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WELSH STATUTORY INSTRUMENTS

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**2023 No. 260**

**The Agricultural Wages (Wales) Order 2023**

**PART 5**

**Entitlement to time off**

**Rest breaks**

**28.**—(1) An agricultural worker who is aged 18 or over and who has a daily working time of more than 5 and a half hours is entitled to a rest break.

(2) An agricultural worker who is aged under 18 and who has a daily working time of more than 4 and a half hours is entitled to a rest break.

(3) The rest break provided for in paragraphs (1) and (2) is an uninterrupted period of not less than 30 minutes and the agricultural worker is entitled to spend it away from their workstation (if they have one) or other place of work.

(4) Subject to paragraph (5), the provisions relating to rest breaks as specified in paragraphs (1), (2) and (3) do not apply to an agricultural worker where—

- (a) due to the specific characteristics of the activity in which the agricultural worker is engaged, the duration of their working time is not measured or predetermined,
- (b) the agricultural worker's activities involve the need for continuity of service or production,
- (c) there is a foreseeable surge of activity,
- (d) the agricultural worker's activities are affected by—
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of their employer,
  - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer, or
  - (iii) an accident or the imminent risk of an accident, or
- (e) the employer and agricultural worker agree to modify or exclude the application of paragraphs (1), (2) and (3) in the manner and to the extent permitted by or under the Working Time Regulations 1998(1).

(5) Where paragraph (4) applies and an agricultural worker is accordingly required by their employer to work during a period which would otherwise be a rest break—

- (a) the employer must, unless sub-paragraph (b) applies, allow the agricultural worker to take an equivalent period of compensatory rest, and
- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, the agricultural worker's employer must afford them such protection as may be appropriate in order to safeguard the agricultural worker's health and safety.

(6) If, on any day, an agricultural worker who is under 18 years of age is employed by more than one employer, their daily working time shall be determined for the purposes of paragraph (2) by aggregating the number of hours worked by them for each employer.

### Daily rest

**29.**—(1) An agricultural worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which they work for their employer.

(2) Subject to paragraph (3) an agricultural worker who is under 18 years of age is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which they work for their employer.

(3) The minimum rest period provided for in paragraph (8) may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.

(4) Subject to paragraph (5), the provisions relating to daily rest as specified in paragraphs (1), (2) and (3) do not apply to an agricultural worker where—

- (a) due to the specific characteristics of the activity in which the agricultural worker is engaged, the duration of their working time is not measured or predetermined,
- (b) the agricultural worker's activities involve the need for continuity of service or production,
- (c) there is a foreseeable surge of activity,
- (d) the agricultural worker's activities are affected by—
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of their employer,
  - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer, or
  - (iii) an accident or the imminent risk of an accident, or
- (e) the employer and agricultural worker agree to modify or exclude the application of paragraphs (1), (2) and (3) in the manner and to the extent permitted by or under the Working Time Regulations 1998(2).

(5) Where paragraph (4) applies and an agricultural worker is accordingly required by their employer to work during a period which would otherwise be a daily rest break—

- (a) the employer must, unless sub-paragraph (b) applies, allow the agricultural worker to take an equivalent period of compensatory rest, and
- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, the agricultural worker's employer must afford them such protection as may be appropriate in order to safeguard the agricultural worker's health and safety.

### Weekly rest period

**30.**—(1) Subject to paragraph (2), an agricultural worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven-day period during which they work for their employer.

(2) If their employer so determines, they shall be entitled to either—

- (a) two uninterrupted rest period each of not less than 24 hours in each 14-day period during which they work for their employer, or
- (b) one uninterrupted rest period of not less than 48 hours in each such 14-day period, in place of the entitlement provided for in paragraph (10).

(3) Subject to paragraph (8) an agricultural worker who is under 18 is entitled to a rest period of no less than 48 hours in each seven-day period during which they work for their employer.

(4) For the purposes of paragraphs (1) to (3), a seven-day period or (as the case may be) 14-day period shall be taken to begin—

- (a) at the start of each week or (as the case may be) every other week;
- (b) at such times on such days as may be provided for by an agreement between the agricultural worker and their employer.

(5) In a case where, in accordance with paragraph (4), 14-day periods are to be taken to begin at the start of every other week, the first such period applicable in the case of a particular agricultural worker shall be taken to begin at the start of the week in which that employment begins.

(6) For the purposes of paragraphs (4) and (5), a week starts at midnight between Sunday and Monday.

