

SUBJECT: Zero Hour/Casual hour contracts

MEETING: Audit Committee

DATE: 15th December, 2016

DIVISION/WARDS AFFECTED:

1. PURPOSE:

- 1.1 Council, at its meeting of 20th October 2016, received a report outlining the use of zero hours/non – guaranteed hours/casual contracts across the organisation, attached as appendix1. Following debate a motion was put and agreed that “Audit Committee take a look at zero hour contracts and report back to full council at the earliest time.” This report seeks to provide members of the audit committee with a review of the current position within the council and agree any further action that is required to reassure council that the contractual arrangements operating are appropriate, non -discriminatory and are legally compliant.

2. RECOMMENDATIONS:

Members consider the content of the report and attachments and identify any further action required.

3. KEY ISSUES:

- 3.1. Members are concerned that the council may be employing individuals in such a way that could be to the detriment of the employee. Council asked for information regarding the number of employees who are employed on zero hours/casual hour contracts within the council and this is outlined in appendix 2 of the attached council report appendix1.

Managers across the organisation employ people to undertake a range of roles and duties and as an organisation we need to comply with the Working Time Directives 1988 which sets out parameters regarding working hours, statutory entitlement to paid leave for most workers and a number of other related issues. Against this background a protocol for managers has been developed. The protocol, attached as appendix 2, provides guidance and aims to provide information & support to managers on the application of the correct type of contract of employment. The purpose of the guidance is to ensure legal compliance and to ensure that the right contract is issued to an employee in Monmouthshire County Council.

Services across the organisation look to minimise the use of non – guaranteed/casual hour contracts to those areas where individuals are employed on a casual basis. Individuals who are employed on a casual basis have no obligation to accept hours of work offered and this flexibility suits both the employer and the individual.

Members are concerned that currently around 9.4 percent of the workforce are employed under casual contracts and have asked for trend information for previous years and also a review of some contracts which are in excess of 20 hours per week. Historic trend information is not available, however we can monitor the position going forward using the information already provided as our baseline.

As an organisation we are developing our approach to workforce planning and HR colleagues, via a business partnership approach, will be working with managers to identify and ensure the correct type of employment contracts are being used in order to minimise the use and cost of agency staff whilst ensuring that employees are not disadvantaged as a consequence of their contracts of employment.

Each quarter a report from the HR Business Partner will be produced that shows the 'establishment' for the particular service area. HR will routinely challenge managers on a range of workforce data and information. This will provide a 'governance' structure which will enable regular review of the type and use of contracts of employment on an ongoing basis.

4. REASONS:

- 4.1 To provide information to Audit Committee on the use of zero hour/casual hour contracts to enable them to identify any required future action, over and above that outlined above, to reassure members that the council's employment practise is appropriate and does not disadvantage employees.

5. RESOURCE IMPLICATIONS:

- 5.1 None as a direct consequence of this report

6. WELLBEING OF FUTURE GENERATIONS IMPLICATIONS (INCORPORATING EQUALITIES, SUSTAINABILITY, SAFEGUARDING AND CORPORATE PARENTING)

7. CONSULTEES:

8. BACKGROUND PAPERS:

- 8.1 Appendix 1 Council report on Use of ZeroHour/casual hour contracts, 20th October 2016

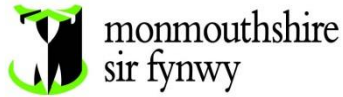
Appendix 2 Council, Protocol on the use of Employment contracts.

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SUBJECT:	ZERO HOUR CONTRACTS
MEETING:	FULL COUNCIL
DATE:	20th OCTOBER, 2016
DIVISION/WARDS AFFECTED:	ALL

1. PURPOSE:

To provide full council with an analysis of the current use of zero hour/ non guaranteed hour(NGH)/ casual contracts across the organisation, requested by full council on 22nd September

2. RECOMMENDATIONS:

Council consider the information provided

3. KEY ISSUES:

In September 2016, The Public Services Commission has provided principles and guidance to public bodies in Wales on the appropriate use of non-guaranteed hours arrangements in devolved public services in Wales. This guidance enables public service organisations and their recognised trade unions to work together to actively review and consider the arrangements they have in place now and those that will need to be developed for the future.

