

TITLE OF REPORT: Term Time Only Non-Teaching Staff

Purpose of the Report

The purpose of this report is to inform Schools Forums of the implications of implementing the February 2019 amendment to Part 4 of the Green Book introducing guidance on the employment of term time only employees.

Background

This report builds on the initial report brought to Schools Forum in March. Currently, holiday entitlement is calculated on a pro rata basis based on the number of hours and weeks an employee is required to work per year. As term-time only employees work 39 weeks per year, they only accrue holiday for these weeks. Therefore, they do not receive the statutory minimum of 5.6 weeks holiday per year that a full year employee accrues.

Recent caselaw (*The Harpur Trust v. Brazel*) refers to a term-time only employee claiming that she must receive the statutory minimum holidays in accordance with the Working Time Regulations and the pro rata of holiday entitlement to 39 weeks is incorrect. The Court of Appeal agreed with the employee and stated that the Working Time Regulations do not provide for pro-rating of holiday for any employee who works part year.

This decision may be subject to a Supreme Court appeal, however to assess the potential implications of applying the case law to the Council's term-time only employees, the current position regarding term time only workers has been examined. Applying the case law would result in positively adjusting the pay for the majority of term-time only employees to account for the increase in holidays to the statutory minimum. Appendix 1 details estimated term-time only statistics on an individual school basis.

Whilst technically the case law is applicable only to statutory holidays, to avoid creating an equal pay risk, the case law should be applied to contractual holiday entitlement, not just the statutory minimum. The impact will be a greater positive adjustment than that detailed in 6 above and will apply to all term-time only employees.

Currently, term-time only employees are paid for 39 weeks work plus a pro rata of their holiday entitlement, which is then equated over 12 months. This means they receive a reduced pay each month in order to receive pay over the 13 weeks of school closures. At present this is not adjusted when term-time only employees leave, join or have contractual changes that affect their annual leave entitlement during the year.

The Green Book Part 4 Guidance, which was revised in February 2019 provides a suggested calculation to be applied when term-time only employees leave or join

during the year to ensure that they receive all monies (pay and holiday) owed to them. In addition, it recommends that councils consider the impact of contractual changes affecting their annual leave accrual rate during the year.

HR Advice and Payroll have considered the guidance and the suggested calculation for leavers and joiners during the year in detail and have determined that this provides term-time only employees with an accurate payment for the work done and holidays accrued. Therefore, it is expected that the majority of term-time only employees leaving during the year will receive a payment on the ending of their contract for any underpayment of salary. In addition, it will allow the Council to recover any monies overpaid to a term-time only employee.

HR Advice and Payroll have applied the suggested Part 4 calculation to contractual changes during the year and have determined that this will continue to pay term-time only employees incorrectly. Therefore, it is recommended that when a term-time only employee has a contractual change affecting their annual leave accrual rate two calculations are undertaken at the date of change to ensure their pay is correct and there is no unlawful deduction of salary. The case has not yet been heard in the Supreme Court.

Proposal

It is currently unclear if the case will progress to the Supreme Court, but as the case law is an obligating event the Council must make a provision in their 2019/20 Final Accounts for the potential cost of implementing the suggested Part 4 of the Green Book and the cost of backdating the changes to August 2017. The estimated cost to maintained schools is approximately £0.970M. This included the estimated amount for 2019/20 and 19 months backdating for the increased entitlements to August 2017. HR Payroll attempted to calculate the cost for Gateshead Academies, but there was insufficient data for this to be carried out.

As a provision is required in the final accounts for 2019/20, the initial provision will be at an individual school level (as per appendix 1). It must be stressed however that these are estimated costs only. If the case does progress to the Supreme Court and the decision is upheld, then the exact calculations will be undertaken. If the Supreme Court overturns the decision, the provision will be reversed. When the situation is crystalized, we will work closely with all Gateshead schools and further reports will be brought to Schools Forum.

Recommendations

It is recommended that Schools Forum notes the contents of the report and that further reports will be brought to Schools Forum when the situation crystalizes.

For the following reasons:

To inform Schools Forum of the current situation re term time only non-teaching staff.

