TIME OFF IN LIEU PROCEDURE

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PROCEDURE SUMMARY
The Trust aims to ensure that there are sufficient resources to undertake normal duties within the normal working day, however, recognises that there will be occasions where employees may be required to work outside their normal hours. In line with Agenda for Change Terms & Conditions the Trust aims to support the Time off in Lieu facility and this policy supports the facilitation of this.

The Trust monitors the implementation of and compliance with this procedure in the following ways:
This policy will be subject to review as per agreed review schedule of Trust HR policies and as agreed by the Trust’s Partnership Committee.

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The Director responsible for monitoring and reviewing this procedure is
Director of Corporate Governance & Strategy
ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

TIME OFF IN LIEU PROCEDURE

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Assurance Statement

This procedure provides assurance to the Trust that we have a process in place to ensure that there are sufficient resources to undertake normal duties within the normal working day. However, we recognise that there will be occasions where employees may be required to work outside their normal hours and at these times time off in lieu may be agreed.

This is balanced with the duty to comply with the Working Time Regulations and protect the health & safety of its employee by ensuring that excessive hours are not worked and that any additional hours which are worked are usually agreed in advance and monitored appropriately.

The procedure has been developed to ensure that the Trust’s values; compassionate, empowering and open are being adhered to at all times.

1.0 INTRODUCTION

1.1 The Time Off In Lieu (TOIL) procedure covers all employees on Agenda for Change band 1 to 7 who are eligible for payment for additional hours worked and has been developed in order to balance the needs/responsibilities of the Trust and to provide employees with clear guidance in relation to TOIL.

Senior Managers on band 8a and above are not entitled to overtime payments and therefore cannot claim TOIL. There is no provision for Bank Workers to claim TOIL as they are paid for the time they work.

1.2 For the purposes of this procedure, TOIL is defined as accrued time which, in agreement with their line manager or individual with delegated duties to authorise, employees are allowed to take off for hours that they have previously worked. The Trust acknowledges the professional nature of its workforce and as a result, TOIL is not intended as a method to accumulate additional leave or replace effective and flexible departmental working practices.

1.3 TOIL should be used as the main method of dealing with both unplanned events/emergencies and the management of any occasional/temporary planned activities which require additional staffing hours.

2.0 ACCRUING TOIL

2.1 TOIL can only be accrued in periods of 15 minutes or more and can only be accumulated with the prior agreement of the line manager or designated other. Failure to secure this agreement, in advance, will result in the additional hours not qualifying for accrual of TOIL.
2.1.1 There may be exceptional occasions where staff may be required to work extra hours to deal with emergency situations, particularly out of hours and where a manager is unavailable. In these situations, staff should report to their line manager/designated other as soon as is practically possible regarding the accrual of TOIL. The line manager will need to approve the accrual of TOIL.

2.2 Once the accrual of TOIL has been agreed, the line manager must ensure that it is possible for the additional hours to be worked, that the employee is working in safe conditions and takes the appropriate breaks.

2.3 Staff should not owe or accrue more than 15 hours in any one month period, except in exceptional circumstances and with the agreement of the Associate Director/Head of Service. The line manager is responsible for reviewing and ensuring that staff do not accrue in excess of 15 hours in any one month by regularly monitoring accrual of TOIL within their service. Managers should also ensure they review on a regular occasion any other accrual of leave such as annual leave and refer to necessary policies and procedures regarding accrual and carry over arrangements.

2.4 Where it is identified that staff are regularly accruing TOIL (continuously over a six month period) a plan should be agreed between the staff member and the line manager to limit further accrual and to take the time back. The line manager should also consider the re-organisation of work duties.

2.5 Staff who accrue extra time out of personal choice when there is not a pre-identified and agreed service need to do so are not entitled to accrue time off in lieu. “Identified service need” must be considered on a case by case basis and can be identified as circumstances in which failure to complete the work at that particular time could have a detrimental impact on patient care/work quality or service delivery etc. It does not normally apply for example to an individual choosing to start early or finish late in order to complete work which forms part of their normal responsibilities.

2.6 Staff are not permitted to avoid taking lunch breaks in order to accrue time off in lieu or so that they can leave work earlier. Rest breaks are a legal requirement and form part of the Working Time Regulations. Where staff are unable to take rest breaks due to service requirement compensatory rest should be granted at the earliest opportunity as per Working Time Regulation Procedure.

2.7 Staff should not be permitted to claim time off in lieu in circumstances such as choosing not to take a break, as a result of poor time management or as a means of accruing extra leave. This list is not exhaustive.

3.0 CLAIMING BACK TOIL

3.1 As is the case with any time off accrued TOIL can only be taken at a time which is agreed by the line manager or designated other and where it does not have an adverse impact on the service. Where a TOIL request has not been approved it is the managers’/employees’ joint responsibility to identify suitable alternative dates when the TOIL can be taken.
3.2 Staff should take their time owing back as soon as practicably possible in consultation with the line manager or designated other. Any such time should be taken back within three months of its accrual. This is a rolling 12 week period. If TOIL is unable to be taken during this period a member of staff or manager can request for this to be paid if no alternative time can be allocated.

