

## **Schools Forum Briefing on Holiday Pay November 28<sup>th</sup> 2017**

### **Background**

Holiday pay and what constitutes holiday pay has been subject to various employment tribunals for a number of years. The most recent EAT case in August 2017 considered whether voluntary overtime and other related payments, e.g. Standby, Sleep-Ins should be treated as part of normal pay for Working Time Directive Holiday (WTDH) pay purposes. The EAT concluded that where the pattern of work extends for a sufficient period of time on a recurring basis to justify the description "normal", then voluntary overtime and other related payments must be included in holiday pay.

The EAT also confirmed that these payments need only be included in the four weeks' (20 days) annual leave derived from the Working Time Directive. The extra 1.6 weeks' (8 days) annual leave which must be given under UK law (5.6 weeks/28 days in total) can be calculated on the basis of basic pay only.

### **Implications**

BCC now needs to implement this ruling and back date payments to 1 August 2017. The principle of the WTDH pay is that people should not be discouraged from taking holiday because their pay will be less than they 'normally' receive when they are at work.

To estimate the cost of this a simple percentage can be applied. WTD holiday is 20 days / 260 working days per annum = 7.69%. This percentage can then be used to estimate the additional cost of including voluntary overtime and allowances in the four weeks WTDH pay. This average assumes that voluntary overtime and related allowances are worked and claimed regularly through a year. The estimated cost of WTD holiday pay on overtime for Schools is based on a total overtime bill in the year 2016/17 of £1,152,818 x 7.69% = £88,651. Sleeping in allowance is the only regularly claimed allowance in schools so only overtime is affected.

In 2016/17 there were 173 schools on BCC payroll with overtime claims. This change presents an opportunity for Headteachers to consider whether overtime is required and if it is regular and ongoing to consider other options such as bringing in an additional employee or increasing part-time hours.

### **Proposal**

The Forum's feedback on the proposal going to SABPAC in December is sought. The proposal is simply to add 7.69% WTDH to all voluntary overtime claims and claimed allowances. Based on the 2016/17 overtime total, this averages to circa £512 pa per school. A large school with an overtime bill of £12k would have a WTDH payment of circa £922 pa. This is a system based approach which is simple to administer and does not bring with it the ongoing cost of identifying which employees are due additional holiday pay, or decisions about what are deemed to be regular payments. This option also removes the risk that employees are underpaid WTDH on regular overtime and other intrinsic claims where it is due. To ensure employees have clarity about this payment, payslips will be amended to create a separate pay element. This approach has the benefit that the payment can be varied or removed in line with evolving case law.