The guidance aims to support greater consistency and cohesion in the way flexible workforce arrangements are developed and considered within public services. The Commission, in accordance with its remit from Welsh Government, has worked with its primary reference point, the Workforce Partnership Council (WPC) and its four sector groups (Local Government, Health, Education and Devolved services) to respond to Welsh Ministers' request to develop this advice and guidance on the use of zero hours contracts.

The guidance outlines five key principles which are outlined in Appendix 1 and our adherence with those principles is also identified. Whilst we already comply with much of the guidance we are looking to address areas where we need further work specifically with regard to Principle 2 and the requirement to develop a Policy statement outlining which areas of the organisation's business will utilise such arrangements and for what purpose.

Services across the organisation look to minimise the use of non guaranteed/casual hour contracts to those areas where individuals are

employed on a casual basis. Individuals who are employed on a casual basis have no obligation to accept hours of work offered and generally this flexibility suits both the employer and the individual.

These posts are set up on the 'just in case' scenario e.g. bank workers, relief workers, midday supervisors - so that service areas and schools then have a 'pool' of people they can call on at short notice with the knowledge that the post and person are already on the system, so saving time for the business area/school with the 'start-up' processes (which can often take some time) and ensuring quick payment for the individual for what maybe a couple of hours work. Individuals who enter these arrangements, do so in the knowledge that the work offered is on this basis.

The council is committed to equality of opportunity and where issues are highlighted the council takes action to identify workable solutions to ensure fair contracts of employment for example work has been undertaken to review contractual arrangements in business areas such as leisure and homecare. Leisure has the largest number of casual contracts, at 62, however the majority of these are Casual Leisure Assistants, who are often students and only want work, or are only able to provide work on this basis and the Play-schemes workers, which is a task and finish based offer of work.

In SCH In house there are very few non guaranteed hours contracts and these are only where there is a positive choice made by the person. Externally we contract with the care sector but we do not at present stipulate non use around zero contract hours. We are currently carrying out a change programme with the sector which will look at the terms and conditions for the future and we are keen to see improved terms and conditions including guaranteed hours as a standard feature

The list in appendix 2 shows that we currently have 318 employees with no contracted hours.

318 employees equates to 8.94% of the workforce but if you look at the figure this includes 67 Exam Invigilators and 35 Supply Teachers, so if these were removed the figures would be 216 or 6.07%. The list also includes a number of casual workers for whom it is mutually beneficial to the individual and the organisation to operate in this way.

Information provided by Newport City Council reflects a very similar position to our own and reflects the use of casual employees to meet the business needs of the organisation whilst also offering flexibility of employment to individuals.

4. REASONS:

To respond to council on the issue of zero hours contracts. To reassure council that the picture within the organisation is a hugely different picture to the scenarios we have seen reported on in the media recently. As a council we offer posts on a casual basis with no mutuality of obligation. This flexibility enables the organisation to meet its business needs now and in the future.

5. RESOURCE IMPLICATIONS: N/A

6. Future Generations and Well –being Assessment.

Attached as appendix 3

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Principle

- 1. Where organisations need to introduce new non-guaranteed hours arrangements or consider changes to their current arrangements they will engage at the earliest opportunity with their recognised trade unions.**

In accordance with the 'Welsh Way' of social partnership, organisations will include their recognised trade unions in the planning of and implementation of any changes to the mechanisms for flexing their workforces. Even where no changes are planned, organisations will regularly review the appropriateness of their non-guaranteed hours arrangements with their trade unions, particularly as part of their joint working on workforce planning.

Guidance

Regular review of the appropriateness of the arrangements for organisations and staff

Organisations will build in regular reviews, both individually and collectively through the recognised trade unions on the appropriateness of the non-guaranteed hours arrangements in use in the organisation. This will include consideration of the service requirements, the organisation's needs, the needs of staff and the impact on the workforce as whole.

