

ADVICE ON THE APPLICATION OF PART 5.4

What does the clause mean?

This clause is not about the nature of work done, but about the requirement to attend school or elsewhere when the school is not open for instruction.

Clause 5.4 gives your employer the contractual right to require you to attend school or elsewhere, when the school is not open for instruction, for five days per year for professional development, and a further and separate five days per year for administration, preparation, communication, co-ordination and liaison. Balanced against the employer right to require attendance, clause 5.4 gives teachers a contractual right to refuse to attend school or elsewhere outside periods when they have already accrued voluntary or directed attendance of five days or the equivalent per year.

A full application of clause 5.4.2 would mean that teachers would not be required to attend school before the first period of the day begins or after the last period of the day ends. This interpretation is possible because the clause inclusion was required by the Government as a necessary concession from PPTA to allow contract settlement. The claim failed to demonstrate any understanding of:

- what the term open for instruction means,
- the normal processes of secondary schools,
- the potential consequences of treating teachers as though they are not professionals and have to be forced to work outside normal instructional hours.

Theoretically the use of clause 5.4.2 would mean that a teacher would not attend school outside any timetabled teaching periods, other than for five days or equivalent per year. Feedback from members suggests that they recognise the practical absurdity of this and wish to operate the clause in a sensible fashion.

The Executive believes the clause will cause no difficulties and have little visible impact in schools where the workload pressures on teaching staff are recognised and accommodated and mutual goodwill exists between the teaching staff and employer.

The advice which follows about what members should consider part of the five days is predicated upon the existence of such mutual goodwill.

What about staff meetings?

You should balance the potential use of the clause as a mechanism for controlling your workload (and avoiding excessive demand on your time and resources) against the reasonable requirements of the school and your professional responsibilities.

For example, a short daily meeting before classes start may reasonably be necessary for normal school administration. Normally, it is unlikely that members will apply this clause to these meetings.

However, if the school were seeking regular early meetings of some duration, or alternatively, extended meetings on an irregular basis prior to the start of periods, you may decide that this is an extension of your workload which you are unwilling to accommodate and might utilise clause 5.4.2.

If branch members have concerns about excessive and late meetings, the first step would be to raise the matter through your branch and seek to negotiate alternatives which do not adversely impact upon workload levels and to which people would be prepared to give time. This might include such options as time in lieu, the cancellation of other activities or the adjustment of period times during the day, or simply a commitment that the events will become less frequent or more focused. If this failed to redress the problem then clause 5.4.2 could be activated.

What about lunchtimes and other breaks?

Boards, not teachers, are legally responsible for ensuring supervision of students during periods when they are out of class, and technically the lunch-time period is not part of the time when the school is open for instruction. In the strictest sense this is unpaid time and falls into the goodwill category.

Most teachers would regard a reasonable and fair supervision allocation as an acceptable use of their time. The Association does not believe that members would wish to enforce the inclusion of the break periods as part of the five days unless teachers were being exposed to excessive demands for supervision.

Does clause 5.4.2 apply to things like report writing?

Clause 5.4.2 specifies activities which fall into any of the following categories:

- * school administration
 - * preparation and coordination
 - * departmental or related activities
 - * community, parent and whanau contact and liaison.
- If an activity falls into one of these groupings then the critical questions are: whether there is a **requirement to attend the school or elsewhere**; and whether **the school is closed for instruction** while the work is being done.
 - If a clause 5.4.2 activity is done at school during the time the school is open for instruction, or after the end of timetabled classes, but before 4.30pm then it would not be counted as part of the five days.

- If a teacher chose to take the reports home to do then the clause would not apply, since they have not been instructed "to attend".
- Where an activity, for example report writing, was part of a well-publicised timeline, with clear deadlines, then the clause would not apply. However, if a teacher were told for the first time at 4.30pm that a task was to be done and had to be finished by 8.30am next day then they are being placed under a requirement to attend either at the school or elsewhere (perhaps at home) to perform this administrative duty after the school is closed for instruction and clause 5.4.2 would apply.

Does marking count towards the five days?

As marking of students' work is part of the core teaching duty we recommend that members do not consider marking to be part of the five days component of clause 5.4.2. However, if marking for some specific purpose is **required** by the school to be done and at such short notice that the teacher can only comply by completing it out of school hours and would thus be required to remain at school or at home or elsewhere in order to do so, it can reasonably be deemed to be covered by clause 5.4.2. Such circumstances are likely to occur only as a result of unavoidable events (*such as emergencies, failure of government agencies*), or as a result of internal problems within the school, such as school management failure.

What about expenses?

You can claim actual and reasonable expenses from the school, including travel costs and childcare costs, under clause 5.4.3 if these arise because your Board chooses to operate clause 5.4.2. If the time spent is at your own initiative the Board does not have to reimburse you because you are not required to attend school or elsewhere. You should check with the board prior to the event that they are prepared to meet these costs.

How should I count my five days?

Part 51 of the ‘*Education (Salaries and Staffing) Regulations 1957*’ (ESSR) applies.

Part 5 of the CEC does not refer to the **teaching half day**, which the ESSR 1957 defines as 2.5 hours during which a teacher is in charge of an approved class or classes, but to the **half day**, which is defined separately.

One **half day** is defined as the whole of any period either before noon or after noon when the school is normally open for instruction of pupils. A half day is completed after 2 hours of student instruction.

A whole school day, therefore, is the period when the school is normally open for the instruction of students. This is why, for example, an evening parent interview activity does not constitute part of the school day.

The Association’s advice on accumulation of time under clause 5.4.2 is that it is best considered in half-day blocks. Therefore, when a teacher is attending school or elsewhere at a time when the school is not open for instruction:

- in the morning for a period of two hours or more which falls within the school’s normal morning hours (usually 8.30 a.m. to lunch time) it should be counted as one half day,
- in the afternoon for a period of two hours or more which falls within the school’s normal afternoon hours (usually following lunch to 3.15 p.m.) it should be counted as one half day,
- when clause 5.4.2 operates outside the school’s normal “open for instruction” period the time every two hours will constitute one half day,
- when clause 5.4.2 operates outside the school’s normal “open for instruction” times for less than two hours the time should be accumulated and each two hours so accumulated will combine to constitute one half day.

This will mean that if the time is used in five full days of activity within the hours of the normal school day the total accumulation might potentially be more than 25 hours, but if the time is used in a number of small packets the total equivalent time may be only 20 hours per year. Schools and teachers should therefore plan carefully the use of clause 5.4.2.

PPTA has issued previously an example of a form for recording Part 5.4 time.

What about part-timers?

The preceding advice applies also to part-time teachers, except that for you, the “equivalent” of five days is the number of hours you teach per week. For example, a teacher employed for 15 hours per week can be required to attend school or be elsewhere when the school is not open for instruction, for two blocks of 15 hours per year (*one for professional development and one for administration etc*).