IBEC - Haddington Road Agreement

Last Updated: 4 July 2013

Amendments since last update are highlighted in yellow

This document has been prepared to give some answers, based on prevailing information at the time of preparation, to some frequently asked questions regarding the Haddington Road Agreement and its application.
The document will evolve over time as further clarification is obtained. Therefore the information is our "best understanding" but is subject to change.

Any additional questions for consideration, or any information members obtain which may assist with providing clarification or answers, should be forwarded to Anne Byrne, anne.byrne@ibec.ie.

It is proposed that this document will be updated on a weekly basis, and circulated by email to interested members. Existing voluntary hospital, DATHs, private hospital and intellectual disability/voluntary agency members are on this mailing list. If you wish to be removed or added to this list please advise Anne Byrne.

Contents

1 How will annual leave be calculated, when converted to hours? If a person has annual leave accrued but not yet taken as at 1 July 2013, and this leave is to be converted to hours what conversion factor is used? Where annual leave is accruing in the future, what conversion factor is used?

For future accrual, a week of annual leave must reasonably be that person's normal working week. After 1 July 2013, employees' normal working weeks increase in accordance with the HRA. Therefore, annual leave accrued after 1 July is accrued at the new weekly hours. Eg an employee who is entitled to 24 days of annual leave, accrues 12 days in the 6 month period 1 July 2013 to 31 December 2013. If s/he used to work 37 hours per week and now works 39 hours, the annual leave entitlement in hours for those 12 days is 12 x (39/5) = 93.6 hours.

For past accrual not yet taken employers may take their own approach –to either recalculate the annual leave balance based on new weekly hours, or to leave the hourly balance based on the old weekly hours. The response from the HSE was:
"As this is essentially a once-off I would personally be flexible enough on this issue. CERS don't have a defined position on the matter and are happy to let individual employers to take the approach that they deem best. I know some of the voluntary hospitals are taking the technical approach as outlined below. However, [if employers], for the effect of creating a bit of good feeling, decide to pro rate the leave up, we have no problem with that."

2 How will parental leave entitlement be calculated after 1 July 2013 (ie what are the implications of the change in hours?)?

The Parental Leave legislation provides for the following:

- Where the employee is taking the parental leave in one of the automatically prescribed patterns under the Acts (ie in a continuous block of no less than 6 weeks), one considers this to be calendar weeks. Eg for an employee with 18 weeks of parental leave, who decides now to take six weeks, six weeks are deducted from his/her parental leave "pot" and s/he

takes six calendar weeks off work (regardless of how many days or hours etc per week s/he works)

- Where an employee is taking the parental leave in a manner which requires the agreement of the employer (ie in blocks of less than 6 weeks, or in days/hours per week etc.), then the employer and employee should agree a reference period for calculation of entitlement. If this cannot be agreed, then the automatic reference period to convert to hours is that one looks at the total hours worked in the 18 weeks prior to commencement of parental leave, and divides by 18 to get the average hours per week.

What the application of the second point above means is that for the 18 week period from 1 July 2013, there will likely be a transition with some form of averaging. Thereafter, a week of parental leave is simply the person's normal working week (as per the HRA).

Parental leave "pots" should continually be recalculated back to weeks for ease of conversion.

3 Radiography national agreement review on-going at present – is the hours at overtime rate 8a.m. – 9a.m. protected until this review is complete or can we use the extra hours for this purpose? Is there a LOE payable if yes?

Awaiting clarification from HSE as Labour Court recommendation is awaited

4 How long can someone remain on reduced hours for (ie the pro-rata reduction in pay, instead of the increased hours)?

The Circular and the Agreement (revised) both state "for a period". HSE have communicated that it views the "period" as to 31 December 2013. This does not appear to be agreed by unions – and therefore may likely be the subject of local consultation. Use of the phrase "for a period" however, does make it clear that it is not an indefinite arrangement.

5 Are all employees entitled to remain on the same hours with a pro-rata reduction in pay?

Whilst only noted in the original Agreement, and in Circular 003/2013, as applying to nurses, the revised Agreement and the understanding of unions appears to be that all employees hold this entitlement.

