



Legal update — March 2016

Employment and pensions Travel time and the National Minimum Wage



As some of you may have seen there have been reports this week of a settled case involving a care provider's failure to pay the national minimum wage (NMW) for travel time between service users. This case is a particularly pertinent one given the additional financial liabilities that care providers will face with the introduction of the national living wage (NLW) on 1 April 2016.

It has been reported in the press that MiHomecare could face group action claims by care workers after it paid a carer an out of court settlement. Analysis of the worker's timesheets showed that on one day in January 2015 she travelled 38 miles between two clients. Beyond mileage, she was not paid for making these journeys and MiHomecare paid £1,250 to the worker to settle her NMW claim. This is not a binding decision because the settlement was reached out of court, but the publicity may result in care providers seeing an increased number of claims from workers claiming excess wages in respect of travel between service-users.

Additionally, care providers should be alert to the possibility of HMRC investigating their NMW compliance. We are aware that HMRC is currently investigating more than 100 care providers and as part of this "are taking targeted action against some of the biggest social providers".

By way of a reminder on the current position in relation to travel time and the national minimum wage:

The EAT, in the case of Mrs J Whittlestone v BJP Home Support Ltd, produced a clear analysis of the position in relation to travel time and the NMW and held that the travel time between appointments is work for the purposes of the National Minimum Wage Regulations 1999 (the NMWR) and therefore workers travelling are entitled to be paid the NMW for that time.

The Claimant's rota in this case was such that she had a number of service users to visit during the course of a day, frequently with little or no prospect of going home between visits. Time spent travelling between the home

of one service user and the next was not counted under her contract.

The EAT found that the Claimant's time was within the general control of the employer who was arranging the assignments. As a result the EAT found that "...with the exception of those periods, none of which were clearly identified in the decision, when the Claimant might have had so long between the end of one assignment and the next as to return home...the work would be assignment work".

April doesn't just see the introduction of the NLW, additionally the penalties for non-compliance with the NMW and NLW will increase from 100% of arrears to 200% of arrears but will be halved if employers pay within 14 days. The overall maximum penalty of £20,000 per worker will remain unchanged.



Source: Fotolia

Care providers are now at a particular risk of being investigated by HMRC and employers need to be aware that if you are not paying travel time between assignments then you may well be in breach of the NMWR, unless the gap between these assignments gives the worker time to go home between visits. Given the increased enforcement penalties and/or potential employment claims if you have any queries about your pay arrangements and/or NMW/NLW compliance, we can help.

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