

Employer Support Payment Scheme Advisory Notice

Employment not at arms length

Last Updated 14 Jun 13

ESPS Advisory Notices provide advice or more detailed explanations concerning aspects of the Employer Support Payments Scheme (ESPS).

EMPLOYERS NOT AT ARMS LENGTH

If an ESPS payment claim is received where the employment is with an employer not at arm's length (eg spouse or parent/child relationship), there may be a need to consider the bona fides of a claim. One of the key indicators that an employer's claim may be for an employee who is not at arm's length is employment evidence of an unusually low salary for the number of hours worked.

An employer is not eligible to make a claim for ESPS payment in relation to Defence service undertaken by a member if the employer pays the member a wage that is less than the national minimum wage as set in a national wage order under the *Fair Work Act 2009*. This provision does not apply if the employer provides an outcome equal to or more favourable than the national minimum wage, through a salary sacrifice or other arrangement.

Decision-makers may need to seek further evidence to ensure that:

- the claim has been properly submitted as an employer's claim (ie that the member is not self-employed); and
- the claim reflects a genuine employment situation (and not simply an attempt to create an appearance of an entitlement to ESPS payment without genuine employment).

Investigation may lead the delegate to conclude that there is no employment at all.

The decision-maker must reject a request where the national minimum wage requirement is not met. If the claim has been rejected, the claimant is to be informed, in writing, within seven days of the decision and provided with a statement of reasons for the refusal. The claimant should also be informed of their review/appeal options.

FURTHER QUERIES

If ESPS staff have any queries about this topic, they are encouraged to ring the ESPS Directorate on 1800 001 696.