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WELSH STATUTORY INSTRUMENTS

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**2017 No. 1058**

**The Agricultural Wages (Wales) Order 2017**

**PART 4 – Entitlement to agricultural sick pay**

**Entitlement to agricultural sick pay**

**18.** Subject to the provisions in this Part, an agricultural worker is entitled to receive agricultural sick pay from their employer in respect of their sickness absence.

**Qualifying conditions for agricultural sick pay**

**19.** An agricultural worker qualifies for agricultural sick pay under this Order provided that the agricultural worker has—

- (a) been continuously employed by their employer for a period of at least 52 weeks prior to the sickness absence;
- (b) notified their employer of the sickness absence in a way previously agreed with their employer or, in the absence of any such agreement, by any reasonable means;
- (c) in circumstances where the sickness absence has continued for a period of 8 or more consecutive days, provided their employer with a certificate from a registered medical practitioner which discloses the diagnosis of the worker's medical disorder and states that the disorder has caused the agricultural worker's sickness absence.

**Periods of sickness absence**

**20.** Any 2 periods of sickness absence which are separated by a period of not more than 14 days must be treated as a single period of sickness absence.

**Limitations on entitlement to agricultural sick pay**

**21.—(1)** Agricultural sick pay will not be payable for the first 3 days sickness absence in circumstances where the duration of the sickness absence is less than 14 days.

**(2)** During each period of entitlement, the maximum number of weeks that an agricultural worker is entitled to agricultural sick pay is—

- (a) 13 weeks where the agricultural worker has been employed by the same employer for at least 12 months but not more than 24 months;
- (b) 16 weeks where the agricultural worker has been employed by the same employer for at least 24 months but not more than 36 months;
- (c) 19 weeks where the agricultural worker has been employed by the same employer for at least 36 months but not more than 48 months;
- (d) 22 weeks where the agricultural worker has been employed by the same employer for at least 48 months but not more than 59 months;

- (e) 26 weeks where the agricultural worker has been employed by the same employer for 59 months or more.
- (3) Where an agricultural worker works basic hours or, where applicable any guaranteed overtime, on a fixed number of days each week, the maximum number of days of agricultural sick pay that the agricultural worker is entitled to is calculated by multiplying the maximum number of weeks relevant to the agricultural worker by the number of qualifying days worked each week.
- (4) Where an agricultural worker works basic hours or, where applicable any guaranteed overtime, on a varying number of days each week, the maximum number of days of agricultural sick pay that the agricultural worker is entitled to is calculated by multiplying the maximum number of weeks relevant to that worker by the number of relevant days.
- (5) The number of relevant days is calculated by dividing the number of qualifying days worked during a period of 12 months leading up to the period of sickness absence by 52.
- (6) An agricultural worker’s maximum entitlement to agricultural sick pay applies regardless of the number of occasions of sickness absence during any period of entitlement.
- (7) Subject to paragraph (8), in this article, “a period of entitlement” is a period beginning with the commencement of a sickness absence and ending 12 months later.
- (8) If the agricultural worker has a period of sickness absence which commences at any time during the period of entitlement described in paragraph (7), but which continues beyond the end of that period of entitlement, the period of entitlement must be extended so as to end on whichever of the following first occurs—
  - (a) the date when the agricultural worker’s sickness absence ends and the agricultural worker returns to work; or
  - (b) the day on which the agricultural worker reaches the maximum entitlement to agricultural sick pay applicable to the 12 month period referred to in paragraph (7) (had it not been extended).

**Determining the amount of agricultural sick pay**

22.—(1) Agricultural sick pay is payable at a rate which is equivalent to the minimum hourly rate of pay prescribed in article 12 of, and Schedule 4 to, this Order as applicable to that grade or category of agricultural worker.

(2) The amount of agricultural sick pay payable to an agricultural worker is determined by calculating the number of daily contractual hours that would have been worked during a period of sickness absence.

