

Workforce Directorate - W47
Time off in Lieu (TOIL) Guidance

1. What is TOIL?

- 1.1 When a need for additional work is identified, managers and employees should discuss and agree arrangements in advance. Time off In Lieu (TOIL), can be applied in a range of circumstances to meet the needs of the service and a plan drawn up between the line manager and the employee when the TOIL will be taken back.
- 1.2 Time off In Lieu (TOIL) is time off which employees are eligible to take in return for additional time worked beyond their normal contracted hours.

2. Principles governing the use of TOIL

- 2.1 Working additional hours is voluntary.
- 2.2 Employees can accumulate TOIL by agreement with their line manager when there is an operational requirement for additional time to be worked. Employees can record TOIL as a minimum of 15 minutes or more, and for some employees this will be recorded at the start or end of a rostered shift, or for other employees additional time worked over and above their usual hours of work. By accruing TOIL, it will be possible for time owing to be taken as a full or half day/shift.
- 2.3 TOIL should be used for a limited period of time. Repeated use of TOIL for longer than a month will require the manager to review the overall staffing needs of the department to ensure working practices are effective.
- 2.4 When an employee identifies additional time which falls under the definition as TOIL, they should raise this with their line manager in advance of the requirement to work that time which should be formalised in writing before the TOIL is worked (please use either the form at Appendix A or communicate via e mail). In exceptional circumstances such as in emergencies, it may not be possible to formalise the additional time beforehand in writing. As long as there is verbal agreement between the line manager and the employee, it is important that TOIL is recorded in writing within 24 hrs of the additional hours worked.
- 2.5 Line managers have a duty of care to ensure employees take their allocated breaks whilst at work, and employees have a responsibility to manage their health and wellbeing. If however, an employee decides to work through their break, this time cannot be claimed as TOIL because the need for additional time to be worked has not been identified or agreed in advance with their line manager. Employees and their line managers need to follow the process outlined above to ensure that TOIL is managed in accordance with the needs of the service.
- 2.6 TOIL should be taken as soon as practicably possible and no later than 3 months. Line managers must ensure that employees are given reasonable opportunities to take TOIL.

2.7 Managers and employees must keep a proper account of additional hours worked, either electronically on Health roster or using the form as at Appendix A.

3. Who is eligible for TOIL?

3.1 All staff on Agenda for Change pay bands 1 to 7 are eligible for time off in lieu, as an alternative to claiming overtime payments for additional hours worked.

3.2 For employees who do not get paid overtime (i.e. Agenda for Change Band 8 and above), there is an expectation that they will work the hours necessary to carry out their normal duties. Whilst this is part of their contract of employment, there may on occasions be exceptional circumstances when the Trust will want to acknowledge the additional time that these employees have worked. This should be with written agreement with their line manager and the additional hours worked taken as TOIL.

3.3 This guidance also applies to staff employed on the temporary staffing bank, who should record the additional hours worked to their timesheets. This guidance does not apply to agency workers.

4. Authorising TOIL Accrual

4.1 The line manager must agree TOIL in writing and before the additional time is worked. (please refer to 2.4 for those exceptional circumstances when retrospective agreement is allowed under this guidance).

4.2 All time accrued must be accurately recorded using Health Roster or by completing the form at Appendix A and must be authorised by the employee's line manager.

4.3 As referred in 2.3 line managers and employees should avoid additional time being worked to excessive levels. Line managers and employees therefore need to take action to reduce the time owing, or in accordance with the Handbook for Agenda for Change terms and conditions, after 3 months additional time should be paid as overtime.

4.4 The relevant section of the Agenda for Change Handbook is Section 3. Key points include:

- If the employee wishes to take TOIL instead of overtime but for operational reasons TOIL is subsequently unable to be taken within 3 months, then it must be paid for at an overtime rate, which is a single harmonised rate of time and a half or double time for general public holidays.
- TOIL is accrued at plain time (i.e. the number of additional hours worked is the number of hours an employee gets back as TOIL). In other words, time off accumulated through TOIL arrangements must be equal to time actually worked.
- Where TOIL is offered in place of overtime pay, the enhancements which relate to pay do not relate to TOIL.
- Single overtime rate will apply when excess hours are worked over full time hours unless TOIL is taken.
- Part time employees will receive payments for additional hours at plain time rates until their hours exceed 37.5 hours per week.

5 Examples when an employee may request TOIL

- 5.1 Employees with accrued time owing may request, or be asked by their line manager, to leave a shift early in order to reduce time owing. In all cases this must be agreed with the employee and authorised by the line manager.
- 5.2 In wards/areas/localities where there is a bleep holder responsible for staffing levels, they should be contacted before any unplanned time owing is taken to ensure that the employee is not required to assist in another ward/area/locality.
- 5.3 There may be exceptional circumstances where pre-agreed TOIL may be difficult to take (usually in emergencies or where there are chronic staff shortages). In these situations, line managers must first seek agreement from the employee, before retracting the authorisation for the employee to take TOIL. If the employee agrees, the line manager should either offer the employee paid overtime instead or re-schedule the time as TOIL for another date.
- 5.4 In another example: an Administrator normally works 9 am to 2 pm Monday to Friday. On a particular shift due to operational pressures, the line manager asks if they can stay until 3 pm one day, accrue 1 hour of TOIL and then take the TOIL back the following day. They agree, the Administrator works until 3 pm and the next day they finish at 1 pm. Their pay remains the same because they have worked the same number of hours as their contracted hours.
- 5.5 Employees must inform their line manager in circumstances where additional time may need to be worked in order to meet service demands. There still needs to be clear authorisation from the line manager in writing before the additional time (accumulated in 15 min slots) can be worked.
- 5.6 The operation of TOIL depends on mutual trust. Any suspected abuse of TOIL may be treated as a disciplinary matter.
- 5.7 Employees working from home cannot normally accrue TOIL, without the explicit authorisation of their line manager, and only in exceptional circumstances.

APPENDIX A: RECORD OF ADDITIONAL HOURS WORKED – TIME OFF IN LIEU (TOIL)

Name:

Division:

Place of work:

Job Title: Band:

Contracted hours:

Reason for additional time worked.....

Date Time Worked.....

Time Worked..... Time Taken.....

*Line Manager authorisation.....

Declaration: - I declare that the information I have given on this form is true, factually correct and complete. I confirm that I have worked the above stated hours in full. I understand that if I knowingly provide false information this may result in disciplinary action.

Signature of Employee: Date:

Certified by: (Line Manager) Date:

* Note: In exceptional circumstances (emergencies), line managers may provide retrospective authorisation following additional time worked.