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Holiday pay and overtime – Branch Briefing

March 2021

Background

Over recent months, UNISON has led negotiations to secure a [framework](#) for NHS staff working under NHS terms and conditions (Agenda for Change) in England to ensure that they receive their correct holiday pay.

This framework covers England only. An agreement has already been reached in [Scotland](#). Employers in Cymru Wales and Northern Ireland have indicated they will enter discussions with trade unions to resolve this issue in their respective administrations.

The NHS terms and conditions handbook, under section 13 already clearly states that pay should be calculated based on what an individual would have received had they had been at work. Until now employers have not consistently included regular overtime in these calculations.

UNISON made it clear from the outset that employers need to **1. Correct historic miscalculations of holiday pay** and **2. Prevent these underpayments from happening in the future**

1. Correcting historic miscalculations

After working through a range of varied and complex fixes to remedy the historic underpayments, trade unions and employers agreed that the fairest approach would be to apply a single percentage to all eligible overtime, including additional time worked by part time staff.

The agreement means that employers will go back 2 full financial years (1 April 2019 to 31 March 2021) and correct historic underpayments for employed staff who meet the eligibility criteria. Payments will be made between April and September 2021. These are called 'Corrective Payments'.

Eligibility for a payment

To be eligible for a corrective payment, someone must be employed in the NHS as of 31 March 2021 and have been paid for overtime (or additional standard time) in at least 4 months out of each financial year. This means they might be eligible for a corrective payment for either, or both, years.

Calculation of Corrective Payments

All eligible staff will have a calculation made based on the overtime and additional standard time paid and will receive 16% of this total as a corrective payment. For example, someone who meets

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the eligibility criteria and earned £1000 in year one, and £1000 in year two will receive 16% of £2000, which equates to £320. This will be paid as gross salary and subject to employer deductions but is not pensionable.

Payments

Payments will be made between April and September 2021. Staff should get a breakdown of the payment to see clearly what has been included. Employers will approach those members of staff who are eligible to receive payments so they do not need to do anything at this point.

Existing claims

These negotiations were only possible thanks to UNISON members taking legal claims through a successful organising strategy, which helped to strengthen our position to collectively bargain on behalf of our members.

UNISON members with existing legal claims will be approached by their employer, through a separate process, with a settlement offer and should speak to their Thompsons' legal advisor before proceeding.

2. Preventing underpayments happening again

NHS payroll systems and the electronic records system (ESR) need to be updated to be able to include regular overtime. This will take some time to complete. In the meantime, advice will be issued to employers on how to ensure underpayments do not reoccur.

Branch actions

NHS Trusts will receive national funding to cover the correct pay period. This is a busy time of year for payroll and finance colleagues who will need our support to work through the calculations and make payments.

In the meantime, branches can do the following:

- Speak to your employer to ensure they are aware of this [national framework](#)
- Read through the [FAQs](#) to familiarise yourself with the framework so that you are able to explain it to members
- Speak to members to ensure they know the role that UNISON played in securing these corrective payments
- Speak to your employer about an appeals mechanism for staff

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