6 What happens after the "period" of remaining on reduced hours?

It is reasonable to assume that any request after the agreed "period" to remain on current hours with a corresponding reduction in pay would be considered to be an application for part-time working or flexible working, and therefore should be considered in line with the principles applicable to any such arrangement, and managed accordingly. This is reinforced in the language of the revised Agreement.

7 For those on salaries over €65k, who are also at the top of the scale – do the provisions regarding the deduction of annual leave apply?

No. Those on €65k+ who are at the top of the scale will not have annual leave deducted. (This is due to those on €65k+ also being affected by the pay-cuts)

8 Does the "max of the scale" mean the max inclusive or exclusive of LSIs?

It is inclusive (ie someone is not considered to be at the top of the scale if s/he is pending an LSI)

[see also IMPACT FAQ document and FAQ 15 below]

9 Are consultants' hours increasing?
Yes. See Circular 05/2013.

10 What's the change for NCHD hours, and when is overtime paid?
Clarification on this was included in Circular 05/2013, and further clarification obtained from the HSE.

NCHD weekly working hours will now be:

- 37 hours of actual work
- 2 hours of paid breaks

Therefore 39 hours will be paid for as a working week. The divisor for overtime is 39.

Overtime is payable after 37 net hours have been worked (in practice this means that overtime will be payable after the 37 hours working and 2 hours paid breaks have been paid).

Additional breaks can and should be granted as necessary and will be unpaid. Such breaks do not impact on working time.

11 Regularisation of acting and nurses acting – presume agreement or circulars will issue to give clarity to the implementation of these agreements?

Our understanding is that Circulars will issue.

12 Do we have to consult individually with non-union staff and/or get individual signed agreement for non-union staff?

You could, if you wish, decide to individually consult, but aside from it being incredibly onerous resource wise, our view is that it is not justified.

Non-union staff have benefitted from collective agreements in the health sector in the past, and have always had the terms of same applied to them (eg social partnership, benchmarking, Croke Park). No distinction has been made previously regarding union and non-union staff, and a very clear argument of alignment could be made. Ie based on custom and practice (and in many cases, written contracts), non-union nurses (for example) have always received the same terms and conditions and have been subject to the same collective agreements as unionised nurses. Introduction of changes to T&Cs on the basis of alignment has been tested in a number of organisations (eg section 39 agencies and private hospitals) and has been upheld as legitimate. We would find it very difficult to think that it would not be upheld in this type of circumstance.

The advice is to communicate with non-union staff to advise them that the terms of the collective agreement agreed for their grade/sector will apply, on the basis of alignment, and as all other collective agreements have previously applied.

13 We have a lot of people who are on research contracts funded externally (ie through fundraising or from different companies), not in receipt of pensions and not returned to the HSE. Does the HRA affect them?

One needs to check in the first instance if these employees are considered to be public servants. (the definition of public servants for the purposes of the HRA/alternative legislation is as per the FEMPI 2010 Act) As these employees are not in receipt of pension, they may not be.
If they are not public servants, then one needs to consider whether or not it is reasonable for an organisation to introduce the changes as a result of alignment. What is meant by this is that if someone is not directly covered by the legislation/the Agreement, an employer may be entitled to implement the changes as if they were by virtue of their terms and conditions of employment being aligned, through custom and practice or through contract, with the terms and conditions of the health service more generally. The organisation should consider how it approached the implementation of the pay-cuts, and Croke Park Agreement, for this category of staff.

14 What happens with the annual leave entitlement of an employee in a voluntary hospital who is at the top of his/her scale?

If an employee in a voluntary hospital has an annual leave entitlement that is lower than the HSE standard then the annual leave changes if s/he is on the top of the scale are postponed, until such time as the discussions are concluded. The employer will need to check the annual leave entitlement for each employee at the top of the scale, compare to HSE standard, and then if it is the same or higher, the employer can make the annual leave amendments. If it is lower, then the employer should not.

15 How is the "top-of the scale" defined?
LSIs are included in the incremental points but promotional posts are not increments.
Ie if an employee has reached the final pre-LSI s/he is not at the top of the scale.
If the employee has received the LSI, then s/he is at the top of the scale.

Promotional roles are new scales: eg Senior staff nurse is its own one point scale; CNM 1, 2 and 3 have their own separate scales.