There will be active consideration as to whether the non-guaranteed hours arrangements remain appropriate. For example, when regular hours have been worked over the preceding three months and there is a continuing need and requirement for the hours to be worked on an ongoing basis, consideration will be given to whether it would be appropriate for the organisation to change the arrangements to something more permanent.

Organisations will establish a process where staff engaged on a non-guaranteed hours contractual arrangement can request a review of their working arrangements with a view to changing their contractual arrangement if they have been undertaking regular hours for example, 4 hours per week over a continuous period of 3 months. Details of the arrangements for requesting a contract review will be included in the recruitment arrangements and terms and conditions of engagement.

Changes to contractual arrangements following review

When the review above leads to a change in the contractual relationship a revised contract setting out the new arrangements will need to be issued. This will set out in a clear accessible language the revised relationship between the organisation and the individual.

Council Position:-

The council meets with TUs on a regular basis, at JAG and at our informal meetings, and this is a regular item for discussion.

Review – we monitor use of our NGH contracts and respond to any challenges. We would encourage our employees to do this either themselves or via their TU – and we have examples where this has taken place – with effective outcomes.

Process to enable an employee to request a review – needs to be established.

Contract changes – this requirement is met..

Principle

2. Organisations will make clear which non-guaranteed hours arrangements they use and for what purposes.

Where organisations use non-guaranteed hours arrangements they will explain the purpose for their use and define the scope for when such arrangements will be used. It will not be appropriate for organisations to seek to deliver their core services solely through these types of arrangements. The organisations will have a clear understanding of the services that they are required to deliver and a broadly predictable workforce requirement. Good workforce planning can ensure that the balance between the use of the permanent and the use of the casual workforce is appropriate and reviewed regularly.

Guidance

Statement on the use of non-guaranteed hours arrangements

An organisation will in conjunction with their recognised trade unions develop a policy statement outlining which areas of the organisation's business will utilise such arrangements and for what purpose. The statement will make clear the procedure for reviewing those arrangements periodically.

Recruitment of new staff

Organisations will ensure that appointments to non-guaranteed hours arrangements will be based on merit through fair and open recruitment processes.

Arranging and planning work

It is expected that organisations will provide as much notice as possible when asking staff on non-guaranteed hours arrangements to undertake work. This may however on occasions reasonably be the day when the staff member is needed to attend work for example to cover a sickness absence. Where work is arranged at short notice, organisations will commit to letting people know as soon as practicable that work is on offer.

In other cases, the arrangements for arranging forward work rotas will be clearly defined and shared with all staff. There will be clear criteria on issues such as allocating work fairly and consistently between staff, and these arrangements will be reviewed periodically by senior staff to ensure fairness and equality for all staff engaged through these processes.

Staff will not be under any obligation to accept work offered to them and organisations will give appropriate consideration to their other responsibilities such as studies, child care or other caring responsibilities. Staff who do not accept work for whatever reason will not suffer a detriment as regards being offered work in the future.

Council Position

Core Services - Our core services are not solely delivered on this basis.

Policy Statement – we haven't got this as yet – but will look to do so

We already have a process whereby we advertise our vacancies – for NGH posts

Arranging & planning work – majority of our business areas use rotas and provide notice to staff in their planning arrangements.

Principle

3. Staff engaged through non-guaranteed hours arrangements will have access to appropriate induction, training and development support to enable them to undertake their roles effectively.

Staff engaged in delivering public services require appropriate training and development to enable them to carry out their work effectively. This applies equally to staff engaged on

non-guaranteed hours arrangements. Organisations will consider what induction and training arrangements are required for staff engaged on non-guaranteed hours arrangements. Appropriate induction and training will be provided as soon as the staff are engaged, and reviewed and updated as and when required. Staff will be paid for undertaking any required induction and training relevant to the role being undertaken.

