

FIRE & RESCUE SERVICES National Employers

**To: Chief Fire Officers
Chief Executives/Clerks to Fire Authorities
Chairs of Fire Authorities
Directors of Human Resources**

Members of the Employers' Side of the NJC

29 February 2012

CIRCULAR EMP/02/12

Dear Sir/Madam,

PART-TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS

Agreement with the Fire Brigades Union

1. Circular NJC/1/12, also issued today, provides authorities with an update in respect of the Agreement reached with the Fire Brigades Union.
2. The circular also sets out the process that will be followed following dispatch of offer settlement letters on 5 March 2012 under that agreement.

Attached to that circular is:

- a copy of the original Agreement
 - copies of the Mechanism letters that Popularis and/or the FBU will use to communicate with eligible employees or ex-employees (who are ET claimants), which also form part of the Agreement
 - a flowchart setting out the anticipated timeline
3. Coupled with the Grey Book amendments circulated to authorities in March 2011 (NJC/4/11), effective from the end of the settlement period, both parties to the Agreement believe it will resolve all claims/potential claims relating to terms and conditions under the above Regulations. Accordingly the FBU will not support an individual who decides to continue to progress his or her Employment Tribunal claim, with one exception.
 4. That exception is where in the view of the FBU and its legal representatives an individual has provided the required evidence that 'non-standard circumstances or previous employment' set out in the Agreement applies but the FRA has not accepted the evidence. Such occurrences are very unlikely. For example, in the case of a period of sickness absence of 9 months or more, the individual is required to provide a report, or reports, from a medical

practitioner(s) confirming that he/she was unable to work for a continuous period of sickness of nine months or more due to sickness absence, medical records evidencing the same or copies of Doctors' Statements under the Statutory Sick Pay (Medical Evidence) Regulations 1985 covering the continuous period of nine months or more, and that, in each case, the reports or records show the precise dates of sickness absence (unrelated to an on-duty injury/illness).

Retained Firefighters Union

5. Agreement with the Retained Firefighters Union (RFU) was reached shortly after that with the FBU. There is no material difference between the two Agreements.
6. The independent third party, Popularis, is working with authorities and the RFU to ensure that settlement offers to RFU members can be issued within a few weeks. It is currently anticipated that this will take place in mid-March.
7. Chief Fire Officers and Heads of HR will be aware that as part of that process information has recently been provided to authorities concerning original ET claimants, supported by the RFU, that do not appear to be matched against data provided by authorities. Clearly, authorities will wish to see all claims withdrawn and it is therefore important that every effort is made to be able to make an offer to all original claimants.
8. Paragraphs 3 and 4 above equally apply to the Agreement with the RFU.
9. Similar, to NJC/1/12, once a dispatch date for the offer settlement letters has been confirmed we shall write to authorities again providing information in respect of what needs to be done and the anticipated timescale thereafter. This will also include a flowchart specific to the RFU Agreement.

Non-union members

10. Once all eligible FBU and RFU members have been identified, it will then be clear that the remaining individuals included in authority data provided to Popularis are not members of either union.
11. Hence it is not possible to identify a dispatch date for offer settlement letters to be sent to this group at this time. Clearly the intention is to do so as quickly as possible.

Settlement payments

12. Both agreements were concluded on the advice of, and drafted by, the respective legal representatives and state that compensation (settlement) payments will not be subject to tax or national insurance. However, HMRC has recently made it clear that it does not necessarily share the same view. This means that currently the tax and insurance liability will fall upon authorities.

13. Discussion is currently taking place with HMRC led by a specialist tax lawyer to explain the complexity of the matter, i.e. that it is not as simple a matter as a straightforward replacement for an individual's lost earnings, and to seek to minimise the tax and national insurance liability.
14. The earliest trigger point at which an FRA can be advised of acceptance is between 20 March and 9 April. As provided for in the settlement agreements FRAs have three months to make the settlement payment from notification of acceptance. We are conscious that FRAs will however wish to make payments as soon as they are able to which means that the first batch of payments could be through the April payroll run. DAC Beachcroft (previously Beachcroft Wansbroughs) is optimistic that HMRC will decide upon the substantive matter within the next few weeks so that we can fully advise FRAs on how to treat the payments before then. If further contact with HMRC suggests that a decision on the substantive matter will be delayed then its view will be sought on how to treat payment of the compensation settlements pending resolution of the substantive matter. Accordingly, our intention is to issue further advice to authorities by the end of March.
15. We have reserved the position of authorities in relation to the legal advice received about tax and national insurance liability on compensation payments should the outcome of the discussions with HMRC not be satisfactory.

Queries

16. Authorities are reminded that all queries in relation to these matters should be directed to firequeries@local.gov.uk

Yours faithfully,



Gill Gittins
Principal Negotiating Officer