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Agreement on Holiday Pay Adjustment

1 Background

Article 7 of the Working Time Directive ("the Directive") requires that member states of the European Union give workers (full time employees working 5 days per week) equivalent to 4 weeks annual leave.

On the 4th November 2014 the Employment Appeal Tribunal ("EAT") made a ruling in the case on how a week's pay for those 4 weeks of statutory holiday entitlement should be calculated.

In order to comply with the current EAT's judgement the Company will introduce Holiday Pay Adjustment ("HPA") for the proportion of holiday entitlement that is granted under the directive.

This document sets out the following agreement reached between the Company and TSSA (the "Union") relating to HPA and the terms and principles contained within this document take precedence over all previous clauses and agreements which have been agreed and accepted with regard to holiday pay and HPA.

2 Agreement

The Company agrees to pay HPA to all employees, calculated in accordance with the methodology agreed and outlined at clause 3 "Calculating Holiday Pay Adjustment", on XX July 2016 in respect of any HPA for the period starting from 1st January 2015.

The back pay from 1st January 2015 to 31st December 2015 will be payable in September 2016. Future payments for HPA will be paid each February and will continue to be based on an annual payment until such time as an automated system has been devised to calculate payment. A review will then be undertaken in regards how HPA should be paid (whether to continue with an annual payment or other agreed basis, such as payment of individual weeks leave when actually taken). The reference period (52 weeks) including qualifying weeks will be reviewed at the same time. The start and finish dates of HPA reference periods will be aligned with the Company's normal payroll periods.

This agreement will be subject to review if the existing case law/legislation changes. This collective agreement closes any outstanding items associated with holiday pay. The Trade Union party to this collective agreement undertake as part of this agreement not to provide support for claims by members in respect of back pay for underpayment of holiday pay allegedly due and owing at the date of this agreement, or prior thereto. Clearly, unless any such claim asserts that the company has failed to correctly apply this agreement.

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3 CALCULATING HOLIDAY PAY ADJUSTMENT

3.1 PAY DEFINITIONS

Pay Definitions for this agreement

3.1.1 **Basic pay**; basic pay and includes guaranteed earnings such as London Allowance, Pensionable Allowances that are paid on a pay period basis as leave is taken.

3.1.2 **Qualifying payments;** Overtime payments including travelling time, Rest Day Working, Sunday Working outside of contractual week, Sunday premiums, mentor payments, commission, free day allowance, night rate supplement, non pensionable DI and Team leader allowances, higher grade duty payments.

3.1.3 **None qualifying payments**; arrears of pay which relates to basic pay and other guaranteed earnings defined in 3.1.1, expenses, ex gratia non contractual items including but not limited to bonus.

3.1.4 **Gross Pay for HPA calculation;** Basic Pay plus qualifying payments

3.2 CALCULATING HOLIDAY PAY ADJUSTMENT HPA

Employees are entitled to receive two levels of pay during holiday leave; basic pay and HPA

3.2.1 HPA calculated by identifying **Qualifying payments** for the relevant period divided by reference period**,** multiplied by a relevant factor.

$$\frac{\text{Gross Pay (in the reference period)} - \text{Basic Pay (in the reference period)} - \text{Non-qualifying payments (in the reference period)}}{\text{Reference Period (weeks)}} \times 4$$

3.2.2 HPA is paid in arrears and based on the calendar year (the actual reference period will be the nearest 52 week payroll cycle that covers this span). The exact dates will be aligned with the company's normal pay periods and will be clearly confirmed and communicated.

3.2.3 HPA is non pensionable and subject to deductions for tax and national insurance.

3.2.4 The reference period will be based over a 52 week reference period.

3.2.5 Holiday pay adjustment will be paid for the first 20 days of holiday taken in the holiday year, even when this falls on a public holiday (the 20 day entitlement would be based on a daily payment of 'one fifth' of the employees weekly HPA calculation, it is not based on an employee's actual working day length or average working week).

3.2.6 New starters including trainees and part time workers will receive a pro-rata payment based on the length of their service and the number of days worked per week.

3.2.7 Leavers will receive a pro-rata payment based on the length of their service and the number of days worked per week. Leavers will need to write to the payroll department to claim their arrears.

3.3 EXAMPLES OF CALCULATIONS

Weeks HPA Entitlement

$$\text{Weeks HPA Entitlement} = \frac{4 \times \text{number weeks employed in HPA reference period}}{52}$$

- **E.g.** Employee works fulltime for the 12 month HPA reference period is entitled to 4 weeks of HPA

$$\mathbf{\frac{4 \times 52}{52} = 4}$$

- **E.g.** Employee working part-time (0.5 FTE) over a 12 month HPA reference period is entitled to 2 full weeks of HPA (or 4 weeks of HPA if pay is based on 4 weeks of part time hours)

$$\mathbf{\frac{4 \times 52 \times 0.5}{52} = 2}$$

- **E.g.** New Starter working fulltime and 6 months of service in the HPA reference period is entitled to 2 weeks of HPA

$$\mathbf{\frac{4 \times 26}{52} = 2}$$

HPA Payment:

$$\frac{\text{Gross Pay (in the ref period)} - \text{Basic Pay (in the ref period)} - \text{Non-qualifying payments (in the ref period)} \times 4}{\text{Reference Period (weeks)}}$$

- **E.g.** A fulltime employee with total earnings of £30,000 over a 12 month payroll reference period, £25,000 basic salary & £5,000 qualifying payments i.e. overtime and commission.

$$\text{HPA Rate} = \frac{30{,}000 - 25{,}000}{52} = £96.15$$

HPA = Weeks HPA entitlement x HPA Rate

4 x £96.15 = **£384.60**

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4 RIGHT TO AMEND

4.1 Either party has the right to re-enter talks should any aspect of the legislation change in anyway.

4.2 The Company agrees that should clause 4.1 be enacted it will not seek to reclaim any payments made to the employees of the Company.

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5 PARTIES TO THE AGREEMENT

Signed by:	Signed by:
For and on behalf of Southeastern	For and on behalf of XX
Peter Snell Head of Employee Relations	XX Organiser
Date 20 July 2016	Date.....

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