

HEE designated NHS employer in Agenda for Change: updates to the NHS Terms and Conditions of Service Handbook

Pay and Conditions Circular (AforC) 2/2016

Purpose

This pay and conditions circular informs employers of the changes to the *NHS Terms and conditions of service handbook* which have been agreed by the NHS Staff Council. These include the addition of Health Education England (HEE) to the list of NHS employers in Annex A.

The amendments to the handbook, detailed in the annex of this circular, will be published in amendment number 36.

Details

1. From 18 July 2016 references in the handbook to NHS employers will mean any organisation listed in Annex A, including Health Education England (HEE). Employers should check if this, and the other changes set out in the annex to this circular, have implications for their local policies.

List of amendments

2. Details of amendments to the *NHS Terms and conditions of service handbook* are in the annex of this circular.

18 July 2016

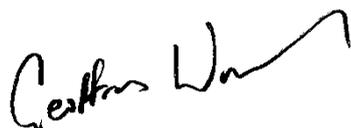
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Enquiries

3. Employees must put their questions on pay and conditions of service to their employer.
4. Employers should direct their questions to: AgendaForChange@nhsemployers.org
5. Copies of this circular can be downloaded from: www.nhsemployers.org
6. 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/case-studies-and-resources/2015/04/updated-terms-and-conditions-handbook>
7. Before November 2004, when NHS Employers was established, the Department of Health was responsible for issuing advance letters containing details of changes to pay and conditions of service. 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>
8. For advance letters issued before 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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NHS Employer

Annex

Pay Circular (AforC) 2/2016

NHS Terms and conditions of service handbook, amendment number 36.

Title page

Amendment number 35 is deleted and replaced by **Amendment number 36**.

Pay and conditions circulars (AforC) 1/2015, number 2/2015 and number 3/2015 is changed to **Pay and conditions circulars (AforC) number 1/2016 and number 2/2016**.

Section 14: sickness absence

Paragraph 14.6 is:

The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness no account will be taken of:

- unpaid sick absence;
- injuries, diseases, or other health conditions sustained or contracted in the discharge of the employee's duties of employment, as defined in Section 22;
- injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland) and the Compensation Agency (Northern Ireland);
- as above, but an injury which has not attracted payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise.

It is changed to:

The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness the following absences will be disregarded:

- **unpaid sick absence;**
- **absence caused by injuries, diseases, or other health conditions that are wholly or mainly attributable to the employee's NHS employment and which have been sustained or contracted in the discharge of the employee's duties of employment, as defined in paragraph 22.3;**

- **absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland) and the Compensation Agency (Northern Ireland);**
- **absence caused by injury resulting from a crime of violence as described in the bullet immediately above, but which has not attracted payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise.**

Section 14(a) (England and Wales): Sickness absence

Paragraph 14.7 is:

The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness no account will be taken of:

- unpaid sick absence;
- injuries, diseases or other health conditions sustained or contracted in the discharge of the employee's duties of employment, as defined in Section 22;
- absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland), and the Compensation Agency (Northern Ireland);
- as above, but an injury which has not attracted payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise.

It is changed to:

The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness the following absences will be disregarded:

- **unpaid sick absence;**
- **absence caused by injuries, diseases, or other health conditions that are wholly or mainly attributable to the employee's NHS employment and which have been sustained or contracted in the discharge of the employee's duties of employment, as defined in paragraph 22.3;**
- **absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland), and the Compensation Agency (Northern Ireland);**
- **absence caused by injury resulting from a crime of violence as described in the bullet immediately above, but which has not attracted payment of an award as it has**

not met the loss of earnings criteria or was not one for which compensation above the minimum would arise.

Section 14(a) (England and Wales): sickness absence

Paragraph 14.4: the first sentence is:

For staff on pay spine points 1 to 8 and those absent due to a work related injury or disease contracted in the actual discharge of their duties (see paragraph 14.7 in this Section) who are in receipt of injury allowance, the definition of full pay will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Sick 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. Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been at work.

It is changed to:

For staff:

- **on pay spine points 1 to 8: and**
- **those staff who are absent due to injuries, diseases or other health conditions sustained or contracted in the discharge of their duties of employment which are wholly or mainly attributable to their NHS employment, whom the employer determines are eligible to receive injury allowance in line with paragraphs 22.3 and 22.4 (see paragraph 14.7 in this Section);**

pay during sickness absence is calculated on the basis of what the individual would have received had he/she been at work. It will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. It will be based on the previous three months at work or any other reference period that may be locally agreed. Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been at work.

Section 15: Maternity leave and pay

The heading above paragraph 15.49 is: Accrual of annual leave. It is changed to **Annual leave and public holidays.**

Paragraph 15.49 is:

Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.

It is changed to:

Employees on paid and unpaid maternity leave retain their right to the annual leave and public holidays provided by Section 13.

Paragraph 15.50 is:

Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave exceeds normal carry over provisions.

It is changed to

Where unused annual leave and public holidays exceed local provisions for carry over to the next leave year it may be beneficial to the employer and employee for the employee to take the unused annual leave and public holidays before and/or after the agreed (paid and unpaid) maternity leave period. The amount of annual leave and public holidays to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave and public holidays exceeds normal carry over provisions.

Annex A

The entry National Institute for Health and Clinical Excellence is changed to **National Institute for Health and Care Excellence**.

Health Education England is added to the list of NHS Employers in England.

Annex G: Good practice guidance on managing working patterns

Paragraph 4 is:

NHS Staff Council guidance on Improving Working Lives (IWL) is at:

<http://www.nhsemployers.org/HealthyWorkplaces/ImplementingBoorman/Pages/Improvingworkinglives.aspx>

It includes a good practice database, which provides examples of how flexible working is used to cover both normal hours and the provision of care outside normal hours. There are comparable initiatives providing similar information in each of the other countries (e.g. the PIN policies in NHS Scotland).

It is changed to:

NHS Staff Council guidance on Improving Working Lives (IWL) is at:

<http://www.nhsemployers.org/your-workforce/retain-and-improve/staff-experience/health-work-and-wellbeing/protecting-staff-and-preventing-ill-health/partnership-working-across-your-organisation/partnership-working-on-health-safety-and-wellbeing/hswpg-publications-advice-and-resources>

This substantial database of jointly agreed advice and guidance includes information on the importance of effective partnership working on health, safety and wellbeing, guidance on the prevention and management of stress at work and on the prevention and management of sickness absence. There are comparable initiatives providing similar information in each of the other UK countries (e.g. the PIN policies in NHS Scotland).

Annex A2: guidance on frequently asked questions

Part 3: Terms and conditions

Part 3: Section 12: Contractual continuity of service

Paragraph 4

Footnote number 1

When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods?

An employer must include all reckonable service when calculating annual leave entitlement (12.3).

12.2 gives discretion to employers to decide what previous (non-NHS) employment can count towards annual leave entitlement.

Is changed to:

Part 3: Terms and conditions

Part 3: Section 12: Contractual continuity of service

Paragraph 4

Footnote number 1

When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods?

An employer must include all reckonable NHS service when calculating annual leave entitlement (12.1 and 12.4). Paragraph 12.2 gives discretion to employers to decide what previous (non-NHS) employment can count towards annual leave entitlement.