



GOOD WORK PLAN: HEALTH IS EVERYONE'S BUSINESS

Issued 9 October 2019

ICAEW welcomes the opportunity to respond to the [Good Work Plan: Health is Everyone's Business: proposals to reduce ill health-related job loss](#) consultation published by the Department of Work & Pensions and Department of Health and Social Care on 18 July 2019.

Employees should not be left open to exploitation but we do not support the proposals to align SSP enforcement with NMW enforcement unless statutory care and management powers are incorporated, and make employers report sickness absences to HMRC.

This response of 9 October 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 1.

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GENERAL COMMENTS

1. We believe that employees should not be exploited but we are concerned about some of the government’s proposals in this consultation, notably that SSP enforcement should mirror that for national minimum wage and that employers should report to HMRC information about employee sickness. The former because the way in which national minimum wage is enforced currently often penalises employers for technical breaches even where employees benefit and the latter because it would create compliance burdens for employers in return for no benefit.
2. We are disappointed that the Statutory Payments Consultation Group of which we are a member has not been invited to a meeting to discuss the SSP proposals in this consultation.
3. Many of our members provide payroll services. We are commenting from a payroll administration perspective so are answering only selected questions.

ANSWERS TO CONSULTATION QUESTIONS

Chapter 2 A clear legal framework for employers: reforming statutory sick pay (SSP)

Questions 16 to 26

4. We are disappointed that representatives (of which we are one) on the [Statutory Payments Consultation Group](#) (SPSG) sponsored by BEIS, DWP and HMRC have not been asked directly by the SPCG secretariat or invited to a meeting to consider or discuss these SSP questions.

Question 23: Do you think that the enforcement approach for SSP should mirror National Minimum Wage enforcement?

5. No, we do not agree with this proposal.
6. Although we do agree that employees should be protected from exploitation, there are widespread problems at the coalface for employers and employees arising from how HMRC enforces the national minimum wage (NMW) rules on behalf of BEIS. This is because HMRC has to enforce the letter of the law as NMW law contains no care and management provisions to allow an approach to enforcement that achieves NMW policy intentions without penalising employers for technical breaches which actually benefit employees.
7. To make enforcement fair and effective, all employment rights law needs care and management provisions to enable those who enforce it to ignore technical breaches and unintended consequences of the legislation, rather than penalise employers, where employees, especially the low paid, benefit.
8. Examples of where HMRC has penalised employers for making voluntary deductions from wages intended to benefit employees include Christmas clubs and holiday funds (eg *Iceland Christmas savings club*) and employees buying goods and services from their employer at a discount (eg the *Middlesbrough Football Club* season tickets case – *Middlesbrough Football & Athletic Company (1986) Limited v HMRC* ET 2501182/2018).
9. For further details see our March 2019 response [ICAEW REP 28/19](#) to the BEIS consultation *NMW: salaried workers and salary sacrifice schemes*. We recommended that NMW law and guidance and enforcement need a comprehensive review to ensure that:

- they achieve their objective of protecting vulnerable workers from exploitative pay practices and permit rather than outlaw pay practices that are beneficial to both employees and employers, including allowing any pay frequencies and reasonable contractual arrangements that are commonly present in 21st century business;
 - the guidance includes practical real-life case studies and covers inter alia pensions and how to remedy a NMW compliance failure from a PAYE perspective; and
 - the policing of NMW is undertaken by an agency under the direct control of BEIS so that the law is enforced in accordance with the policy intent.
10. These recommendations apply *pari passu* to employment rights law including statutory payments, and we suggest that our *Ten Tenets for a Better Tax System* (summarised in Appendix 1) provide a starting point for a benchmark that could be applied to statutory payments and other employment rights law.

Chapter 4 Advice and support for employers: Targeted and timely interventions

Question 54: All respondents: do you agree with the proposal to introduce a requirement for employers to report sickness absence to government?

11. No we do not agree with this proposal as it would impose an additional administrative burden on employers for no benefit.
12. We assume that, if a requirement to report sickness data to government were to be introduced, employers would be expected to report this data via PAYE RTI. However, not all employers do keep sickness records because it is simpler, and better for employee/employer relations, to continue to pay a sick employee their normal salary, at least for the short term. Smaller employers are more likely to need to hire a replacement if someone is absent owing to sickness and, to mitigate the cost, pay their sick employee the minimum amounts due under SSP rules. There may be confidentiality considerations that preclude payroll having access to information about employees’ sickness, save for the minimum data necessary to enable sick pay (where paid and differentiated from normal pay) to be processed in payroll and shown as such on payslips.
13. Either way, sickness records are kept in human resources (HR) departments or possibly locally where the employee works rather than in payroll so a requirement to report would necessitate HR departments or whichever part of the business keeps such records having to provide specified one-off data to payroll for the relevant pay periods which in addition to any sick pay would need to be added as a one-off item to the employee record in each payroll run, in most cases manually.
14. If such a requirement were to be mandated, then this would need to be legislated at least 18 months before go-live. This would enable businesses to change their processes and HMRC to provide detailed IT specifications to payroll software developers a year before go-live rather than as a last minute briefing note, as too frequently happens at present, and issue timeous updated guidance to employers.

APPENDIX 1

ICAEW TAX FACULTY’S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person’s tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).