

ARTICLE: Government to consult on travel and subsistence schemes

March 2010

Introduction

The Government announced in its 2009 Pre-Budget Report that it was committed to addressing the problem of National Minimum Wage (NMW) workers being able to participate in travel and subsistence schemes which can be extremely exploitative. The Government is now consulting on proposed changes to the NMW legislation to address these concerns.

Current schemes

As the law currently stands, payments made by employers to workers for expenses involved in travelling to a temporary workplace can be counted towards NMW. Some employers, employment businesses and umbrella companies encourage workers to sacrifice part of their salary and instead receive a travel and subsistence allowance for travel expenses, food, drink, accommodation, etc. Such an allowance is not subject to payment of tax or national insurance contributions (NICs) and so provides the worker with a higher net take home pay.

By using overarching employment contracts, companies can effectively link a series of separate assignments and turn what would be a permanent place of work (travel to which *does not* receive tax relief) into a temporary place of work (which *does* receive tax relief).

However, the Government has identified various problems with such schemes. Firstly, although the worker receives some tax advantage, most of the financial benefits go to the employer, employment business or umbrella company – a fact which most workers are unaware of. Only a small portion of the benefit actually goes to the worker. Secondly, workers' entitlement to earnings-related contributory benefits (such as working tax credits) can be adversely impacted due to the lower actual wage. Thirdly, those businesses who cannot implement such schemes or, more importantly, do not wish to do so since they consider them to involve profiting from low paid workers, find themselves at a competitive disadvantage. Finally, these schemes pose an Exchequer risk of about £85 million per year.

Proposed changes and consultation questions

To address the issues above, the Government proposes amending the NMW legislation so that travel and subsistence schemes cannot be taken into account when assessing whether an employer has met its NMW obligations. This means that, much like the recent change for tips and gratuities, payments through travel and subsistence schemes would have to be made on top of any NMW payment.

The Government emphasises that, because it is the NMW legislation that is being changed, only those workers on the borderline of receiving NMW will be affected. Travel and subsistence schemes for all other workers will not be affected.

The proposal document sets out five questions to which the Government would like answers. The deadline for responses is 6 May 2010 and the questions are as follows:

1. The Government believes that amending the NMW Regulations to exclude expenses which relate to travel to a temporary workplace from counting towards NMW pay is the best approach in dealing with this problem. Are there alternative approaches

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which would achieve the same outcome and which you believe that the Government should consider?

2. Will amending the NMW Regulations in this way adversely impact on NMW workers in a way that we have not anticipated?
3. What are your views on the potential implementation date of 1 October 2010, if the proposed changes to the Regulations are adopted?
4. What would be the impact of changes to Regulations on administrative processes and costs to business?
5. Do you have any comments on the Impact Assessment?

The consultation proposals can be found here:

http://www.hm-treasury.gov.uk/d/consult_minimumwage_expenses.pdf

If you would like further information on how these potential changes may impact on your workplace, please contact David Hill at dhill@davidsonlarge.com or Lucy Bond at lbond@davidsonlarge.com.

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