CPSU
EQUALITY REPORT

THERESA DWYER,
EQUALITY OFFICER

ANNUAL DELEGATE CONFERENCE

ATHLONE

2011

Delegates,

The following is intended as a guide to the Organisation of Working Time Act 1997 (No 20/1997) and subsequent Regulations in terms of how it applies to the current arrangements for annual leave, Public Holidays and Privilege Days. In order to give a better understanding of the formulae used and how it can be impact on different levels of leave I have used three different grades – Clerical Officer, Higher Executive Officer and Assistant Principle Officer.

The examples provided show the impact on the three different grades in the case of an officer

- working 50% of the time of a full-time equivalent
- working a 3-day week pattern
- working a 4-day week pattern
- working a 9am – 3pm pattern
- working a 4-day week and taking 10 weeks SWYS

Any member who has a specific query in relation to their own particular worksharing arrangement should contact their union official.

1. ORGANISATION OF WORKING TIME ACT 1997 AND ANNUAL LEAVE

The calculation of annual leave is provided for under the Organisation of Working Time Act 1997 (No. 20/1997) and subsequent Regulations. The Act provides that from the 1st April 1999 a statutory minimum annual leave allowance which is normally **four working weeks should apply.** The formula for the calculation of annual leave is set out below and whichever is the more favourable should be applied:-

(a) 4 working weeks in a leave year in which he or she works at least 1365 hours (unless the individual changes employment)
(b) One third of a working week per calendar month that the employee works at least 117 hours
(c) 8% of the hours an employee works in a leave year (but subject to a maximum of 4 working weeks). Using this method annual leave is calculated in hours not days.

In calculating the above employers are required to include all hours worked including overtime, extra attendance etc. and any form of paid leave such as maternity, adoptive, paternity, force majeure, parental and marriage leave, paid study and exam leave as well as public holidays taken during the calculation period. It should be noted that the first 13 weeks of Carers Leave are also counted. Periods of non-statutory unpaid leave are not counted.

(d) Pro–rata the holiday entitlement of an equivalent full-time employee in that grade. Using this method an officer whose attendance pattern is based on an agreed reduced fixed daily attendance regime must also be expressed in hours. For an officer working a pattern involving a standard day of 6.95 hours this method should be calculated in days. Where the exact leave calculated includes part of a day, the fraction should be rounded up to the next half or whole day, as appropriate.

If more than one of the above methods are applicable, the employee is entitled to whichever method is the more favourable. However, the maximum statutory annual leave entitlement of an employee in a leave year is four or his/her normal working weeks.

Reference to a working week means the number of days that the employee concerned usually works in a week.

The same annual leave allowanced applies to staff whether they are established, unestablished or temporary workers.

The granting of annual leave to an employee is determined by the employer having regard to the work requirements, work and family responsibilities and the opportunities for rest and recreation for the employee.

2. ANNUAL LEAVE

While the minimum statutory annual leave allowance is 20 days in the Civil Service the amount of leave above 20 days is determined by grade. The following table shows the annual leave allowance for grades from CO to PO is based on full-time workers working a five-day week and does not include the additional service days.

Grade	CO	SO	EO	HEO	AP	PO, A/Sec and Sec General
Number of days annual leave	20	21	21	27	30	31

3. ANNUAL LEAVE AND WORKSHARERS

The annual leave entitlement of a person worksharing is based on their agreed attendance pattern and is pro rata that of a full-time equivalent.

Full time staff normally work 6.95 hours net per day which equals a net working week of 34.75 hours and a net working year of 1,813.255 hours (34.75 x 52.18 weeks).

4. The following are examples of different grades working a 50% pattern of attendance.

4.1 Example 1 Worksharer 50%

CO Worksharer working 50% of that of a full time equivalent

6.95 ÷ 2 = 3.475 hours per day

3.475 x 5 days = 17.375 hours per week

17.375 x 52.18 (weeks per year) = 906.628 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 906.628 = 72.530 hours annual leave per year, but maximum of 4 working weeks applies i.e. 17.375 x 4 = 69.5 hours max.

Option (d) is applicable as 906.628 ÷ 1813.255 (full timer) = 50% of annual leave of a full time worker in the grade i.e. CO on 20 days leave – 50% of 20 = 10 days annual leave.

