

Update on Coronavirus

Top 5 Questions on the Wage Subsidy Scheme & Employee Status

In the current landscape most Employers are seeking to implement changes to terms and conditions in one form or another. With a wealth of information available it can be difficult to manoeuvre, especially where information is constantly changing and adapting in light of the ever present challenges. Whether the actions to be taken by Employers are as a result of the more recent changes to the Temporary Wage Subsidy Scheme or the changing status of an Employee, the outcome is that questions become more common. Below we have included the top 5 questions relating to both of these categories for your information.

Top 5 Questions on Changes to the Temporary Wage Subsidy Scheme

1. Why are Employees with previous net pay of less than €412 per week getting an increased subsidy?

For those Employees with previous average net pay less than €412 per week (equivalent to almost €24,400) the subsidy will be increased from 70% to 85% of their previous net weekly pay. This is to ensure that Employees of this category will now receive a greater level of subsidy bringing them closer to €350 per week.

2. What is the 'tiered approach' and who does it impact?

The tiered approach takes into account both the amount paid by the Employer and the level of reduction in pay borne by that Employee and it will impact those whose net average weekly pay is excess of €586 per week (equivalent to €38,000).

Tapering of the subsidy in these situations will apply to all cases where the gross pay paid by the Employer and the subsidy exceed the previous average net weekly pay. This is calculated by subtracting the amount paid by the Employer from the previous average net weekly pay. This is to ensure that no Employee would be better off under the scheme.

Gross Amount paid by Employer	Subsidy
Up to 60% of employee's previous average net weekly pay	Up to €350 week
Between 60% and 80% of employee's previous average net weekly pay	Up to €205 week
Over 80% of employee's previous average net weekly pay	No subsidy

3. A number of my Employees earned more than €960 average net pay per week pre-Covid so were previously excluded from the Temporary Wage Subsidy Scheme, has this now changed?

Yes, from April 16, 2020, the wage subsidy is available to support Employees where the average net pre-Covid salary was greater than €76,000, and their gross post-Covid salary has fallen below €76,000, but the amount of subsidy is tapered based on the percentage decrease in salary.

4. What subsidy will Employees get where their pre-Covid salary was in excess of €76,000 and their post-Covid gross salary is less than €76,000?

A tiered arrangement such as the one applicable to gross incomes in excess of €38,000 will apply in such circumstances. This means that if an Employee was earning over €76,000 gross and has now been reduced to below €960 net pay a week, and their reduction is more than 20% then a subsidy of up to €205 would be payable and if the reduction was more than 40% a subsidy of up to €350 would be payable. To calculate the level of subsidy payable, current gross pay will be compared with previous average net weekly pay for January/February. This subsidy will be tapered so as to ensure that the total net income (Employer contribution + wage subsidy) does not exceed €960 net per week.

5. When do these changes to the Temporary wage Subsidy come into place?

The effective date of these changes will apply for payroll with a pay date on or after the May 4, 2020 and received by the Revenue Commissioners on or after that date (no backdating of increased subsidy will apply). In Phase 2, from 4 May 2020, the operation of the scheme will ensure that the Subsidy paid to Employers will be based on each individual Employee's Average Net Weekly Pay, subject to the maximum weekly tax-free amounts. It is expected that further information on how these arrangements will work will be issued by Revenue shortly.

Top 5 Questions on Changes to the Status of an Employee

1. Do Employees accrue annual leave while on a period of temporary layoff?

The entitlement to annual leave arises under the Organisation of Working Time Act, 1997 and with the exception of a period of sick leave, annual leave is calculated on the basis of hours worked. While an Employee is on a period of temporary layoff they do not accrue annual leave.

2. Can an Employer advise Employees that they must work reduced hours?

An Employer cannot unilaterally impose a reduction in hours for any Employee without first consulting with the Employee and seeking their agreement. This is on the basis that an Employee has express terms and conditions relating to their working hours and remuneration. While the impact of Covid-19 may certainly result in a necessity to cut hours, to do so without the agreement of the Employee, could result in a claim under payment of wages, minimum terms or unfair dismissal legislation. However, it is worth noting that if an Employee does not agree to changes then an Employer may have no alternative but to consider a redundancy situation.

3. How much notice of layoff or short time should an Employer provide to an Employee?

While the legislation outlines that notice of either layoff or short time should be provided it is silent on how much notice this entails. What is important in the current circumstances of the pandemic is that the Employer acts as reasonably as possible and gives as much notice as he/she can.

4. Where an Employer seeks to make a role redundant for an Employee who has been on a period of temporary layoff how much annual leave has the Employee accrued?

While an Employee on temporary layoff does not accrue annual leave for this period of time, any annual leave accrued during the leave year must be paid upon termination. Therefore, an Employer must consider the amount of annual leave days accrued in the leave year up until the effective date of layoff.

5. Where an Employer is proposing to make a number of roles redundant what process should be followed?

While more and more Employers may have to affect redundancies owing to the impact of Covid-19, it is important to follow a transparent and fair process from the beginning. This means that natural justice and equality should prevail from the at risk process, selection process, consultation stage right through to the decision and appeal stage(s). It is also important to be aware that a separate and distinct collective redundancy process could ensue where it is proposed that a minimum number of Employees are to be made redundant within a period of 30 consecutive days. In this case the minimum numbers vary with the normal size of the establishment's workforce. Also, worth noting that in a collective redundancy process there exists a number of prerequisites that must be adhered to satisfy compliance with the legislation.

Disclaimer - The information in this section is provided to assist Employers on the implementation of the government schemes and must be read in the context of information provided by the Minister for Finance website, Revenue and Department of Employment Affairs and Social Protection websites and should not be interpreted as a legal definition of any of the information provided. The information is changing constantly, and any information provided is correct of April 24, 2020 and is per information

on the above websites as of that date. Further clarifications on these changes are expected from Revenue in the future.

**For further information or advice, please contact the experienced HR team in
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