Briefing Note

The National Minimum Wage and Accommodation Offset

This briefing note is of interest to all employers who provide employees with accommodation.

In circumstances where the employer is also a landlord of their employee and the employee pays rent, the if the minimum wage has been paid, the employer is required to deduct from total remuneration the entire amount of the rent less the accommodation allowance.

In the guidance note published by the Department of Trade and Industry (DTI) in April 2007 “National Minimum Wage and Accommodation Offset” the DTI advise that, according to their interpretation of the legislation, the whole amount of rent less the accommodation offset provided by Regulation 36 is required to be deducted from the gross weekly pay for the purposes of calculating whether or not the National Minimum Wage has been paid. The example given by the DTI is of an employee earning £6 gross per hour for a 45 hour week (i.e. £270 gross per week) but paying rent of £75 per week. The accommodation offset is deducted from the £75, leaving a balance to be deducted from weekly pay. The resultant number is then divided by the number of hours worked to get the basis hourly wage paid. In the example given the result of the rent being charged was to reduce the wages to below the national minimum wage.

Therefore, in circumstances where a full weekly wage is paid but in another capacity the employee as a tenant is charged full rent, the results can be surprising even where the rent being paid is a fair rent and there is no question of overcharging or any improper motive on the part of the employer.

So the question must arise as to whether or not the legislation does provide, as the guidance suggests, that the whole of the rent (less the offset) be deducted from total remuneration.

Section 1 of the National Minimum Wage Act 1998 provides “a person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage”.

Regulation 31(1) National Minimum Wage Regulations 1999 sets out the total reductions which require to be subtracted from the total remuneration for the purposes of calculating whether or not somebody has received the minimum wage.

Regulation 31(1)(h) states that there should be included any payment “made by or due from the worker in the pay reference period falling within Regulation 34”.

Regulation 34(1)(c) states that the payments made by or that are due from the worker which require to be subtracted from the total remuneration by Regulation 31(1)(h) include “any other payment due from the worker to the employer in the pay reference period that the employer retains or is entitled to retain for his own use and benefit except for a payment required to be left out of account by Regulation 35”.

Regulation 35 provides for the exclusion of payments in respect of the purchase by the worker of goods or services “… unless the purchase is made in order to comply with a requirement in the worker’s contract … in connection with his employment”. Regulation 35 does give some prospect that rent paid in connection with a lease, which is wholly independent of the contract of employment, might be excluded but to be successful the landlord would need to show that the provision of accommodation is a good or service being purchased by the worker. There does however not seem to be case law on that as yet. The issue did arise in relation to payments for household utilities in Commissioners for HM Revenue and Customs v Leisure Employment Services Limited (UKEAT/0106/06) but the issue whether the provision of accommodation might amount to the provision of goods or services has yet to be resolved.

Even if the argument is made that the rent relates to the purchase of a service the landlord/employer is caught by Regulation 31(1)(i).

This regulation states that the balance of rent over the allowance shall be deducted from remuneration.

The conclusion therefore is that the employer who is also a landlord is required to deduct rent (less the offset) by regulation 31(1)(i) for the purposes of determining whether the minimum wage has been paid.

An Example – Your Gardener

- National minimum wage offset for Non Agricultural Workers – currently £4.73 per day or £33.11 per week
- Agricultural Workers – accommodation is valued at £1 per week
- Their entitlement is to be paid not less than £6.08 per hour
- Your gardener works 40 hours per week. You do not provide a house.
- You therefore must pay a minimum of £6.08 x 40 = £243.20
- Your gardener works 40 hours per week. You do provide a house
- You therefore must pay a minimum of £6.08 x 40 (-33.11) = £210.09 which equates to £5.25 per hour
- You could therefore lawfully employ on £5.25 per hour
The Calculation

- Step 1: calculate the gross pay over the pay reference period
- Step 2: calculate the accommodation offset that can be applied, then compare it to the rent being charged

If the rent charged is higher than the offset, the next steps will be:

- Step 3: deduct the amount of rent from the gross pay
- Step 4: then add the applicable accommodation offset
- Step 5: divide the total by the hours worked

This will produce the hourly rate of pay for national minimum wage purposes.

An Example

- Your employee rents a cottage from you at £250 per month (market rental value £500 per month)
- Your employee works 40 hours per week
- You pay £6.08 per hour

Are you paying at least the Minimum Wage?

- Step 1 – calculate gross pay 40 x £6.08 = £243.20
- Step 2 – calculate accommodation offset (£33.11) and compare with rent charged (£250 per month x 12) / 52 = £57.69 per week
- Step 3 – deduct rent from pay £243.20 - £57.69 = £185.51
- Step 4 – add offset £33.11 + £185.51 = £218.62
- Step 5 – divide by number of hours £218.62 / 40 = £5.46

You are not paying the minimum wage.

This note is intended as a brief summary of the national minimum wage and accommodation offset. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

© Turcan Connell February 2012