

# Public Holidays and Time Off in Lieu (TOIL) guidance

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# Section 1

## Introduction

NHS Employers has developed this guidance in response to feedback from employers indicating difficulties and inconsistency interpreting section 13 of the [NHS Terms and Conditions of Service \(TCS\) Handbook](#). Specifically, regarding the public holidays and time off in lieu (TOIL) for those staff who are rostered to work on a public holiday. We hope that this guidance will reduce inconsistency and prevent unequal treatment for NHS staff.

Ensuring annual leave is taken is key to improving employees work-life balance and allows individuals to rest and re-energise, which helps with improved mood and staff morale. Please refer to NHS Employers health and [wellbeing framework](#) that sets out the standards for supporting staff to feel well, healthy and happy at work.

### What does the NHS TCS Handbook say about public holiday entitlement?

In addition to annual leave entitlement, which is based on reckonable service.

The Agenda for Change (AfC) annual leave and general public holiday entitlements are set out in Section 13 of the handbook. In normal circumstances all staff are entitled to eight general public holidays in a twelve-month period. Sometimes Easter will fall in March and in effect there may be two Easter holidays in the same twelve-month period. In such circumstances the local partners will need to decide on the appropriate action to take. Pragmatically, this might mean anticipating and planning for the two public holidays falling in the next twelve-month period.

### Section 13 - Table 6: 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                         |

As with all aspects of employment in the NHS, public holiday entitlement and how that is taken should be fair, equitable and transparent. There are some key principles that will help guide your consideration of public holiday allocation / entitlement:

- No one should be advantaged or disadvantaged by their working pattern.
- There is a need to ensure equal pay (leave entitlement and pay for leave, including public holidays, is a relevant term in such matters).
- Staff should not lose entitlement to time off, but neither should they be remunerated twice for the same period of time.

The handbook explains entitlement in different situations as follows:

### **Part-time staff**

For part-time staff, public holiday and annual leave entitlements are calculated on a pro-rata basis according to their contracted hours. It is imperative to ensure that equality and fairness for both part time and full-time staff is applied.

*11.1 Part-time employees will receive the same entitlements on a pro-rata basis to full-time colleagues. (See paragraph 13.6 for the treatment of public holidays).*

### **On call arrangements and working a public holiday**

It is clear that staff required to work or be on call for all or part of a public holiday are not able to take advantage of the time off in the usual way. Therefore, they should be able to take equivalent time off at a different time. The NHS TCS Handbook says the following:

*“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”.*

In such situations, you would not expect the public holiday to be deducted from their entitlement, but if local systems do make this deduction, TOIL should be given so that the member of staff can take the equivalent public holiday time off at another time. Such TOIL when taken does not attract unsocial hours (USH) payments.

### **Working non-standard shifts**

Whilst the NHS TCS Handbook states that a standard shift is 7.5 hours, many staff work shifts that are either shorter or longer. In these cases, the handbook says the following:

*“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”.*

This will ensure that, for example, someone who usually works 12-hour shifts is required to use 12 hours of leave entitlement to take a ‘day’ off work. For situations where such staff are off duty on a public holiday see below.

## **Consolidating annual leave and public holidays**

The NHS TCS Handbook section 13, paragraph 13.2 states:

*“Local arrangements to consolidate some or all of the general public holidays into annual leave may operate, subject to agreement at local level.”*

This allows employing organisations to implement local arrangements to consolidate annual leave and public holidays into a single entitlement for the year. This method provides staff with a single leave entitlement and effectively removes the notion of having allocated public holiday days for the purposes of receiving equivalent TOIL. Enhanced rates of pay for working on one of these allocated public holiday days would still apply in these circumstances.

Having variations in the application of annual leave and public holidays has created confusion when awarding additional TOIL to members of staff. How TOIL is awarded to staff will be dependent on which method employing organisations are applying locally.

For example, if organisations are treating public holiday and annual leave separately then the member of staff working on a public holiday would get the equivalent time off at a later date.

Where organisations are consolidating public holidays and annual leave then TOIL should not be awarded for working on an allocated public holiday, as the eight public holidays have already been accounted for within the consolidated leave entitlement and are still available to the member of staff.

