

Information from NHS trade unions

USING THE STAFF COUNCIL GUIDANCE ON OVERTIME PAYMENTS DURING THE COVID PERIOD

A toolkit for staff side reps

Introduction

On 29th May NHS unions and employers issued [joint Staff Council guidance on overtime payments during the COVID-19 period](#) for Agenda for Change staff.

The guidance sets out a framework for local negotiations on temporary overtime measures covering the period of the COVID-19 emergency and its aftermath.

Existing [NHS Terms and Conditions Handbook provisions on overtime payments](#)

- are not always consistently applied or implemented for bands 1-7
- do not cover bands 8 and 9

The intention of the guidance is to ensure that temporary local agreements are put in place in every employer to ensure staff get paid properly for all the additional hours they work during the COVID-19 period and its aftermath.

Some local partnerships have already implemented such agreements and the guidance is not intended to replace any existing arrangements that already meet or exceed what's included in the Staff Council document.

If you do not already have all the provisions in place, this toolkit has been produced by NHS trade unions to help local staff sides in negotiating your agreement.

It covers

- Getting the issue on your joint negotiating agenda
- Key messages for members
- What to include in your local agreement

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Getting the issue on your joint negotiating agenda

Here is a template email you could use to raise the issue with your HR department and ask to start discussions on overtime payments ...

Dear -----

I'm sure you will have seen [joint Staff Council guidance on overtime payments during the COVID-19 period](#) published on 29th May. It's clear that there is a national expectation – from employers and unions alike – that local agreements are reached that properly and fairly recognise and reward the additional work staff have been doing during this unprecedented time.

**As a staff side we have reviewed our local arrangements and think that they need to be improved in light of this new guidance. We are therefore asking that a meeting of the Partnership Forum/JNC be arranged to start discussions on this important matter as soon as possible.*

Or

**As a staff side we are aware that there is no local agreement that covers this matter and we are therefore asking that a meeting of the Partnership Forum/JNC be arranged to start discussions on this important matter as soon as possible.*

I hope you will agree that this is a priority area and look forward to working constructively with you to reach an agreement.

Kind regards

Key messages for members

As staff side reps you may want to update and engage your members as you prepare to enter into local negotiations.

Affected members will have a crucial role to play in the effectiveness of your negotiations.

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In order to scope the potential for extending overtime payments – and hopefully get members the money they are entitled to – it will be helpful if as many as possible can provide you with details of overtime they've worked during the COVID response.

Key messages to share with members

- Local staff side reps need the support of the membership as they enter negotiations to secure overtime payments during COVID-19.
- All staff working overtime need to accurately record hours worked going forward **and** it would also be very helpful if you could look back and attempt to collate overtime worked since [DATE LOCAL COVID RESPONSE BEGAN].
- Overtime means any additional hours worked over and above your contracted hours.
- Additional hours include shift overruns worked in response to service needs where not working over could lead to detriment in delivery of critical clinical and non-clinical services – where this happens you should keep a log of the hours and the circumstances so that once agreement is reached these can be presented to their manager for retrospective authorisation.
- It also includes additional hours done at the request of the manager or other authorised person by an individual with a substantive contract where these were worked via a bank system.
- It will be helpful if you can provide your staff side reps with details of the number of additional hours you worked (dates and times), your usual rate of pay, and the rate of pay you received for the additional hours you worked.
- Where you are offered additional hours over 37.5 hours in a week via the bank at a rate that is less than time and a half on your substantive salary (double time for public holidays) you should ask to be offered this as overtime pay instead. And refer to the negotiations your union reps are seeking to undertake in response to the agreed Staff Council guidance.

What to include in your local agreement

Process and authorisation

There are two main types of overtime premium payment covered by the Staff Council guidance:

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- 'Shift overruns' whereby staff have to work beyond the end of their allocated shift, which takes them beyond 37.5 hours a week and
- Hours over 37.5 hours in a week worked at the specific request or requirement of the employer

'Shift overruns' are hours worked in response to service needs where not working over could lead to detriment in delivery of critical clinical and non-clinical services. This could also apply to staff in bands 8 and 9 where there are critical demands on the postholder which necessitate working longer hours.

