

Dear Colleague

## **PAYMENT DURING ANNUAL LEAVE FOR BANK/CASUAL WORKERS**

### **Summary**

1. The Scottish Terms and Conditions Committee (STAC) has agreed updated guidelines on payment/annual leave arrangements for bank/casual workers. These are attached as an Annex to this circular.

### **Background**

2. Changes to the Working Time Regulations in 2008 in respect of payment during annual leave for bank/casual workers resulted in a change to Section 2 of the Agenda for Change Handbook. The service was informed of these changes through NHS Circular PCS(AFC)2008/12 and Health Boards were expected to have systems in place to comply with payment during annual leave for these staff from 1 October 2008.

3. However, the changes proved challenging to implement in a number of instances and Boards have sought further guidance. STAC has therefore developed the attached additional guidelines with a view to supporting Boards with implementation of the Regulations and ensuring consistency of application.

4. It is recognised that Boards may already have arrangements in place that are working well. However, where the guidelines set out in this circular are to be adopted, it is suggested these are put in place from 1 April 2011.

5. Employers are asked to make their own arrangements for obtaining additional copies of this Chief Executive Letter (CEL) which can be viewed at [www.sehd.scot.nhs.uk](http://www.sehd.scot.nhs.uk).

Yours sincerely

**John Cowie**  
Deputy Director of Health Workforce

**CEL 15 (2011)**

21 March 2011

### **Addresses**

#### For action

Chief Executives, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)  
Directors of Human Resources, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)

#### For information

Members, Scottish Partnership Forum  
Members, Scottish Terms and Conditions Committee  
Members, Scottish Workforce and Governance Group

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## POLICY GUIDELINES

### PAYMENT DURING ANNUAL LEAVE FOR BANK/CASUAL WORKERS

#### 1. Introduction

1.1 In line with changes to the Working Time Regulations (WTR), Section 2 of the Agenda for Change Handbook was amended to reflect a new UK agreement on the way in which staff working unsocial hours and bank/casual workers (i.e. any worker employed on a bank, casual relief or on an “as and when required” basis) were paid during periods of annual leave. This new system replaced the practice of paying enhanced hourly rates in lieu of leave with a system which allocated paid annual leave in accordance with actual hours worked. The commencement date was 1 April 2008.

1.2 NHS Circular PCS(AFC)2008/12 confirmed these changes, and a comprehensive Q&A was also issued to support implementation of the new system. However, given complexities of applying the guidance, it was agreed through the Scottish Terms and Conditions Committee (STAC) and confirmed in NHS Circular PCS(AFC)2009/1 that staff would continue to receive an additional percentage on top of their hourly rate for the six month period to 30 September 2008. Health Boards were expected to have systems in place to comply with the new system from 1 October 2008.

1.3 Although systems are now in place which ensure that substantive staff affected by this change receive appropriately paid annual leave, there are ongoing difficulties with bank/casual workers who are entitled to receive paid annual leave in accordance with the statutory entitlements and pro rata to hours worked.

1.4 These policy guidelines recommend a system of ensuring that bank/casual workers are appropriately paid for annual leave by dividing the leave year into four accounting periods, monitoring work done and advising employees of their entitlement at the end of each three month period, subject to the maximum amount of leave being pro rata to 28 days per annum.

#### 2. Policy Guidelines

##### 2.1 WTR Leave Entitlements

2.1.1 The statutory entitlement to 31 March 2009 was 24 days per year and increased to 28 days per year from 1 April 2009 as confirmed by NHS Circular PCS(AFC)2009/4. As such, the maximum leave entitlement for bank/casual workers is 28 days pro rata to actual hours worked.

2.1.2 A bank/casual worker commencing their first shift part way through a leave year will be entitled to WTR leave proportionate to the period of the leave year remaining.

2.1.3 A bank/casual worker commencing their first shift part way through an accounting period will become eligible for paid annual leave at the end of the first complete accounting period worked. See section 3.

## **2.2 Requesting Annual Leave**

2.2.1 Leave may be taken in instalments but only within the accounting period in which it is due unless there are extenuating circumstances. In such circumstances the worker should discuss the situation with their manager and agree when the leave will be taken. Leave must not be replaced by a payment in lieu except where the bank/casual contract comes to an end and there is WTR leave entitlement outstanding.

2.2.2 Workers will be required to give reasonable notice when requesting annual leave.

## **2.3 Responsibility of Managers**

2.3.1 Managers must:

- calculate and authorise the annual leave entitlement and related unsocial hours enhancements due at the end of each accounting period.
- authorise requests to take leave in the following period and where this is not possible to give notice and reasons for the non-approval.
- authorise both timesheets/SSTS and the request to take annual leave form where the annual leave is to be taken on a day that the worker is not due to work.
- Ensure that no more than 28 days, ie 210 hours, pro rata to actual hours worked, is taken in any one leave year.

