

National Joint Council for local government services

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**To: Chief Executives in England, Wales and N Ireland
(copies for HR and Finance Directors)
Members of the National Joint Council**

25 February 2020

Dear Chief Executive,

Review of Term-Time Working: update

You will recall that the 2016-18 pay deal included a commitment for the NJC to establish a working group to undertake a joint review of term-time working to consider "*an NJC approach to deliver fair, consistent and transparent contracts for school support staff and term-time only staff not employed in schools*". The review is taking much longer than originally anticipated due to the complex nature of the issues under discussion. The National Joint Secretaries are continuing to be advised by HR practitioners and local union representatives who are familiar with employment issues relating to Term-Time Only employees (TTOs).

As you will understand, TTO remuneration can be a hugely complex issue as pay and leave arrangements are often uniquely tailored to take account of an individual employee's working pattern.

The NJC issued the first tranche of guidance in February 2019 which has since been incorporated into the 'Green Book' as Part 4.12. The final set of guidance will concentrate on '*maternity, maternity support, adoption, parental and shared parental leave and pay*' for TTOs. However, this is unlikely to be published until at least later this year.

The working group is currently focusing its efforts on drafting guidance relating to '*sickness and designation of annual leave*', to take account of circumstances when sickness occurs during periods of school closure. This next set of guidance will subsequently be incorporated into the 'Green Book' as Part 4.13.

In the first instance, it is imperative that employers should ensure they have appropriate sickness absence reporting and record keeping processes in place – especially during periods of school closure - so that any adjustments to a TTO employee's pay or leave arrangements can be effected as soon as practicable.

The practical issue that the working group is trying to draft into comprehensive guidance can be summarised as follows:

an all-year-round employee who has booked annual leave but then falls sick and notifies their employer of their sickness in line with normal reporting requirements is entitled to take their

annual leave at another time within the leave year. They are therefore entitled to their full annual leave entitlement and to time off on paid sick leave.

However, if the employer of a TTO employee does not have a system for identifying when the employee takes their annual leave, they will not know whether the TTO employee who is sick during a school closure period would have been on annual leave. The employer may therefore assume that, if the TTO employee has been in good health in sufficient school closure periods to accommodate their annual leave entitlement for that year, they have received the time off and the pay for it (which is viewed as being included in their averaged monthly rate of pay). This would seem on the face of it to comply with the requirements of the Working Time Regulations, in that they have had the requisite amount of paid annual leave. However, it does not take account of potential less favourable treatment which could be an issue in the context of the Part-Time Worker Regulations.

By way of an example for purely illustrative purposes consider a TTO employee who is engaged for the school year (e.g. 1 September to 20 July), and how they might be treated unfavourably, as follows:

If the employee is entitled to, for example, 30 days' leave, which they were to take during school closures, but they were sick during each such closure they would receive sick pay for 30 days instead. They would then be owed their annual leave during the term time, which would mean they would work fewer days in that school year but receive the same amount of pay as they would have done if they had not been sick.

However, TTO employees are normally engaged over 12 months. There are therefore 'spare weeks', which are not working weeks or weeks that have to be used as annual leave. These 'spare weeks' are commonly used to accommodate annual leave should the employee be sick during some of the school closure periods. This can result in TTO employees not receiving both sick pay for the time that they would have been on annual leave and also their paid annual leave at another time or time off during term time.

In order to identify when during a period of school closure a TTO employee is on annual leave, the NJC considers the solution is to designate annual leave.

When an employee is off sick during a period of designated leave they would be entitled to sick pay (according to their entitlement under Green Book Part 2 Para 10) and would be able to take the period of annual leave that they missed at a later date subject to compliance with the organisation's sickness reporting and absence management procedures. The employer may agree that this is taken in term time or the employer may designate another period of school closure as leave for which the employee would receive payment.

The NJC is keen to hear from any employer who currently operates a system of designating annual leave. Please email harry.honnor@local.gov.uk with the relevant details.

Yours sincerely,

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