

New arrangements for redundancy pay

Pay and Conditions Circular (AforC) 2/2015

Summary

This Pay and Conditions circular informs employers in England of new redundancy provisions for staff covered by the NHS terms and conditions of service handbook (Agenda for Change) which take effect, in England only, from 1 April 2015.

The amendments to the NHS terms and conditions of service handbook, detailed in this circular, will be published in amendment number 35. Pay circular (AforC) 1/2015, published alongside this one, contains details of changes to pay. Circular (AforC) 3/2015 refers to Shared Parental Leave and flexible working.

Action

1. The new Section 16, redundancy pay, in this circular, applies only in England, from 1 April 2015.
2. For those earning less than £23,000 per year (full time equivalent), the redundancy payment will be calculated using notional full-time annual earnings of £23,000, pro-rated for employees working less than full time.
3. For those earning over £80,000 per year (full time equivalent) the redundancy payment will be calculated using notional full-time annual earnings of £80,000, pro-rated for employees working less than full time.
4. No redundancy payment will exceed £160,000 (pro-rata).
5. Employees subject to formal redundancy consultation which commenced **prior to 1 April 2015**, the redundancy provisions in force prior to 1 April 2015 will apply.
6. Employees subject to formal redundancy consultation which commences **after 31 March 2015**, the new redundancy provisions will apply.
7. Employers should ensure that their policies and procedures are in line with these new provisions.

12 March 2015

Pay arrangements for 2015/16

Pay and Conditions Circular (AforC) 2/2015

Effect of this amendment

8. Full details of all the changes made effective by this circular are in the Annex attached.

Enquiries

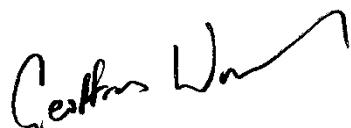
9. Employees must direct personal enquiries to their employer.
10. Employers should direct enquiries to: AgendaForChange@nhsemployers.org
11. Copies of this circular can be downloaded from: www.nhsemployers.org
12. A copy of the NHS terms and conditions of service handbook can be downloaded from the NHS Employers website at the following web address:

<http://www.nhsemployers.org/your-workforce/pay-and-reward/nhs-terms-and-conditions/nhs-terms-and-conditions-of-service-handbook>
13. Prior to the establishment of NHS Employers in November 2004, responsibility to inform the NHS of changes to pay and allowances rested with the Department of Health. Changes were published in Advance Letters. Copies of Advance Letters going back to 2000 may be obtained from the national archives website at the following web address:

<http://www.webarchive.org.uk/wayback/archive/20060506120000/http://www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/AdvancedLetters/fs/en.html>
14. For Advance Letters published prior to 2000, please contact the Ministerial Correspondence and Public Enquiries Unit, Department of Health, at the following web address:

<http://www.info.doh.gov.uk/contactus.nsf/memo?openform>

Issued by:



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Annex

Pay and Conditions Circular (AforC) 2/2015

NHS Terms and Conditions of Service Handbook, amendment number 35

The changes made effective by this circular are listed below.

Title Page:

“Pay and Conditions Circular (AforC) number 1/2015” is replaced by **“Pay and Conditions Circular (AforC) number 2/2015”**

Introduction

Paragraph 3: line 2: the first sentence is:

“Sections and annexes with the suffix "(a)" apply in England from 31 March 2013 (Pay Circular (AforC) 2/2013) and in Wales from 1 January 2015.”

It is changed to:

“Sections and annexes with the suffix "(a)" apply in England from 31 March 2013 (Pay Circular (AforC) 2/2013) and in Wales from 1 January 2015, except that Section 16(a) (England), redundancy pay, applies only in England from 1 April 2015 (Pay Circular (AforC) 2/2015).”

Contents

A new entry **“Section 16(a) (England) Redundancy pay”** is inserted.

A new Section 16(a) (England) **“Redundancy pay”** is inserted.

Section 20: Mutually agreed resignation schemes: principles

Paragraph 20.5: line 5: the words **“or Section 16(a) (England)”** are inserted after “Section 16”.

Annex X: (England and Wales): Guidance on workforce re-profiling

Paragraph 4(ii): line 4: the words **“or Section 16(a) (England)”** are inserted into the brackets after the words “Section 16”.

