

HR Committee

22nd September 2016



Report of: Service Director HR & Workplace

Title: Holiday Pay

Ward: N/A

Officer Presenting Report: Richard Billingham

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Recommendation

That the Committee notes this report.

Summary

The report explains the reason for the introduction of a holiday pay supplement to employees.

The significant issues in the report are:

- The requirement to comply with recent employment case law regarding payments to be incorporated in the calculation of employees holiday pay.
- Payroll systems cannot calculate holiday payments in any other compliant way.
- A collective agreement has been reach with the trade unions.



Policy

1. Holiday pay was previously calculated by reference to basic salary and some allowances. Developments in case law now require holiday pay to be calculated by reference to all contractual pay.

Consultation

2. **Internal**
Trade unions.
3. **External**
None.

Context

4. There have been a number of case law developments over the past few years that have defined what payments need to be included in holiday pay: Williams v British Airways (allowances); Lock v British Gas (commission); Fulton v Bear Scotland (non-guaranteed overtime); Patterson v Castlereagh Council (overtime); White v Dudley Metropolitan Borough Council (regular overtime).
5. The Council has traditionally paid its employees their contractual payments whenever they have taken holiday but not paid any regular payments that were paid on claim basis, such as overtime.
6. The Council has been named in 6 claims at employment tribunal claims on grounds of unlawful deduction of wages as a result of the case law developments around holiday pay. These have been settled at a total cost of around £5k.
7. The Council entered into negotiations with the trade unions with a view to reaching a collective agreement, which the trade unions were keen to do so as to rectify the situation and avoid the necessity for them to support their members pursuing multiple claims against the Council.
8. The payroll system has not previously been used to record when employees have taken holiday. The agreement reached recognises the limited capabilities of the payroll system to calculate holiday pay in strict interpretation with the law, as well as the need to avoid either a costly system upgrade or labour-intensive manual intervention.
9. From now on as well as paying its employees their contractual payments at the time they take holiday, the Council will also pay a holiday supplement on certain non-contractual elements. The elements that will be taken into account in this holiday supplement are as follows:
 - Night pay for hours that an employee is not contractually obliged to work
 - Sleep-in pay for hours that an employee is not contractually obliged to work
 - Standby call-out payments
 - Bank/public holiday pay for hours that an employee is not contractually obliged to work
 - Additional hours in excess of normal contracted hours (part-time employees)
 - Non-contractual overtime
10. The holiday supplement will be calculated using the percentage rate (12.07%) that ACAS uses to

calculate statutory holiday entitlement. This percentage rate will be applied to all salary payments made for the above non-contractual pay elements during a month and paid as a separate holiday supplement in the following month.

11. It has been agreed with the trade unions that this payment will be backdated to 1st April 2016.
12. The cost to the Council will depend on levels of overtime, additional hours etc worked, which are within the control of each service. The amount of holiday supplement payable for April to July 2016 is £140,254. Extrapolating this for a full 2016/17 figure gives £420,762, which is interestingly 20% lower than that which would have been paid in 2015/16 (£532,214).

Proposal

13. That the Committee notes this report.

Other Options Considered

14. To continue to remunerate contractual pay only. This is not recommended because the Council would likely have to spend considerable time and expense dealing with Employment Tribunal claims.
15. To carry out manual calculations each time employees take holiday. This is not recommended because it would be bureaucratic and labour-intensive.

Risk Assessment

16. Not applicable.

Public Sector Equality Duties

- 17a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
 - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons¹)

disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

17b) No equality impact assessment has been undertaken because this action will apply to all employees.

Legal and Resource Implications

Legal

None because this report is for information only.

Financial

(a) Revenue

None because this report is for information only.

(b) Capital

Not applicable.

Land

Not applicable.

Personnel

These are set out in Context above.

Appendices:

None.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

None.