

## Term-time working

Term-time contracts in schools result in lower pay for staff to account for school closures. There are many variations in the formulas for reducing pay from the full-year rate to a term-time figure and no clarity on holiday entitlement. The arguments can be complex and the law is not particularly helpful. This guidance is an update of previous advice (2006) designed to support branches in their negotiations on behalf of school staff. It aims to describe the problem of term-time pay in schools and to garner the arguments to tackle it.

### 1. The term-time contract

- The law is not clear on the employment status of term-time workers. It does not specify whether they are full or part-time staff and leaves it to employers to classify them. This is more than a technical issue as part-time staff are covered by specific protective regulations.
- Holiday entitlement suffers from a lack of legal clarity. Term-timers are in continuous employment, unable to claim out-of-work but able to claim in-work benefits. It follows that they should accrue holiday throughout the year.
- Employers, even within a single authority, have a variety of term-time contract options which makes it difficult to identify whom is paid what and for how many weeks.

Staff are often confused about their own entitlements.

- The lack of consistency, transparency and logic in term-time contracts leads to blurring of workforce data and a high risk of unfair and even illegal employment practice.

### 2. Arguments for full-year status

- Support staff gained additional responsibilities under the School Workforce Agreement 2003 to add to growing job complexity and professionalisation since the 1980s. The school team in the 21st century is distantly related to the professional/non-professional divide of the past. Treating half the workforce as full-year and reducing the salaries of the rest by up to 20 per cent is divisive, bad for morale and unfair.
- Staff who are treated on a par with teachers are more willing to work outside of school hours on planning, preparation and assessment; parent contact, liaison with teachers and other professionals, staff meetings and training. Introducing term-time contracts risks the flexibility and good will that schools enjoy from support staff.

- Employers can argue that they have a business case (economic, technical and organisational) to defend the difference between school and other staff. Without full-year pay, it is difficult to recruit and retain high calibre staff and to promote school employment as a career.
- Where the local authority is the employer, there is no history of equal pay challenges to school staff from local government colleagues. It is unlikely that different gender comparators on worse overall conditions could be found. If they were, a 'material defence' could be mounted to prove that term-time working is a requirement of the job and the peculiarity of the school year. There is no case law and it is not sufficient for employers to say that pay must be reduced on legal grounds.
- Where the local authority is not the employer, the argument for treating the working time of teachers and support staff differently is even weaker.

### 3. Maximising paid hours and weeks

UNISON's policy is to try and achieve full-year status and pay for all school staff. Failing this, the next aim is to maximise the number of paid hours and weeks. This might include:

- Extension of paid working time (hours or weeks) to reflect duties performed outside of the school day and terms.
- Payments, including retainer pay and special needs allowance, should be defended recognising the particular nature of school employment, for example, the requirement to be at work during term-time weeks and to take holidays only during school closure.
- The law is silent on term-timers' holiday entitlement but given that they are 'in' work if not 'at' work during school closure, there is an argument against reducing leave entitlement. Where employers are insistent, there is a strong argument that school staff cannot receive less than statutory minimum entitlement i.e. 5.6 weeks.

### 4. The term-time calculation

- Employers use a variety of different formulas to arrive at term-time pay in schools. It is important that they do this fairly and consistently, using the clearest possible calculation. A common mistake is to divide the year (52.14 weeks) by the number of school weeks (38/39) and to use that fraction to pro-rata annual salary and holidays. But this is not comparing like with like as the 52.14 weeks includes all holidays: annual leave, bank and statutory holidays. Weeks worked must be compared to weeks worked, so the full year comparison figure should have all holidays removed.
- Some employers do factor in leave when comparing term-time to full year but arrive at the number of weeks of leave by a pro-rata calculation based on the full year and not weeks worked. As school staff do not accrue annual leave in the usual way, the holiday calculation for support staff is about pay, so it is important to maximise the holiday weeks. Examples of calculations are:

#### Example 1:

39 weeks (38 weeks plus 5 inset days)  
 +  
 7 weeks' holiday  
 +  
 2 weeks' retainer/flexibility pay  
**= 48 weeks**

#### Example 2:

38 weeks  
 +  
 7 weeks' holiday  
 +  
 3.5 weeks' retainer pay  
**= 48.5 weeks**

### Example 3:

39 weeks  
+  
5.6 weeks holiday  
+  
2 weeks' retainer/flexibility pay  
**= 46.6 weeks**

These examples apply to full-time school staff. Those who work part week or any other pattern that is less than full time, will receive pro-rata pay like any part-time worker.

