



## **Advice regards employment issues of bank holiday working in General Practices.**

General Practices have been instructed to remain open as a normal working day on Good Friday and Easter Monday in anticipation of the Covid-19 spike over the Easter weekend. So far, the instruction has only been for the bank holidays, it is possible that the instruction will later be applied to the weekend.

This document is to advise on the employee relations aspect of this instruction and whether Practices can compel staff to work on these days.

We advise GP Practices to take the following steps to establish their position:

1. Consider what is set out in staff employment contracts and any custom and practice regarding overtime and bank holiday working
2. Consider the potential religious and childcare implications of an instruction to work
3. Consider what enhanced payments may be applied
4. Consider the working time regulations and the impact on annual leave if staff are required to work bank holidays and not receive TOIL
5. Consider the financial implication of providing the service and whether costs can be recovered

Once you have taken these steps you can consider your Practice Strategy. Guidance on these questions follows:

### **1. Employment contracts**

Contract terms are important, as is any previous practice of employees working bank holidays (perhaps as a result of overtime worked for PCN extended access work).

Examine your employment contract. You are looking for clauses such as the one below which sets out the contractual position:

*“You may be required to work during recognised public holidays, depending on the needs of the business. You will be given as much notice as possible of such a requirement.*

*If you are required to work on a recognised public holiday, you will be entitled to receive your normal hourly rate of pay and at the entire discretion of the Practice, the equivalent time off in lieu for the hours worked.*

*Where you are entitled to receive time off in lieu for working on a public holiday, this must be agreed in advance with your manager, and taken at a time convenient to the business”.*

In this case the contract allows for bank holiday working and sets out the terms for doing so. It may be that your contracts are not so clear. In which case you have no contractual right to insist on bank holiday working.

Examine whether there is previous custom and practice for overtime working on bank holidays and, if so, whether any enhancements were paid. If staff have previously worked bank holidays or weekends, it may be reasonable to expect that they can do so again (but do talk to them about this).



**Salaried GPs** employed under the national model contract contains the following provisions in respect of bank holiday working and overtime. Not all salaried GPs are employed under the national model contract so it will be important check individual provisions. The national model contract set out:

### “Overtime

The model contract does allow for overtime to be worked where both parties agree, and if so then the salaried GP is paid on a pro rata basis for the extra time. Salaried GPs may wish to negotiate a higher rate of pay (based on, for example, time and a quarter, time and a half or double time) to recognise any unsocial overtime hours that they may work.

### Public holiday entitlement

The model contract provides that a full-time salaried GP is entitled to the public and bank holidays as paid time off, or where the salaried GP is required to work on these days to a day off in lieu. Good employment practice means that a part-time salaried GP would receive a pro rata of the total number of their country’s public/bank days.

Part-time salaried GPs and their employers who are BMA members are advised to contact the BMA to discuss their individual circumstances with regard to public and bank holiday entitlement”.

In practice, even the existence of bank holiday working clauses in contracts that compel employees to work if required should be applied with care with reference to the section below on the avoidance of indirect discrimination on grounds of childcare responsibilities and religious belief.

## **2. Potential childcare and religious implications of an instruction to work**

Employers should be mindful that a limited number of staff will have no bank holiday childcare and if forced to work (even with the necessary contract clause), could raise grievances and possibly indirect discrimination claims.

Good Friday and Easter Sunday are considered by many Christians to be the most holy days in the religious calendar. It may be that Christian members of staff may object to working on Good Friday or may wish to work hours that will allow them to attend an online service or private prayer. Employees who are devout Christians that are forced to work on Good Friday (perhaps under threat of disciplinary action resulting from a perception that refusing to work is a breach of contract) could lead to grievances and possibly indirect discrimination claims.

It should be noted that Easter Monday is a bank holiday only and is not a religious holiday.

As an aside, Passover in the Jewish calendar begins on Wednesday 8<sup>th</sup> and finishes on Thursday 9<sup>th</sup> April. Jewish staff may wish to book leave (or may have already booked leave) or may refuse overtime on these days to observe their religious festival and feast. These observations should be respected.

In order to head these issues off, Practices would be well advised to speak to staff about their childcare or religious observances over this time.



### 3. What enhanced payments may be applied

If employment contracts do not specify the scale of payments due for bank holiday working, the Practice will need to establish what they are prepared to pay to induce staff to work overtime. Some Practices may make reference to Agenda For Change enhanced payments for overtime. This is set out below:

3.1 All staff in pay bands 1 to 7 will be eligible for overtime payments. There is a single harmonised rate of time-and-a-half for all overtime, with the exception of work on general public holidays, which will be paid at double time.

3.2 Overtime payments will be based on the hourly rate provided by basic pay plus any long-term recruitment and retention premia.

3.3 Part-time employees will receive payments for the additional hours at plain time rates until their hours exceed standard hours of 37.5 hours a week.

