

Enhanced Pay Guidance

This supplementary SMETA guidance document has been developed by the UK Network Group with the collaboration of Sedex, buyer/supplier members of Sedex and affiliate audit companies.

This guidance makes recommendations on how to audit enhanced pay and overtime payment against ETI Base Code and UK legislation as part of a SMETA audit.

Please note that this document is designed to be used in the UK, where overtime premiums are not regulated by the standard law. If there are specific laws relating to overtime, these must be complied with (e.g. AWO) In countries where overtime premiums are regulated by law, enhanced pay would not be an alternative option.

Implementation

This guidance will be release in December 2019 and will be implemented from 6th January 2020.

Background

Many employers are paying enhanced pay to workers to show their value to the business. However, Sedex requires that the overtime premium amounts to at least 125%. In addition, the ETI only accepts overtime paid at a premium and so enhanced pay conflicts with their belief of paying all overtime at a premium.

In the United Kingdom, where the law allows businesses not to pay overtime premium, yet non-compliances are being raised on SMETA reports for sites where no overtime premium is being paid, even where workers are still benefiting from higher standard rates of pay and benefits through enhanced pay.

Scope:

This document establishes the cases and conditions under which:

- enhanced pay is acceptable or deemed a non-compliance.

Sedex recommends that workers are be paid, as a minimum, the required minimum rate of pay plus at least 125% overtime premium OR be paid enhanced pay as per the guidance below.

Current SMETA Guidance

The ETI Base Code recommends a 125% overtime premium as a minimum. This 125% overtime rate may be different to a country's legal overtime, so the ETI Base Code states that the prevailing standard to use is the one that affords greater protection for workers (i.e. whichever is higher should be the standard for that site). The SSF have agreed that if 125% overtime is not paid then this will result in a non-compliance which will be raised in the audit against the ETI Base Code. This guidance is to clarify the situation when enhanced pay can be used legally in areas where there is no legal overtime rate.

Enhanced Pay

The proposed change is that we will accept enhanced pay as long as the overall amount paid to any worker based on a total of 60 hours is equal or more than basic and overtime at 125% and under the following conditions:

- **Overtime must be voluntary**
- **All workers are benefitting including casual and agency workers**
- **All workers are benefitting regardless of how many hours they work**
- **Pay rates are clearly defined in the employment terms**

There are situations where the ETI recommendation of overtime paid at 125% are not met but do not prove to disadvantage workers.

This change is not intended to restrict the amount of pay workers receive but to show that whilst sites might not be complying with the recommendation of the ETI, workers are still being adequately compensated in other ways.

In current practice, Sedex and the ETI code states that overtime must be voluntary. This will not change; it is paramount that **overtime work always remains a choice for workers**, rather than a requirement. If overtime is found not to be voluntary, it will be raised as a non-compliance, but against overtime not enhanced pay.

Below is a table to show the proposed outcomes of certain situations:

Whenever a Non-Compliance is raised, an auditor must check a box in the SMETA report to highlight whether this NC is against a law or a code (ETI base code or supplier code). See below for more details.

| OT Above or equal to 125% | Basic pay meets the local law | Pay meets the enhanced rates criteria | Outcome |
|---------------------------|-------------------------------|---------------------------------------|--|
| Yes | Yes | Yes | Compliant |
| Yes | No | No | Non-compliance against law |
| Yes | No | Yes | Non-compliance against law |
| No | Yes | No | Non-compliance against code |
| No | Yes | Yes | Compliant |
| No | No | No | Non-compliance against law and code |

Please see our example calculations in the Appendix.

Changes to Audit Process

The auditor must:

- Audit the wage section as per this guidance
- Refer the site to this guidance, in case the site disputes the finding
- Ask about consolidated pay during the interview process with workers and confirm the benefits from the workers' perspectives

Changes to Report Writing

When completing the audit report, the auditor must make sure:

- the “consolidated pay” (what we now define as enhanced) box is ticked and make it clear that the company is using enhanced pay

| | |
|---|---|
| <p>O: ETI Code requires a prevailing standard to give greatest worker protection. If a site pays less than 125% OT premium and this is allowed under local law, are there other considerations? Please complete the boxes where relevant. Multi select is possible.</p> | <input type="checkbox"/> No <input checked="" type="checkbox"/> Consolidated pay (May be standard wages above minimum legal wage, with no/low overtime premium) <input type="checkbox"/> Collective Bargaining agreements <input type="checkbox"/> Other |
| | <p>Please explain any checked boxes above e.g. detail of consolidated pay CBA or Other</p> |
| | |

All necessary information should be recorded on the current SMETA report and Corrective Action Plan Report (CAPR). The auditor should state in the audit report:

- How they have verified that overtime is voluntary
- The wage calculations they have made to ensure that enhanced pay rates are adequate

It is important that the evidence reviewed (including interview information) is clearly detailed and this should be recorded under 'current status and evidence examined'.

Uploading & Follow-up

The audit should be uploaded as detailed in SMETA Best Practice Guidance (BPG). If the site disputes a finding, they should use the dispute section on Sedex Advance, or the onsite CAPR.

The auditor may have a view on the method of verification but normally a Follow-up on non-compliance on wages and hours have to be done through site visits.

FAQs

What if workers never work 60 hours per week or work more than 60 hours in a week?

To calculate if enhanced pay is acceptable, the auditor must calculate it based on working basic hours and OT at 125% of basic up to 60 hours and compare it to enhanced pay (based on 60 hours), regardless of the number of actual hours worked.

Can other non-statutory benefits be included in the calculation?

