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AN ROINN OIDEACHAIS AGUS SCILEANNA | DEPARTMENT OF EDUCATION AND SKILLS

Frequently Asked Questions in respect of the application of Circular 0070/2010

These FAQs relate **only** to staff, paid directly by a recognised school or VEC, who have not already been affected by the pay reductions imposed, in accordance with the Financial Emergency Measures in the Public Interest (No. 2) Act 2009 (*the Act*). **This document is not a legal interpretation of Circular 0070/2010 and does not purport to deal with every query that may arise.**

To whom does a person go to if they have queries about the application of the Circular to their rates of pay?

Queries in relation to the application of Circular 0070/2010 in individual circumstances, and any other questions in this regard, should be addressed to the employer in the first instance. The employer should liaise with the Department of Education & Skills if there are any matters requiring clarification in respect of the application of the Circular.

From what date will the adjustments be made?

In line with Circular 0070/2010, adjustments in salary should be applied with effect from 1 January 2011, to all relevant staff in your employment who have not already been affected by these pay reductions. This is in light of the fact that the Minister for Finance has granted an exemption from the provisions of the Act for the staff in question up until 31 December 2010.

Categories of Staff who will now be affected:

Any staff falling in to the following categories **who have not already been affected by the pay reductions** introduced under the Act;

- School Secretaries, Caretakers, Cleaners and Administrative staff;
- School Completion Programme staff;
- School Transport Bus Escorts;
- Tutors (Literacy Service, Community & Adult Education etc.);
- Non-teaching staff in Youth Encounter Projects (YEPs);
- Teachers employed in Traveller pre-schools;
- Any other Staff employed directly by a recognised school or VEC.

What impact will the adjustment proposed have on a persons salary?

In accordance with the Act, reductions in basic salary should be applied with effect from 1 January 2011 as follows:

- 5% on the first €30,000 of salary;
- 7.5% on the next €40,000 of salary;
- 10% on the next €55,000 of salary.
- This formula produces overall reductions in salaries ranging from 5% to 8% in the case of salaries up to €125,000.

Does the reduction apply to fixed allowances such as call-out allowances?

Fixed allowances such as call-out payments payable to persons whose basic pay does not exceed €125,000 per annum should also be reduced by 5%.

Work-sharers - How is the rate of adjustment in salary calculated?

The salary of worksharers and those on other atypical work patterns is calculated by reference to the whole time equivalent salary for the grade in question.

Part-time / hourly-paid Staff - How is the rate of adjustment in salary calculated?

The pay of part-time staff or hourly paid staff may be revised, in accordance with normal arrangements, by reference to the pay of whole-time staff to which they are related for pay purposes in accordance with Circular 0070/2010. The annualised basic rate of pay will determine the rates of reduction to be applied in accordance with those set out in Circular 0070/2010.

Is any portion of my basic salary not subject to reduction?

The adjustment applies to all basic salary.

Does the reduction apply to all income including overtime?

The adjustments should be applied to all basic pay and allowances including such matters as overtime and shift payments. Revised daily and hourly rates for casual and non-casual staff should also apply in all sectors. The rate of adjustment should be determined in accordance with the rates for reduction for basic salary.

Is the percentage cut on gross or net pay?

The percentage cut applies to gross rates of pay.

How are increments affected?

The appropriate rates of reduction should be applied across incremental pay scales.

My pay rate is set out in my contract. How can it be cut?

The provisions of the Act apply to all relevant pay rates and supersede those rates that are set out in other legislation, statute, contract or any other instrument.

Is the pay cut temporary?

This reduction is not designed as a temporary measure. The matter will be kept under review and it is intended that the Minister for Finance will report to the Oireachtas on the operation, effectiveness and impact of the pay reduction by mid 2011.

Is anybody employed by a public service body exempt?

The legislation does not exempt any individual or groups save for the Judiciary and the President due to provisions in the Constitution. Section 6 does provide a limited power to the Minister for Finance to exempt or vary the reduction in pay rates provided for in the legislation where exceptional circumstances exist or because of an arbitration award.

In line with section 6 of the Act, this Department sought an exemption from the provisions of this Act from the Minister for Finance for these categories of staff. The Minister did not grant a full exemption however, he has allowed for a temporary exemption from the application of the Act for these categories of staff up until 31 December 2010.

I am on a short-term contract of service working for a public service body, am I included?

If you are a public servant as defined in the Act, the length or nature of an employment contract is not relevant as to whether or not a pay adjustment is to be made.

Why is a person subject to this salary reduction when they were not subject to the pension levy deduction?

The term "public servant", within the meaning of the Act includes *inter alia*:

"a person who is employed by or who holds any office or any position in, a public service body."

A recognised school or VEC is therefore a "public service body" for the purposes of the FEMPI No. 2 Act 2009. It follows, that **all** persons employed by a recognised school or VEC, **regardless** of the source of the money used to fund their salary, the lack of ability of any Minister or Department to determine on their appointment or set their pay rates, and irrespective of whether or not they are eligible for, or members of, a public service pension scheme, are "public servants" within the meaning of the Act.

To be subject to the pension levy deduction a public servant also has to —

- (i) be a member of a public service pension scheme,
- (ii) be entitled to a benefit under such a scheme, or
- (iii) receive a payment in lieu of membership in such a scheme.

This is a differentiating factor between the two Financial Emergency Measures in the Public Interest Acts of 2009.

Why was the legislation not implemented since 1 January 2010?

There was a differentiating factor between the two FEMPI 2009 Acts. This led to a question as to whether some staff employed in recognised schools or VECs (for example, school secretaries and caretakers), who are not subject to the pension levy may be subject to the reductions in pay detailed in this Act. Legal advice was sought and this determined that all persons employed by a recognised school or VEC come within the term "public servant" solely for the purposes of the Act. It follows, therefore, that all persons employed by a recognised school or VEC, regardless of the source of the money used to fund their salary, the lack of ability of any Minister or

Department to determine on their appointment or set their pay rates, and irrespective of whether or not they are eligible for, or members of, a public service pension scheme, are “public servants” within the meaning of the Act.

Following receipt of this the Department sought an exemption from the provisions of this Act from the Minister for Finance for these categories of staff. The Minister for Finance has allowed for a temporary exemption from the application of the Act for these categories of staff up until 31 December 2010.

Does this alter the employment status of affected staff?

It is important to point out that the fact that affected staff employed by recognised schools and VECs come within the definition of “public servant” solely for the purposes of the Act does not alter their employment status in any other respect.