Hours worked in response to a request by a manager or other authorised person should be agreed prior to being carried out. This could apply to hours worked at home or in the work setting.

- ✓ Your local agreement will need to include a section on authorisation and agreement processes.

For shift overruns you will want to include some wording to cover the fact that it is often not possible to pre-authorise these – for example:

Where exigencies of the service during the emergency make prior agreement by the manager impracticable, hours worked should be recorded by the member of staff and presented to the manager for retrospective authorisation.

- ✓ You may also want to include a provision for dealing with any disputes over authorisation of shift overruns

Time off in lieu (TOIL)

[Section 3.5](#) of the NHS Agenda for Change handbook allows staff to take TOIL instead of overtime payments. Managers should support the individual's choice over whether to take the overtime in the form of payment or as TOIL.

The current handbook provisions state that if TOIL is not taken within 3 months for operational reasons it must be paid at overtime rates.

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- ✓ The Staff Council guidance on local agreements recommends considering a provision for a temporary variation to the Handbook so that after **1 month** has elapsed the employee may request overtime be paid instead.

Rates

The Staff Council guidance recommends including all bands from 1- 9 in local agreements.

- ✓ Your local agreement will therefore need an opening statement about which bands are eligible for overtime payments.

For bands 1-7 the Handbook provides for a single harmonised rate of time-and-a-half for all overtime over 37.5 hours a week, with the exception of work on general public holidays, which will be paid at double time.

For part-time staff s3.3 of the Handbook states they should receive plain time for additional hours until their hours exceed 37.5. However, some local COVID agreements have included a variation providing time-and-a-half for any additional hours worked by part-time staff – so this may be something you want to discuss.

- ✓ A key issue for your local agreement is the rate that will be paid to bands 8 and 9. Local arrangements that have already been agreed suggest there are two main approaches. Your ability to negotiate the higher rate will depend on a number of local factors, however even achieving plain time rates for these bands will be a significant step if these staff are currently getting nothing.

Wording for the two options is suggested below:

[This agreement provides for a local variation to the Handbook extending the overtime rates in [section 3](#) of the Handbook to bands 8 and 9]

OR as a minimum

[This agreement provides for a local variation to the Handbook extending to staff in bands 8 and 9 a single rate of plain time for all overtime with the exception of work on general public holidays, which will be paid at double time.]

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Bank

The interface of overtime and bank is a complex one due to the wide variation in bank rates offered between (and even within) employers.

We know that there can be inequalities in who gets access to overtime premium pay and who is offered bank shifts where rates of pay are often only plain time or even less.

The NHS trade unions want to use the Staff Council guidance to tackle these issues and create greater uniformity so those putting in extra effort are properly rewarded.

- ✓ Your local agreement should address the relationship with bank offerings in a way which make sense for your circumstances.

The wording below may be useful as a starter for your adaptation:

Overtime premium payments will be offered when an employer requests a member of staff works more than 37.5 hours. Bank rates should only be offered where payment would exceed the overtime rate, for example through inclusion of unsocial hours or other enhancements.

Date of application

The Staff Council guidance refers to finance arrangements for the additional costs of responding to COVID since March 2020. The NHS trade unions are clear that overtime payments in line with the guidance are part of the necessary additional costs that employers will have been incurring in their COVID response.

- ✓ Your local agreement should include an agreed start date which you should seek to align as far as possible with the employer's COVID response plan. This suggests a process for overtime payments to be made retrospectively will be required where these were not paid at the time. Where staff have not previously recorded overtime (in the case of shift overruns for example) the agreement should include a process for calculating an average number of overtime hours worked.

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Review

The Staff Council guidance includes an expectation that any local agreements would apply up to 31 August 2020 in the first instance, with an option for joint local review and extension for a further fixed-term to continue to respond to the COVID-19 period.

The document refers to the emergency response *and its aftermath*.

- ✓ Your local agreement should be subject to monitoring, including equality monitoring, and review to ensure it is operating fairly and transparently and does not advantage any group of staff over another.
- ✓ It should apply at least until 31 August with provision to renew for a further period which we would suggest should be for a minimum of three months

Feedback

Please feed back via your union structures on your progress – including successful negotiations and any problems or concerns.