Yes - but the benefits value has to be clearly demonstrated and relate to each and every pay period. For example, paid breaks, shift premiums or guaranteed weekly bonus payments. Other payments like additional paid annual leave, non-guaranteed bonus payments, enhanced pension contributions and paid sick leave would all not be accepted.

If overtime is not voluntary, is this acceptable?

No - overtime must always be voluntary, and this would be raised as a separate non-compliance under the overtime section.

Are annualised hour contracts acceptable?

This type of contract is not included within the scope of this guidance.

Is it acceptable if a worker is salaried and isn't paid for overtime hours but receives a higher overall salary?

No - workers should receive pay for each and every hour that they work. If a salaried worker is not receiving an OT premium when working OT or does not follow the Enhanced Pay requirements, then this should be raised as a non-compliance.

How are salaried workers calculated?

If salaried, then each worker should work to their contracted conditions. The hours of work have to be recorded and can be calculated in the same way as enhanced pay. It needs to be demonstrated that the overtime is voluntary, or a non-compliance will be raised against overtime.

Appendix

Examples of Payment Calculations

The examples below use 40 hours as the standard week. Contracts will vary as to what the standard working hours are i.e. 48 hours as an alternative. Enhanced pay should be based on the contracted basic hours, whatever they may be. Then, the balance up to 60 hours is calculated as overtime.

Enhanced pay rate for all hours worked must be EQUAL TO or MORE THAN the following:

(Legal Minimum Wage x No. of Basic Hours [according to contract]) + (Legal Minimum Wage x 125% for additional hours up to 60 [according to contract])

Examples with enhanced pay only

Please note that these examples use figures from 2019. Please ensure future calculations are based on current National Living Wage.

Situation: The National Living Wage is **£8.21**. Therefore, the overtime rate (125%) of the NLW is **£10.26**. This site could also offer workers **enhanced pay**; the examples below show the usual pay versus the acceptable and unacceptable alternatives.

The Usual: 60-hour week

40 hours of NLW at £8.21
20 hours 125% overtime at £10.26
 $£328.40 + £205.20 = \mathbf{£533.60}$



Option A: 60-hour week

60 hours of enhanced pay at **£8.90**
£534.00

Option A of enhanced pay is **acceptable** as it's greater than NLW + 125% overtime. Option B is lower, so it is **unacceptable**.



Option B: 60-hour week

60 hours of enhanced pay at **£8.60**
£516.00

Examples with enhanced pay and staggered overtime

Situation: The National Living Wage is **£8.21**. Therefore, the overtime rate (125%) of the NLW is **£10.26**. This site could offer workers **enhanced pay and staggered overtime**. The staggered overtime could mean that the first 8 hours of overtime is the same basic enhanced rate, and anything over 12 hours is then 125% of the enhanced pay. The examples below show the usual pay versus the acceptable and unacceptable alternatives.

The Usual: 60-hour week
 40 hours of NLW at £8.21
 20 hours 125% overtime at £10.26
 £328.40 + £205.20 = **£533.60**



Option A: 60-hour week
 40 hours of enhanced pay at **£8.60**
 8 hours of overtime at £8.60
 12 hours of overtime at £10.75 (125%)
 £344 + £68.80 + £129 = **£541.80**

Option A of enhanced pay and staggered overtime is **acceptable** as it's greater than NLW + 125% overtime. Option B is lower, so it is **unacceptable**.



Option B: 60-hour week
 40 hours of enhanced pay at **£8.30**
 8 hours of overtime at £8.30
 12 hours of overtime at £10.40 (125%)
 £332 + £66.40 + £124.80 = **£523.20**

Example with enhanced pay and less than 125% overtime

Situation: The National Living Wage is **£8.21**. Therefore, the overtime rate (125%) of the NLW is **£10.26**. This site could also offer workers **enhanced pay with an overtime of less than 125%**. Even though the overtime is less than the recommended 125%, if the basic enhanced pay is high enough, it would be acceptable. The examples below show the usual pay versus the acceptable and unacceptable alternatives.

Option A of enhanced pay and lower overtime is **acceptable** as it's still greater than NLW + 125% overtime. Option B is lower, so it is **unacceptable**.



Option A: 60-hour week
 40 hours of enhanced pay at **£8.80**
 20 hours of overtime at 110% at £9.68
 £352 + £193.6 = **£545.60**

The Usual: 60-hour week
 40 hours of NLW at £8.21
 20 hours 125% overtime at £10.26
 £328.40 + £205.20 = **£533.60**



Option B: 60-hour week
 40 hours of enhanced pay at **£8.50**
 20 hours of overtime at 105% at £8.92
 £340 + £178.40 = **£518.40**

Examples with enhanced pay and paid breaks

Non-statutory benefits e.g. paid break can be included in the calculation.

Situation: The National Living Wage is **£8.21**. Therefore, the overtime rate (125%) of the NLW is **£10.26**. This site could also offer workers **enhanced pay and paid breaks**. The examples below show the usual pay versus the acceptable and unacceptable alternatives.

The Usual: 60-hour week

40 hours of NLW at £8.21
20 hours 125% overtime at £10.26

$$£328.40 + £205.20 = \mathbf{£533.60}$$



Option A: 60-hour week

60 hours of enhanced pay at **£8.40**
Paid breaks (5 hours per week) at £8.40

$$£504 + £42 = \mathbf{£546.00}$$

Option A of enhanced pay paid breaks is **acceptable** as it's greater than NLW + 125% overtime. Option B is lower, so it is **unacceptable**.



Option B: 60-hour week

60 hours of enhanced pay at **£8.30**
Paid breaks (2.5 hours per week) at £8.30

$$£498 + £20.75 = \mathbf{£518.75}$$