UNISON briefing: Changes to redundancy (and other exit) payments in the public sector

8 March 2016

The government has introduced a set of reforms to exit payments (which include redundancy payments, whistleblowing payments, pension top up payments and all other payments made on a termination of employment) for people who work in the public sector.

The government has not yet finalised the detail of all the changes, and the impact these changes will have on individuals will depend on many factors (how old they are, how much they earn, how long they have been in their job, their current pension scheme, and more).

Below are some of the changes we do know about, and what you should be aware of when talking to members about these changes.

There are three main sets of proposals on exit payments:

1. **Recovery of exit payments if you return to the public sector within 12 months (for those earning over £80,000)**

2. **Absolute cap on the value of any exit payment set at a maximum of £95,000**

3. **New reduced limits on calculating all exit payments.**
We have had clarification that Housing Associations, Higher Education and Further Education bodies will not count as public sector for the purposes of these changes and so will not be affected. Clarity on other bodies is still being sought.

*Note: The government’s intention is that these changes will cover the whole of the UK. This may well be challenged by the devolved nations.*

1. **Recovery of exit payments if you return to the public sector within 12 months**

**When does it come into force?**

1st April 2016

**Who is affected?**

Anyone earning over £80,000pa when they were paid to exit public sector employment, if they return to a job ANYWHERE in the public sector within 12 months.

Up to 100% of the exit payment will be recovered by the old employer, or by the government if the old employer no longer exists.

**What payments will it cover?**

Payments made to an exiting employee, or a third party on behalf of the employee, including:

- Redundancy payments,
- Any pension top-up to enable early retirement
- Any payment made as part of an agreed exit settlement between the employer and the employee

**What if I return part time?**

The recovery will take that into account and there will be only partial recovery on a pro-rata basis.

**What if I return on a lower salary?**

This is not taken into account in the current proposals.
**What happens to recognition of my previous service?**

Treasury guidance MAY encourage new employers to consider lost service entitlement – it will not automatically be recognised. This means that if the member is made redundant again, their future service related entitlements will be dramatically reduced.

**How can I return money given to my pension scheme as part of my exit package?**

If a member took early retirement, and was in receipt of their pension, there would need to be special arrangements to recover the pension top up given to the scheme by the previous employer. The details of this have yet to be agreed but it is likely that an exemption may be allowed (see question on “waiver process” below) if a case can be made that repaying a lump sum, when you did not receive it yourself, would cause hardship (the payment goes straight to your pension fund and cannot be returned to the individual).

**What if I can’t pay it back?**

There will be a new requirement placed on prospective employers to withdraw any new job offer if recovery cannot be established.

**What if I come back as a consultant?**

Being paid to perform work in the service of the public sector will still count as re-entry into the public sector for the purposes of this legislation.

**Are there any exceptions?**

There is a waiver process whereby employers can ask the relevant government minister for an individual exemption from recovery. Waivers will be dealt with on an individual basis. It is anticipated that settlements made as a result of whistleblowing would be likely to receive such an exemption.

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2. **Absolute cap on the value of any exit payment set at a maximum of £95,000**
When does it come into force?
1st October 2016 (at earliest – not formally confirmed)

Who is affected?
Anyone working in the public sector who gets an exit/redundancy/early retirement settlement. It will mostly affect high earners, but despite previous government promises, it will also affect moderate earners if they have long service such as nurses, social workers, paramedics and librarians – particularly if they were previously entitled to access early retirement as an alternative to being made redundant.

What does it cover?
Payments made to an exiting employee, or a third party on behalf of the employee, including:

- Redundancy payments,
- Any pension top-up to enable early retirement,
- Any payment made as part of an agreed exit settlement between the employer and the employee

I’m not a high earner - how could this affect me?
If you have long service, you may have earned redundancy entitlements that mean you will exceed this cap. In the NHS, the maximum exit payment allowable is currently set at 24 months of current salary. For a nurse working in central London, doing night shifts, this could easily mean that long service would mean an exit payment would breach the £95k cap.