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Appendix 1

School Name	19 Months backdated	2019/20	Total
Barley Mow Primary School	£5,283	£3,122	£8,404
Bede Community Primary School	£10,136	£5,856	£15,992
Bensham Grove	£1,940	£1,146	£3,086
Bill Quay Primary School	£6,463	£3,819	£10,282
Birtley East Community Primary School	£10,903	£6,442	£17,345
Blaydon West Primary School	£6,230	£3,681	£9,911
Brandling Primary School	£5,406	£3,194	£8,600
Brighton Avenue Primary School	£19,417	£11,473	£30,890
Caedmon Community Primary School	£11,384	£6,727	£18,111
Carr Hill Community Primary School	£16,205	£9,576	£25,781
Chopwell Primary School	£9,305	£5,498	£14,803
Clover Hill Community Primary School	£4,533	£2,679	£7,212
Colegate Community Primary School	£6,212	£3,671	£9,882
Corpus Christi Catholic Primary School	£5,952	£3,517	£9,469
Crookhill Community Primary School	£6,524	£3,855	£10,379
Dryden Special School	£9,119	£5,388	£14,508
Dunston Hill Community Primary School	£11,840	£6,997	£18,837
Emmaville Primary School	£13,941	£8,238	£22,179
Eslington Special School	£14,974	£8,848	£23,823
Falla Park Community Primary School	£9,511	£5,620	£15,131
Fell Dyke Community Primary School	£7,546	£4,459	£12,006
Fellside Community Primary School	£5,176	£3,059	£8,235
Front Street Community Primary School	£10,416	£6,155	£16,571
Furrowfield Special School	£17,404	£10,284	£27,688
Gibside Special School	£34,621	£20,458	£55,079
Glynwood Community Primary School	£18,140	£10,719	£28,859
Greenside Primary School	£6,874	£4,062	£10,935
Harlow Green Community Primary School	£9,193	£5,432	£14,625
High Spen Primary School	£7,891	£4,663	£12,553
Highfield Community Primary School	£3,338	£1,972	£5,310
Hill Top Special School	£16,620	£9,821	£26,441
Kells Lane Primary School	£7,371	£4,356	£11,727
Kelvin Grove Community Primary School	£15,893	£9,391	£25,284
Kingsmeadow Community Comprehensive School	£11,722	£6,927	£18,649
Larkspur Community Primary School	£6,350	£3,753	£10,103
Lingey House Primary School	£8,554	£5,055	£13,609
Lobley Hill Primary School	£13,379	£7,906	£21,285
Oakfield Infant School	£5,860	£3,463	£9,322
Oakfield Junior School	£5,887	£3,479	£9,366
Parkhead Community Primary School	£10,095	£5,965	£16,060
Portobello Primary School	£3,942	£2,329	£6,271
Ravensworth Terrace Primary School	£9,233	£5,456	£14,689
Roman Road Primary School	£9,238	£5,459	£14,696
Rowlands Gill Community Primary School	£7,691	£4,545	£12,236
Ryton Community Infant School	£6,132	£3,624	£9,756
Ryton Junior School	£6,983	£4,127	£11,110
South Street Community Primary School	£8,209	£4,851	£13,059
St Agnes' Catholic Primary School	£5,614	£3,317	£8,931
St Aidan's Church of England Primary School	£6,854	£4,050	£10,904
St Alban's Catholic Primary School	£6,450	£3,811	£10,262
St Augustine's Catholic Primary School	£6,464	£3,820	£10,284
St Joseph's Catholic Infant School, Birtley	£3,257	£1,924	£5,181
St Joseph's Catholic Junior School, Birtley	£4,185	£2,473	£6,658
St Joseph's Catholic Primary School, Blaydon	£6,259	£3,698	£9,957
St Joseph's Roman Catholic Voluntary Aided Primary School, Gateshead	£8,328	£4,921	£13,249
St Joseph's Roman Catholic Voluntary Aided Primary School, Highfield	£3,314	£1,958	£5,272
St Mary and St Thomas Aquinas Catholic Primary School	£6,240	£3,688	£9,928
St Mary's Roman Catholic Primary School	£3,740	£2,210	£5,949
St Oswald's Roman Catholic Voluntary Aided Primary School	£11,113	£6,567	£17,680
St Peter's Roman Catholic Voluntary Aided Primary School	£4,460	£2,636	£7,096
St Philip Neri Roman Catholic Primary School	£7,291	£4,308	£11,600
St Wilfrid's Roman Catholic Voluntary Aided Primary School	£6,334	£3,743	£10,076
Swalwell Primary School	£7,042	£4,161	£11,202
The Drive Community Primary School	£6,418	£3,793	£10,211
Wardley Primary School	£9,911	£5,856	£15,767
Washingwell Community Primary School	£4,909	£2,901	£7,810
Whickham Parochial Church of England Primary School	£4,064	£2,401	£6,465
White Mere Community Primary School	£5,295	£3,129	£8,423
Windy Nook Primary School	£8,267	£4,885	£13,152
Winlaton West Lane Community Primary School	£14,767	£8,726	£23,493
	£609,610	£360,090	£969,701