Guidance

Induction and ongoing training and development

Induction training will be provided to enable individuals to undertake their roles effectively. Where training and development opportunities are available for equivalent roles, organisations will provide similar opportunities to staff engaged on non-guaranteed hours arrangements if these are relevant to the roles being undertaken.

Any induction and training identified as being necessary for undertaking non-guaranteed hours roles will be paid.

Staff on non-guaranteed hours arrangements will be allocated a named “line manager”¹. There will be the opportunity to meet, discuss and record at least annually the key achievements and challenges experienced by the individual in fulfilling the duties allocated and set out any career aspirations they may have for the future.

Council Position

Our Induction Programme is for all.

CICO – whole purpose is so that no matter how many hours an employee works – they can have a meaningful conversation/discussion about what they do / how they perform and how we can support an individual in the workplace including training.

Principle

4. Organisations will ensure that they comply with employment law and collective bargaining agreements and provide their staff with the required rights, terms and benefits.

Organisations have a duty to comply with legislation and collective bargaining agreements covering their staff. All staff engaged on non-guaranteed hours arrangements will have clear and accessible contracts which set out the terms for their engagement and what the relationship is between the organisation and its staff. Staff with a contract of employment (including non-guaranteed hours contracts) must be explicitly part of the collective bargaining arrangements. All staff will be encouraged to join the appropriate trade union in accordance with Workforce Partnership Council agreement – ‘Partnership and Managing Change’².

Guidance

Cancelling work at short notice

Organisations will agree with their recognised trade unions appropriate arrangements for compensating staff when work is cancelled by the organisation at short notice. This will include covering costs incurred by staff, for example caring costs and travel costs.

Pensions

Organisations are required to auto enrol all eligible staff into a qualifying pension arrangement. Organisations will agree with their recognised trade unions appropriate pension arrangements which will apply to staff on non-guaranteed hours arrangements and set these out clearly and transparently in recruitment information and terms of appointment.

Opportunities to seek permanent employment

Organisations will have clear procedures in place to enable staff engaged on non-guaranteed hours arrangements to be able to transition into permanent roles and/or apply for relevant permanent vacancies where such opportunities exist.

Council Position

Cancelling work at short notice – need to clarify with business areas to clarify this issue and ensure arrangements put in place

Pension – auto enrolment is in place

Permanent vacancies – we are an equal opportunities employer – and as such all our vacancies are advertised and open for all to apply.

Principle

5. Staff engaged through non-guaranteed hours arrangements will have terms and conditions of service broadly similar to those of their permanent staff.

Appropriate non-guaranteed hours arrangements will provide broadly similar terms and conditions of service to those afforded to permanent staff. Differences may be appropriate in respect of some issues i.e. a payment to recognise statutory annual leave entitlement where it is not expected that staff engaged on short-term work will be able to take leave during the period of work.

Guidance

Pay progression

Organisations are required by law to ensure their pay arrangements comply with equal pay legislation.

Leave and statutory holiday pay

Organisations will have clear policies enabling staff engaged on these types of arrangements to be able to take annual leave. Where it is not possible to arrange such entitlement to leave during the period of work, a payment will be made to reflect the individuals entitlement to statutory holiday pay at the end of the period of work or at the end of the individual's annual leave period.

Council Position

Terms & Conditions – applies to all employees. Holiday & sickness entitlements are calculated based on service in accordance with Green Book Terms and Conditions of Employment.

Post Description	Count of Employee Number
Administrative Assistant	1
Assistant Sports Coach	2
Bar/Catering Assistant	1
Before School Club Assistant	1
Care Assistant	6
Casual Bar / Catering Staff	1
Casual Cashier/Receptionist/Bar Person	2
Casual Driver	1
Casual event assistant	1
Casual Leisure Assistant	24
Casual Seasonal P/T Assistant Warden	3
Casual Sport & Phys Activity Coordinator	1
Casual Sport & Physical Activity Leader	11
Catering and Visitor Assistant 600 hours	2
Catering Assistant	1
Cleaner - Casual - as and when required	4
Community Lettings Officer	1
Community Meals Provider	1
Cook	1
Cook / Supervisor	1
Curriculum/Resource Support Officer	1
Custodian	3
Design + Technology Art Technician	2
Disability Sports Mentor	1
Domestic	5
Exam Invigilator	67
Facilities Assistant	1
Fitness Instructor	3
HGV Driver (Caldicot)	1