16 How does one calculate the value of the last increment (if a cash-deduction is being taken instead of an annual leave deduction)?

The HSE have advised in Circular 5/2013, that more advice will circulate in relation to this as "certain technical issues have arisen". Given that the HSE have stated that further advice will come on this - and that there is time on this one (ie the full three years of the agreement to make this change) I would wait for further advice.

17 Do salary reductions for those earning over €65k apply to all earnings, or just earnings above €65k?
The reductions apply to all earnings, subject to a floor (ie that the total salary will not drop below €65k). Some worked examples may be of assistance:

Current salary €67,000
5.5% reduction on all earnings up to €80k = 67000/100*5.5 = €3,685
€67,000 – 3,685 = €63,315

The floor of €65,000 therefore applies
New salary = €65,000

Current salary €70,000
5.5% reduction on all earnings up to €80k = 70000/100*5.5 = - €3,850
New salary = €70,000 - €3,850 = €66,150

Current salary €95,000
5.5% reduction on all earnings up to €80k = 80000/100*5.5 = - €4,400
8% reduction on amounts between €80k-€150k = 15000/100*8 = €1,200
New salary = €95,000 – 4,400 – 1,200 = €89,400

18 Some unions are stating that decisions regarding the use of additional hours cannot be made until there has been negotiation with union officials. Is this the case? How should hospitals respond to this claim?

Clauses 2.6 and 2.7 of the Agreement refer to "consultation at workplace level" and "local consultation". In the section for nursing, 1.3 mentions "detailed consultation at workplace level". No mention of unions is made – and certainly no mention of union officials. Workplace level consultation and local level consultation involves discussions with affected staff, and/or shop stewards. The Agreement does not require negotiation with union officials.

It is also notable that the Agreement refers to "consultation" – not "negotiation".

The only bit which the unions could really rely on to say they should be involved is that matters should or could default to the to the Joint Review Process under Croke Park, in the event of non-agreement through consultation. (This may particularly be an argument for nursing – given the explicit reference to the Croke Park mechanisms in its section about additional hours).

19 How do pay reductions and increased hours work for part-time staff?

Everything in the agreement is pro-rata and the same principle applies to both hours and salary. With hours if you have a person who works 19.5 hours per week, and is a 0.5 WTE, his/her hours of work don't change, because if you pro-rate "up" his/her hours s/he is a 39 hour a week worker. Someone who works 17.5 hours as a 0.5 WTE, will increase hours because s/he is a 35 hour WTE. The increase in that latter scenario will be an increase of half the amount of hours that the full-time equivalent is to increase by. Similarly for salary - someone who earns €50k for a 0.5 WTE role, needs to be treated as a €100k full-time worker for equity purposes.

A further examples:
A nurse who works 15 hours at present should be paid 15/37 = 40.54% of the full-time salary. The increase in hours can alter such an employee's situation in one of two ways: his/her hours of work can increase by just over 48 minutes per week (40.54% of the two hour increase) OR s/he can opt to remain on his/her hours, for a period, subject to a reduction in salary. The new salary applicable would be 15/39 = 38.46% of the full-time nurse salary.

20 What will happen to the additional hours at the end of the Agreement? What about the premium payment adjustments (eg overtime, twilight etc.)?

There is no automatic reversion set out in the Agreement for the additional hours, unlike (for example) the pay reductions or increment freeze. However, given that it is a three year agreement, I

imagine the unions will seek to have the changes reversed at the end of it. It's not explicit however, and appears to be a bit of deliberate ambiguity and will be a negotiation point in 2016.

Twilight premium and overtime etc are all in the same category - the unions will look to have them reversed at the end of the three years, but it's not explicit in the Agreement that this should or will happen. Regarding twilight premium, the INMO have stated that this will be their first objective - and that any savings arising from the transfer of tasks from NCHDs to nurses should be used to bring back the twilight premium.

21 Some colleges are saying that we can't change the hours of the current group of student nurse interns on the basis that they have already been allocated their clinical practice hours, is this the case?

If the intern nurses are employees, then they are covered by the HRA. If their colleges are saying that hours don't increase - then they can remain on those reduced hours for a period (which would reasonably be agreed as the duration of the internship employment) with a reduction in pay.