

# Pay Circular (AforC) 3/2009

## Unsocial hours payments during annual leave

To: All NHS employers

Dear Colleague,

### Summary

This circular informs NHS organisations of agreed arrangements for unsocial hours payments during annual leave.

### Action

#### Unsocial hours payments during annual leave

1. Since 1 October 2004 the Agenda for Change agreement, incorporated into the NHS Terms & Conditions of Service Handbook, has included the provision that unsocial hours payments during annual leave will be calculated on the basis of what the individual would have received had he/she been at work. The method of calculation specified in the Handbook up until 31<sup>st</sup> March 2008, was that staff would have their unsocial hours payments multiplied by 11.59%. From 1<sup>st</sup> April 2008 all reference to 11.59% was removed from the Handbook.
2. However, since 1 April 2008, when the new system of unsocial hours' payments started, some staff have continued to have their unsocial hours payments multiplied by 11.59%. This percentage was based upon an assumption that the annual leave entitlement was 27 days. The consequence of this was that many staff received less than they would have, had they been at work. The NHS Staff Council has, therefore, agreed that the method of calculation will be to base payments on the previous three months at work or any other reference period that may be locally agreed. This brings unsocial hours payments during annual leave into line with payments during sickness absence.
3. From 1 April 2010 new facilities will be available on the Electronic Staff Record (ESR). These will enable employers to calculate unsocial hours' payments during annual leave by reference to the unsocial hours payments made in a previous reference period.

4. It has been agreed by the Staff Council that staff whose unsocial hours payments have been multiplied by 11.59%, since 1 April 2008, should have their unsocial hours payments multiplied by an extra 0.91 per cent, backdated to 1 April 2008. Facilities on ESR will enable employers to perform this calculation.
5. It should be noted that the agreement on back pay was a compromise that will mean that some staff may receive slightly more than they would have received on the post April 2008 system, whilst others will receive slightly less. The alternative would be to apply different percentages to different staff based upon their annual leave entitlement. The Staff Council agreed that this would put an onerous burden on payroll departments. This is the reason the back pay based upon an additional 0.91% should be paid to all staff who were paid on the 11.59% system.

#### Effect of this amendment

6. This is amendment number 15 to the NHS Terms and Conditions of Service Handbook. Paragraph 13.9 is amended and the new Section 13, attached, replaces the existing Section.
7. Details of the changes made effective by this circular are in the Appendix attached.

#### Enquiries

8. Employees must direct personal enquiries to their employer.
9. Employers should direct enquiries to: [agendaforchange@nhsemployers.org](mailto:agendaforchange@nhsemployers.org).
10. Copies of this circular can be downloaded from: [www.nhsemployers.org](http://www.nhsemployers.org)
11. A copy of the NHS Terms and Conditions of Service Handbook can be downloaded from the NHS Employers' website at the following address:  
[www.nhsemployers.org/payandconditions/agendaforchange.asp](http://www.nhsemployers.org/payandconditions/agendaforchange.asp)
12. Prior to the establishment of NHS Employers in November 2004, responsibility to inform the NHS of changes to pay and allowances for staff on Agenda for Change contracts rested with the Department of Health. Changes were published in Advance Letters. Copies of previous Advance Letters going back to 1995 may be obtained from the Department of Health website at the following address:  
[www.dh.gov.uk/letters](http://www.dh.gov.uk/letters).

Pay and Conditions for NHS Staff covered by the Agenda for Change agreement

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Issued by

A handwritten signature in black ink, appearing to read 'Geoffrey Winnard', written in a cursive style.

Geoffrey Winnard  
Head of Agenda for Change/Non-Medical Pay  
NHS Employers

## APPENDIX

### Pay Circular (AforC) 3/2009

#### NHS TERMS AND CONDITIONS OF SERVICE HANDBOOK

The changes made effective by this circular are:

- **Section 13: Annual leave and general public holidays.**

Currently paragraph 9 is:

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 paragraph is amended so that it is:

**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 would be based on the previous three months at work or any other reference period that may be locally agreed.**

## Section 13: Annual leave and general public holidays

- 13.1 Staff will receive the entitlement to annual leave and general public holidays as set out in Table 7 below (see Section 12 for provisions governing reckonable service).

Table 7  
Leave entitlements

Length of service	Annual leave and general public holidays
On appointment	27 days + 8 days
After five years' service	29 days + 8 days
After ten years' service	33 days + 8 days

- 13.2 Local arrangements to consolidate some or all of the general public holidays into annual leave may operate, subject to agreement at local level.
- 13.3 These leave entitlements include the two extra-statutory days available in England and Wales in the past, therefore any local arrangements to add days on account of extra-statutory days will no longer apply. In Scotland this entitlement includes the two additional days that could previously be designated as either statutory days or annual leave. In Northern Ireland this entitlement also contains the two extra statutory days, however there are ten general public holidays.
- 13.4 Staff required to work or to be on-call on a general public holiday are entitled to equivalent time to be taken off in lieu at plain time rates in addition to the appropriate payment for the duties undertaken (see Section 2).
- 13.5 Where staff work standard shifts other than 7½ hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis to prevent staff on these shifts receiving greater or less leave than colleagues on standard shifts.
- 13.6 Part-time workers will be entitled to paid bank holidays no less than pro-rata to the number of bank holidays for a full-time worker, rounded up to the nearest half day.
- 13.7 Part-time workers' bank holiday entitlement shall be added to their annual leave entitlement, and they shall take bank holidays they would normally work as annual leave.
- 13.8 An existing part-time worker who, prior to 1 October 2004, was in receipt of a bank holiday entitlement in excess of pro-rata to a full-time worker,

shall have their excess entitlement protected for a period of five years from the date of assimilation onto the new system.

- 13.9 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 would be based on the previous three months at work or any other reference period that may be locally agreed.

### Transitional arrangements

- 13.10 Further information on the assimilation to these leave entitlements during the transition to the new system is set out in Part 7.