- (3) The number of daily contractual hours are determined—
  - (a) in circumstances where an agricultural worker works a fixed number of hours each week by dividing the total number of hours worked during any week by the number of days worked in that week;
  - (b) in circumstances where an agricultural worker works a varying number of hours each week, by applying the formula—

$$\frac{QH \div 8}{DWEW}$$

where for the purposes of this article:

- QH** is the total number of qualifying hours in the period, and
- DWEW** is the number of days worked each week by the agricultural worker when taken as an average during a period of 8 weeks immediately preceding the commencement of the sickness absence.

- (4) In this article “qualifying hours” are hours where—
- (a) the agricultural worker worked basic hours or guaranteed overtime;
  - (b) the agricultural worker took annual leave or bereavement leave;
  - (c) the agricultural worker had sickness absence qualifying for agricultural sick pay under this Order; or
  - (d) the agricultural worker had sickness absence not qualifying for agricultural sick pay under this Order; and
- “qualifying days” are any days within the period on which there were qualifying hours relating to the agricultural worker.

(5) For the purposes of calculations under this article, where an agricultural worker has been employed by their employer for less than 8 weeks, account must be taken of qualifying hours and qualifying days in the actual number of weeks of the agricultural worker’s employment with their employer.

#### **Agricultural sick pay to take account of statutory sick pay**

**23.** An amount equal to any payment of statutory sick pay made in accordance with Part XI of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup> in respect of a period of an agricultural worker’s sickness absence may be deducted from that worker’s agricultural sick pay.

#### **Payment of agricultural sick pay**

**24.** Agricultural sick pay must be paid to the agricultural worker on their normal pay day in accordance with either their contract of service or their apprenticeship.

#### **Employment ending during sickness absence**

**25.—(1)** Subject to paragraph (2), if during a period of sickness absence, either an agricultural worker’s contract of service or their apprenticeship is terminated or the agricultural worker is given notice that either their contract of service or their apprenticeship is to be terminated, any entitlement which the agricultural worker has to agricultural sick pay continues after that contract ends as if the agricultural worker was still employed by their employer, until one of the following occurs—

- (a) the agricultural worker’s sickness absence ends;
- (b) the agricultural worker starts work for another employer; or
- (c) the maximum entitlement to agricultural sick pay in accordance with article 21 is exhausted.

(2) An agricultural worker whose contract has been terminated is not entitled to any agricultural sick pay after the end of their employment in accordance with paragraph (1) if the agricultural worker was given notice that their employer intended to terminate their contract of service or their apprenticeship before the period of sickness absence commenced.

#### **Overpayments of agricultural sick pay**

**26.—(1)** Subject to the provisions of paragraph (2), if an agricultural worker who is entitled to agricultural sick pay under this Part is paid more agricultural sick pay than their entitlement, their employer can recover the overpayment of such agricultural sick pay by deduction from that agricultural worker’s wages.

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(1) 1992 c. 4.

(2) If an overpayment of agricultural sick pay under this Order is deducted as mentioned in paragraph (1), the employer must not deduct more than 20% of the agricultural worker's gross wage unless notice has been given to terminate the employment or the employment has already been terminated in which case more than 20% of the agricultural worker's gross wage may be deducted by the employer from payment of the agricultural worker's final wages.

### **Damages recovered for loss of earnings**

**27.—**(1) This article applies to an agricultural worker whose entitlement to agricultural sick pay arises because of the actions or omissions of a person other than their employer and damages are recovered by the agricultural worker in respect of loss of earnings suffered during the period in respect of which the agricultural worker received agricultural sick pay from their employer.

(2) Where paragraph (1) applies—

- (a) the agricultural worker must immediately notify their employer of all the relevant circumstances and of any claim and of any damages recovered under any compromise, settlement or judgment;
- (b) all agricultural sick pay paid by the employer to that agricultural worker in respect of the sickness absence for which damages for loss of earnings are recovered must constitute a loan to the worker; and
- (c) the agricultural worker must refund to their employer a sum not exceeding the lesser of—
  - (i) the amount of damages recovered for loss of earnings in the period for which agricultural sick pay was paid; and
  - (ii) the sums advanced to the agricultural worker from their employer under this Part by way of agricultural sick pay.