The difference between pay for annual leave and public holidays means that, when annual leave and public holidays are consolidated, employers should ensure that there is a distinction between time off that is taken as annual leave and time off taken for public holidays for the purposes of determining pay for that period.

## **Booking and recording leave on systems**

Employing organisations will have their own leave booking / recording systems with many who will consolidate annual leave entitlement with public holiday entitlement, therefore requiring public holidays to be 'booked' as other annual leave. In these cases, so long as someone who works on a public holiday has not had their public holiday entitlement reduced, there is no requirement to give them an additional day's TOIL as this would effectively give them two days entitlement rather than one.

This guidance seeks to provide advice and describe scenarios to assist in the calculation of entitlement for the following situations:

- Staff working standard shifts – this is where a shift is 7.5 hours.
- Staff working non-standard shifts – this is where a shift is more / less than 7.5 hours.
- Staff working rotational shift pattern - this is where shift patterns change between calendar weeks (however, this may not be the case for all rotational shift patterns).
- Staff working fixed shift patterns – this is where shifts remain the same every calendar week and do not change.

## **Scope**

This guidance applies to all NHS staff employed in England under the NHS Terms and Conditions Handbook.

The term 'staff' is a collective term that includes full time, part time and temporary staff, but not bank or casual workers engaged under separate terms.

# Section 2

In this section, we provide examples of how to apply the entitlements for employees working different patterns.

## Staff working standard shifts:

These entitlements, as set out in the NHS TCS Handbook, are based on standard hours of 37.5 hours per week (or 7.5 hours per day), excluding meal breaks and are relatively straightforward to apply.

### Scenario 1



Sam works full time with a standard working shift pattern. Sam's working hours are Monday to Friday 9am-5pm, (7.5 hours excluding breaks). Sam is entitled to 33 days of annual leave plus eight public holidays.

Sam is asked to work on a public holiday Monday, therefore Sam should be paid the unsocial hours rates (USH) for that day and either Sam's public holiday entitlement is not reduced or, if it is, they should be given TOIL to take at another suitable time, as agreed by Sam and employer.

## Staff working non-standard shifts:

This is when staff are working different working patterns, for example, anything other than the regular 7.5 hours. This may include a variety of arrangements, including:

- working a public holiday shift outside normal working patterns
- working irregular hours
- working on rotas that have consecutive shifts and partly span a public holiday.

Paragraph 13.5 of the NHS TCS Handbook sets out how this entitlement is calculated for those with different working patterns as described above:

*“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.”*

## Scenario 2



Sam is a full-time member of staff and works three x 12-hour shifts per week with additional time worked at regular intervals to make working time up to 37.5 hours per week. Sam is entitled to 33 days annual leave plus the eight public holidays. This equates to 307.5 hours ( $33 \times 7.5 = 247.5$  and  $8 \times 7.5 = 60$ .  $247.5 + 60 = 307.5$ )

Sam is scheduled to work on the Monday, which is the public holiday. As Sam's annual leave and public holidays are consolidated, a day should not be deducted from Sam's leave entitlement as it is already included in the overall entitlement.

As Sam has worked the public holiday, Sam should be paid the USH for the hours worked as per the NHS TCS Handbook. However, Sam does not receive the 12 hours TOIL in addition to this as the equivalent public holiday entitlement has already been accounted for in Sam's leave allowance. Sam does not receive additional time as TOIL.

## Please note

Staff who are required to work more than 60 hours on a public holiday should receive TOIL at plain time rates and appropriate payment for all the hours worked. Please refer to [Annex 28, paragraph 4-foot number 2 for further details.](#)

## Staff working on call arrangements:

Staff required to be on-call will receive an on-call allowance determined by local policy. This payment is given in recognition of the disruption caused by having to be available should work arise. Whilst time spent on call isn't "working time", someone who is on-call on a public holiday is available for work and therefore not able to take advantage of the leisure time in the way others can. Consequently, their entitlement to the public holiday time needs to be ensured, even if they take it at another time.

For further details on public holidays and on-call arrangements, please see [Annex 29](#).

## Scenario 3



Sam is a full-time member of staff and works on a rotational shift pattern including an on-call arrangement. Sam is entitled to 33 days annual leave plus the eight public holidays.

