

Hertfordshire County Council

Children, Schools and Families

HR Guidance for Headteachers

Developing Extended Services in Schools Changing an employment contract

Department: Schools' HR Advisory Team

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1 PURPOSE

The purpose of this document is to give guidance to headteachers, children's centre managers and extended services co-ordinators about the flexibilities and constraints available to them as employers in organising staffing to provide more flexible (including extended) services to their pupils and communities.

The guidance here summarises , and elaborates on, that provided since the Summer term 2007 in briefings about flexible nursery entitlement and extended services.

2 CHANGING THE EMPLOYMENT CONTRACT

- 2.1 Remember that the "contract" is not just the document that is sent to an employee on appointment. It includes local and national conditions of service plus the general requirements of employment law.
- 2.2 Significant change to someone's contract can only be made by agreement with the employee. There is no firm definition of "significant", but, for example, changing the starting time from 8.45 to 8.15 is likely to be significant if this affects the employee's commitments outside work.
- 2.3 If agreement is not possible, then it may be necessary to terminate the existing contract and offer another in its place. This would require a formal procedure which would need to be defensible in an employment tribunal.
- 2.4 This is, in law, a dismissal and should be avoided – partly because of the potential for claims if unfair dismissal and/or redundancy – unless absolutely necessary

3 KEY FEATURES OF EMPLOYMENT CONTRACTS

3.1 Knowing what someone's contract actually says is the starting point for thinking about change. Many employees know little about some important features of their contract.

3.2 Teacher

- Working time – 195 days, 1265 hours directed time per year
- Above does not apply to teachers on the leadership scale or who are ASTs
- Entitled to 10% of timetabled teaching time for PPA
- Entitled to a break of "reasonable length" either between school sessions or between 12noon and 2pm
- Notice deadlines are 28 February for the Spring term, 31 May for the Summer term, 31 October for the Autumn term

3.3 Nursery Nurses

- Full time is 32½ hours per week, 195 days per year

- Note that nursery nurses are paid for the whole year, as if they were working for 37 hours per week, 52 weeks per year. **This makes their contract unique, and extra care is needed** when changing the contract. The recommended pay grade for a nursery nurse is H3. This reflects the uniqueness of the contract : the hourly rate is actually equivalent to H6, so it is very easy to make the mistake of agreeing an increase in hours and an increase in grade with a nursery nurse only then to find in the next payslip that monthly pay has actually dropped. Always get advice when considering a change to a nursery nurse.
- Notice period is one month expiring on the last teaching day of the term
- Entitled to a break of 20mins if working more than 6 hours

3.4 Teaching Assistants and Others

- Full time is 37 hours per week, 52 weeks per year
- Notice period is one month below grade H8, 3 months at grade H8 or above
- Entitled to a break of 20mins if working more than 6 hours

3.5 Working Time Regulations

- Maximum of 48 hours per week
- All employees are covered, except those who control their own time

4 WHAT CAN BE CHANGED?

4.1 The following are likely to be considered for change to employees' contracts in order to make the flexible provision that parents can expect. This is not an exhaustive list

- Start and finish times (but must not break the 48 hours limit)
- Scheduling of the midday break
- Additional hours or days for part time staff
- Dates of the 195 days for some teachers and for some nursery nurses. This allows for services to be offered during school holidays and weekends in exchange for time off during term-time.

4.2 For staff that are already working full time, separate payments or a separate contract can be offered.

5 WHAT ABOUT FULL TIME STAFF WHO WANT TO DO MORE?

5.1 Existing employees might well be willing to work, say, an extra half hour a day to avoid breaks in continuity for the children.

5.2 Any employee can be given an additional and separate contract for the extra work, but employers need to be careful not to break the 48 hour maximum

and that means checking what other jobs your employee might have elsewhere.

5.3 The pay rate on an additional contract should be the same as the employee's "normal" rate, unless the separate job is very different, and evidently so, from the main job.

5.4 If either party is unsure whether the extra commitment will last and wants to try it out for a temporary period, then use the contractual provisions for additional payments.

5.5 Teachers

- Schools can make extra payments for "out-of-school hours learning activities"
- Teachers must agree (obviously). **Agreements must be confirmed by letter setting out the duties, the hours, the pay rate and the time period**
- It is recommended that such agreements should be made for not less than one term and that the hourly rate should be not less than a proportion of the teacher's point on the pay spine.
- To calculate the recommended hourly rate, identify the full-time annual salary at the teacher's point on the pay scale (e.g. point M5 or U2), then divide by 975.
- Additional hours are claimed on the paper version of form TE006 if the school uses SERCO Payroll

5.6 Nursery Nurses, TAs and other Local Government Employees

- Overtime payments can be made. The rates are fixed and cannot be varied
- Overtime is entirely voluntary and can be withdrawn by the employee at any time
- For part-time staff, overtime pay is at plain time up to a full time week
- Beyond the full-time week, overtime pay is at time and a half from Monday to Saturday (and double time on Sunday and Bank Holiday).
- To calculate the hourly rate for a nursery nurse, identify the full-time annual salary at the nursery nurse's point on the pay scale (e.g. H3 ,point 16), then divide by 1265 to get the plain time rate; divide by 843 to get the time and a half overtime rate; divide by 633 to get the double time overtime rate.
- To calculate the hourly rate for a TA or other local govt employee, identify the full-time annual salary at the employee's point on the pay scale (e.g. H2, point 12), then divide by 1929 to get the plain time rate; divide by 1286 to get the time and a half overtime rate; divide by 965 to get the double time overtime rate.
- Additional hours are claimed on the paper version of form TE006 if the school uses SERCO Payroll.

6 FIXED-TERM CONTRACTS – USES AND ABUSES

- 6.1 Where there is uncertainty about take-up by parents – and therefore about funding - temporary staffing arrangements may help
- 6.2 Fixed-term contracts are, however, fraught with difficulty. Employees may acquire the rights of a permanent employee even though they clearly have a contract with an end date. Great care needs to be taken when using fixed term contracts.
- 6.3 **The ending of a fixed-term contract is, in law, a dismissal**, and employees have rights to be treated fairly and in accordance with employment law.
- 6.4 At its simplest, there are 3 significant thresholds in relation to fixed term contracts:
- 1 year - the employee must not be unfairly dismissed.
 - 2 years - the employee may be entitled to a redundancy payment (which would be calculated on all of his/her continuous local government service, not just at your school or centre).
 - 4 years - the employee may have acquired all of the rights of a permanent employee, thus making the fixed term contract meaningless.
- 6.5 Where schools do need to test the water before making a permanent staffing commitment, the following are possible
- 6.6 For an existing employee who is willing to do more hours, issue an amendment to his/her existing contract offering temporary additional hours for one term or two terms (but not more). The contract needs to say:
- “Temporary additional hours, reverting to permanent contractual hours on (date), pending either a permanent appointment or the ending of the work.”**
- 6.7 For a new employee, issue a fixed term contract which says:
- “The contract will end on (date) after which either a permanent appointment will be advertised or the post will be deleted.”**
- In choosing the end date, it is advisable to make this just one term or two terms, by which time it should be possible to determine whether the demand for the new entitlement is sustainable.

7 FURTHER INFORMATION

For schools that buy the Personnel Advice or Comprehensive Personnel Service from county, further advice can be obtained from your linked HR Manager or Roy

Hardcastle, Senior Adviser HR on 01438 843789 or email:
Roy.Hardcastle@hertscc.gov.uk

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