

## **A GUIDE TO TERM TIME ONLY CONTRACTS**

The purpose of this guidance is to provide information on the complexities of term time only (TTO) contracts and clarify the annual leave arrangements in complex situations such as during long-term sickness absence and maternity leave. This guidance seeks to provide information to employees and line managers to ensure that the pay and conditions of TTO employees are transparent, consistent, fair and they are treated no less favourably than employees on all-year-round contracts.

### **1. TERM TIME ONLY CONTRACTS**

#### **1.1 What is a term time only (TTO) contract?**

A TTO contract allows a member of staff to work in term time only but be paid throughout the year in equal monthly payments. The arrangement allows the employee to remain on a continuous contract that carries on through the school holidays.

A TTO salary is made up of working time and annual leave/public holidays and is paid in 12 equal instalments across the year a TTO employee will receive 1/12th of their annual leave entitlement in their salary each month.

A TTO contract is mainly used in schools but can be used by any service who will allow an employee to work around the school terms. Term time working can help to attract and retain employees with children of school age or with carer responsibilities.

#### **1.2 How do you calculate a term time only (TTO) salary?**

To calculate a TTO salary you need to know how many weeks will be worked across the year and the annual leave/public holiday entitlement for the role. This is the total weeks paid. You then calculate a pro-rata salary by dividing the full time salary by 52.14286 weeks and multiply this value by the total weeks paid. This salary is also pro-rata if the employee is also part-time.

##### **Method of Calculation**

The method of calculation is based on:

- A** Actual number of weeks contracted work per annum divided by
- B** Actual number of weeks in year (52.143) minus number of weeks annual leave and Bank Holidays per annum multiplied by
- C** Number of contracted hours per week

Example based on an individual who works for 12 hours per week, 38 weeks of the year and is entitled to 30 days' annual leave plus 8 Bank Holidays (7.6 weeks) as if they worked the whole time during the year.

A = Actual number of weeks contracted work per annum (38) divided by B = Actual number of weeks in year (52.143) minus number of weeks annual leave and Bank Holidays per

annum leave per annum (7.6) = 44.543 Multiplied by C = Number of contracted hours per week (12) A/B x C = hours payable. Therefore: 38 (A)/ 44.543(B) x 12 (C) = 10.237 hours payable for 52 weeks of the year.

### **1.3 How do you know what the entitlement is for annual leave and public holidays?**

Annual leave entitlement is determined by the nationally agreed terms and conditions stated in an employee's particulars of employment. These will be either based on the National Joint Council national agreement on pay and conditions of service for local government services (The Green Book) or The Joint Negotiating Committee for Youth and Community Workers national agreement on pay and conditions (The Pink Book).

In addition there are normally 8 public holidays in a leave year. 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.

The annual leave entitlement and public holidays are incorporated into the annual salary and divided into 12 equal monthly payments throughout the year to ensure the employee receives regular payments and has paid time off work (see point 1.2).

### **1.4 What is the annual leave year for TTO staff?**

In GTC contracts, the annual leave year starts on 1 April to 31 March each year.

### **1.5 When do staff on TTO contracts take annual leave?**

TTO staff take their annual leave during school holidays. They do not need to specify when they are taking annual leave. TTO staff receive payment for annual leave in their TTO salary and they receive 1/12th of their total TTO salary each month.

### **1.6 What is the maximum number of weeks a TTO contract can be set up for?**

The standard weeks per year for a TTO contract are 38 weeks' working time. There is flexibility to increase this and still have a TTO contract, so long as the working time and holiday do not equal or exceed 52 weeks.

If the employee works more than 38 weeks, the additional working weeks need to be agreed in advance by the line manager.

If in setting out a TTO contract the working weeks plus their annual leave entitlement exceeds 52 then the number of working weeks needs to be reduced to accommodate the correct annual leave entitlement. If the total is equal to 52 weeks then the contract is not TTO, it is a standard all year round contract.

### **1.7 What happens to holiday pay if a TTO employee leaves before the end of a holiday year?**

There will inevitably be situations whereby employees leave employment mid-year. Therefore the Finance & Corporate Services Officer will need to make some calculations to ensure that no over or under payment of both salary and holiday pay occurs. The employee will be informed of any under or over payment to be made.

### **1.8 If a TTO employee resigns and leaves at the end of term (e.g. summer term, Christmas, Easter etc.), when will they be paid until?**

TTO employees should give notice in accordance to their contract of employment when resigning from their post. If the employee leaves before the last day of term, then a calculation

will need to be undertaken by the Finance & Corporate Services Officer to determine if the employee has been paid the correct amount of salary at this point and also if any holiday pay is due or owed based on their last day of employment.

### **1.9 How is redundancy pay for TTO employees calculated?**

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 the paid leave) by the employee.

### **1.10 What happens to annual leave when a TTO employee is on jury service?**

The usual jury service guidelines should be followed when a TTO employee is called up for jury service. Employees are paid at their usual rate throughout jury service which includes the holiday pay element. If jury service coincides with school closure periods, the line manager will need to check if there have been enough school closure periods to accommodate their annual leave allowance. If not, they should be allowed to take their annual leave at a later date.