Home Care Assistant	3
Individual Support Service Assistant	6
Kerbcraft Assistant	1
Kerbcraft Supervisor	1
Leisure Assistant	5
Leisure Tutor	1
Maintenance Assistant	1
Midday supervisor	16
Midday supervisor – Casual	1
Mini Bus Driver (Term Time only)	1
Mobile Hygeine Cleaning Operative	1
MY DAY ASSISTANT WORKER	3
My Day My Life Support Worker	3
Night Care Assistant	1
Outreach Tutor	1
P/T Custodian	2
PCV Driver	2
Principal Librarian	1
Registration Officer	3
Relief Catering Assistant - SHIRE HALL	1
Relief Chauffeur	2
Relief Community Meals Provider	1
Relief Custodian	2
Relief School Crossing Patroller (0 Hrs)	1
Relief TIC Receptionist 0 Hrs	1
Residential Services Officer	2
Residential Services Officer- Night Bank	1
Respite Opportunities Support Assistant	2
School Administrator	3
Seasonal Assistant Warden	1
Sessional Worker – YOT	8
Social Care Assessor	1

Supply Library and Information Assistant	2
Supply Library Assistant	1
Teaching Assistant	16
Outdoor Instructor	5
Adult Tutor	17
Swimming Instructor	13
SUPPLY TEACHER	35
Grand Total	318

**EMPLOYING PEOPLE
& CONTRACTS OF EMPLOYMENT
PROTOCOL**

GUIDANCE FOR MANAGERS

Contents

	PAGE
Purpose & Scope	3
Types of workers	3
General Principles	5
Absence	6
Holidays and annual leave entitlement	6
Payment for annual leave on termination of employment	7
Holidays and sick leave	7
Implementation of holiday pay	9
Definitions	9
Calculating holiday pay for different working patterns	11

CONTRACTS OF EMPLOYMENT

Protocol for Managers

PURPOSE & SCOPE

This guidance aims to provide information & support to managers on the application of the correct type of contract of employment. The purpose of the guidance is to ensure legal compliance and to ensure that the right contract is issued to a worker in Monmouthshire County Council. This ensures that there is a consistent approach to the way in which sick pay and holiday pay is calculated and implemented across the organisation.

In terms of the legal context the Working Time Regulations (WTR) (1998) sets out parameters regarding working hours, statutory entitlement to paid leave for most workers and a number of other related issues. It is against this background that the guidance has been developed.

TYPES OF WORKERS

Permanent Employees

A permanent employee is a full time or part time individual who is employed by the Authority on a permanent contract. The employee will have full employment rights in line with current legislation, as outlined in their statement of particulars. There is no expected end date of their employment and they will accrue continuous service.

Permanent employees will accrue all relevant entitlements and benefits in line with Monmouthshire County Council's terms and conditions i.e. sick pay and annual leave.

Fixed Term Employees

A fixed-term contract is one that ends on a specified date or on the occurrence of a particular event such as the loss of funding or the completion of a task. A fixed term employee can be a temporary replacement for an absent employee whose contract will terminate upon the return of the regular employee. After four years' continuous service in a fixed term position the manager should refer to People Services for advice and guidance, as the employee will be entitled to permanent status.

Employees recruited on such a contract should be done so on the basis that there is a fixed period for which the work is expected to last and that the weekly hours are definitive e.g. to cover maternity leave or an externally funded project.

Fixed term employees will be entitled to the same benefits as a permanent worker, i.e. annual leave and sick pay.

