

Workforce team update

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Exit pay restrictions

- £95k cap came into force 4 November 2020, removed in Feb 2021, legislation revoked March 2021
- Recovery of exit payments for high earners who return to the public sector within 12 months of leaving: wasn't brought into force
- DLUHC (MHCLG) reform proposals: further restrictions were expected early 2021, not introduced

What next?

- HMT stated in Spring 2021 that they will legislate again to ‘tackle unjustified exit payments’ and will do so ‘at pace’...
- It remains DLUHC’s intention to also introduce some form of further reform to exit payments
- DLUHC exit pay data request April/May 2021
- Reforms will be preceded by consultation

Special severance payments

- 12 May 22: [Statutory Guidance](#) issued on SSP
- It applies to ‘best value authorities’: includes councils
- Purpose is to set out:
 - Government’s view that SSPs do not normally represent value for money
 - What or what isn’t an SSP
 - The criteria employer should consider in the ‘exceptional circumstances’ in which it may be appropriate to make an SSP
 - Examples of those exceptional circumstances
 - Clarify the disclosure and reporting requirements for SSPs

What is an SSP?

- Payments made to employees, office holders, workers, contractors and ‘others’ outside of statutory, contractual or other requirements when leaving employment/service
- Examples which are **likely** to be SSPs
 - Settlement agreement payments, in relation to legal proceedings
 - Value of any employee benefits or allowances which are likely to continue beyond the employee’s agreed exit date
 - Loan write offs
 - Honorarium payments
 - Hardship payments
 - Retraining payments related to termination of employment

What is an SSP? (2)

- Examples which **may** be SSPs depending on the contract, relevant statutory provisions, any non-statutory ‘applicable schemes and other relevant terms and conditions’
 - Pay or compensation in lieu of notice where it is not greater than the salary due in the contractual notice period
 - Pension strain payments made to enhance standard pension benefits e.g. where employer agrees to waive reduction on retirement before NPA or grants additional benefits

What is an SSP? (3)

- **Examples which are not SSPs**
 - Statutory and contractual redundancy payments
 - Severance payments made under the authority's policy under the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
 - Pension strain costs for those aged 55+ who leave by reason of redundancy or business efficiency
 - Payment for accrued annual leave
 - Court/tribunal order payments or those agreed in judicial or non-judicial mediation
 - Payments under the ACAS early conciliation process
 - Ill-health, injury, death payments

Considerations: economic

- Local authority should be able to demonstrate economic rationale for SSP, including
 - Feasibility of achieving exit at lower cost
 - How the payment will be perceived by the public/is it in line with duty to manage taxpayers' money appropriately
 - What alternative use could be made of the money
 - Does it set a potential precedent?
 - Evidence for 'additionality': evidence that employee would not have accepted statutory and contractual benefits alone

Considerations: efficiency

- In relation to the impact of efficiency and effectiveness:
 - Seek legal advice on prospects of defending a claim, alongside the likely legal costs
 - Ensure payments are not made to avoid management action, disciplinary processes, unwelcome publicity or avoidance of embarrassment
 - Consider alignment with the private sector (assumption that payments are typically less generous)
 - Manage conflict of interests: individuals who are the subject of a relevant complaint should have no role in deciding payments

Exceptional circumstances

- An SSP made to set aside a break in service which would otherwise reduce entitlements e.g.
 - Where accompanied spouse on military service overseas
 - Where the employer indicated it would recognise service with another employer for recruitment and retention issues
- In order to settle disputes where other routes have been explored and excluded
 - Those approving SSPs must be given evidence of resolution attempts, plus consider the long-term impact of settling frivolous or vexatious claims just to save legal costs

Accountability and disclosure

- Approval process:
 - £100k or more: full council sign off (as applies now)
 - £20k up to £100K: Head of Paid Service, with a ‘clear record’ of the Leader’s approval and any others who signed it off
 - Up to £20k: in accordance with authority’s scheme of delegation
- Payment to Head of Paid Service
 - Approval by a panel of at least two independent persons
- S.151 and Monitoring Officer duties highlighted
 - Alerting members and the auditor to unlawful expenditure
 - MO should take a ‘close interest’

Disclosure and transparency

- Highlights data reporting requirements in respect of pay and exit payments
- Local Government Transparency Code
- Localism Act 2011
- DLUHC annual collection of data on exit payments

Removal of COVID rules

- 24 February:
 - self-isolation requirements ended as did obligation to tell employer if tested positive
- 24 March:
 - COVID SSP rules ended
- 1 April:
 - Free testing removed, except for social care staff and at risk groups
 - COVID does not have to be explicitly considered in risk assessments
 - New public health guidance replaced 'Working safely' guidance

1 April 2022 Guidance

- [Guidance for individuals](#) if they have COVID symptoms
 - Positive test: try to stay at home for 5 days, avoid meeting people at risk for 10 days, work at home if possible
 - Symptoms and a high temperature: try to stay at home, avoid meeting people at risk until you feel well and do not have a high temperature, work at home if possible
- [Workplace guidance](#)
 - Employers ‘may wish to consider how best to support and enable their workforce to follow’ the above guidance for individuals
 - Maintain a clean workplace, good ventilation etc
 - Those at greater risk: employers ‘may wish’ to consider their needs
 - Risk assessments: employers ‘may choose’ to include COVID in assessments

Issues for employers

- Health and safety duties remain in place
- Managing those with symptoms who are well enough to work but who cannot work at home
 - Pay if you ask them not to come to work – they are not sick so it is not sick pay
 - Green Book provision: “An employee who is **prevented** from attending work **because of contact with infectious disease** shall be entitled to receive normal pay. The period of absence on this account shall not be reckoned against the employee’s entitlements under this scheme” (Part 2, para, 10.9)
 - Providing tests

Issues for employers

- Member of household has COVID-19
 - [Government guidance](#) is to avoid close contact with others
 - Providing tests
- Sickness absence procedures: will COVID-19 absence count for trigger points? NJC circular approach was voluntary
- Long COVID: each case different but consider whether a disability
- [Specific guidance](#) for those working in social care settings
- [ICO guidance](#) on issues such as asking for and recording employee's vaccination status

Further information

<https://www.local.gov.uk/our-support/workforce-and-hr-support/employment-relations>

<https://local.gov.uk/developing-hybrid-working-local-government>