4.2 Example 2 Worksharer 50%

HEO Worksharer working 50% of that of a full time equivalent

6.95 ÷ 2 = 3.475 hours per day

3.475 x 5 days = 17.375 hours per week

17.375 x 52.18 (weeks per year) = 906.628 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 906.628 = 72.530 hours annual leave per year, but maximum of 4 working weeks applies i.e. 17.375 x 4 = 69.5 hours max.

Option (d) is applicable as 906.628 ÷ 1813.255 (full timer) = 50% of annual leave of a full time worker in the grade i.e. HEO on 27 days leave – 50% of 27 = 13½ days annual leave.

4.3 Example 3 Worksharer 50%

AP Worksharer working 50% of that of a full time equivalent

6.95 ÷ 2 = 3.475 hours per day

3.475 x 5 days = 17.375 hours per week

17.375 x 52.18 (weeks per year) = 906.628 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 906.628 = 72.530 hours annual leave per year, but maximum of 4 working weeks applies i.e. 17.375 x 4 = 69.5 hours max.

Option (d) is applicable as 906.628 ÷ 1813.255 (full timer) = 50% of annual leave of a full time worker in the grade i.e. AP on 30 days leave – 50% of 30 = 15 days annual leave.

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5. **The following are examples of different grades working a 60% pattern of attendance.**

5.1 Example 1 Worksharer 3 day week

CO Worksharer working 60% of that of a full time equivalent

6.95 x 3= 20.850 hours per week

20.850 x 52.18 (weeks per year) = 1087.953 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1087.953 = 87.036 hours annual leave per year, but maximum of 4 working weeks applies i.e. 20.850 x 4 = 83.40 hours max.

Option (d) is applicable as 1087.953 ÷ 1813.255 (full timer) = 60% of annual leave of a full time worker in the grade i.e. CO on 20 days leave – 60% of 20 = 12 days annual leave.

5.2 Example 2 Worksharer 3 day week

HEO Worksharer working 60% of that of a full time equivalent

6.95 x 3= 20.850 hours per week

20.850 x 52.18 (weeks per year) = 1087.953 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1087.953 = 87.036 hours annual leave per year, but maximum of 4 working weeks applies i.e. 20.850 x 4 = 83.40 hours max.

Option (d) is applicable as 1087.953 ÷ 1813.255 (full timer) = 60% of annual leave of a full time worker in the grade i.e. HEO on 27 days leave – 60% of 27 = 16.2 days rounded up to 16½ days annual leave.

5.3 Example 3 Worksharer 3 day week

AP Worksharer working 60% of that of a full time equivalent

6.95 x 3= 20.850 hours per week

20.850 x 52.18 (weeks per year) = 1087.953 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1087.953 = 87.036 hours annual leave per year, but maximum of 4 working weeks applies i.e. 20.850 x 4 = 83.40 hours max.

Option (d) is applicable as 1087.953 ÷ 1813.255 (full timer) = 60% of annual leave of a full time worker in the grade i.e. AP 30 days leave – 60% of 30 = 18 days annual leave.

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6. **The following are examples of different grades working an 80% pattern of attendance**.

6.1 Example 1 Worksharer 4 day week

CO Worksharer working 80% of that of a full time equivalent

6.95 x 4 = 27.8 hours per week

27.8 x 52.18 (weeks per year) = 1,450.604 hours per year

Option (a) officer works more than 1,365 hours per year, however 4 working weeks is 4 days x 4 weeks = 16 days.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1,450.604 = 116.048 hours annual leave per year, but maximum of 4 working weeks applies i.e. 27.8 x 4 = 111.2 hours max = 16 days

Option (d) 1450.604 ÷ 1813.255 (full timer) = 80% of annual leave of a full time worker in the grade i.e. CO on 20 days leave – 80% of 20 = 16 days annual leave.

6.2 Example 2 Worksharer 4 day week

HEO Worksharer working 80% of that of a full time equivalent

6.95 x 4 = 27.8 hours per week

27.8 x 52.18 (weeks per year) = 1,450.604 hours per year

Option (a) officer works more than 1,365 hours per year, however 4 working weeks is 4 days x 4 weeks = 16 days.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1,450.604 = 116.048 hours annual leave per year, but maximum of 4 working weeks applies i.e. 27.8 x 4 = 111.2 hours max = 16 days

Option (d) 1450.604 ÷ 1813.255 (full timer) = 80% of annual leave of a full time worker in the grade i.e. HEO on 27 days leave – 80% of 27 = 21.6 days rounded up to 22 days annual leave.