### **1.11 What happens with the early May Bank Holiday which is usually outside of school closure dates?**

TTO employees receive payment for eight days for bank holidays (pro-rata) which are incorporated into the salary calculations for term time employees. 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. Although the employee who usually works on a Monday will benefit to the day off compared to employees who work later in the week, both employees are paid the same.

### **1.12 What happens to annual leave on maternity /adoption leave?**

Employees continue to accrue contractual annual leave and bank holiday entitlement throughout both ordinary and additional maternity leave, whether on the paid or unpaid element of maternity leave. A woman who takes maternity leave must be able to take her annual leave at a time outside her maternity leave. Term time only employees are normally required to take their leave in periods of school closure. The line manager should calculate the number of hours / days of paid leave that the employee has taken at the point at which they go on maternity leave.

If the maternity leave spans across two leave years, the calculation will need to be done for each leave year and the totals added together. If, on a term-time only employee's return from maternity leave, there are insufficient school closure periods to accommodate the employee's outstanding statutory annual leave entitlement the employee must be allowed to take any remaining leave during term time.

For some employees, they may wish to use this just before their return to work. Where there is insufficient time on the employee's return before the end of the annual leave year to take the remaining annual leave, the employee must be allowed to carry over leave to the next leave year. An employee can be required to take this during the remaining periods of school closure after the employee's annual leave entitlement for that leave year has been accommodated. The same principles apply for adoption leave.

### **1.13 What happens if the employee does not return to work?**

If an employee does not return to work, the pay for any outstanding annual leave owed should be calculated by the Finance & Corporate Services Officer. This should be paid to the

employee or offset against any monies she may owe, for example due to the need to repay any occupational maternity pay.

## **2. SICKNESS ABSENCE**

Annual leave continues to accrue during sickness absence regardless of how long the employee is off sick or whether sick pay has been exhausted. Annual leave should be taken in the year that it is accrued therefore employees who have been on long-term sickness absence should be encouraged to take their remaining entitlement for the current year. No part of the sickness absence period can be treated as annual leave.

### **2.1 Can a TTO employee who is on sickness absence leave claim for annual leave they have been unable to take?**

There is some basic guidance from ACAS on annual leave and sickness absence which says that annual leave entitlement carries over if an employee is unable to take their annual leave due to sickness.

Where long-term sickness absence has prevented statutory annual leave from being taken before the end of the annual leave year, employees will be allowed to carry this forward to the new leave year to take this accrued holiday on their return to work. Employees should discuss with their line manager how accrued leave will be used. In some circumstances this may be used to facilitate a phased return but must be done so with the agreement of the employee.

Annual leave entitlement can be offset by any period of school closure that occurs in the leave year in question i.e. both before and after the sickness leave period. If on a TTO employee's return from sickness absence, there are insufficient school closure periods to accommodate the employees' outstanding annual leave entitlement, the employee must be allowed to take any remaining leave during term time.

When an absence extends across one leave year into the next, only outstanding accrued leave up to the statutory entitlement of 20 days can be carried forward (pro rata for part time employees).

### **2.2 Can an employee use annual leave whilst on sickness absence?**

In situations where an employee is on long-term sickness absence and requests annual leave to benefit their recovery, an employee can request to use annual leave without breaking their sickness absence. This may be particularly beneficial for employees who have entered a period of half or no pay.

Moving between sick leave and annual leave will not 'break' the sickness and must still be covered by an appropriate medical certificate and needs to be authorised in advance and recorded. In these circumstances further advice should be sought from the Council's HR advisers.

### **2.3 Can an employee on a TTO contract claim untaken annual leave?**

TTO employees are paid for the time they work and their annual leave each month as 1/12th of their total TTO salary.

If a TTO employee is on sickness absence leave, they can only claim **time off** for untaken annual leave if there are fewer non-working days in the leave year than their annual leave entitlement allows for.

The TTO employee can only claim **pay** for untaken annual leave if they were in a half pay or nil pay period whilst on sickness absence leave.

When TTO employees move onto half or nil pay, it will be necessary for the Finance & Corporate Services Officer to check if the employee has had sufficient pay for their proportionate annual leave entitlement. Whilst on full sick pay the employee is receiving their full annual leave pay entitlement, but when their pay reduces to half or nil pay, they would receive less annual leave payment as a result of their sickness absence. As a result, a TTO employee is able to be reimbursed for half the annual leave payment for any half pay period and the full annual leave payment for any nil pay periods.

This payment would only be made on their return to work (in the next available payroll run) or on their termination of employment, should they not return to work.

In some circumstances, as an alternative to making a payment on return to work, the employee could take paid time off for the element of leave they have accrued during periods of half or nil pay. The line manager should discuss the options available with the employee to decide which approach is best. It is acknowledged that it can be impractical to accommodate the employee having time off in term time, and so it will depend on the job role and ability to cover the post.

#### **2.4 How do you calculate the pay a TTO employee should receive for annual leave they have been unable to take whilst they were on sick leave?**

Whilst on full sick pay the member of staff is receiving their full annual leave pay entitlement. It is only when they drop to half or nil pay that they would receive less annual leave pay as a result of their sickness absence. They would be able to claim half the annual leave payment for any half pay period and the full annual leave payment for any nil pay period.