3.4 The single overtime rate will apply whenever excess hours are worked over full-time hours, unless time off in lieu is taken, provided the employee's line manager or team leader has agreed with the employee to this work being performed outside the standard hours.

3.5 Staff may request to take time off in lieu as an alternative to overtime payments. However, staff who, for operational reasons, are unable to take time off in lieu within three months must be paid at the overtime rate.

3.6 Senior staff paid in pay bands 8 or 9 will not be entitled to overtime payments.

The Agenda for Change pay scale does not pay overtime at enhanced rates until 37.5 hours has been worked. In this case working on a bank holiday would be subject to an unsocial hours enhancement instead of between 97% and 60% depending upon grade.

Agenda for Change Grade	Enhanced rate
1	Time plus 97%
2	Time plus 85%
3	Time plus 72%
4 - 9	Time plus 60%

Obviously General Practice is different to the 24/7 service that these terms and conditions were designed and negotiated to support. They are indicative only and have been included to inform Practice policy, where one is not in existence already.



#### **4. Working time regulations and the impact on annual leave if staff are required to work bank holidays and not receive TOIL**

A reminder of the UK working time regulations:

- a 20 minute rest break if the day's working time is more than 6 hours;
- an uninterrupted 11 hour rest break in every 24 hour period;
- 1 uninterrupted day (24 hours) off every 7 days or, at the engaging entity's choice, 2 uninterrupted days (48 hours) off every 14 days.

A reminder that unless the employee has opted out, there is a 48 hour limit on the working week. This should not apply if staff just work the bank holidays but if staff are required to work across the weekend as well, this should be taken into account in calculating their working hours.

Under UK law, workers are entitled to 5.6 weeks (or 28 days for a fulltime worker) paid leave in a year. This includes bank holidays. If the Practice offers employees or workers the minimum entitlement to annual leave (or 30 days or fewer days including bank holidays) then there will be an impact on their annual leave caused by working the bank holiday. In this case, the employees or workers should receive time off in lieu in addition to payment for the time worked.

#### **5. The financial implication of providing the service and whether costs can be recovered**

Coronavirus Act 2020 states:

##### **86 Financial provision**

(1) There is to be paid out of money provided by Parliament—

(a) any expenditure which is incurred by a Minister of the Crown, government department or other public authority by virtue of this Act,

(b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided, and

(c) any other expenditure which is incurred by a Minister of the Crown, government department or other public authority in connection with the making of payments, or the giving of financial assistance to a person (whether directly or indirectly), as a result of coronavirus or coronavirus disease.

(2) In subsection (1)(c)—

(a) the reference to expenditure includes expenditure incurred before or after the passing of this Act, and

(b) "financial assistance" includes assistance provided by way of grant, loan, guarantee or indemnity, and any other kind of financial assistance (actual or contingent).



It is the view of the LMC & Kraft HR that the Coronavirus Act 2020 may provide a legally justifiable case for funding the increased cost to practices of providing an Easter bank holiday service, during the Coronavirus outbreak. Funding under the Act would only be justified where “any increase [is] attributable” to specific practice measures implemented as a result of the pandemic. An enhanced rate of up to double time could be argued as reasonable costs. This is only a viewpoint at present, not confirmed advice due to the rapidly developing situation.

For consideration, some Practices are talking to staff and agreeing that if they would otherwise have been in on the Friday or Monday, they will be expected to come in. That seems to have been accepted (although flexibility may be required for childcare or religious observance).

Some Practices have consulted with staff to pay plain time and if funding eventually comes though, they will pay some form of attendance bonus. That also seems to have been accepted.

### **Summary of advice**

Once you are in possession of the information regarding contracts, impact on annual leave, staff demographic and have a view as to the payment arrangements you wish to offer staff to work on the bank holidays, you are in a position to consult with staff. You may wish to agree a stance on payment within your PCN.

Our advice is to always begin by explaining the situation to your staff and seeking volunteers. The requirement to work over the bank holiday is something that has been imposed upon General Practices; there is no choice in the matter. Ideally you will ask your staff to volunteer to work and establish whether you can run your service with the volunteers. If you cannot, you will then need to look at whether, given contractual provisions and the personal circumstances of each employee, you can impose the requirement to work the bank holiday by issuing an instruction to employees to work. You will find that the more generous your offer of overtime is for the service, the more likely you are to get volunteers. Ultimately if you cannot run your service due to lack of staff and the requirement to provide the service is clear, any efforts you make to impose these hours on staff will most likely be seen as reasonable once you have exhausted the steps to secure volunteers and adjust hours to allow for child care and religious observance.

We would recommend that you make clear that any enhancements that you make to the normal overtime arrangements are a one off due to the Corona situation and not to be considered as custom and practice in future.

Kraft HR

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