Term-Time Employees

A term-time contract is defined by an employee working only during periods that coincide with the school terms and is not required to work during school holidays. Term-time employees will be employed based on the number of weeks they work per year and remuneration (pay) will be calculated on a pro rata basis which will be inclusive of their annual leave entitlement.

As part of their contract of employment, term-time employees will not be permitted to take leave during school term time but will be entitled to the same other benefits of the Local Authority such as sick pay.

Temporary Employees

Temporary contracts will have no expectation of permanence as the termination date or the event on which the employment will terminate is known. An employee on a temporary contract will accrue continuous service from the start date of that contract.

Temporary employees will be entitled to sick pay, annual leave and the range of other benefits the Local Authority offers, where applicable.

An employee should be recruited on a temporary contract if the work is expected to be of a temporary nature (but the end date may not be known) e.g. to cover a period of sickness of a permanent employee. Contractual hours should be stipulated for the purposes of a temporary contract.

Casual / Relief Employees

Casual/ Relief employees should be recruited as a way of dealing with a variable need for work - which can often not be predicted or planned for by the business or service area. Employees recruited on this basis should only be used on an ad hoc basis and will not work regularly and consistently. No contractual or implicit hours should be stipulated as part of relief or casual work.

Casual/Relief employees will not be entitled to annual leave, sick pay or bank holiday entitlements. Casual/Relief employees do not benefit from the range of entitlements to which other employees of the Local Authority are entitled, due to the fact that they do not work a regular pattern of hours.

Managers should regularly monitor the hours that are worked by any casual/relief employees employed in their business/service area and termination paperwork completed routinely when the employee is no longer required, to ensure there is an accurate record of all current employees. If casual/relief employees start to work a regular and consistent pattern of hours then a manager needs to review the requirement for the work being undertaken, and if necessary, a temporary contract of employment be issued. If casual/relief employees build up regular and consistent hours then this will mean that they will be entitled to annual leave, sickness pay and a redundancy liability may be incurred for the business area.

Part Time Employees

A part time employee will be defined as such if they work fewer hours than the Local Authority's normal full time hours (37 hours per week). Part time employees will not be treated less favourably than comparable full time workers, nor will they be entitled to any benefits which exceed a full time equivalent worker.

Agency Workers

The Local Authority has a contract to source all agency workers. All requests for agency workers must be approved by the relevant DMT. All administration relating to annual leave and sick pay will be administered by the contractor directly. It should be understood that Agency Workers are not employees of the Local Authority.

GENERAL PRINCIPLES

When recruiting, a manager should carefully decide the type of contract that would best suit the required need to ensure efficiency of the service. Due consideration should be given throughout the duration of any contract that is not permanent to ensure that it is still fit for purpose and meets the need of the service or business area.

Managers should change the nature of the contract if the situation changes e.g. a casual or relief employee who has started to pick up regular shifts as a result of sickness should be terminated as a relief employee and given a temporary contract.

ABSENCE

Permanent, Fixed Term, Term-Time and Temporary employees of the Monmouthshire County Council are entitled to the following sick pay benefits, dependent on their length of service:

1st year – 1 month full pay and (after 4 months service) 2 months half pay

2nd year – 2 months full pay and 2 months half pay

3rd year – 4 months full pay and 4 months half pay

4th and 5th year – 5 months full pay and 5 months half pay

After 5 years – 6 months full pay and 6 months half pay

Sickness entitlement is calculated on a rolling 12 month basis, which starts on the first day of sickness absence looking back a calendar year.

Periods of absence in respect of industrial injury arising out of, or in the course of, employment with Monmouthshire will not be counted for the purpose of calculating entitlement to sick pay.

All sickness and absence periods must be submitted as part of the Manager's weekly sick returns to People Services.

The Attendance Management Policy can be found on the People Services HUB and provides guidance on how to manage short term and long term employee absence. This policy applies to all types of employees.

HOLIDAYS

ANNUAL LEAVE ENTITLEMENT

Basic – 23 days per year

After 3 years' service - 25 days

After 5 years' service - 27 days

After 8 years' service - 30 days

Annual leave and bank holiday entitlements will be calculated on a pro-rata basis for part time staff.

