



Information Governance

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Response Due: 4th September 2017

24th August 2017

Dear

INFORMATION REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000

We are now pleased to respond to your request for information under the FOI Act.

You asked:

We represent The MIU limited, a body which speaks for several thousand locum doctors, nurses and other healthcare professionals in the UK.

We are writing to you because of a concern that the new "Off Payroll in the Public Sector" rules (contained in Chapter I 0 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003) are not being applied correctly by the majority of NHS Trusts, resulting in potentially adverse tax consequences for many locums. These new rules have been in place since 6 April 2017 and are covered in guidance from NHS Improvement dated May 2017.

This letter, which enquires about your Trust's compliance with the new rules, requires your prompt attention and response by Friday 4 August 2017. If you fail to respond satisfactorily to this letter, you should be aware that The MIU limited reserves the right to take legal action in order to defend its members' interests, including but not limited to judicial review proceedings against NHS Trusts which continue to misapply the new rules, NHS Improvement and/or HMRC as appropriate.

New obligations on NHS Trusts

The new "Off Payroll in the Public Sector" rules in force since 6 April 2017 place new obligations on NHS Trusts. The rules require NHS Trusts, instead of (as was previously the case) the personal service company (PSC) of each locum, to assess on a case-by-case basis the employment status of each locum for tax purposes. NHS Trusts must take reasonable care when classifying each and every locum.

This assessment must be conducted fairly and accurately and must take into account all relevant factors, including representations which may be provided by the locum and/or the PSC.

Though HMRC might have indicated that Trusts can make a single determination as to the treatment of the employment status of all locums, we do not consider that this view is correct.

Implementation of the new rules

It is apparent that several Trusts are currently applying 'blanket' policies regarding the employment status of all locums rather than undertaking the fact-specific assessment outlined above.

This is resulting in locums being wrongly characterised as employees. Such classification can have substantial and adverse tax consequences for locums, and, as stated above, may give rise to legal action.

Equally, it is apparent that some Trusts have undertaken a fact-specific analysis of each locum, demonstrating that a case-by-case analysis can and should be undertaken.

Next steps

We would be grateful for your confirmation that, as is required by the new rules, your Trust is assessing the employment status of locums on a case-by-case basis. We would ask that you summarise in writing your procedures and processes in making such assessments and that you provide appropriate supporting documentation. As stated, please provide this full response by Friday 4 August 2017.

A considered response to this important enquiry will allow us to reassure the locums who provide services to your Trust that their employment status will be assessed with due care and attention. If you fail to respond satisfactorily to this letter, as stated, we reserve the right to exercise the legal rights and remedies to which our members are entitled.

The Trust can confirm that it makes every effort to ensure compliance with HMRC and NHSI rules and guidelines with respect to 'Off payroll working in the public sector'.

We can confirm that we are working with Brookson to navigate the changes required in order to fully comply with the new IR35 legislation and guidance recently issued by NHS Improvement discouraging the use of PSCs.

As part of this process we have given permission for Brookson to contact all of our directly engaged locums to provide them with a suitable payment vehicle to enable payments to be made compliantly post 6 April 2017. Please note that WWL has not shared, nor holds, any sensitive personal data related this process. Brookson has only contacted individuals who are registered with them to advise of an acceptable method of engagement, given the NHSI instruction and legislative changes.

All directly engaged locums are required to accept our terms and conditions for providing their services to the Trust.

I trust that this information is helpful to you, however if you are not entirely satisfied with this response please do not hesitate to contact the Information Governance Department on 01257 488271. If we do not hear from you within 28 days we will assume that we have been able to accommodate your request under the Freedom of Information Act 2000.

Yours sincerely,



Andrew Foster
Chief Executive

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If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision, you should write to: Information Governance Department, Wrightington, Wigan and Leigh NHS Foundation Trust, Wrightington Hospital, Hall Lane, Appley Bridge, Wigan, WN6 9EP

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally the ICO cannot make a decision unless you have exhausted the complaints procedure at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF