

11th February 2003

To: **Director of Human Resources
Each Health Board / ERHA**

**Labour Court decision on the inclusion of acting-up allowance in the
calculation of premium pay**

Dear Colleagues

You will be aware from previous correspondence that the Nursing Alliance appealed to the Labour Court the recommendation of the Rights Commissioner in respect of the above matter. The Court has decided that the period of qualification for payment of arrears should be amended from one continuous month to one continuous week. A copy of the Court decision is attached.

The amended formula for calculation of arrears is set out below:

1. Nurses who acted in higher posts and to whom premium payments applied, should apply for payment to their Health Board.
2. For each minimum period of one continuous week acting in a higher post they should be paid pro rata to the value of one year.
3. The value of one year is recommended as €600.
4. The maximum payment available to any individual is the equivalent of five years i.e.€3,000.

Application of the formula to those who have retired from service:

1. The proposal outlined above in respect of salary arrears should also apply to salary arrears due to pensioners.
2. Pensioners who acted in a higher post in the three years prior to retirement should have their lump sum and pension reviewed to reflect this fact and any adjustment should be in accordance with normal superannuation arrangements.

Employers are asked to note the following points:

- Premium pay must be based on basic pay and acting-up allowance.
- Before entertaining any applications for arrears, each employer should be satisfied that a liability for arrears actually exists, i.e. that acting-up allowances had not been included in the calculation of premium pay.

In circumstances where acting-up allowances had been included in the calculation of premium pay, no liability for arrears exists.

- Calculation of arrears should be based on each continuous week of acting-up in which **premium hours were worked**, i.e. Sunday, Public Holiday or Night-Duty. No arrears are

due to be paid in respect of any period of acting-up that did not include premium pay. It is important to note that not every continuous week of acting-up attracts premium pay.

- The maximum payable in respect of any single year is €600.
- The total arrears payable to any individual claimant is €3,000.
- In amending the Rights Commissioners original recommendation, the Labour Court expects the Unions to be conscious of the difficulties associated with implementation of this formula and to facilitate management in minimising the task. To this end, when making an application for payment of arrears, applicants should indicate the period(s) of acting-up relevant to their application.
- Arrears are due from the introduction of the Holiday (Employees) Act, 1973 to receipt of clarification on the matter from the Department of the Environment and Local Government on 1st May 2001.
- As per previous circulars, all premium pay from 1 May 2001 should be based on basic pay plus acting-up allowance and should have been paid accordingly.

Any points of clarification on this matter should be addressed to the undersigned.

Yours sincerely

GERRY BELLEW
Industrial Relations Executive

CC: Mr Kieran Feely, Nursing Policy Division, Department of Health & Children