Sam works 7:30am-8pm on the day before a public holiday and is then rostered to be on call from 8pm-7:30am. Therefore, Sam is on call on a public holiday from midnight until 7:30am. They are not rostered to work again until three days later.

In this scenario Sam receives their on-call allowance as per the local policy and, if they are called to work at this time, will also receive USH payment for work done. Their public holiday leave entitlement should not be reduced, because they have worked the public holiday. As the leave is included, equivalent time off is not needed.

## Scenario 4



Sam is rostered to work on a public holiday Monday 7:30am - 8pm and is then required to be on call from home until 7:30am the next morning.

In this scenario Sam receives the USH payment for working the public holiday as per the NHS TCS Handbook. If Sam's public holiday entitlement has been reduced for the public holiday, they are also entitled to receive the equivalent time back to take at another point. However, if their entitlement has not been reduced, they do not receive an additional day's TOIL as this would mean they had two days available to them. If Sam undertakes any work whilst on call, they will receive the relevant USH payment for it.

## Scenario 5



Sam is required to be on call on a public holiday between 9am and 5:30pm.

Sam receives their on-call allowance as per local policy and receives the equivalent time off to take at a later date if their public holiday entitlement has been reduced. If not, they do not get an additional day's TOIL as this would mean they had two days available to them.

## Staff working part time:

Paragraph 13.6 and 13.7 of the handbooks state:

*13.6 Part-time workers will be entitled to paid public holidays no less than pro-rata to the number of public holidays for a full-time worker, rounded up to the nearest half day.*

*13.7 Part-time workers' public holiday entitlement shall be added to their annual leave entitlement, and they shall take public holidays they would normally work as annual leave.*

Employers should ensure there is a distinction between time off that is taken as annual leave and time off taken for public holidays for the purposes of determining pay for that period.

## Scenario 6



Sam works part time. Sam's contracted hours are 18.75 hours per week (50 per cent). Sam's working arrangements are Monday to Wednesday, 6.25 hours per day. Sam is entitled to 30 hours public holidays (0.5 x 8 Public Holiday days = 4 days, 7.5 hours x 4 days)

Public holidays often, but not always, fall on Mondays. As Monday is one of Sam's usual working days, when a public holiday is on a Monday, 6.25 hours leave should be deducted from their entitlement. If the public holiday fell on a Friday, Sam does not work on Fridays, so no deduction would need to be made.

If for example, Sam takes four public holidays off, and (however, public holidays could also fall on a non-working day for example Good Friday) these fall on one of Sam's working days, then 25 hours (4 x 6.25 hours) should be deducted from the annual leave/public holidays allowance.

# Section 3

## Staff on long term sickness absence:

This section provides further clarity on the public holiday entitlement for staff members on long term sickness absence. The relevant section of the handbook states:

*‘14.9 Employees will not be entitled to an additional day off if sick on a statutory holiday.’*

The public holiday entitlement of staff members is as stated in the NHS TCS Handbook section 13.1. This entitlement is in addition to the annual leave entitlement. Where an individual is on sick leave on a public holiday which falls on a day, they would have been rostered to work had it not been for the sickness absence employers are not contractually required to give the staff member an additional day.

## Scenario 7



Sam works full-time. Sam's working arrangements are Monday to Friday 9am-5pm (7.5 hours excluding breaks)  
Sam is entitled to 33 days of annual leave plus eight public holidays.

Sam is unwell on Thursday and goes off work that day.  
Sam returns to work on Wednesday. Due to sickness Sam has been off work during two public holidays Good Friday and Easter Monday. Therefore, Sam does not get any additional days off in lieu

If employing organisations are consolidating public holidays and annual leave entitlement and a staff member is not required to work on a public holiday this should be deducted from the staff member's leave entitlement.

Employers may wish to consider seeking advice regarding staff on long-term sickness absence.

Please refer to [NHS Employers sickness absence toolkit](#) guidance which is designed to support line managers to have both confidence and consistency every step of the way when it comes to supporting colleagues with conversations about sickness absence.

# Section 4

## Further resources

- [Holiday pay legislation changes](#)
- [Calculating holiday entitlement for part year and irregular hours workers](#)
- [Accrual of statutory annual leave and sickness](#)
- [Annex 28 – guidance on frequently asked questions](#)