3.3 Line managers should avoid authorising requests for time off in lieu which will require a bank worker or an agency worker to cover the shift.

3.4 Time owing may be cancelled in exceptional circumstances (24-hour notice), by the line manager/designated other. In such instances the time owing to be taken should be re-booked, or if not possible paid according to section 10.

3.5 Managers should carry out a review of TOIL before the end of the financial year (31st March). Any TOIL which was accumulated before the 12 week rolling period should be processed for payment before the end of the financial year. TOIL within the last 12 week period may be ‘carried over’ to the new financial year and claimed back as time owing.

3.6 If an employee transfers to another role and there is outstanding accrued time in lieu, this should be taken before the individual transfers to the new role. If it is agreed by the new department to permit the accrued time of in lieu to be carried over to the new role then the associated costs will be absorbed by the new department.

4.0 MEDICAL APPOINTMENTS

4.1 TOIL may be used to attend personal medical appointments. For any such appointments the time to be taken should be cleared with the employee’s line manager/designated other. This is to ensure that cover can be provided, if necessary.

4.2 This section of this procedure should be used in conjunction with the Trust’s Sickness Absence Policy & Procedure.

5.0 BREAKS

5.1 The Trust promotes healthy working and in line with the requirements of the Working Time Regulations 1998, amendment 2003. Details on time taken for a break from work are to be found in the Working Time Regulation Procedure; Statutory Rest Breaks and Compensatory Rest.

6.0 PUBLIC HOLIDAYS

6.1 The NHS Terms and Conditions of Service Handbook, section 13: Annual leave and general public holidays is applicable to the TOIL procedure.

6.1.1 Staff required to work or to be on-call on a general public holiday are entitled to equivalent time to be taken off in lieu at plain time rates, in addition to the appropriate payment for the duties undertaken.
6.1.2 The appropriate payment for duties undertaken is detailed in section 2, Maintaining Round the Clock Services in the NHS Terms and Conditions of Service Handbook.

6.1.3 Staff who work more than 60 hours (8x7½ hours) on general public holidays, in their personal leave year, will receive TOIL at plain time rate for all of the hours worked and the appropriate payment for all of the hours worked. The 60 hour threshold will be set on a pro-rata basis for part-time staff. E.g. if staff were required to work 70 hours per year on public holidays they would receive 70 hours TOIL, plus the appropriate payment.

6.1.4 Staff who volunteer to work more than 60 hours in their personal leave year will receive TOIL at plain time rate up to the 60 hour threshold and the appropriate payment for the duties they undertake. For any time worked over the 60 hour threshold they will receive payment only.

7.0 EMPLOYEES CALLED INTO WORK DURING AN ON-CALL PERIOD

7.1 The NHS Terms and Conditions of Service Handbook, Annex 3, Principles for harmonised on call payments is applicable to the TOIL procedure:

7.1.2 Employees who are called into work during a period of on-call will receive payment for the period they are required to attend, including any travel time. Alternatively, staff may choose to take time off in lieu. However, if for operational reasons time off in lieu cannot be taken within three months (12 weeks), the hours worked must be paid for.

7.1.3 For work (including travel time) as a result of being called out the employee will receive a payment at time and a half, with the exception of work on general public holidays which will be at double time. Time off in lieu should be at plain time. There is no disqualification from this payment for bands 8 and 9, as a result of being called out.

8.0 RECORD KEEPING

8.1 All time owing must be clearly documented at the time on the individual staff member’s Time Owing record sheet (Appendix 1), including date, reason and length of time accruing or taken.

8.2 Staff are responsible for ensuring that they get all time owing (accumulated and claimed back) authorised and countersigned by their line manager or designated other.

8.3 Failure to follow the TOIL policy and procedure may lead to action under the Trust’s Conduct & Capability Policy & Procedure.
9.0 TIME OUT FOR REPRESENTATION

9.1 Where it is necessary for an accredited union representative/work colleague to accrue additional working time due to union/representation duties then, following discussion with the line manager, the additional time will either be agreed as TOIL or bank.

9.2 Further details are to be found in the following policies: Time out for Trade Union Duties and Deployment of Temporary Workers.

10.0 REMUNERATION

10.1 Employees in Bands 1-7 have a contractual right to be paid at the appropriate overtime rate for approved additional hours worked in excess of the standard full time hours of 37.5 hours per week. Part time employees will receive payment for additional hours worked at plain time rates until their hours exceed the standard full time hours unless they take TOIL.

10.2 Under the national agreement, set out in the Agenda for Change Handbook, employees may request to take time off in lieu as an alternative to receiving overtime payments. Time off in lieu of overtime will be paid at plain time rates. However, where, for operational reasons, staff are unable to take the time off in lieu within three months (of the overtime being worked) they must receive the overtime payment, unless there are exceptional circumstances