

Local Government House, Smith Square,
London, SW1P 3HZ
Telephone 020 7187 7336 Fax 020 7664 3000
Employers' Secretary, Sarah Messenger

Direct Dial
020 7187 7335

e-mail: firequeries@local.gov.uk
website: www.lge.gov.uk/

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

30 March 2012

CIRCULAR EMP/05/12

Dear Sir/Madam,

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

1. Authorities will be aware from circular EMP/2/12 of the situation in respect of the tax and National Insurance status of settlement payments.
2. That circular informed authorities that:
 - 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 had recently made it clear that it did not necessarily share the same view. That meant the tax and National Insurance liability would fall upon authorities.
 - discussion was 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.
 - further advice would follow.
3. We have now heard from HMRC in response to our clearance application in respect of the tax treatment of the settlement payments. Unfortunately, HMRC is of the opinion that the whole amount of the settlement payments must be paid subject to PAYE and National Insurance contributions.

4. The possibility of making an appeal to HMRC is currently being considered and we will advise you of the position as soon as possible.
5. As provided for in the settlement agreements FRAs have three months to make the settlement payment to an individual from notification of acceptance. We are however conscious that FRAs will 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. In such circumstances we recommend that, for pay slip purposes, the settlement payment is expressed as being net after tax so that the settlement payment is made in full but grossed up for the purposes of PAYE and National Insurance.
- 6.. As a matter of timing no income tax or National Insurance contributions will be payable through PAYE until 14 days after the end of the PAYE month. For example, if settlement payments are made before 5 April 2012 then an FRA will have until 19 April 2012 to make payment to HMRC; if settlement payments are made after 5 April 2012 and before 5 May 2012 then the key date will be 19 May 2012.
7. Given that the FBU legal representatives have until 9th April to inform FRAs of initial acceptances it is possible that payments will not be made in April. However, we will provide you with further guidance about whether and if so how to make payment to HMRC in advance of 19 April 2012.
8. We continue to reserve the position of authorities in relation to the legal advice received about tax and National Insurance liability on compensation payments should the outcome remain as stated and are seeking independent legal advice in that regard.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'G. Gittins', with a horizontal line underneath.

Gill Gittins
Principal Negotiating Officer