been correctly calculated, we would encourage conversations between staff and their line managers to address this issue in the first instance and for their manager to raise the issue with payroll. Staff may need to provide evidence, for example, their payslips, payments that they have received for either overtime, or additional standard time. This information is important to help employers/payroll determine if staff are eligible.

**I have previously reached a settlement agreement with my employer on this matter. Am I still entitled to a corrective payment?**

Employees are not entitled to a Corrective Payment where they have previously entered a settlement or received compensation for any annual leave payments made in relation to overtime worked within the eligible period. Any overtime worked in the period after entering any settlement within the corrective payment timeframe will attract a Corrective Payment.

**I am a Doctor/locum worker; am I entitled?**

No, this only applies to employees on Agenda for Change terms and conditions only.

**Can I receive my payment in instalments?**

No, as with other arrears of pay for current employees and those who left after the 31 March 2021 this will be paid in August 2021.

**Is the payment pensionable?**

No, overtime is non pensionable and therefore the corrective payment won't be.

**Will this affect my benefits?**

The detail of how this will impact on people's benefits will depend on what benefits people receive, their household income and other factors. If you have concerns regarding this it is recommended that you discuss your situation with your manager or trade union representative.

**Am I able to opt-out of receiving this payment?**

No as this is arrears of pay it will be paid to you automatically in August pay.

**What is happening to payments from 1 April 2021?**

There are complexities with delivering a technical solution within ESR to enable the application of ongoing payments i.e., from 1 April 2021. Employers and trade union partners have discussed the specific arrangements for making the ongoing payments from 1 April 2021 and two further lump sum payments will be made during the 2021/22 financial year to ensure payments can be made on an ongoing basis.

**When will the payments be made for overtime worked after 1 April 2021?**

There will be two payments. The first will cover the period from April 2021 – September 2021 and will be paid in November 2021 and the second will cover the period October 2021 – March 2022 and will be paid in May 2022.

**Will these payments use the same percentage as the settlement agreement?**

Yes, the payments will use the 13% multiplier which will be applied to any overtime that was paid during the two periods.

**When will there be an arrangement in place to make these payments on an ongoing basis?**

Employers and trade union partners will be meeting to discuss the ongoing arrangements and will be working with colleagues in NWSSP/payroll/ESR to ensure that a technical solution can be put in place at the earliest opportunity. Our aim is that this will be in place from 1 April 2022 subject to the technical solutions being deliverable and in place.