## **2.4 Responsibility of Employees**

2.4.1 Workers must:

- give reasonable notice when requesting leave, normally a minimum of 2 weeks.
- record hours worked and leave requested on the 'Record of Hours Worked and Annual Leave Request Form' (Appendix A) and ensure that the form is authorised in advance or comply with any alternate local arrangement for requesting annual leave.
- complete a timesheet in addition to the 'Record of Hours Worked and Annual Leave Request Form' to claim payment or comply with any alternate local arrangement for ensuring payment for annual leave.

### 3. Annual Leave Accounting Periods

In order to monitor the annual leave entitlement of bank/casual workers, hours worked will be monitored in accounting periods and given/taken retrospectively. Therefore, at the end of each quarter, a review will be undertaken of the hours worked and an entitlement agreed for the following periods as follows:

- 1<sup>st</sup> Period** – 1 April to 30 June – Leave to be taken between 1 July and 30 September
- 2<sup>nd</sup> Period** – 1 July to 30 September – Leave to be taken between 1 October and 31 December
- 3<sup>rd</sup> Period** – 1 October to 31 December – Leave to be taken between 1 January and 31 March
- 4<sup>th</sup> Period** – 1 January to 31 March\* – Leave to be taken between 1 April and 30 June.

(\*No more than 37.5 hours should be carried forward from the 4<sup>th</sup> period into the 1<sup>st</sup> period of a new leave year.)

### 4. Calculation of Annual Leave Entitlements

4.1 The annual leave entitlement will be calculated by Managers in line with the following example:

Total hours worked during the 3 month period = 130

Average weekly hours worked –  $130 \times 4 \times 7 / 326^* = 11.17$  hrs

28 annual leave days = 5.6 weeks

5.6 weeks ÷ 4 accounting periods = 1.4

11.17 hours x 1.4 = 15.64 hours annual leave to be taken in the following accounting period

(\*326 is 365 less 5.6 weeks, ie 39 days)

4.2 The same calculation principles should be applied in respect of each individual unsocial hours element and should be reported as separate elements when recording on Timesheets/SSTS.

4.3 The annual leave entitlements should be paid at the hourly rate applicable during the leave year in which it was worked.

## **5. Procedure to Record and Take Annual Leave**

5.1 Workers will record the hours they worked on a 'Record of Hours Worked and Annual Leave Request Form' (Appendix A).

5.2 A new form will be required for each accounting period.

5.3 Workers should also complete a claim form/timesheet in accordance with Departmental arrangements.

5.4 At the end of each 3 month accounting period the worker's annual leave will be calculated in accordance with Section 4 above.

5.5 Workers must ensure that their Record of Hours Worked and Annual Leave Request Form is authorised by his/her manager at the end of the accounting period.

5.6 A bank/casual worker must ask to take annual leave on a day when they have not been requested to work. In these circumstances, the relevant number of hours must be included on the worker's timesheet so that annual leave entitlement can be granted via the relevant salary payment. The Manager should authorise the Record of Hours Worked and Leave Request Form and the timesheet/SSTS.

5.7 If annual leave is allocated, and the worker is requested to work a shift then, in agreement with the worker, the annual leave may be cancelled and will be required to be allocated to another day.

## **6. Monitoring the Compliance and Effectiveness of this Guidance**

6.1 The Director of Human Resources will ensure that a process is in place to monitor the compliance and effectiveness of this guidance. This will involve consideration of any complaints as they arise in relation to the application of this guidance ensuring that issues are addressed both through feedback to the relevant NHS Bank, Managers, Payroll and HR Staff through amendment as required to the guidance.

## **7. Review of this Guidance**

7.1 This guidance will be reviewed one year from the date of approval or sooner if there is a requirement to meet legal, statutory or good practice guidance.

RECORD OF HOURS WORKED AND ANNUAL LEAVE REQUEST FORM FOR BANK/CASUAL WORKERS

NAME: ..... DEPARTMENT: .....

JOB TITLE: ..... BASE: .....

| Week Ending      | Basic hours worked | Sat Hrs | Sun Hrs | Ngt Hrs | Uns Hrs | Location | Signature of Worker | Authorised Signature |
|------------------|--------------------|---------|---------|---------|---------|----------|---------------------|----------------------|
|                  |                    |         |         |         |         |          |                     |                      |
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|                  |                    |         |         |         |         |          |                     |                      |
|                  |                    |         |         |         |         |          |                     |                      |
| Total for Period |                    |         |         |         |         |          |                     |                      |

Calculation of Annual Leave Entitlement

Total hours worked during a 3 month period =  $*4*7/326*1.4$  = ..... hours entitlement

During this next period I wish to request my leave on the following dates: .....

.....  
.....  
.....  
.....

Signature of Bank/Casual Worker” ..... Date: .....

I certify that the annual leave entitlement is correct and I have approved this annual leave request.

Signature of Manager: ..... Date: .....