(7) The minimum rest period to which an agricultural worker is entitled under paragraph (1) or (2) shall not include any part of a rest period to which the agricultural worker is entitled under article 29(1), except where this is justified by objective or technical reasons or reasons concerning the organisation of work.

(8) The minimum rest period to which an agricultural worker who is under 18 years of age is entitled under paragraph (3) —

- (a) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration, and
- (b) may be reduced where this is justified by technical or organisational reasons, but not to less than 36 consecutive hours.

(9) Subject to paragraph (10), the provisions relating to daily rest as specified in paragraphs (1), (2) and (3) do not apply to an agricultural worker where—

- (a) due to the specific characteristics of the activity in which the agricultural worker is engaged, the duration of their working time is not measured or predetermined,
- (b) the agricultural worker's activities involve the need for continuity of service or production,
- (c) there is a foreseeable surge of activity,
- (d) the agricultural worker's activities are affected by—
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of their employer,
  - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer, or
  - (iii) an accident or the imminent risk of an accident, or
- (e) the employer and agricultural worker agree to modify or exclude the application of paragraphs (1), (2) and (3) in the manner and to the extent permitted by or under the Working Time Regulations 1998(3).

(10) Where paragraph (9) applies and an agricultural worker is accordingly required by their employer to work during a period which would otherwise be a weekly rest break—

- (a) the employer must, unless sub-paragraph (b) applies, allow the agricultural worker to take an equivalent period of compensatory rest, and
- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, the agricultural worker's employer must afford them such protection as may be appropriate in order to safeguard the agricultural worker's health and safety.

### **Annual leave year**

31. The annual leave year for all agricultural workers is the period of 12 months beginning on 1 October and ending on 30 September, unless a different leave year is mutually agreed by the agricultural worker and their employer.

### **Amount of annual leave for agricultural workers with fixed working days employed throughout the annual leave year**

32.—(1) An agricultural worker who is employed by the same employer throughout the annual leave year is entitled to the amount of annual leave prescribed in the Table in Schedule 2.

(2) Where an agricultural worker works their basic hours and, where applicable any guaranteed overtime, on a fixed number of qualifying days each week, the number of days worked each week for the purposes of the Table in Schedule 2 is that fixed number of days.

### **Amount of annual leave for agricultural workers with variable working days employed throughout the annual leave year**

33.—(1) Where an agricultural worker works their basic hours on a varying number of days each week, the number of days worked each week for the purposes of the Table in Schedule 2, is to be taken as an average of the number of qualifying days worked each week during the period of 52 weeks immediately preceding the commencement of the agricultural worker's annual leave and that average number of qualifying days must, where appropriate, be rounded to the nearest whole day.

(2) At the end of the annual leave year the employer must calculate the agricultural worker's actual entitlement for the purposes of the Table in Schedule 2, based upon the number of qualifying days worked each week, taken as an average of the number of qualifying days worked each week during the annual leave year (i.e. over a period of 52 weeks) and the average number of qualifying days must be, where appropriate, rounded to the nearest whole day.

(3) If at the end of the annual leave year, the agricultural worker has accrued but untaken holiday entitlement, the agricultural worker is entitled to carry forward any accrued but untaken holiday to the following annual leave year in accordance with article 35(3) of this Order or the agricultural worker and the employer may agree to a payment in lieu of any accrued but untaken holiday in accordance with article 38 of this Order.

(4) If at the end of the annual leave year, the agricultural worker has taken more holiday days than they were entitled to under this Order, based on the average number of qualifying days worked per week (calculated in accordance with paragraph (2)), the employer is entitled to deduct any pay for holiday days taken in excess of the agricultural worker's entitlement or, in the alternative, deduct the holiday days taken in excess of the agricultural worker's entitlement from their entitlement for the following annual leave year (provided any such deduction does not result in the agricultural worker receiving less than their statutory annual leave entitlement under regulations 13 and 13A of the Working Time Regulations 1998).

### **Amount of annual leave for agricultural workers employed for part of the leave year**

34.—(1) An agricultural worker employed by the same employer for part of the annual leave year is entitled to accrue annual leave at a rate of 1/52nd of the annual leave entitlement specified in the Table in Schedule 2 for each completed week of service with the same employer.

(2) Where the amount of annual leave accrued in a particular case includes a fraction of a day other than a half day, that fraction is to be—

- (a) rounded down to the next whole day if it is less than half a day, and
- (b) rounded up to the next whole day if it is more than half a day.

### **Timing of annual leave**

**35.**—(1) An agricultural worker may take annual leave to which they are entitled under this Order at any time within the annual leave year subject to the approval of their employer.