All annual leave should be taken during the year in which it is accrued. A maximum of five days may be carried over from one entitlement year to the next (pro-rated for part time staff).

Each calendar year employees are entitled to 8 statutory bank holidays and 2 extra statutory bank holidays.

Part time staff should be given a pro rata entitlement for bank holidays which will be added to their annual leave entitlement. Part time workers whose normal rota day falls on a bank holiday will be expected to deduct their normal working hours for that day from their entitlement.

Term-time only staff do not take any leave during term time; they are instead paid a pro rata amount of annual leave included in their monthly salary, in order to take leave outside term time.

PAYMENT FOR ANNUAL LEAVE ON TERMINATION OF EMPLOYMENT

If an employee leaves Monmouthshire's employment part way through their entitlement year their annual leave entitlement will be calculated on a pro rata basis up until their termination date (based on completed months only). Colleagues are encouraged to take the annual leave to which they are entitled before terminating with Monmouthshire County Council. Only in exceptional circumstances will employees be entitled to be paid for any accrued annual leave that they are unable to take before the date of termination, in such cases this request must be detailed on the termination form which is completed by the manager and sent to People Services.

If, on the date of termination, an employee has taken annual leave in excess of their pro rata entitlement, then they will be required to reimburse Monmouthshire by means of deduction from their salary in respect of any excess annual leave taken. A manager would request this on completion of the termination form.

It is important that all annual leave is managed appropriately so that the risk of outstanding annual leave or taking more than accrued is limited.

When an employee finishes employment all outstanding holiday pay that has been accrued but not taken must be paid.

HOLIDAYS AND SICK LEAVE

An employee who is absent due to sickness will continue to accrue their contractual annual leave entitlement. However, only annual leave up to the statutory entitlement (28 days including bank holidays) as provided by the Working Time Regulations (1998) can be carried over from one leave year to the next. This will be pro-rated for part time employees. Any leave carried over must be taken in the following year and Monmouthshire may require an individual to take the leave on particular days.

Example 1 - Full Time Equivalent

Employee A is entitled to 40 days leave (30 days annual leave + 10 bank holidays).

Employee A has taken 5 days annual leave and shortly after returning to work is then sick for nine months, returning 2 weeks before the end of the leave year.

Although the employee has 35 days in total left only 28 days can be carried over to the following leave year.*

Employees who are sick must only be allowed to carry over 5 days annual leave if they have previously taken their statutory allowance of 28 days, inclusive of bank holidays, and do not return before their next entitlement year.

Example 2 - Full Time Equivalent

Employee B is entitled to 40 days leave (30 days annual leave + 10 bank holidays).

Employee B has taken 30 days annual leave and is then sick until the next leave year.

Although the employee has 10 days left in total, only 5 days can be carried over to the following leave year.

**Where an employee returns to work following long term sick leave, any annual leave accrued should be taken in the same leave year where practicable. Monmouthshire may require an individual to take all or part of the accrued leave on particular days in the interest of service delivery.*

An employee on sick leave may request to take their accrued annual leave entitlement while on sick leave. This must be approved by the employee's GP and evidence of this submitted to the manager who will then approve any dates. This will not impact on the employee's entitlement to paid or unpaid sick leave. However, it will be deducted from the annual leave allowance and

not be classed as sick leave. It is the responsibility of a manager to inform People Services that an employee is on annual leave instead of sick leave (via MY VIEW sick returns) during this time as it may affect the rate of pay.

Employees on paid or unpaid sick leave should be aware that if they participate in activities that are inconsistent with their stated reasons for being sick or activities that worsen or prolong their absence, which could include travel and holidays, Monmouthshire County Council reserves the right to stop statutory sick pay and/or occupational sick pay, and in some cases this could result in disciplinary action.