Section 16(a) (England): Redundancy pay

Introduction

16.1 This Section sets out the arrangements for redundancy pay for employees dismissed by reason of redundancy who, at the date of termination of their contract, have at least 2 years of continuous full-time or part-time service. These take effect from 1 April 2015. It also sets out the arrangements for early retirement on grounds of redundancy and in the interests of the service, for those who are members of the NHS Pension Scheme and have at least two years of continuous full-time or part-time service and two years of qualifying membership in the NHS Pension Scheme. NHS contractual redundancy is an enhancement to an employee's statutory redundancy entitlement, the statutory payment being offset against any contractual payment.

Definition of redundancy

- 16.2 A dismissal will be by reason of redundancy if it is mainly or wholly attributable to:
- the fact that the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was employed; or to carry on the business in the place where the employee was so employed; or
 - the fact that the requirements of the business for employees to carry out work of a particular kind; or the requirements of the business for employees to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.

Qualification for a redundancy payment

16.3 To qualify for a redundancy payment the member of staff must be an employee, working under a contract of employment for an NHS employer. 'NHS employer' means any of the organisations listed at Annex A in this Handbook and any predecessor or successor body. Non-executive directors of NHS organisations do not qualify. Contracts of employment may be written or verbal, and can be for a fixed period or be continuous. In law, employees have a contract as soon as they start work and in accepting and undertaking the work required they accept the terms and conditions offered by the employer. To qualify for a redundancy payment the employee must also have at least 2 years of continuous full-time or part-time service. A redundancy payment will only be paid where the employee is dismissed by reason of redundancy.

Definition of continuous service

16.4 “Continuous service” is calculated in accordance with Part XIV, Chapter 1, of the Employment Rights Act 1996, “Continuous Employment.” For the purpose of determining whether service has been continuous it does not matter whether an employee works on a full-time or part-time basis. For the purpose of determining eligibility for redundancy pay, previous continuous employment with different NHS employers may be counted as long as there has not been a break of a week or more (measured Sunday to Saturday) between any periods of employment.

Definition of reckonable service

16.5 “Reckonable service” for the purposes of an NHS redundancy payment, which is calculated on the basis of the service up to the date of termination of the contract, means continuous full-time or part-time employment with the present or any previous NHS employer but with the following additions:

- subject to paragraph 16.6 below, where there has been a break in service of 12 months or less, the period of employment prior to the break will count as reckonable service;
- periods of employment as a trainee with a general medical practitioner, in accordance with the provisions of the Trainee Practitioner Scheme, will count as reckonable service;
- at employer discretion, any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment, can be included in reckonable service – see Section 12 of the handbook.

16.6 The following employment will not count as reckonable service:

- employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer;
- where the employee has previously been given NHS pension benefits, any employment that has been taken into account for the purposes of those pension benefits.

Definition of a month’s pay

16.7 “Month’s pay” means whichever is the more beneficial of the following calculations:

- 4.35 times a week’s pay, calculated in accordance with the provisions of Sections 221 to 224 of the Employment Rights Act 1996;

- an amount equal to 1/12th of the annual salary in payment at the date of termination of employment.

Calculation of redundancy payment

16.8 The redundancy payment will take the form of a lump sum, dependent on the employee's reckonable service at the date of termination of employment. The lump sum will be calculated on the basis of one month's pay for each complete year of reckonable service, subject to a minimum of two years' continuous service and a maximum of 24 years' reckonable service being counted.

- For those earning less than £23,000 per year (full time equivalent), the redundancy payment will be calculated using notional full-time annual earnings of £23,000, pro-rated for employees working less than full time.
- For those earning over £80,000 per year (full time equivalent) the redundancy payment will be calculated using notional full-time annual earnings of £80,000, pro-rated for employees working less than full time. No redundancy payment will exceed £160,000 (pro-rata).