(2) An agricultural worker is not entitled to carry forward from one leave year to the next leave year any untaken annual leave entitlement without the approval of their employer.

(3) Where an employer has agreed that an agricultural worker may carry forward any unused annual leave entitlement, the balance carried forward may only be taken in the leave year to which it is carried forward.

(4) During the first 6 months in any annual leave year an employer may require an agricultural worker to take up to 2 weeks of their annual leave entitlement under this Order and may direct that the worker takes one of those 2 weeks of annual leave on days in the same week.

(5) During the second 6 months in any annual leave year an employer must permit an agricultural worker to take 2 weeks of the worker’s annual leave entitlement under this Order in consecutive weeks.

(6) For the purpose of this article, 1 week of an agricultural worker’s annual leave is equivalent to the number of days worked each week by the agricultural worker as determined in accordance with articles 32 and 33.

### **Holiday pay**

**36.**—(1) An agricultural worker is entitled to be remunerated in respect of each day of annual leave taken by them.

(2) The amount of holiday pay to which an agricultural worker is entitled under paragraph (1) is to be determined by dividing the agricultural worker’s weekly wage as determined in accordance with paragraph (3), or as the case may be paragraph (4), by the number of qualifying days worked each week by that agricultural worker.

(3) Where the agricultural worker’s normal working hours under either their contract or apprenticeship do not vary (subject to paragraph (4)), the amount of the agricultural worker’s weekly pay for the purposes of paragraph (2) is the agricultural worker’s normal weekly pay payable by the employer.

(4) Where the agricultural worker’s normal working hours vary from week to week, or where an agricultural worker with normal working hours (as in paragraph (3)) works overtime in addition to those hours, the amount of the agricultural worker’s normal weekly pay for the purposes of paragraph (2) is calculated by adding together the amount of the agricultural worker’s normal weekly pay in each of the 52 weeks immediately preceding the commencement of the worker’s annual leave and dividing the total by 52. Any weeks in which no remuneration was payable to the agricultural worker should be excluded from the 52 week reference period and earlier weeks taken into account, up to a maximum of 104 weeks.

(5) For the purposes of this article “normal weekly pay” means—

- (a) the agricultural worker’s basic pay under their contract or apprenticeship, and
- (b) any overtime pay and any allowance paid to the agricultural worker on a consistent basis.

(6) Where an agricultural worker has been employed by their employer for less than 52 weeks, account must be taken only of weeks in which pay was due to the agricultural worker.

(7) For the purposes of paragraph (2), the number of qualifying days worked is determined in accordance with the provisions in articles 32 and 33 of this Order.

(8) Any pay due to an agricultural worker under this article must be made not later than the agricultural worker’s last working day before the commencement of the period of annual leave to which the payment relates.

### **Public holidays and bank holidays**

**37.**—(1) This article applies where a public holiday or bank holiday in Wales falls on a day when an agricultural worker is normally required to work either under their contract or their apprenticeship.

(2) An agricultural worker required by their employer to work on the public holiday or bank holiday is entitled to be paid not less than the overtime rate specified in article 12.

(3) An agricultural worker who is not required by their employer to work on the public holiday or bank holiday is to have the balance of their accrued annual leave for that leave year under this Order reduced by 1 day in respect of the public holiday or bank holiday on which the agricultural worker is not required to work.

### **Payment in lieu of annual leave**

**38.**—(1) Subject to the conditions in paragraph (2), an agricultural worker and their employer may agree that the agricultural worker is to receive payment in lieu of a day of the agricultural worker's annual leave entitlement.

(2) The conditions referred to in paragraph (1) are—

- (a) the maximum number of days for which an agricultural worker can receive a payment in lieu of annual leave during any annual leave year is prescribed in the Table in Schedule 3;
- (b) a written record is to be kept by the employer of any agreement that an agricultural worker will receive payment in lieu of a day's annual leave for a minimum of 3 years commencing at the end of that annual leave year;
- (c) in circumstances where the agricultural worker does not work on a day as agreed in accordance with paragraph (1), that day is to remain part of the agricultural worker's annual leave entitlement;
- (d) payment in lieu of annual leave is to be paid at a rate which comprises both the overtime rate specified in article 12 and holiday pay calculated in accordance with article 36 as if the day for which a payment in lieu of annual leave is made is a day on which the agricultural worker is taking annual leave.

### **Payment of holiday pay on termination of employment**

**39.**—(1) Where an agricultural worker's employment is terminated and the agricultural worker has not taken all of the annual leave entitlement which has accrued to them at the date of termination, the agricultural worker is entitled in accordance with paragraph (2) to be paid in lieu of that accrued but untaken annual leave.

