

National Joint Council for local government services

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**To: Chief Executives in England, Wales and N Ireland
(copies to Director of Children's Services, Finance Director and HR Director)
Members of the National Joint Council**

28 June 2021

Dear Chief Executive,

Green Book: updated Part 4.12 guidance

Part 4.12 in the '*National Joint Council for local government services National Agreement on Pay and Conditions of Service*' ('*Green Book*') has been updated from the February 2019 version.

The updated guidance now reflects the one-day increase to the minimum annual leave entitlement that was agreed as part of the 2020 pay agreement. The example calculations in the guidance have been amended accordingly.

For ease of reference, the updates are shown as track changes in the attached document.

Yours sincerely,

Naomi Cooke *Rehana Azam* *Jim Kennedy* *Jon Richards*

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Joint Secretaries

Part 4.12: Term-Time Only Employees (updated June 2021)

1. Introduction

- 1.1 Term-time only (TTO) employees are staff that are principally employed to work only during periods in which schools are open. In most organisations, the standard approach for TTO employees is to calculate their pay on an annual basis and then pay over twelve equal monthly instalments. The amount paid each month is without regard to the actual amount of work done during the month in question. Employees on TTO contracts are normally contractually obliged to take any annual leave that they accrue outside of term-time. Both of these issues can cause complications relating to the pay and conditions of service of TTO employees.
- 1.2 This guidance seeks to provide information to employees and employers to ensure that the pay and conditions of TTO employees are transparent, consistent and fair and they are treated no less favourably than employees on all-year-round contracts.

2. What is term-time working?

- 2.1 A TTO employee normally works a reduced number of weeks during the year, accruing a pro-rata entitlement to paid leave. The arrangement allows the employee to remain on a continuous contract that carries on through the school holidays.
- 2.2 If an employee works term-time only, their actual number of working weeks are normally 39. Depending upon the requirements of the job employees may work extra weeks outside of term-time. In addition to the weeks worked, the employee will be entitled to a pro-rated proportion of weeks per year annual leave entitlement, public holidays and extra-statutory days that would be provided by the organisation to all of its employees.
- 2.3 For employers, term-time working can help to attract and retain employees with children of school age or with carer responsibilities who might otherwise be unable to work and helps to address fluctuations in demand for services.
- 2.4 Some employees would welcome the opportunity to work additional hours in the school holidays. It is therefore recommended that TTO employees are made aware of any relevant work that may become available in the organisation during the school holidays and be given the chance to apply before work is advertised externally.
- 2.5 Employers and employees must recognise the need for employees to benefit from adequate annual leave and should be mindful of the requirements of the Working Time Regulations.

3. Part-time employees

- 3.1 Part 2 Para 8.1 states that “*part-time employees shall have applied to them the pay and conditions of service pro-rata to comparable full-time employees in the authority*”
- 3.2 ‘Pro-rata’ means that where a full-time employee receives or is entitled to receive pay or any other benefit, a part-time employee is to receive or be entitled to receive not less than the proportion of that pay or other benefit compared to the proportion of working hours they are required to work in relation to a comparable full-time employee.
- 3.3 TTO employees have continuity of employment (Part 2 Para 14 refers). Periods of school closure should not be treated as a break in service.
- 3.4 Part 2 Paras 7.1 to 7.11 provides for a minimum holiday entitlement of 22 days per year for a full-time employee. Entitlement increases with service, with an additional three days leave after five years’ continuous service. In addition, there are normally eight public holidays in a leave year and there are also two ‘extra statutory’ days provided for. In practice many local authorities provide leave entitlement above the NJC minimum entitlement.
- 3.5 Employees who only work during term-time should receive a proportion of a full-time employee’s leave entitlement. Their annual leave, public and extra-statutory holiday entitlement would be proportionate to the annual working time of an all-year-round equivalent employee. Employees should be informed of their annual leave entitlement and how this total has been calculated.

4. Calculation of pay and annual leave

- 4.1 There are a range of methods of calculating pay for term-time employees but whatever method is used, it should be a fair, accurate and consistent approach which ensures that TTO employees are not disadvantaged when compared to full year employees.
- 4.2 Calculation of pay must be made clear in the Statement of Particulars of Employment. It is essential that employers are able to explain clearly to employees the basis of the calculation. The method of calculation chosen should be able to withstand scrutiny in respect of contractual rights, sex discrimination and discrimination against part-time employees.
- 4.3 If an employee is employed on multiple contracts, a separate calculation of pay and leave entitlement will be required for each contract under which they are employed.

- 4.4 When advertising vacant posts, a clear indication should be given as to the number of weeks to be worked and the actual pro-rata pay that will be paid to the successful applicant.
- 4.5 Pay for TTO employees should reflect their contractual working arrangements. If TTO employees are required to undertake work outside of their contracted hours they must be appropriately remunerated. Any such additional hours should be incorporated into contractual arrangements if they become an ongoing feature of the post.
- 4.6 For school-based TTO employees, staff must be paid or granted time off in lieu if required to attend INSET training days if these days fall outside of their contracted hours.
- 4.7 Most organisations pay TTO employees in twelve equal instalments over the year. This ensures that the employee is receiving regular pay throughout the year and can make it easier to calculate average weekly pay for Statutory Sick Pay and Statutory Maternity Pay purposes.
- 4.8 If a TTO employee has a contractual change in hours or pay part way through the year, it will be necessary to determine whether their pay needs to be recalculated at that point. See Para 10.
- 4.9 Where contracts are for less than one year's duration, the term-time calculation should reflect the timeframe of the period covered by the contract. It is essential that employers are able to explain clearly to employees the basis of the calculation.

5. Guiding principles on calculation of pay

- 5.1 When calculating a TTO employee's pay, it is necessary to calculate their proportional entitlement, based on the full-time equivalent annual salary. Organisations use a range of calculations but these calculations must meet equal pay considerations and must also comply with the Part-Time Workers Regulations and the Working Time Regulations. Failure to do so could result in organisations facing a legal challenge.
- 5.2 Employers must ensure that the following factors are considered when determining the pay formula for TTO employees:
- Normal pay (see Part 2 Para 7.11)
 - Number of days / weeks contracted to be worked
 - Number of hours worked each day / week as a proportion of full-time hours
 - Contractual leave entitlement plus extra statutory days (pro-rata for hours worked and number of weeks)
 - Bank holiday entitlement (pro-rata for hours worked and number of weeks)

- 5.3 The calendar of the start and end dates of school terms can affect the days available to work during term-time. Where an employee is contracted to work on set days only for a set number of weeks in a year, an annual adjustment may be required to ensure that the hours actually worked reflect the contractual arrangements. This may result in an adjustment to working arrangements. For example, allowing leave to be taken during term-time, or with the agreement of the employee, additional hours to be worked on a day that the employee would not normally work.
- 5.4 These factors and the resulting calculation should be included in the employee's statement of particulars.

6. **Advisory model calculation**

- 6.1 The model formula below seeks to ensure that the payment system for TTO employees is fair (and secure on equal-pay grounds) in comparison with all-year-round employees in the same organisation. The ratio of working days to days of paid leave therefore needs to be the same for both groups. This is subject to the current interpretation of the Working Time Regulations by the EAT in *Brazel v The Harpur Trust* (UKEAT/0102/17) (see below).
- 6.2 The example is based on a comparison with all-year-round employees with more than five years' service whose basic annual leave entitlement is 25 days and whose standard working week is 37 hours but the methodology can be applied to any leave entitlement or standard working week.
- 6.3 This calculation is advisory; it should not supersede local arrangements where these are more favourable.

Year-round employees

Assuming a five-day working week, the number of days available annually is 260.71 ($365 \div 7 \times 5 = 260.71$). The annual leave comprises of:

Basic annual leave	25 days
Public holidays	8 days
Extra-statutory days	2 days
Total leave	35 days

This means that all-year-round employees with this leave entitlement work 225.71 days a year (260.71 minus 35) in order to produce a paid leave entitlement of 35 days. Each working day accrues 0.1551 days of paid annual leave, which is calculated by dividing 35 by 225.71.

Term-time employees

Assuming a five-day working week the example TTO employee works 39

weeks per year, which is 195 days per year.

If paid leave accrues on the basis of 0.1551 days of leave for every day worked then the paid leave entitlement would be $195 \times 0.1551 = 30.2445$ days.

The numbers of paid days (days worked plus paid leave) per year would therefore be $195 + 30.2445 = 225.2445$ days per year, compared with 260.71 days for a year-round employee.

This can be expressed as a percentage of the all-year-round contract by dividing the term-time only paid days by the all-year-round paid days, which in this example would be 225.2445 divided by $260.71 = 86.3965\%$ of the working year of the FTE.

The TTO employee should therefore receive 86.3965% of their notional full pay (with a pro-rata adjustment where they work less than 37 hours per week). This would be spread across the whole year and paid in (twelve) equal instalments.

225.2445 days is equivalent to 45.05 weeks (ie. $225.2445 / 5 = 45.05$ weeks).

The above is an example based on 35 days' total leave for an all-year-round employee where there is 0.1551 days annual leave accrued each day. The calculation would have to be adjusted for other entitlements. All leave received by year-round employees would need to be taken into account including extra leave after five years' service and concessionary days.

In some cases, it will be appropriate to use an hours based calculation when comparing the hours worked in a year between a full year employee and a TTO employee (see Appendix A). This will be more appropriate where an employee works an unequal number of hours in a week or an unequal number of hours on each working day.

Brazil: Where the calculation of a TTO employee's annual leave entitlement results in a leave entitlement of less than 5.6 of their weeks then the current interpretation of the Working Time Regulations requires the annual leave entitlement to be increased to 5.6 weeks.

For example, in the case of minimum Green Book leave entitlement the annual leave, extra-statutory days and bank holidays equates to 32 days' leave.

Basic annual leave	22 days
Public holidays	8 days
Extra-statutory days	2 days
Total leave	32 days

A year-round employee with this leave entitlement works 228.71 days a year (260.71 minus 32) in order to produce a paid leave entitlement of 32 days. Each working day accrues 0.140 days of paid annual leave, which is calculated by dividing 32 by 228.71

$195 \times 0.140 = 27.3$ days of paid annual leave

As this person works 5 days a week, the 5.6 weeks' leave entitlement under the Working Time Regulations amounts to 28 days. Therefore, in order to comply with the [Court of Appeal](#) decision in the Brazel case, an additional 0.7 days will have to be added to the holiday calculation to give them the minimum requirement under the Regulations.

This is the current interpretation of these regulations and may be subject to change. If this interpretation is overruled this part of the guidance will no longer be applicable.

7. Designation of annual leave

- 7.1 Organisations should consider adopting a system that designates when a TTO employee actually takes their annual leave.
- 7.2 This is most likely to have implications for issues relating to sickness absence and will be addressed in more detail in further guidance to be issued in due course.

8. Calculation of redundancy pay

A week's pay for the purpose of redundancy payment must be calculated in accordance with sections 221-229 of the Employment Rights Act 1996 (ERA). When calculating a week's pay for the purposes of redundancy pay for a TTO employee, the calculation should be based on the number of weeks actually worked (including paid leave) by the employee.

i.e. in the model calculation in Para 6, the calculation of a week's pay for redundancy pay purposes would be based on 1 / 45.05 of the employee's annual pay.

9. The leave year for TTO employees

- 9.1 It is recommended that organisations use a consistent approach in relation to the leave year of TTO employees. Most organisations use either a set date in the year e.g. 1 September or 1 January, or the anniversary date of the start of employment in the term-time role.

- 9.2 If a fixed leave year is adopted, it will be necessary to apply a specific calculation of pay in the first year of employment if an employee starts employment part way through the leave year.
- 9.3 If organisations use a 1 April anniversary date for the leave year, they should be aware that this can cause issues relating to the timing of Easter and the number of public holidays in a given leave year.

10. Termination of employment or contractual change part way through leave year

- 10.1 If an employee terminates their employment part way through a leave year, it will be necessary to determine whether they have been over or underpaid at this point.

Example: An employee with an anniversary start date of 1 September, an annual pro rata pay of £12,000 and contracted to work for 195 days a year leaves employment at the end of February.

At the point at which they leave employment, in this example they have worked for 108 of their contracted 195 working days in the year, (55.38% of their working year). However, they will only have received 50% of their annual pay, (six of twelve equal monthly instalments of £1,000). Therefore, at the point of their termination of employment, they will be owed 5.38% of their annual pay. i.e. $5.38\% \times £12,000 = £645.60$.

- 10.2 It is recommended that such a calculation will need to take place at any point where there is a contractual change in employment that changes either the rate of pay or allocation of annual leave of a TTO employee. For example, where an employee changes their hours or becomes entitled to long service leave entitlement.

11. Payment for overtime and additional working hours

- 11.1 TTO employees that are required to work above the hours of the standard working week in any given working week should receive the relevant overtime premium rates for these hours.
- 11.2 Allowances for working non-standard or irregular working patterns as described in Part 3, Paragraph 2 of the Green Book should apply equally to TTO employees.
- 11.3 Consideration will need to be given to whether TTO employees required to work additional hours above their normal contracted hours of work will accrue leave for working those hours (in accordance with Part 2 Para 7.11). Arrangements for accrual of additional annual leave for working additional hours should be consistent with those for all-year-round employees

12. School closure periods

- 12.1 If additional paid leave is awarded to all full year employees during periods of school closure, (e.g. Christmas closure), TTO employees should be able to benefit equally from such closures as other all year-round employees at the same workplace.
- 12.2 If a school or other place of employment is closed during the normal school year, (e.g. because of severe weather, or use of the school as a polling station), the same principles with regard to non-attendance and pay should apply to TTO employees as all year round employees in the same place of work.

13. Public Holidays

- 13.1 TTO employees are entitled to a pro-rata allocation of public holidays that occur during the leave year. This entitlement is unaffected by whether the public holiday occurs on a normal working day for the employee. This will be accounted for in the pay calculation.
- 13.2 If the Government announces an additional public holiday(s), a TTO employee's pay should reflect the additional public holiday or an additional period of paid leave during term-time could be granted.

14. Special Leave

Organisations should ensure that TTO employees have equal access to that of full and part time all year round staff to agreed arrangements for both paid and unpaid special leave.

15. Public Duties

- 15.1 Part 2, paragraph 7.5 provides for paid leave of absence for employees undertaking public duties. This should apply on the appropriate pro rata basis to TTO employees.
- 15.2 Where an employee has been on jury service for an extended period, and there has not been enough school closure periods to accommodate their annual leave, they should be able to take their annual leave at a later date.

16. Training and Career Development

- 16.1 TTO employees must be given equal access to any training and career development opportunities.
- 16.2 If TTO employees are required to undertake training outside of their normal working hours, they should normally receive payment or paid time off in lieu for this time.

17. Participation in trade union activities and duties

TTO employees should be allowed the opportunity to fully participate in the activities of their recognised trade union. If the employee is required to undertake duties outside of their normal working hours, appropriate arrangements for pay or paid time off in lieu should apply if a full-time employee would have been paid during this time.

18. Sickness absence and sick pay

The NJC will issue further guidance in due course.

19. Maternity, parental leave, shared parental leave and adoption leave

The NJC will issue further guidance in due course.

20. Local policies on term-time working arrangements

It is recommended that all employers develop term-time only working policies and pay and leave calculations that reflect working arrangements applicable in that organisation in consultation with recognised trade unions. The local policies should be made available to employees by appropriate means.

21. Retained Employees and Nursery Employees in Educational Establishments

Further advice relating specifically to retained employees and nursery employees in educational establishments is at Part 3 Appendix 2.

APPENDIX A

School Support Staff Pay Example Calculation

The below examples follow the calculation methodology set out in the Advisory Model Calculation in section 6 which can be summarised as follows:

Summary of Calculations:

Annual Leave Accrual (FTE):

$365 \text{ days} / 7 \times 5 \text{ days} = 260.71$ maximum available days

$260.71 - \text{FTE days annual leave (incl public holidays)} = \text{maximum working days}$

$\text{Annual Leave} / \text{maximum working days} = \text{days annual leave accrued each working day}$

Term-time only calculation:

$\text{Working days} \times \text{accrual per working day} = \text{days annual leave}$

$\text{Working days} + \text{days annual leave} = \text{total paid days}$

$(\text{Total paid days} / \text{maximum available days}) \times 100 = \% \text{ of working year full time equivalent}$

Example 1 – 39 weeks per year, 37 hours per week

Annual Leave Accrual (FTE):

$365 \text{ days} / 7 \times 5 \text{ days} = 260.71$ maximum available days

$260.71 - 35 \text{ days annual leave} = 225.71$ maximum working days

$35 / 225.71 = 0.1551$ days annual leave accrued each working day

Term time only calculation:

$195 \times 0.1551 = 30.2445$ days annual leave

$195 + 30.2445 = 225.2445$ total paid days

$(225.2445 / 260.71) \times 100 = 86.3965\%$ of working year full time equivalent

Based on an FTE salary of £20,000, the term time worker would receive £17,279.31 (i.e 86.3965% of £20,000.)

Example 2 – 43 weeks per year, 37 hours week

Annual Leave Accrual (FTE):

365 days / 7 x 5 days = 260.71 maximum available days

260.71 – 35 days annual leave = 225.71 maximum working days

35 / 225.71 = 0.1551 days annual leave accrued each working day

Term time only calculation:

215 x 0.1551 = 33.3465 days annual leave

215 + 33.3465 = 248.3465 total paid days

$(248.3465 / 260.71) \times 100 = 95.2577\%$ of working year full time equivalent

Based on an FTE salary of £20,000, the term time worker would receive £19,051.55 (i.e. 95.2577% of £20,000.)

Example 3: using an hours based calculation

If an example term time employee was contracted to work 7 hours on a Tuesday and 3 hours on a Thursday for 39 weeks a year, it would be more appropriate to calculate their pay and leave entitlement based on hours rather than days.

Again, you should compare the hours worked to that of an all-year-round equivalent (FTE) employee to calculate the proportion of leave and pay they are entitled to.

If the all-year-round equivalent employee is entitled to 35 days leave (22 days leave, 2 concessionary days, 8 bank holidays and 3 long service days) they would be required to work for 225.71 days. (260.71-35 days leave).

Therefore, assuming a 37-hour week, the FTE would be required to work for 1670.254 hours per year (225.71 x 7.4 hours) and would receive 259 hours of leave. (35 x 7.4 hours).

The example TTE Employee is required to work 390 hours per year (10 x 39). This equates to 23.349% of the hours of an all-year-round equivalent employee. (390 / 1670.25).

Therefore, the term-time employee should be entitled to 23.349% of the pay and leave of the all-year-round equivalent employee.

i.e. 60.48 hours of leave (23.349% of 259) and assuming a FTE salary of £20,000 they would receive £4670 as pay (23.349% of £20,000).

Example 4 – 39 weeks per year, 15 hours week (Incl calculation of FTE 37 hr / wk)

Annual Leave Accrual (FTE):

365 days / 7 x 5 days = 260.71 maximum available days or 1929.254 hours (260.71 x 7.4)

260.71 – 35 days annual leave = 225.71 maximum working days or 1670.254 hours (225.71 x 7.4)

35 / 225.71 = 0.1551 days annual leave accrued each working day

Term time only calculation:

195 x 0.1551 = 30.2445 days annual leave

195 + 30.25 = 225.2445 total paid days

(225.2445 / 260.71) x 100 = 86.3965% of working year full time equivalent

Part time hours calculation:

37 / 5 = 7.4 hours per day (for a TTO employee working 37 hours per week)

225.2445 x 7.4 hours = 1666.8093 paid hours per year (for a TTO employee working 37 hours per week for 39 weeks a year)

1666.8093 / 37 hours x 15 hours = 675.7335 part-time paid hours per year (35.0256% of the hours of the FTE – 675.7335 / 1929.254)

Based on an FTE salary of £20,000, the term time worker would receive £7,005.30 (i.e 35.028% of £20,000.)