Browne Jacobson

Taxi driver's rental and uniform costs deductible for NMW purposes

Augustine v Data Cars Ltd the Employment Appeal Tribunal highlights importance of ensuring pay for National Minimum Wage purposes is carefully calculated.

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In Augustine v Data Cars Ltd EA-2020-000383 (previously UKEAT/0254/20) the Employment Appeal Tribunal (EAT) was required to consider whether certain payments made by the claimant in connection with his employment fell to be deducted from his pay for National Minimum Wage (NMW) purposes.

In brief, regulations 12 and 13 of the National Minimum Wage Regulations 2015 say that any purchases made by the worker, or payments paid by the worker to the employer, which are "in connection with" the worker's employment are to be treated as reductions to their pay.

The claimant was a taxi driver employed by Data Cars Ltd (Data Cars). In the first instance, the Employment Tribunal had held that whilst some of the claimant's costs - including the cost of fuel, insurance and equipment rental - were to be deducted from total earnings, rental payments for his vehicle and uniform costs fell outside of regulations 12 and 13.

In his appeal against the decision, the claimant argued:

- in relation to the rental payments, that he was required by his contract to use a private hire vehicle in the performance of the role; and
- in relation to the uniform costs, that he wore the uniform because he was required to as he worked as what was known as a "gold driver". The uniform bore Data Cars' logo and he had no other use for the garment;

and that the payments were therefore in connection with the employment.

The claimant also noted that to not allow the rental payments against the national minimum wage calculation created a situation where drivers had to put in more hours to "keep their head above water", risking a breach of the 48-hour maximum working week in the Working Time Regulations 1998.

The EAT allowed the claimant's appeal. They pointed out that the correct test was whether the expenditure was incurred "in connection with" the employment, and that both the rental payments and uniform costs satisfied that test.

This case highlights the importance of ensuring pay for NMW purposes is carefully calculated. For organisations where workers are required to purchase certain goods or services which are not reimbursed, such as uniform, insurance or equipment, employers should pay particular attention to whether such payments are sufficiently connected to the employment as to make them deductible from the worker's pay. Getting the calculation wrong could not only lead to an employment tribunal claim but also enforcement by HMRC, including being publicly "named and shamed".

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