To : All Headteachers

Cc: All SBMs

Dear Colleague,

**HOLIDAY PAY FOR AWR (as and when required) STAFF**

We have discussed at the HR Steering Group meeting the question of AWR staff employed in schools and their entitlement to holiday pay. You may recall that a few years ago we confirmed the position for Governing Body Clerks and their entitlement to holiday pay. This is something that schools should be doing for all AWR staff. The calculations set out below should now be used for AWR staff and for Governing Body clerks.

Employees paid on an as and when required basis (sometimes referred to as zero hours contracts), have an entitlement to holiday pay under the Working Time Regulations. Under the regulations, workers are entitled to 5.6 weeks (28 days) paid holiday per annum (including part-timers and most agency and freelance workers). There is a concern that staff paid on an AWR basis are paid by submission of timesheets only for the hours that they work and there is no element of holiday pay included. We are therefore asking schools to ensure that holiday pay for all AWR staff begins from this academic year, if you do not do it already.

Before setting out the formula and methodology to use for calculating holiday pay for AWR staff, the first thing for you to think about is to ensure that any AWR staff are employed on the right type of contract. There are a number of questions you should consider:

1. How long has the person been employed/engaged by the school?
2. How often are they used?
3. Are they only used to cover for genuine unforeseen circumstances?
4. Have they established a regular pattern of working at the school, no matter how few hours per week that is?

Considering these questions may lead to a conclusion that another type of contract (fixed term or permanent) should be issued to the employee. Please contact HR if you would like to discuss this.

The Council would ask that schools only issue AWR contracts in circumstances where the nature and requirement of the work clearly identify that it is the correct and most suitable contract to issue. In reality this would be relatively few contracts.

If you can demonstrate that the person you are employing is rightly employed with an AWR contract then you need to consider how to ensure that they are paid holiday pay.

Employers cannot include an amount for holiday pay in the hourly rate (known as rolled up holiday pay). Holiday pay must be paid for the time when leave is actually taken. It follows therefore that in order to comply with the law, schools will need to pay their AWR staff for part of the school holidays.

In order to be consistent with the annual leave allowances given to other school support staff, it is equitable to pay AWR staff a contractual, rather than statutory holiday entitlement. For school staff paid on term time only contracts, a contractual annual leave allowance is paid to them as part of their working arrangements. This equates to 35 days per annum for employees with up to 5 years’ service, 38 days per annum for between 5 and 10 years service and 41 days per annum for over 10 years service. These totals are made up of 8 days public holiday, 3 Ealing days and an annual leave entitlement of 24, 27 or 30 days per annum, subject to length of service.

Schools have been using this calculation for over 3 years.

The simplest way to administer this is if the holiday pay entitlement is calculated and paid as a percentage of actual hours worked each year and for these purposes we shall base our calculations on an employee who works all year around (so a total of 260 days potential working). Therefore 35 days leave per annum represents 15.55% of the working time available per annum, 38 days leave per annum represents 17.12% of the working time available per annum and 41 days leave per annum represents 18.72 % of the working time available per annum. The percentage is worked out by using a calculation whereby the total leave allowance is divided by the number of working days available per annum (e.g. 35/225 = 0.155 then convert this to a percentage = 15.5%).

AWR staff could therefore be paid annually for the relevant percentage of the hours worked that year. So if a Scale 5 (£13.48 per hour) AWR staff member with 6 years’ service works, say, 50 hours in a school year, they would claim 8.56 hours or £115.39 holiday pay at the end of the year (£13.48 x 50 x 17.12%).

This does mean that schools will need to monitor the hours worked by their AWR staff in order to check their holiday entitlements when payments are made. iTrent generate a final pre-pay day report which will show the number of hours worked, schools can check prior to payment each year. Schools should monitor the hours claimed by AWR staff and at the end of the academic year submit an additional payment for holiday pay. This can then be paid to AWR staff in a month (August) when they would not normally be paid.

Yours sincerely,

Mark Nelson

Head of Schools HR Consultancy