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Dear Headteacher / Principal

## **BACKPAY – POTENTIAL IMPLICATIONS FOR MAINTAINED SCHOOLS**

**HEADLINE:** The LA have been engaged in a negotiation with UNISON in order to reach a collective agreement on backpay in relation to a term-time only holiday calculation. Most schools have at least some staff in scope and so there will be a varying level of financial impact for individual schools. We understand UNISON are balloting their members with a recommendation to accept the current offer. If any employment tribunal claims are lodged in the meantime at school level it is important they are brought to our attention without delay please.

I hope that this letter finds you well in these uncertain times. I am acutely aware of the fact that school leaders are in receipt of a high volume of communication at this time but I feel it is important to update you, on behalf of the Local Authority, on a collective consultation underway which may have implications for your school.

You may recall that a case of Harpur vs Brazel Trust was heard by an Employment Tribunal in 2019 which has had an impact on the way in which term-time only (TTO) staff calculations need to be applied. I have attached a summary of the case and its impacts if you would find a quick 'refresher' helpful.

The required changes to the term-time only calculation were applied to all NYCC NJC staff on term-time contracts, including in maintained schools on 1 April 2020 but, as you hopefully will be aware from previous communications, **negotiations have been continuing in the background in order to reach a collective agreement with UNISON on backpay.** We have worked on the basis that it is in everyone's best interests to try and reach a settlement and this will be far preferable to defending any individual or collective claims for backpay which employers, including individual school leaders, would then need to be involved in defending,

with the associated cost and resource impacts. However, we are also very aware of the potential financial burden for schools so know it is a sensitive balance.

Negotiations have been progressing on the basis of reaching a set sum per individual in order to keep the administrative burden low. Last week, in an effort to gain agreement, an increased offer of 1 year of backpay was tabled. Any agreed sum would be held in abeyance until we are clear that there will not be a Supreme Court decision to overrule the case law. We are pleased to inform you that UNISON have now accepted the offer in principle, subject to balloting of their members.

As a reminder, any collective agreement reached will be legally binding and will apply to all term-time only staff regardless of whether they are a member of UNISON or not, including staff employed in maintained schools.

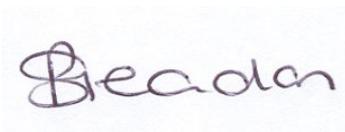
The estimated total cost of the increased offer of 1 year is in the region of £90,000 across all schools which we appreciate is a large sum but we strongly believe this is preferable to the work and finances involved in defending / settling claims at individual school level. It is difficult to provide a precise estimate of costs for individual schools as this very much depends on: (i) the number of support staff on TTO (ii) the length of service of those TTO staff (and therefore the amount of leave they are paid). However, as a very rough guide, typical **overall costs of the current offer of 12 months** to agree a backpay 'deal' are likely to be in the region of:

| School                  | Potential total estimated cost on current offer (per school) |
|-------------------------|--|
| Small to medium primary | £300   |
| Medium to large primary | £600   |
| Secondary               | £1000 - £2000  |
| Special                 | varies considerably but in the region of £2000 - £5000       |

**In the meantime, can I ask that if you have any claims lodged at school level in relation to term-time only payments you inform us without delay on [NYHR@northyorks.gov.uk](mailto:NYHR@northyorks.gov.uk)**

We will keep you informed of progress of the negotiations but if you wish to make any specific comment please email [NYHR@northyorks.gov.uk](mailto:NYHR@northyorks.gov.uk). UNISON have been clear that Academies / Trusts will need to negotiate separately, as separate employers, and we will be in touch with NYHR NYCC Academy / Trust clients next week to provide tailored communication, specific to the circumstances of the setting.

Kind regards and stay safe.



Penny Yeadon  
Head HR – CYPS

## BRAZEL – CASE SUMMARY AND IMPACTS

### Summary:

- Teacher (but not on STPCD)
- The Working Time Regulations state that all workers are entitled to **5.6 weeks'** leave each year.
- Although the European Directive from which the UK rights were implemented would allow some form of pro-rating (as has been established in European case law), that had **not been expressly adopted in the UK Working Time regulations**.
- The argument put forward by Mrs Brazel was that she should be entitled to 5.6 weeks' leave a year even though she only worked during term time.
- The Court of Appeal agreed with Mrs Brazel that technically this was the case.
- NB: It is irrelevant that the correct method of calculating holiday entitlement could, in certain atypical cases, lead to extreme anomalies (for example, in theory, applying this means that someone who only works 3 weeks of the year could be entitled to 5.6 weeks' leave)
- NYCC initially held off implementing in anticipation of a potential appeal which may overturn the decision. However, this is now looking less likely, advice of Local Government Association was to implement.

### Impact - what does it mean?

The total leave received by any employee can be calculated by taking the weeks paid and subtracting the weeks worked. Only those with LESS than 5.6 weeks will benefit because the principle only applies to statutory leave. As NYCC leave entitlements are proportionately quite low for new starters (leave increases with length of service) it is those with lesser service and working less weeks who will see the positive impact of the minimum weeks paid increasing to 5.6 weeks – see highlights below:

|                   |                   | Weeks worked |     |     |     |     |     |
|-------------------|-------------------|--------------|-----|-----|-----|-----|-----|
|                   |                   | 38           | 39  | 40  | 41  | 42  | 43  |
| Length of service | Less than 2 years | 5.1          | 5.3 | 5.4 | 5.5 | 5.7 | 5.8 |
|                   | 2 years           | 5.3          | 5.5 | 5.6 | 5.7 | 5.9 | 6   |
|                   | 3 years           | 5.5          | 5.7 | 5.8 | 5.9 | 6.1 | 6.2 |
|                   | 4 years           | 5.7          | 5.8 | 6   | 6.1 | 6.3 | 6.4 |
|                   | 5 years           | 5.9          | 6   | 6.2 | 6.4 | 6.5 | 6.7 |
|                   | 10 to 14 years    | 6.5          | 6.7 | 6.8 | 7   | 7.2 | 7.3 |
|                   | 15 years          | 7.1          | 7.3 | 7.5 | 7.7 | 7.8 | 8   |

The impact on individual school budgets is essentially paying the difference between 5.1 to 5.3 weeks and 5.6 weeks leave and depends on the individual make up of staff i.e. proportion of support staff and length of service of the group.