



Workforce

**Guide to the application of
NHSScotland Workforce Policies to
workers**

NHSScotland relies on the services of a large number of people who are considered to be “workers” to fill gaps in the workforce. These individuals work under a contract for service and do not hold a contract of employment. Examples of staff who may be workers rather than employees are those who provide services via a staff bank, through an Agency or as a sessional worker. Workers are entitled to many, but not all, of the employment rights which an employee is entitled to. It can be complex to work out if someone is self-employed, a worker or employee, but someone is likely to be a worker if the following apply:

- The staff member is not providing the service as a self-employed person carrying on a business on their own behalf
- There is a contract of some kind in place, which requires the staff member to provide work / service to the Board – but this is not a contract of employment
- The staff member is obliged to provide the service themselves, and not send a substitute

Although workers do not hold a contract of employment, they are still entitled to certain employment rights including:

- protection against unlawful discrimination
- protection for ‘whistleblowing’ i.e. reporting wrongdoing in the workplace
- to not be treated less favourably if they work part-time
- getting the National Minimum Wage
- protection against unlawful deductions from wages
- the statutory minimum level of paid holiday
- the statutory minimum length of rest break
- to not work more than 48 hours on average per week or to opt out of this right if they choose

If they fulfil the statutory criteria they may also be entitled to:

- Statutory Sick Pay
- Statutory Maternity Pay
- Statutory Paternity Pay
- Statutory Adoption Pay
- Shared Parental Pay

Workers are not usually entitled to:

- protection against unfair dismissal
- minimum notice periods if their contract for service is ended
- the right to request flexible working
- time off for emergencies
- Statutory Redundancy Pay

(The above lists are not exhaustive, and HR should be contacted in the event of any query about the rights of a specific worker).

NHSScotland Workforce Policies apply to workers unless otherwise stated. Where parts of them do not apply to workers, then this is clearly set out.

Because workers do not hold a contract of employment, they have no right to claim unfair dismissal. However, to ensure workers are treated fairly, decisions regarding the termination of a worker's contract should be based on a reasonable level of investigation, and given careful consideration. The views of the worker should be taken into account before any such decision is made (unless there are exceptional circumstances). The worker should have a right to have any decision to terminate their contract, or disciplinary action short of termination, reviewed.

Workers have the right to raise concerns with the service regarding their working conditions and treatment by the organisation and its employees.