(2) The amount of payment to be made to the agricultural worker in lieu of each day of their accrued but untaken holiday as at the date of termination is to be calculated in accordance with article 36 as if the date of termination was the first day of a period of the agricultural worker's annual leave.

### **Recovery of holiday pay**

**40.**—(1) If an agricultural worker's employment terminates before the end of the annual leave year and the agricultural worker has taken more annual leave than they were entitled to under the provisions of this Order or otherwise, their employer is entitled to recover the amount of holiday pay which has been paid to the agricultural worker in respect of annual leave taken in excess of their entitlement.

(2) Where under paragraph (1) an employer is entitled to recover holiday pay from an agricultural worker, the employer may do so by means of a deduction from the final payment of wages to the agricultural worker.

### **Bereavement leave**

**41.**—(1) An agricultural worker is entitled to paid bereavement leave and agricultural bereavement pay in accordance with article 43 in circumstances where the bereavement relates to a person in Category A, Category B or Category C.

(2) For the purposes of paragraph (1), persons in Category A are—

(a) a child.

(3) For the purposes of paragraph (1), persons in Category B are—

(a) a parent of the agricultural worker,

(b) the agricultural worker’s spouse or civil partner, or

(c) someone with whom the agricultural worker lives as if they were spouses (without being legally married) or someone with whom the agricultural worker lives as if they were in a civil partnership (without legally being in a civil partnership).

(4) For the purposes of paragraph (1), persons in Category C are—

(a) a brother or sister of the agricultural worker,

(b) a grandparent of the agricultural worker, or

(c) a grandchild of the agricultural worker.

(5) Bereavement leave for the purposes of paragraph (1) is in addition to any other leave entitlements under this Order.

### **Determining the amount of bereavement leave**

**42.**—(1) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person within Category A is 2 weeks.

(2) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person within Category B is—

(a) 4 days where the agricultural worker works their basic hours on 5 days or more each week for the same employer, or

(b) where the agricultural worker works their basic hours on 4 days a week or less for the same employer, the number of days calculated in accordance with paragraph (3).

(3) Subject to paragraph (7), the amount of an agricultural worker’s entitlement to bereavement leave following the death of a person within Category B is to be calculated according to the following formula—

$$\frac{DWEW}{5} \times 4$$

(4) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person in Category C is—

(a) 2 days where the agricultural worker works their basic hours on 5 days or more each week for the same employer, or

(b) where the agricultural worker works their basic hours on 4 days a week or less for the same employer, the number of days calculated in accordance with paragraph (5).

(5) Subject to paragraph (7), where this article applies the amount of an agricultural worker's entitlement to bereavement leave following the death of a person within Category C is to be calculated according to the following formula—

$$\frac{DWEW}{5} \times 2$$

(6) For the purposes of the formula in paragraphs (3) and (5), DWEW is the number of days worked each week by the agricultural worker calculated in accordance with article 32 or 33 (as appropriate).

(7) Where the calculation in either paragraph (3) or (5) results in an entitlement to bereavement leave of less than 1 day, the entitlement is to be rounded up to one whole day.

(8) In circumstances where an agricultural worker has more than one employment (whether with the same employer or with different employers), paid bereavement leave may be taken in respect of more than one employment but must not exceed, in respect of any one occasion of bereavement, the maximum amount of bereavement leave specified for a single employment in this article.

#### **Agricultural bereavement leave pay**

**43.**—(1) The amount of pay in respect of bereavement leave following the death of a person in Category A is, for the first four days, or where the agricultural worker works their basic hours on 4 days a week or less the number of days calculated in accordance with article 42(3), to be determined in accordance with the provisions of article 36 as if the first day of the agricultural worker's bereavement leave was the first day of that worker's annual leave. For the remainder of any period of bereavement leave the agricultural worker shall be entitled to an amount equivalent to statutory parental bereavement leave pay applicable from time to time.

(2) Any agricultural bereavement leave pay paid to the agricultural worker in accordance with article 43(1) is inclusive of any statutory parental bereavement leave pay that the agricultural worker may be entitled to for the same period.

(3) The amount of agricultural bereavement leave pay to which an agricultural worker is entitled to following the death of a person in Category B or C is to be determined in accordance with the provisions in article 36 as if the first day of the agricultural worker's bereavement leave was the first day of that worker's annual leave.

#### **Unpaid leave**

**44.** An agricultural worker may, with their employer's consent, take a period of unpaid leave.