16.9 Fractions of a year of reckonable service will not be taken into account.

Early retirement on grounds of redundancy for employees entitled to pension benefits

Qualification criteria

16.10 Members of the NHS Pension Scheme who are made redundant and meet the conditions set out below may choose to retire early and use the redundancy payment, set out in paragraphs 16.12 to 16.15 to buy out all or part of the pension benefits reduction. To qualify for early retirement the member of staff must:

- be an active member of the NHS Pension Scheme in respect of the employment that is being terminated;
- have at least two years' continuous service and two years' qualifying membership of the NHS Pension Scheme;
- have reached the minimum pension age. The Finance Act 2004 allows for protection of a minimum pension age of 50, for members who had the right to take reduced benefits at that age on 5 April 2006. This protection may continue as long as members retiring early after 6 April 2010 take all their benefits payable under scheme rules. In the NHS Pension Scheme, for those without this protection, members who first

joined and some who returned to the scheme after 6 April 2006, minimum pension age is 55.

Definition of qualifying membership

16.11 'Qualifying membership' is membership that counts towards establishing entitlement for benefits. Pensionable membership is service that counts when calculating the value of pension benefits. This may be different from reckonable service for the purposes of a redundancy payment as it can include pensionable service from previous periods of employment with the NHS or another employer, and periods of part-time working.

Use of redundancy payment to pay for early retirement

16.12 Pension benefits that are paid earlier than a member's normal pension age are usually reduced to cover the cost of paying the pension early. The amount of reduction is calculated by the scheme actuary and depends on how early the pension has been taken.

16.13 Subject to meeting eligibility criteria, the redundant member of staff can choose to exchange their redundancy lump sum payment in return for immediate payment of their qualifying pension benefits at the point of redundancy, with such actuarial reduction applied that has not been bought-out. The employer will use the employee redundancy lump sum payment to pay a contribution to the relevant NHS pension scheme in order to buy-out as much of the actuarial reduction as the value of the redundancy lump sum payment permits.

16.14 If the value of the redundancy lump sum payment that would otherwise have been payable under paragraph 16.8 exceeds the cost of buying out the reduction, the redundant individual will receive a redundancy lump sum payment that is equivalent to the difference between the two amounts. If the value of the redundancy lump sum payment is not sufficient to buy-out the full reduction, the pension benefits are proportionally reduced by the remainder. Where this is the case, members have the further option to make an additional contribution to the relevant NHS pension scheme in order to buy-out the remaining reduction using their own personal funds. The additional contribution option may only be exercised before the pension is paid.

16.15 If the redundant member of staff does not wish to take unreduced or partly reduced pensions benefits early, they can opt to keep their redundancy lump sum payment and either preserve their pension benefits for payment at a later date or take those benefits immediately but with a reduction applied in the same way as if the member had opted to take voluntary early retirement.

Repayment

16.16 If, before the date of termination, an employee is offered suitable alternative employment with their own employer or with another NHS employer and that employment starts within 4 weeks of the termination date, they will not be entitled to a redundancy payment.

Treatment of concurrent pensionable employment

16.17 Where there is concurrent pensionable employment, members may choose between

- ceasing all pensionable employment and taking all pension benefits. For members of the 1995 section of the NHS Pension Scheme, this means that they cannot be pensionable again in the scheme. (An employment may continue if it is not more than 16 hours a week, without affecting the payment of enhanced benefits, but it will not be pensionable in the scheme); and
- taking benefits only in respect of the employment that is being terminated on redundancy grounds, in which case they can continue being pensionable in other employments.

16.18 Members with concurrent practitioner and non-practitioner employments (as defined by the relevant NHS pension scheme), who choose to cease all pensionable employments, will receive only their non-practitioner benefits on redundancy grounds. Where appropriate, benefits for practitioner membership may be taken on an early retirement basis with an actuarial reduction or preserved for payment at normal pension¹ age².

16.19 The member can exchange their redundancy lump payment and use other personal funds (if required) to buy-out the cost of paying benefits early, including the pension costs accruing from other terminating employment.

Exclusion from eligibility

16.20 Employees shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:

- they are dismissed for reasons of misconduct, with or without notice;
or

¹ Where practitioner membership ended 12 months or more before the date of non-practitioner retirement on redundancy grounds, and all other posts have ceased, pension benefits accruing from practitioner service will be paid at the same time, reduced to the extent that the actuarial reduction which would otherwise apply is bought out in accordance with paragraphs [16.12 to 16.15].

² Practitioners are general medical and general dental practitioners.

