



NYHR News



Pay and Pension Special Edition

Welcome to our special edition of NYHR News where we examine a range of pay and pension related news and developments relevant to schools.

As we highlighted in our September newsletter, NYCC has adopted revised arrangements for **term-time working** and are changing the way in which **relief staff are paid for their leave**. We will discuss the impact these decisions will have on the schools' workforce and detail any actions which need to be taken.

The Government is moving forward with its intention to **cap public sector exit payments** and this will have a particular impact on Local Government Pension Scheme members who are made redundant over the age of 55.

Finally, the Government are considering how they are going to address the finding in the McCloud case that transitional arrangements within **public service pension schemes** were discriminatory.

Payment of leave for relief support staff

Currently, relief support staff who work in schools are paid an increased hourly rate which includes a percentage of holiday pay. This is commonly known as rolled-up holiday pay (RUHP). These arrangements were widely adopted for those working variable hours as it is easy to understand and simple to administer.

However, developing case law now requires that holiday pay should be paid when the leave is taken. RUHP clearly does not meet this requirement so NYCC has agreed revised arrangements with Unison to ensure compliance with current legislation.

The revised arrangements will apply to hours worked by school based relief workers on and after 1st January, 2021. This means that the last RUHP will be paid on hours worked in December which are paid at the end of January.

Under the new arrangements, relief workers will accrue leave at the rate of 12.5%. This means they will accrue 1 hour's leave for every 8 hours worked. The term relief includes casual and supply workers but only applies to support staff employed on NJC terms and conditions and **not** to teaching staff.

ESS will provide schools with letters which they should distribute to their relief workers to notify them of the change. It is important to emphasise that the total pay received by relief workers will not be changing, just the timing of when the leave element is paid.

In this issue

Payment of leave for relief support staff – removal of rolled-up holiday pay

Public sector exit payment cap – implementing the cap and further reforms

Term-time working arrangements – NYCC revised arrangements which apply to school support staff

Pensions update – the impact of the McCloud judgment on the LGPS and TPS

Pay webinars – details of the webinars NYHR are running

Employee benefits platform – a new provider has been appointed

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How will the revised arrangements work in schools?

The following process has been set up within ESS to minimise the administrative impact on schools. Accrued leave can be paid in two ways:

- **Automatically** - at 3 fixed points to coincide with school closure periods
- **By exception** - when individual workers make a request

Automatic Payments

ESS will automatically pay accrued leave to relief workers at the end of each term as shown in the box to the right.

In this way, leave will be paid when workers are not working in school i.e. at Christmas, Easter and in the summer. Schools do not need to take any action to ensure these payments are made. The first automatic payment will be made in April 2021 to cover hours worked during the period January to March 2021.

Payment by exception

Some workers may wish for their leave to be paid differently from above and, by law, schools need to be able to offer this option. For example, a worker may be taking a big holiday and want to save up their holiday pay for this.

In such cases, the worker must make a request to the school for payment of their leave. This is subject to approval by the school and cannot be agreed unless it coincides with a period when the individual is not working. This is to ensure that holiday is paid when leave is taken.

Any leave agreed by the school should be recorded on the monthly summary sheet and ESS will provide guidance on how to do this.

Payments to leavers

ESS will pay outstanding holiday pay to relief workers leaving the employment of the school. Again, this will happen automatically and schools do not need to take any additional actions other than notify ESS of the termination.

Review of contractual arrangements

It is important that schools regularly review their use of relief workers and consider whether other contractual arrangements may be more appropriate. Where relief workers are working regularly over extended periods it would be more appropriate to put them on an established contract, either temporary or permanent. In this way, schools will reduce the likelihood of legal challenge and ensure that these workers are receiving the correct contractual and statutory entitlements.

NYHR can advise on revising contractual arrangements for relief workers.

Relief holiday pay – key points

- Changes apply from 1 January 2021
- Last rolled-up holiday paid for December 2020 hours in January 2021
- Automatically paid by ESS at end of each term
- Can be paid by exception at request of worker
- Automatically paid to leavers

When work is undertaken	When leave is paid
August (unlikely in most schools) September October November	December
December January February March	April
April May June July	August



Action

- Ensure admin staff who process payroll are aware of revised arrangements
- Review recruitment documentation and offer letters for relief positions to ensure they reflect the correct hourly rate
- Review contractual arrangements for relief workers to ensure these are appropriate
- Contact NYHR for advice on contractual arrangements for relief workers



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Public sector exit cap and other reforms

You may recall the manifesto pledge made by the Conservatives in 2015 around introducing a £95k cap on public sector exit payments. This has now been implemented and became law on 4 November, 2020.

Exit payments covered by the cap will include pension strain, redundancy, settlement and compensatory payments, with the total of these payments not being able to exceed £95k.

Locally, exit payments exceeding £95k are rare and invariably involve pension strain costs associated with early pension release where a member of the Local Government Pension Scheme (LGPS) over the age of 55 is made redundant. The Ministry of Housing, Community and Local Government is consulting on the changes required to the LGPS regulations to enable a reduced pension to be paid and some wider reforms. The exit cap legislation takes effect before the LGPS regulations can be changed, making the payment of some contractual payments unlawful. No changes to the TPS are needed.

