

Appendix 4

Delivering Early Years Extended and Flexible Entitlement in Maintained Nursery classes and Schools in Cheshire West and Chester

Implications: Staffing hours and Salaries

TERMS AND CONDITIONS

Teaching Staff

Teaching staff are employed for 195 days, 1265 hours per academic year.

This includes the following Directed Time for teaching staff;

- Contact or timetabled teaching time
- 10% PPA
- Parents evenings/meetings

Statutory regulations state full time must have a break of “reasonable length” either between school sessions or between 12pm and 2pm. PPA time is within the normal working school day and there should be equity and fairness across all teaching staff.

Teaching Assistants

- 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

Working Time Regulations

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

ISSUES TO CONSIDER

26 part-time place nursery

- A current 0.5 FTE teacher contract will have insufficient time to work the additional half hour per day of the extended free entitlement. This would require the teacher to increase to 0.6 FTE. There is also a need to review that the current TA time allocated is sufficient.

52 part-time place nursery and above

- If the nursery will operate both in the morning and the afternoon but will **not** offer flexibility over the lunchtime period (e.g. two sessions per day – 8:45am till 11:45am and 12:15pm until 3:15pm) then a current 1.00 FTE teacher is insufficient to cover the additional 1 hour per day contact time. Part of this additional 1 hour per could be covered by TAs conducting activities planned by the teacher in accordance with the principles and requirements of the Early Years Foundation Stage. Additional TA time (circa 5 hours) may therefore be required dependent on TA's current terms and conditions.
- If offering sessions over the lunchtime period as part of the flexible entitlement the additional areas to consider are that although the teacher will not be present they must have planned the session in line with the principles and requirements of the Early Years Foundation Stage. Dependant upon the current TA's terms and conditions they may be able to cover with the additional support of 1 X TA and 1 X mid day assistant assuming that the existing TA has had a 20 minute break at some point during the day and/or what the local custom and practice is.

CHANGING THE EMPLOYMENT CONTRACT

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.

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.

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.

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

WHAT CAN BE CHANGED?

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 midday break
- Additional hours or days for part time staff

WHAT ABOUT FULL TIME STAFF WHO WANT TO DO MORE?

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

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.

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.

If either party is unsure whether the extra commitment will last and wants to try it out for a temporary period, and then issue a temporary contract or a temporary change to an existing contract.

TEMPORARY CONTRACTS – USES AND ABUSES

Where there is uncertainty about take-up by parents – and therefore about funding - temporary staffing arrangements may help

Temporary contracts – even those with an expected end date can be 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 this type of contract.

The termination of a fixed-term contract is, in law, a dismissal, and employees have rights to be treated fairly and in accordance with employment law.

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)
- 4 years the employee may acquire all of the rights of a permanent employee.

Where schools do need to test the water before making a permanent staffing commitment, the following are possible

- 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.”
- For a new employee, issue a temporary contract which says “The reason for the temporary nature of the contract is And the contract is expected to end on (date).”

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.

If you require any further information, advice and guidance in terms of staffing issues relating to early years extended and flexible entitlement to staffing, please contact your HR Officer.

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