Claiming payment for excess hours worked

RCN guidance for nursing staff
Introduction

This guidance outlines the steps that you should take in order to claim payment for any excess hours you have worked above your contracted hours. Ultimately it is for you to decide if you wish to claim for any excess hours you have worked.

The guidance outlines the support you can expect to receive from the RCN should your employer fail to make the appropriate payment to you. The entitlement to pay for work done is an issue for all RCN members whether they work in the NHS or in the independent sector.

The legal position

A contract of employment exists between you and your employer. When you started work your employer was legally obliged to issue you with a statement of the main terms and conditions that apply to you. One of these ‘terms and conditions’ confirms how many hours a week you are contracted to work and how you will be paid.

In the contractual relationship between employer and employee both parties make undertakings to each other. For example, you agree to be available to work for a period of time in the week (your contracted hours) and your employer agrees to pay you for that commitment and to provide work for you to do. In the absence of an express requirement to work overtime, you are not obliged to work more than your contracted hours. Neither is the employer allowed to pay you for less than the hours you have contracted to work.

If you are expected, or want to volunteer to work more than your contracted hours, then this should be agreed with your employer. If such an agreement is reached then it should also be agreed what pay you should receive for working those extra hours. No one should work more than their contracted hours without being paid or otherwise compensated for doing so.

If your employer does not pay you then the employer is in breach of your contract, and you may have, for example, a claim for ‘unlawful deduction of wages’ that can be pursued through an employment tribunal.

Any claim to an employment tribunal must generally be made within three months of the date when the payment was due.

Circumstances where such a claim may arise

It is not possible to outline all the situations where people may have to work hours (or are required to) beyond their contracted hours. However, the following are a few common situations where this can happen.

- To ensure that a proper handover is completed between shifts – in particular where an employer may have reduced the handover period to a minimum.
- Where staff remain at work in order to await the late arrival of colleagues for the next shift.
- Where an emergency situation arises and the member of staff feels that it is not in the interests of patient or staff safety for them to leave at the end of their shift.
- In a non-emergency situation but where the nurse feels that patient safety is best maintained in them remaining at work until the situation is safely resolved.
- Where staff are asked to come in early or stay late at a manager’s request.

What should you do?

It is not always possible to plan for these situations. Emergencies, by definition, have to be dealt with immediately; it is not always possible to have a discussion with your manager about pay at that point. However, even in an emergency it is reasonable for you to raise the issue as soon as is reasonably practical after the event. Other situations are possibly clearer. For example, you may find you are always
staying longer because of changes to handover times.

If you can predict in advance (even if only a short period in advance) that you may be required to work longer you should:

- inform your line manager that you believe that you will need to remain for longer than your contracted hours. In doing so you should indicate why you believe that this is the case and outline what clinical, managerial or patient safety risks could arise if you were to leave at your normal time

- ask your manager to agree how you will be paid/compensated for this time and at what rate. This may be in terms of pay, time off in lieu or another arrangement

- make an immediate note as to the details of your discussion and any agreement reached. This would form the basis of any claim you may have to make in the future.

If your line manager agrees to the work ensure that you receive payment/compensation for the period worked – you can do this by regularly checking your pay slip.

It is not always the case that such matters can be agreed in advance. Where this is not possible, you should notify your manager at the earliest possible time that you have worked excess hours based on a clinical, managerial or safety need and that you will be making a claim for payment. You should record what hours you have worked and the reasons.

If you work in the NHS

Agenda for Change (AFC) full time standard hours are 37.5 hours a week. Staff in AFC Bands 1-7 who work over these hours should be paid overtime rates (AFC Section 3). Part time staff (those undertaking less than 37.5 hours a week) should receive plain time rates up to 37.5 hours and overtime rates thereafter. AFC does allow the employee to make a choice as to whether they wish to receive overtime pay or time off in lieu (TOIL) as an alternative. If TOIL is chosen, the employee should be able to take it within three months otherwise overtime must be paid. You should pay particular attention to the following requirement.

AFC 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.'

If you receive TOIL it will be at plain time rate. For example, if you work three excess hours and agree TOIL then you will have three hours of TOIL and not hours calculated at time and a half or double time.

There are different overtime rates in the NHS dependent upon when the excess hours were worked (see AFC 3.1). Most overtime will be at time and a half. This means that if you are a full time employee and are paid £15 per hour and work one excess hour, then you would be paid £15 plus 50 per cent (£7.50), totalling £22.50. Overtime rates on a public holiday are at double time. Using the same example, an hour at double time would be 15 x 2, totalling £30.

Overtime payments are not pensionable in the NHS pension scheme.

If you work outside the NHS

You have the same legal protections and requirements as any other worker. You should be paid for the work you do and if you work excess hours.

You should follow the key steps outlined in this document if you wish to claim for excess hours worked. Each employer will have their own terms and conditions of employment that they offer to their workforce. You need to find out if your employer has their own process for claiming payment for hours worked. You should comply with your employer’s procedure in the first instance. If that fails to get a positive result you should contact your RCN representative or country/board office for further help and support. You can also call RCN Direct on 0345 772 6100 to discuss this with an adviser.

What happens if you explain to your line manager why you need to work beyond your contracted hours but they refuse to accept this?

In this situation, you need to reflect on your professional accountability. You cannot be expected to continue working without being appropriately compensated. However, you will appreciate that you have a professional obligation to ensure that no avoidable harm is
caused to your patient. If you believe that your patient may be at risk if you were to leave at the end of your shift, or take your break, then you should ensure that this is recorded clearly in the relevant documents. You should bring this to the attention of your manager, preferably in writing, explaining why you continued working. You should also submit a relevant claim in writing to your employer, again explaining why you are claiming compensation for the additional hours worked.

**How do you claim?**

Even if you were unable to obtain your manager’s approval to working the excess hours, for example because your manager was not available at the time, or you managed to get their agreement, it is important that you have recorded exactly what excess time you have worked and why.

You should check if your employer has a formal process for the recording of excess hours worked and, if they have, you should comply with that in the first instance. In some cases the employer may say that certain periods of extra hours are not paid for, for example, they may say that the first fifteen minutes is not paid for. This just means the first fifteen minutes you work in the payment period – not the first fifteen minutes of each excess hour.

If you have to make a claim direct to your line manager this can be recorded on the template and/or the covering letter (see pages 6 and 7) and submitted for agreement and payment. The key issue is that you have to make the initial claim for payment of hours worked.

If your line manager still refuses to authorise payment/compensation you should notify your RCN representative who will attempt to resolve the situation through the employer’s internal grievance procedure.

If this is not successful, and you wish to pursue the issue further, you can be referred to the RCN country/board office for further consideration.

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**The Nursing and Midwifery Council (NMC)**

The role of the NMC is public protection. What hours nurses work or what they are paid is not an issue that the NMC would be directly concerned with. Payment of excess hours worked is entirely a contractual matter between the employer and employee.

**The longer term**

For individuals or groups of staff consistently working excess hours, it is not a good thing for them, their patients or the service they work in. Working longer hours can also impact on your ‘fitness to practice’ at any particular point. Where a culture of excess hours has built up [or is building up] the employer must be notified as to its potential adverse impact. In all cases where there is concern over the ability to deliver safe clinical care, the director of nursing must be formally notified. This should be in writing and can be initially through the completion of incident forms, through clinical meetings/supervision, team meetings or a direct communication or meeting with the director of nursing. Failing to do this when patient care or the NMC registration of other nurses is put at risk, could leave an individual open to challenge by the NMC.

**Useful websites**

**NHS Agenda for Change T&Cs**


**NMC Code**

[www.nmc.org.uk/standards/code](http://www.nmc.org.uk/standards/code)

**RCN online advice (for RCN members)**

[www.rcn.org.uk/support/rcn_direct_online_advice](http://www.rcn.org.uk/support/rcn_direct_online_advice)

**Templates**

See pages 5, 6 and 7 for templates for a covering letter [one for NHS health care staff and one for independent sector staff] and excess hours record sheet.
Claim for excess hours working during the month of

I write to request payment / time off in lieu (Toil)* for time worked in excess of my contracted hours as allowed by Section 3 of the NHS Agenda for Change terms and conditions of employment.

I have enclose a completed form which details the excess hours worked and reasons why.

Please confirm when I will receive payment / TOIL*.

Yours sincerely

*Delete as required
To
Manager name: 
Trust name: 
Trust address: 

Date: 

From
Name: 
Department: 
Payroll number: 

Dear

Claim for excess hours working during the month of ________________________________

I write to request payment / time off in lieu [Toil]* for time worked in excess of my contracted hours.

I have enclose a completed form which details the excess hours worked and reasons why.

Please confirm when I will receive payment / TOIL*.

Yours sincerely

*Delete as required
# Excess hours record sheet

<table>
<thead>
<tr>
<th>Date</th>
<th>Time period and hours allocated to work</th>
<th>Hours actually worked (not including breaks)</th>
<th>Excess hours claimed</th>
<th>Reason for working excess hours (be as detailed as possible and identify any clinical or environmental risks that required you to work longer)</th>
<th>Authorised as overtime TOIL* by</th>
<th>If no authorisation requested/received please state why</th>
</tr>
</thead>
<tbody>
<tr>
<td>Example 1</td>
<td>4/6/15</td>
<td>08.00 - 16.00 7.5hrs</td>
<td>08.00 - 18.00 9.5hrs</td>
<td>16.00 - 18.00 = 2.5hrs</td>
<td>Agency staff booked to arrive at 15.30 but did not arrive until 17.30. I remained on duty to ensure appropriate cover and to give handover</td>
<td>Sr Smith</td>
</tr>
<tr>
<td>Name</td>
<td>Payroll number:</td>
<td>Ward/Unit/Centre</td>
<td>Signature</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*TOIL: Time Off In Lieu*