

# The NHS pay deal – are all Agenda for Change staff eligible?

25 May 2023

The announcement that a pay deal had been reached for Agenda for Change staff was no doubt welcome news for NHS employers who had been managing the impact of the recent strike action. However, although not impacted by strike action, many social enterprise, primary care and charity employers are impacted by the deal because of the terms on which they employ their staff, often mirroring Agenda for Change terms and conditions. This has led to concerns being raised regarding the affordability of the deal which, for such employers, is not fully government funded.

NHS employers are also grappling with the eligibility criteria and whether it extends to their bank and other atypical workers.

## What are the implications of the deal in these atypical arrangements?

Staff employed by non-NHS organisations on Agenda for Change terms and conditions are potentially entitled to the award either in full or in part. The award is made up of a 5% consolidated increase to pay and two non-consolidated lump sum payments, namely a 2% increase on pay for 2022/2023 and a one-off “NHS backlog bonus” ranging between £1250 and £1600 for each of the pay bands. However, as the one-off payments are not funded for social enterprise, charity and primary care employers, many are concerned that they don't have the financial means to implement the award, despite wanting to reward their hardworking staff. This puts the employer in a difficult position. Do they implement and face the financial implications, or do they decline to pay and face legal challenge and the negative impact on employee relations, possibly leading to strike action?

## What are the legal considerations?

Whether non-NHS employers of Agenda for Change staff are obliged to pay the award will depend on a careful legal analysis of the contractual and collective bargaining arrangements, particularly whether all elements of the pay award have become incorporated into the individual contracts of staff. Indeed, the [FAQ's](#) that accompanied the announcement of the payments is clear that only staff directly employed by NHS organisations as set out in Annex 1 of Agenda for Change are eligible to receive the payments. This leaves open a number of questions about whether NHS employers are required to make the payment to bank staff and whether non-NHS organisations, who employ on Agenda for Change terms, are required to make the payments at all.

## What is the solution?

If affordability is a significant issue, non-NHS employers may need to carry out a careful analysis of the existing contractual arrangements in place to determine whether staff are entitled to any or all of the award. NHS employers will need to consider the nature of the relationship with their bank workers, and whether this could be considered to be direct employment. The terms of the contract and what happens in practice will be relevant.

Whatever the outcome of that analysis, employers will need to decide what is the right approach for their organisation, balancing financial constraints with the potential impact on employee relations if a decision is made to pay anything less than the full award.

If you're a [healthcare employer](#) and would like to discuss any of the issues raised above, please contact us.

## Contact



Helen Badger  
Partner

[helen.badger@brownejacobson.com](mailto:helen.badger@brownejacobson.com)

+44 (0)121 237 4554

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