- at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the same or another NHS employer; or
- unreasonably refuse to accept or apply for suitable alternative employment with the same or another NHS employer; or
- leave their employment before expiry of notice, except if they are being released early (see Paragraphs 20 to 21 below); or
- they are offered a renewal of contract (with the substitution of the new employer for the previous NHS one); or
- where their employment is transferred to another public service employer who is not an NHS employer.

Suitable alternative employment

16.21 Employers have a responsibility, before making a member of staff redundant or agreeing early retirement on grounds of redundancy, to seek suitable alternative employment for that person, either in their own organisation or through arrangements with another NHS employer. Employers should avoid the loss of staff through redundancy wherever possible, to retain valuable skills and experience where appropriate within the local health economy.

16.22 'Suitable alternative employment', for the purposes of paragraph 16.20, should be determined by reference to Sections 138 and 141 of the Employment Rights Act 1996. In considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.

16.23 For the purposes of this scheme any suitable alternative employment must be brought to the employee's notice in writing or by electronic means agreed with the employee, before the date of termination of contract and with reasonable time for the employee to consider it. The employment should be available not later than four weeks from that date. Where this is done, but the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment the 'trial period' provisions in Section 138 (3) of the Employment Rights Act 1996 will apply.

Early release of redundant employees

16.24 Employees who have been notified of the termination of their employment on grounds of redundancy, and for whom no suitable

alternative employment in the NHS is available, may, during the period of notice, obtain other employment outside the NHS.

16.25 If they wish to take this up before the period of notice of redundancy expires the employer will, unless there are compelling reasons to the contrary, release such employees at their request on a mutually agreeable date. That date will become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under this agreement.

Claim for redundancy payment

16.26 Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of the date of termination of employment. Before payment is made the employee will certify that:

- they had not obtained, been offered or unreasonably refused to apply for or accept, suitable alternative health service employment within four weeks of the termination date and they understand that payment is made only on this condition and undertake to refund it if this condition is not satisfied.

Retrospective pay awards

16.27 If a retrospective pay award is notified after the date of termination of employment, then the redundancy payment and/or pension will be recalculated, and any arrears due paid.

Disputes

16.28 An employee who disagrees with the employer's calculation of the amount of redundancy payment or the rejection of a claim for redundancy payment, should make representations to the employer via local grievance procedures. See also paragraph 16.25 about making a claim for a redundancy payment.

Early retirement in the interests of the efficiency of the service

16.29 Members of the NHS Pension Scheme will receive payment of benefits without reduction if they retire early in the interests of the efficiency of the service, and they satisfy the qualifying conditions set out in paragraph 16.10. Retiring early in the interests of the service is a flexibility available at employer discretion. In these cases, no redundancy payment is due. In agreeing to retirement in the interests of the service, the employer undertakes to pay the costs of paying the pension and lump sum early. Employers will need to ensure that they exercise this discretion appropriately and will be conscious of the implications of any potential discrimination on grounds of age, gender, gender identity or gender

expression, pregnancy or maternity, marriage or civil partnership, race, religion or belief, disability, or sexual orientation.

16.30 These arrangements are aimed at employees who have given valuable NHS service in the past but are no longer capable of doing so. This might be because of new or expanded duties or a decline in the ability to perform existing duties efficiently but not so as to qualify them for ill health retirement. Employers would be expected to consider alternatives before agreeing to early retirement, including reasonable adjustments to an existing role or potential suitable alternatives.

16.31 The relevant NHS pension scheme certifies the grounds on which early retirement is taking place. The scheme does so on the basis of the information provided by the employer. In each case, therefore, an appropriate senior manager should authorise the early retirement, ensuring that the relevant criteria have been met.

Employer responsibilities

16.32 The cost of redundancy early retirement to the employer is limited to the value of the redundancy lump sum payment. However, employer contributions to the NHS Pension Scheme do not cover the costs of early retirement benefits in the interests of the service. There is a requirement for NHS employers to pay these costs if they retire staff early in the interests of the service.

Transitional arrangements.

16.33 Employees subject to formal redundancy consultation which commenced **prior to 1 April 2015**, the redundancy provisions in force prior to 1 April 2015 will apply.

16.34 Employees subject to formal redundancy consultation which commences **after 31 March 2015**, the new redundancy provisions will apply.