## 5. School staff, job profiles and pay

Support staff employed by community schools are employees of the local authority and are covered by National Joint Council (NJC) agreements. This means that their jobs must be evaluated under the 1997 single status agreement which was introduced to establish fair and equal terms for all local authority staff. The timetable for implementation has varied considerably, with school staff jobs re-graded prior to single status, with the rest of the authority staff or at the end of the job evaluation exercise.

The NJC developed school job profiles in 2003, which reflected changing roles and were used by some authorities as a basis for restructuring pay scales. Job profiles were also developed in the School Support Staff Negotiating Body (SSSNB) in England (abolished in 2011) and have been used to guide pay modelling in some authorities.

Schools outside of NJC arrangements, self-governing schools and academies have used NJC profiles and pay scales to arrive at support staff salaries. They may also evaluate school jobs using another scheme, such as Hay. This patchwork of local pay determination has resulted in inconsistent pay rates for particular jobs. There are also wide variations in how

actual pay is arrived at in a term-time contract, with employers using different calculations to reduce salaries to reflect school closure weeks.

Various attempts have been made to achieve national term-time agreements. In 2003 Scottish nursery nurses lodged a re-grading claim. After negotiations backed by action, the headline salary was increased but paid weeks were lost to bring school and social work nursery nurses into line. In Northern Ireland in 2001 a term-time agreement was reached which gave staff the choice of redeployment into other local authority jobs during school closure. In England there have been attempts to tackle term-time contracts: in a NJC working group and a SSSNB working time working group, which attempted to establish a consistent national formulation based on an hourly rate. Unfortunately currently it is still determined locally.

## 6. School contract issues and local strategies

The single status agreement makes no allowance for particular terms and conditions of school staff. These include the nursery nurse contract, (also applied to some teaching assistants), with its 32.5 hour week and full-year contract; retainer pay for school meals and some transport workers; special needs allowance and school-based accommodation. Dealing with these issues has relied on local negotiations in the context of the whole authority workforce. The justification for this has been equal pay legislation and the claim that school staff must be on a par with council colleagues who work a 37 hour week all year. Comparison is also made between term-time and full-year school staff and term-time workers in other local authority jobs. In local strategies:

- Attempts to remove full-time status and school staff benefits have been resisted, resulting in extended protection and other measures.
- Some negotiations have resulted in a reduction of term-time contracts. This has been easier where there is already a critical

mass of staff on full-year contracts, which is less and less the case.

- The headline salary has been increased enough to ensure no reduction of actual earnings when moving to a term-time contract.
- Flexible options for individual schools to increase paid working time have been introduced. It is widely acknowledged that support staff carry out a high level of unpaid work at the start and end of the working day, at home and during school closure. The employers agreed (WAMG advice note 22) that where this is identified, the school should consider paying overtime or, by agreement, increasing the paid contractual hours.

## 7. Back pay and protection

Term-timers whose pay has been increased under single status may have back-pay claims, if there are relevant equal pay comparators, based on their full-year salary figure, rather than actual pay. Complexities may arise in bringing claims if members' jobs have varied over a period of time and every case requires individual assessment. Some members may be entitled to up to six years' back pay.

There must also be consistency in protection arrangements between men and women. If a predominantly male group in the authority has protection of a condition of service such as bonus payments, school staff, predominantly women, have potential claims for sex discrimination if they are moved straight to a pro-rata term-time contract. Even if there is a time-lag between evaluation of school and other staff, the same level of protection should be afforded to all. Branches should refer to their region on potential claims.

## 8. Main points to remember

- School staff are a distinct employment group. Their pattern of work is determined by the school year and is not a matter of choice.
- Unlike teachers, most support staff have a pay reduction for school closure weeks and are employed on a term-time contract.
- This is despite the fact that they are 'in' work during unpaid periods, cannot claim jobseekers' allowance, but can claim in-work benefits.
- The term-time penalty is imposed on mostly low paid staff, usually woman and often part-time; they suffering multiple disadvantage.

## 9. Negotiating priorities

- Nationally UNISON continues the political campaign, highlighting the injustice of term-time contracts in schools; seeking clarification on statutory holiday entitlement, continuing discussion with the local government and other employers on job profiles and reviewing the impact of single status agreements on school staff.
- Branches should use the arguments in this advice to support school staff during job evaluation, reorganisation or pay reviews.
- Evaluation of school roles and pay structures should consider the full range of duties and specific learner and learning support skills.
- Employers should be asked to audit the pay of school staff and for indications of direct or indirect discrimination.
- UNISON believes that school staff should not suffer the term-time penalty and branches should aim to oppose abatement of pay or at least to minimise it.
- School staff should be consulted and involved in the campaign for improvement to their terms and conditions of service; training and career development.

### For more information contact

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