**Term Time Only and Part Time Working Comparison**

**Existing Position within NHS Wales and New Staff Council Guidance**

**Supplementary Guidance for NHS Wales**

Background

Following the implementation of Section 33 of the NHS TCS Handbook, the NHS Staff Council agreed to draft additional guidance specifically relating to the contractual issues arising from different types of flexible working with particular focus on term time only working.

In addition, in July 2022 the Supreme Court ruled on the Brazel vs Harpur case and the guidance has been updated in relation to this decision.

This paper identifies and issues arising out of the above for NHS Wales specifically.

Individuals Working Full Time (37.5 hours per week) for 39 weeks per annum

|  |  |  |  |
| --- | --- | --- | --- |
|  | Current Wales Position (extra day) – Pro Rata Pay % (39 weeks) | Staff Council Guidance Position – Pro Rata Pay % (39 weeks) | Previous Wales Position for Comparison (without extra day) – Pro Rata Pay % (39 weeks) |
| 0-5 Years’ Service | 86.77 | 86.39 | 86.39 |
| 5-10 Years’ Service | 87.54 | 87.16 | 87.16 |
| 10+ Years’ Service | 89.14 | 88.75 | 88.75 |

***No action required for NHS Wales***.

Individuals Working Full Time (37.5 hours per week) for less than 39 weeks per annum

The Supreme Court’s July 2022 decision in the ‘Brazel’ case (which upheld the Court of Appeal’s 2019 decision) means that where the calculation of a Term Time Only (TTO) employee’s annual leave entitlement results in an entitlement of less than 5.6 of their weeks, the Working Time Regulations require the annual leave entitlement to be increased to 5.6 weeks.

Formula

Holiday (incl PHs)/FTE Working Days = Daily Holiday Accrual Rate\*Working Days.

Daily Holiday Accrual Rate for NHS Wales is equal to

0-5 years = 0.1602

5-10 years = 0.1706

10 years + = 0.1920

See look up table for NHS Wales at Appendix 1.

Example

A TTO employee working 33 weeks of the year (165 days) a year and with less than five years’ service would have the following calculation: 0.1602 x 165 = 26.43 days’ holiday.

If they worked five days a week 26.43 days = 5.28 weeks. They would need an additional 1.57 days’ leave to make their holiday entitlement up to 5.6 weeks i.e., 28 days.

***Managers and payroll need to ensure that those staff who previously/currently receive less than 5.6 weeks leave have their leave entitlement increased by the required amount.***

Term-time and part-time contracts

Where the term-time employee also works a part-time pattern i.e. fewer than 37.5 hours a working week, a two-element pro-rata calculation will apply in the pay calculation.

The NHS Staff Council guidance should be used along with the additional look up table for NHS Wales at appendix 1.

Hours Based Calculations

If a term-time employee is contracted to work variable hours, e.g. 7 hours on a Tuesday and 3 hours on a Thursday (10 hours a week) for 39 weeks a year, it would be more appropriate to calculate their pay and leave entitlement based on hours rather than days. Again, hours should be compared to those worked by an all-year-round equivalent (FTE) employee to calculate the proportion of leave and pay they are entitled to.

The NHS Staff Council guidance should be used along with the additional look up table for NHS Wales at appendix 1.

**Appendix 1**

**Summary Look Up Table – NHS Wales**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Year Round Contract | | | | Daily Holiday Accrual | Term Time Contract (39 weeks) | | | |
| Years  Service | A  Working Days | B  Hols incl BHs | C  Total Paid Days | D | E Working Days | F  Hols inc PHs | G  Total Paid Days | Pro Rata Pay |
| 0-5 | 224.71 | 35 | 260.71 | 0.1602 | 195 | 31.239 | 226.239 | 86.77 |
| 5-10 | 222.71 | 38 | 260.71 | 0.1706 | 195 | 33.267 | 228.267 | 87.54 |
| 10+ | 218.71 | 42 | 260.71 | 0.1920 | 195 | 37.44 | 232.44 | 89.14 |