

Annual leave payable on compulsory overruns

Template Policy Statement

On behalf of National Ambulance Strategic Partnership Forum

The Bear Scotland ruling found that the European WTD requires workers' statutory holiday pay (20 days) to be calculated on the basis of their "normal remuneration" and that there must be an intrinsic or direct link between the payment claimed and the work that the worker is required to carry out. This position statement has been written following a number of discussions across the Ambulance service following the Bear Scotland case, regarding payments which should be included when Trusts are calculating holiday pay. Discussions have been nationally held at HR Director and National Ambulance Strategic Partnership Forum level and {state Trust name} are in agreement with the following approach:

1. The principles derived from the Bear Scotland ruling in relation to 'compulsory over-runs' will be treated as applying to Ambulance Service staff who are regularly required, due to the nature of their role, to work compulsory overtime in the form of overruns. This stance is adopted without prejudice to any ongoing or subsequent litigation but as a constructive attempt to avoid litigation in the first place. For the avoidance of doubt, this is deemed to apply in the unavoidable/unplanned (enforced) event that staff are dispatched to a late incident or an incident that takes them over their scheduled shift end time, take an emergency or urgent call which they cannot walk away from at the planned end time for their shift; or whom have worked through their shift without an unpaid break and thus resulted in a forced 'over-run' within their planned hours for that shift .
2. The principles in Bear Scotland apply only to the payment of the 20 days annual leave that workers are entitled to under the European WTD. As such, these principles will apply only to statutory the 20 days annual leave entitlement under the European WTD.
3. The following will not be included within the calculation of payment:
 - Voluntary and planned overtime.
 - Other incidental payments, such as: late notice shift changes, late or missed meal breaks or disturbed meal breaks.
4. In the event an employee does not receive an overtime payment for the 'enforced over-run', for example time off in lieu or compensatory rest, then no further payment will be included in the calculation of holiday pay.

A calculator has been developed on behalf of all Ambulance Trusts which will aid individual Trusts to calculate the overrun payments for inclusion in the calculation of

holiday pay. It is acknowledged that there will need to be local variations of the calculator due to the differing processes within each Trust, however the fundamental basis of the calculator will be applied consistently across the Ambulance Trusts. Each Trust will implement this guidance and introduce this calculation method within their Trusts during quarter 1, 2017/18.

This position and its application within Ambulance Services will be reviewed in the event of new relevant case law and changes to the law as result of Article 50 and the UK exit from the European Union.