These developments may require amendment to a number of HR policies, e.g. RRR and Early Retirement, and we will update our templates when further information becomes available. In the meantime, please contact your NYHR advisor if you have any queries relating to this issue.

Term-time working arrangements for support staff

We have discussed in previous newsletters the work that NYCC has progressed with Unison to implement the nationally agreed principles set out in Part 4.12 of the Green Book on term-time working for NJC support staff.

For the first time the County Council has adopted a [formal documented](#) approach to setting out its arrangements for administering term-time contracts and terms and conditions of employment. This is not a policy to be adopted at school level but is incorporated into all NJC staff contracts through the agreement with Unison. They will be implemented in schools with effect from September 2020 and the arrangements have been incorporated through school pay policies.

Term-time working is a complex area and issues arise due to the unequal distribution of working days and weeks across the academic year and the effect of the long summer closure period. Term-time pay is averaged over the year to ensure a constant income for employees. However, at any point during the year an employee may be paid proportionately more or less than they have worked. This only becomes an issue when an employee starts or leaves during the year or has an extended period of absence.

Pension Developments

You will recall that all public service pensions ceased to be final salary schemes between 2014 and 2015 and moved to Career Average Revalued Earnings (CARE).

As part of this transition, protection arrangements applied to those close to their retirement age. This was known as the underpin.

In the McCloud case, a group of judges argued that this was direct age discrimination which could not be justified. The Court of Appeal agreed and no further appeal in this case will be allowed.

Consequently, the Government has committed to 'take steps to remove the discrimination' across all public service schemes. This includes the **Local Government Pension Scheme** and the **Teachers' Pension Scheme**.

The proposals which have been consulted on involve extending the underpin to eligible employees i.e. those in service at 31 March 2012 and have service after 31 March 2014 without a break of more than 5 years.

Schools and individual employees do not need to take action at this time as changes will be made to the LGPS and TPS. However, individuals may be required to make an election when the new arrangements are implemented.

This is likely to be a complex issue and we will bring you further information when the final arrangements have been agreed.

FAQs for **LGPS** members are available [here](#).

FAQs for **TPS** members are available [here](#).



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The aim of the arrangements is to ensure that we are compliant with employment legislation by ensuring those working term-time are treated no less favourably than comparable full-year employees. The main areas covered are:

- Calculation of term-time pay
- Pay adjustments for mid-year starters and leavers
- Leave arrangements for those who have been absent due to sick leave or on parental leave
- Calculation of redundancy payments

A number of the provisions do not constitute a change to existing practice, for example redundancy pay calculations, however, employees may see changes as a result of others.

Under the arrangements, leave accrued will be calculated based on the proportion of the contracted days and weeks which the employee has worked. This is based on a leave year of April to March and is the same principle which currently applies to full-year employees.

For example, if a full-year worker leaves 6 months through the year they would be entitled to have taken $\frac{1}{2}$ of their total leave entitlement. If they have not taken all of their leave, they may be able to take this before they leave or have it paid in lieu. If they have overtaken their leave, they will be required to pay this back, usually through a deduction from their final pay.

Under the new arrangements, the same principle will apply to a term-time worker and a pay adjustment will be calculated. For example, someone starting in September may be paid slightly more in the first 7 months of their employment to reflect that they have worked proportionately more of the year than they would have been paid for without the adjustment.

Schools do not need to understand these calculations in detail as they will be undertaken by ESS on their behalf. However, they should be aware of the principles and ensure that the new arrangements are shared with term-time employees.

To support the implementation of these revised arrangements we have produced two employee FAQ sheets (one for [current employees](#) and one for [new staff](#)) and an [action list for schools](#).



Action

- Share the [term-time working arrangements](#) with Governing Bodies for information in line with local arrangements
- Inform current term-time staff of the arrangements and share the [current employee FAQs](#)
- Use the [Actions for Schools](#) checklist to identify any immediate and longer term actions required

NYHR Webinar on Pay

We will be running two webinars on the issues covered in this special edition. These will be free for customers of the NYHR service and can be booked through the Advisory Line on [01609 798343](tel:01609798343) or by email NYHR@northyorks.gov.uk. You will be sent joining instructions shortly before the event.

The dates of the session are below:

Date	Time
7 December 2020	2 – 3pm
10 December 2020	10 -11 am

Employee Benefits Scheme

NYCC has appointed a new provider for the employee discount platform from 1 December.

VivUp will be taking over the provision of the discount platform, so staff will be required to register for the new platform from 1 December. The platform will provide links to salary sacrifice schemes and staff will be able to apply to the cycle-to-work scheme at any time.

The childcare voucher provider is also changing and employees who are currently registered for vouchers have been contacted separately.

Where employees have individual agreements, e.g. for green lease cars or bikes, these will continue.

Where employees have any savings from cashback offers on the current discount platform with Xexec they need to be either spent on the existing platform or transferred to their bank account by the end of December.

Marketing materials and the new site link will follow soon.