In local government, where anyone made redundant after age 55 is currently automatically entitled to early retirement instead of redundancy, someone earning as little as £25,000 could be affected, because an early retirement settlement (made directly to the pension scheme to compensate for taking current entitlements earlier than expected) is often much larger than a
straightforward redundancy settlement. In other words, the £95,000 cap applies to the whole settlement, even the part of it which is paid to the pension scheme – not just the part which the individual receives.

**What do I do if my exit payment is no longer enough to cover my entitlement to an early retirement??**

The government is clear that the member would have three choices:

- Take a straight redundancy payment instead of early retirement or
- Make up the difference themselves (find part of the lump sum to pay the pension scheme) or
- Accept a partly reduced pension.

However, there is going to be a “waiver” process where employers can apply to waive the cap in individual or group cases. Guidance has yet to be issued on this but we understand that “hardship” is likely to be an acceptable reason to waive the cap and this might apply in cases where early retirement is affected.

We will know more when the guidance is issued.

**How will this affect Tribunal settlements?**

Currently, all settlements including settlements agreed as part of the mandatory ACAS pre-Tribunal early conciliation process will be included.

By law, a settlement at Tribunal cannot be capped in this way. This would contradict previous government legislation mandating an attempt to settle cases before a tribunal hearing through ACAS, as under these proposals there would be less incentive to settle pre-tribunal where the new cap would apply.

However, the waiver process (see below) is likely to cover most pre-tribunal settlements.

**Are there any exceptions?**
There is a waiver process whereby employers can ask the relevant government minister for an individual exemption from recovery. Waivers will be dealt with on an individual or group basis. It is anticipated that settlements made as a result of whistleblowing would be likely to receive such an exemption. We will know more when guidance is issued on this matter.

For local authority employees, an exception can be made by a vote of the full council, though the detailed guidance on which circumstances might be acceptable for an exception to be granted has not yet been published.

3. **New reduced limits on calculating all exit payments**

*When does it come into force?*

These proposals are currently only at a consultation stage. However, the government is clear that once the consultation period is over, guidance or legislation may be issued for implementing any new proposals if sufficient changes cannot be achieved through negotiation.

*Who is affected?*

All workers in the public sector.

*What is proposed?*

Our understanding is that the proposals are not meant as a “reference scheme” and it is not expected that every public sector exit payment scheme will look the same. It is expected that all areas of the public sector look to reform or revise their scheme to consider making savings and to specifically consider the following three broad areas:
1. New maximum redundancy / exit entitlements (see below)
2. Reducing entitlements as people near retirement
3. Reducing, or eliminating, access to early retirement options.

The suggested maximum limits on redundancy entitlements being consulted on are

- Maximum of 3 weeks’ pay for each year of service
- Maximum of 15 months’ pay in total and possibly less for compulsory redundancies (to encourage people to take exit packages earlier)
- Maximum salary for calculating an exit payment set at £80,000

Please note: These are not necessarily the expected outcomes of individual reviews and negotiations, but are expected to be considered as part of a review of exit package policies.

What does this mean for UNISON members?

In light of the extent of public service budget cuts and the proposed future cuts, these new proposals are entirely punitive, representing yet another attack on public sector workers and the services they provide.

This initiative would tear up collective agreements and negotiated settlements, many of which are still in the process of being agreed directly with government departments, at a time when the flexibility required by employers to negotiate redundancies with recognised trade unions could not be more acute.

It is clear that the proposals, as they stand, will not only affect high earners but will also impact on moderate earners such as nurses, midwives, social workers and librarians with long service in public services.
Whilst it may be that some sectors will be able to negotiate on some of the areas under threat, it cannot be ignored that some employers will take this opportunity to seek to reduce terms and conditions in all areas and treat the proposed areas of reform as the new baseline.

Public service workers often devote years of loyal service: the government’s own evidence on sector comparisons makes it clear that many professionals working in the public sector could earn greater salaries in the private sector.

UNISON believes that the local and national damage done to industrial relations, and the impact on staff morale and the employers’ ability to facilitate necessary change, is too high a price to pay for what may amount – at most - to very moderate savings to the government purse. This will be especially true when you take into account the cost of the sub-standard reorganisations that may result from these restrictions.

Once more is known about exactly what is proposed UNISON will be advising negotiators on how best to deal with any negations on this issue. In the meantime, UNISON is joining with other unions and the TUC to challenge these new attacks on exit payments.

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