6.3 Example 3 Worksharer 4 day week

AP Worksharer working 80% of that of a full time equivalent

6.95 x 4 = 27.8 hours per week

27.8 x 52.18 (weeks per year) = 1,450.604 hours per year

Option (a) officer works more than 1,365 hours per year, however 4 working weeks is 4 days x 4 weeks = 16 days.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1,450.604 = 116.048 hours annual leave per year, but maximum of 4 working weeks applies i.e. 27.8 x 4 = 111.2 hours max = 16 days

Option (d) 1450.604 ÷ 1813.255 (full timer) = 80% of annual leave of a full time worker in the grade i.e. AP on 30 days leave – 80% of 30 = 24 days annual leave.

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7. The following are examples of different grades working a 9am to 3pm pattern of attendance.

7.1 Example 1 Worksharer 9am to 3pm

CO Worksharer 5.085 net hours per day

5.085 x 5 = 25.425 hours per week

25.425 x 52.18 (weeks per year) = 1,326.677 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1,326.677 = 106.134 hours annual leave per year, but maximum of 4 working weeks applies i.e. 25.425 x 4 = 101.7 hours max = 20 days

Option (d) 1,326.677 ÷ 1813.255 (full timer) = 73.17% of annual leave of a full time worker in the grade i.e. CO on 20 days leave – 73.17% of 20 = 14.634 x 6.95 = 101.706 hours, that is 20 days leave of 5.085 hour days. ***This method should always result in an officer on the reduced daily attendance pattern having the same number of 'reduced hours' days annual leave as a full time officer has 'fulltime' annual leave days.***

7.2 Example 2 Worksharer 9am to 3pm

HEO Worksharer 5.085 net hours per day

5.085 x 5 = 25.425 hours per week

25.425 x 52.18 (weeks per year) = 1,326.677 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1,326.677 = 106.134 hours annual leave per year, but maximum of 4 working weeks applies i.e. 25.425 x 4 = 101.7 hours max = 20 days

Option (d) 1,326.677 ÷ 1813.255 (full timer) = 73.17% of annual leave of a full time worker in the grade i.e. HEO on 27 days leave – 73.17% of 27 = 19.756 x 6.95 = 137.304 hours, that is 27 days leave of 5.085 hour days. ***This method should always result in an officer on the reduced daily attendance pattern having the same number of 'reduced hours' days annual leave as a full time officer has 'fulltime' annual leave days.***

7.3 Example 3 Worksharer 9am to 3pm

AP Worksharer 5.085 net hours per day

5.085 x 5 = 25.425 hours per week

25.425 x 52.18 (weeks per year) = 1,326.677 hours per year

Option (a) is not applicable as officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

Option (c) is not applicable as 8% of 1,326.677 = 106.134 hours annual leave per year, but maximum of 4 working weeks applies i.e. 25.425 x 4 = 101.7 hours max = 20 days

Option (d) 1,326.677 ÷ 1813.255 (full timer) = 73.17% of annual leave of a full time worker in the grade i.e. AP on 30 days leave – 73.17% of 30 = 21.951 x 6.95 = 152.559 hours, that is 30 days leave of 5.085 hour days. *This method should always result in an officer on the reduced daily attendance pattern having the same number of 'reduced hours' days annual leave as a full time officer has 'fulltime' annual leave days.*

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8. The following are examples of different grades working a 4-day week but also taking 10 weeks on the Shorter Working Year Scheme (SWYS).

8.1 Example 1 Worksharer 4 day week taking 10 weeks SWYS

CO Worksharer working 80% of that of a full time equivalent

1 day = 6.95 x 4 = 27.8 hours per week

27.8 x 42.18 (52.18 weeks per year minus 10 weeks) = 1,172.6 hours per year which is 64.67% of the annual hours of a full timer (1,172.6 ÷ 1813.255 hours)

Option (a) is not applicable as the officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

> *There are 8 months in which a 4 day week person on SWYS may work more than 117 hours in the month but ⅓ of a week = 9.27 hours x 8 = 74.16 hours per year. 74.16 ÷ 6.95 = 10.67 days l*

Option (c) 8% of 1,172.6 hours (total annual hours) = 93.8 hours ÷ 6.95 = 13.49 days rounded up to 13½ days annual leave.

Option (d) pro rata a full timer with 20 days is 64.67% of 20 days = 12.93 days (rounded up to 13 days).

Therefore option (c) is the most favourable as the officer is entitled to 13½ days.

8.2 Example 2 Worksharer 4 day week taking 10 weeks SWYS

HEO Worksharer working 80% of that of a full time equivalent

1 day = 6.95 x 4 = 27.8 hours per week

27.8 x 42.18 (52.18 weeks per year minus 10 weeks) = 1,172.6 hours per year which is 64.67% of the annual hours of a full timer (1,172.6 ÷ 1813.255 hours)

Option (a) is not applicable as the officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

> *There are 8 months in which a 4 day week person on SWYS may work more than 117 hours in the month but ⅓ of a week = 9.27 hours x 8 = 74.16 hours per year. 74.16 ÷ 6.95 = 10.67 days leave.*

Option (c) 8% of 1,172.6 hours (total annual hours) = 93.8 hours ÷ 6.95 = 13.49 days rounded up to 13½ days annual leave.

Option (d) pro rata a full timer with 27 days is 64.67% of 27 days = 17.46 days (rounded up to 17½).

Therefore option (d) is the most favourable as the officer is entitled to 17½ days.

8.3 Example 3 Worksharer 4 day week taking 10 weeks SWYS

AP Worksharer working 80% of that of a full time equivalent

1 day = 6.95 x 4 = 27.8 hours per week

27.8 x 42.18 (52.18 weeks per year minus 10 weeks) = 1,172.6 hours per year which is 64.67% of the annual hours of a full timer (1,172.6 ÷ 1813.255 hours)

Option (a) is not applicable as the officer does not work at least 1,365 hours per year.

Option (b) is not applicable as officer does not work at least 117 hours in a month

> *There are 8 months in which a 4 day week person on SWYS may work more than 117 hours in the month but ⅓ of a week = 9.27 hours x 8 = 74.16 hours per year. 74.16 ÷ 6.95 = 10.67 days l*

Option (c) 8% of 1,172.6 hours (total annual hours) = 93.8 hours ÷ 6.95 = 13.49 days rounded up to 13½ days annual leave.

Option (d) pro rata a full timer with 30 days is 64.67% of 30 days = 19.40 days (rounded up to 19½).

Therefore option (d) is the most favourable as the officer is entitled to 19½ days.

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9. PAY AND WORKSHARERS

Pay is calculated on a pro-rata basis to that of a full-time equivalent. That is 41 hours per week or 8 hours 12 minutes (8.2) each day. This means that 41 hours over 52.18 weeks = 2,138.38 hours.

For example a person working a 3 day week works 8.2 x 3 = 24.6 hours per week x 52.18 weeks = 1,283.63. A person working this pattern has a 60% attendance i.e. 1,283.63 ÷ 2,139.38 x100 = 60%

A person working a 4 day week works 8.2 x 4 = 32.8 hours per week x 52.18 weeks = 1,711.504. A person working this patters has an 80% attendance i.e. 1,711.504 ÷ 2,139.38 x 100 = 80%.

10. PUBLIC HOLIDAYS / PRIVILIGE DAYS

The Act provides that the employees entitlement in respect of Public Holidays/Privilege Days is determined by the employer and is one of the following:-

(a) A paid day off on that day
(b) A paid day off within a month of that day
(c) An additional day of annual leave
(d) An additional day's pay

Pay for Public Holidays/Privilege Days is determined under Statutory Instrument 475 of 1997 Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997. The provisions of this legislation applies in respect of an officers entitlements where they either do not work, are not required to work or are not scheduled to work on the day.

11. PUBLIC HOLIDAYS AND TIME IN LIEU

The union lodged a claim at General Council seeking to return to a system of choice between pay or time off in lieu in respect of public holidays for worksharers. The Organisation of Working Time Act 1997 provides that in respect of each public holiday an employee is entitled to either:

a) a paid day off from the holiday or

b) a paid day off within a month or

c) an extra day's annual leave

d) an extra days pay and this is at the discretion of the employers.

However the claim was rejected on the basis that the 1997 Act gives full discretion to the employer and therefore Departments were entitled to decide to provide an extra days pay.

12. HOLIDAYS (PUBLIC, CHURCH AND PRIVILEGE DAYS)

There are nine Public Holidays, one Church Holiday and two Privilege Days as follows:-

1) News Years Day (January 1st)
2) St Patricks Day (March 17th)
3) Easter Monday
4) First Monday in May
5) First Monday in June
6) First Monday in August
7) Last Monday in October
8) Christmas Day (25th December)
9) St Stephens Day (26th December)
10) Good Friday
11) Privilege Day at Easter
12) Privilege Day at Christmas

While the agreement is that officers who work a reduced pattern of attendance receive the benefit of a Public Holiday / Privilege Day pro-rata that of a full-time worker in practice this was not the case.

13. ORGANISATION OF WORKING TIME (DETERMINATION OF PAY FOR HOLIDAYS) REGULATIONS 1997 (No 475/1997)

However there is an anomaly in the Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997 regarding the treatment of some worksharers in relation to these holidays.

The Regulations determine that Worksharers working a pattern of mornings only/afternoons only will on each holiday get the benefit of the holiday which is twelve holidays at half pay. Worksharers working a pattern of week on/week off or split week will, if scheduled to work, receive a full day's pay and if not scheduled to work receive a half days pay. The benefit over a year is six holidays at half pay and six holidays at full pay.

This means that over a year worksharers benefit as follows:

a) **If working mornings only/afternoons only you get twelve holidays at half pay.**
b) **If working a week on/week off or split week you get six holidays at full pay and six holidays at half pay.**

Therefore the impact of Statutory Instrument 475 of 1997 is that it has a disproportionate effect on those working in category A above when compared to those in category B.

In 2005 the Union brought a case under these Regulations before a Rights Commissioner who ruled that while the legislation was being applied correctly an anomaly exists in that it is more beneficial to some than to others. The Union has sought to have the anomaly addressed in direct discussions with the Department of Finance and with the assistance of ICTU but it has not been possible to find a formula that deals with the issue while at the same time complies with the regulations.

14. PUBLIC HOLIDAY PAY FOR CERTAIN CATEGORIES OF WORKSHARERS

In September 2006 the Labour Court issued a decision regarding a person who works a 4 day week on the basis of a half day Monday and Friday and full days on Tuesday, Wednesday and Thursday. The claimant in this case felt that as all public holidays fall on either a Monday or a Friday and that as he was not required to work the second half of those days he was not receiving his entitlements under the Organisation of Working Time Act. The employer believed that the claimant received his full entitlement on the basis that he was given the day off and paid as though he had worked the day in question.

The Labour Court determined that an additional amount was due to the claimant and this amount should be calculated by reference to the average weekly attendance of that person less the value of the time off actually received for the public holiday.

In other words *'the calculation of the complainant's rate of pay ……should be an average daily rate, based on his contracted working arrangements, i.e. 1/5 of his weekly rate of pay = 6.57 hours. However since the complainant already works for part of that day and is therefore already on paid time off for that part of the day the Court interprets this to mean that he is therefore entitled to be paid an extra 2.56 hours pay for such public holidays on the basis that he is already paid 4 hours for those days.'*

The unions requested that the Department of Finance issue a letter of clarification on this matter and this was done in September 2009.

15. ABSENCE PRIOR TO A PUBLIC HOLIDAY / PRIVILIGE DAY

An employee who is absent from work immediately before a Public Holiday / Privilege Day will **not** be entitled to benefit from the day in the following circumstances:-

(a) If the absence is in excess of 52 weeks by reason of an occupational injury

(b) If the absence is in excess of 26 weeks by reason of illness or injury

(c) If the absence is in excess of 13 weeks by reason not referred to in (a) or (b) above but is an absence authorised by the employer, including lay off

(d) If the absence is by reason of a strike

(e) If the absence is on Carer's Leave in excess of the first 13 weeks of the 65 weeks entitlement for each person being cared for.

16. PRSI and WORKSHARING

The rules governing PRSI contributions require a person for whom a contribution is made to work at least one day in a PRSI contribution week. A PRSI contribution week is defined as each successive period of seven days starting on 1st January each year. Members who decide to work reduced hours under the worksharing scheme should be aware that their pattern of attendance may affect their PRSI contributions and consequently their entitlements to social insurance benefits.

The 1st January 2011 fell on a Saturday therefore the contribution week for 2011 is Saturday to Friday. This means that you need to work at least one day during the contribution week in order to ensure you have 52 contributions recorded. For example a person working an attendance pattern of a week on/week off from Saturday to Friday inclusive would not be PRSI compliant as the officers working week is Monday to Friday and if they do not work any day in the contribution week a contribution is not recorded. A person continuing to work this pattern in 2011 will only work every second contribution week the outcome of which is that only 26 contributions will be recorded as opposed to 52 thus yielding a negative impact on that person's pension entitlement.

In the Civil Service the Union negotiated an arrangement whereby members wishing to change their pattern of attendance so as to be PRSI compliant would be facilitated.

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