IMPLEMENTATION OF HOLIDAY PAY

Case Law and Employment Appeal Tribunals have necessitated a revision of how certain additional payments are treated. Applicable in Monmouthshire since 1 April 2015, the basic principle is that if an employee regularly and consistently receives additional payments as part of their role then these payments need to be included when calculating holiday pay. This is because the individual should not be at a financial detriment because they are on leave or are sick.

It should be stressed that this principle hinges on whether the payments are regular and consistent. If so then consideration also needs to be given whether these payments should be included in the contracted salary.

- Appropriate overtime is included in workers holiday pay.
- Managers need to ensure that entitlements are paid to workers where relevant and in accordance with this document.
- A quarterly reference period (12 weeks) will apply
- This calculation will only apply to annual leave up to 20 days (4 weeks)

DEFINITIONS

OVERTIME - generally means any work over the basic contractual 37 working hours per week.

ADDITIONAL HOURS - any work over the contracted basic working hours of part-time workers i.e. those whose contract is less than 37 hours per week. Overtime only becomes applicable to part time workers once these additional hours, added to the contracted hours, exceed the normal working hours of full-time staff i.e. more than 37 hours per week.

Important note 1: If overtime/additional hours are consistently and regularly worked and paid over a prolonged period e.g. 12 weeks, they must be included when calculating annual leave and sick pay.

However, if the nature of the work involves predictable peaks and troughs e.g. seasonal work, a longer reference period may be used. The key is that the period used should be an accurate reflection of the overall average hours worked by the individual. If you have any queries about using a longer reference period please speak to People Services HR.

Important note 2: If employees regularly and consistently work overtime/additional hours this should be covered by a separate temporary or fixed term contract.

NON-GUARANTEED OVERTIME

Non-guaranteed overtime is where there is no obligation by the employer to offer overtime but if they do then the worker is obliged by the contract to work overtime. Example – covering a rota.

GUARANTEED OVERTIME (contractual)

Guaranteed overtime is where the employer is obliged by the contract to offer and pay for agreed overtime. Guaranteed overtime must be included within the calculation of holiday pay. Our practice in Monmouthshire is that this is already included in the calculation of holiday pay.

VOLUNTARY OVERTIME (regular and occasional)

Voluntary overtime is where the employer asks the worker to work overtime and the worker is free to turn down the request as there is no contractual obligation on either side to offer or refuse overtime. The question of voluntary overtime has not been directly considered by any recent judgments, so there is currently no definitive case law to suggest that voluntary overtime needs to be taken into account when calculating holiday pay.

Managers should ensure a good audit trail to evidence **voluntary** element. At any-time workers can refuse to undertake this type of overtime and managers need to plan accordingly. Managers therefore must keep this type of overtime under review to ensure compliance with legislation. Managers must consider on a regular basis the definition of overtime and how they apply it to their workers.

STANDBY

Standby payments are payments made to workers on a regular basis for being available to be called out when needed. This payment is made irrespective of whether the worker is called out or not, and is paid irrespective of whether the worker is on holiday or not.

Therefore, stand-by is not included in holiday pay directive (as this would be double counting) but any overtime worked whilst on stand-by will be included.

EMERGENCY CALL OUT

Emergency call out is where there is an expectation on the worker (separate to any standby arrangement) that they will respond to an emergency situation outside normal working hours. Example: severe weather conditions; alarm call outs.

Managers need to keep under review how they cover these situations and the definition of emergency call out.

Calculating holiday pay for different working patterns

No matter the working pattern a worker should still receive holiday pay based on a 'week's normal remuneration'. This usually means their weekly wage may include allowances or similar payments.

- For workers with fixed working hours – if a workers working hours do not vary, holiday pay would be a week's normal remuneration.
- For workers with no normal working hours – if a worker has no normal working hours then their holiday pay would still be a week's normal remuneration but the week's pay is usually calculated by working out the average pay received over the previous 12 weeks in which they were paid.
- For shift workers – if a worker works shifts then a week's holiday pay is usually calculated by working out the average number of hours worked in the previous 12 weeks at their average hourly rate.