COVID-19 Apprentice pay and breaks in learning guidance Apprentices and National Minimum Wage (NMW) legislation / funding rules

Apprentices are likely to be asked to increase substantive clinical duties during Covid-19 operations. They will of course still be enrolled on an apprenticeship (albeit on a break), but we need to be clear on proceedings if employing them for 2-3 months without them completing much or any learning in that time.

Alert

In cases where they are on apprenticeship minimum wage, under NMW, their apprenticeship is suspended and they are being used as full time staff, then their pay rate is illegal. If the apprentice does not have a second assignment as for example an HCA, NA, or AP, and due to complexities of changing their contract short term to NMW, a bank contract supporting the extended clinical role is a good short term solution. This will allow the apprentice to be paid the correct wage for their age when they are not in an apprenticeship role.

Breaks in learning only need to be applied after 4 weeks of continuous break, either because the learner is off with illness or in special circumstances (I.e. Coronavirus). The guidance (see reference below) indicates that if the government advice causes apprenticeship learning to be suspended for more than 4 weeks, this can be recorded as a break in learning.

Advice: Breaks of less than 4 weeks do not officially need to be recorded, but if there is concern about the impact of numerous shorter breaks, or a short term change, please record these anyway just in case they are needed in future.

Action: On the Individual Learner Record (ILR) record very clearly any breaks in learning that take place due to illness or organisations complying with government advice, indicating the start and end dates of the breaks in learning. Employers must ensure this is done in partnership with the training providers and that all breaks are formally recorded on the ILR and any relevant paperwork/eportfolio.

Advice: If the apprentice is on apprenticeship NMW and on a full break in learning (not being utilised on bank or in other substantive roles) then you can continue to pay them apprenticeship NMW. If they are on a break and you are using them for other substantive duties they need to be paid correctly as they are no longer in learning.

19/03/2020

Below, for reference, is an excerpt from ESFA guidance released on 9th March 2020 – we expect further updates any day now but this is unlikely to change.

In order to support the sector during any disruption which may be experienced due to Covid-19 these are the initial recommendations from the Department for Education:

1. Apprentices who are ready for assessment – i.e. who reach gateway and cannot be assessed due to assessor illness or Covid-19 related measures, will be allowed to have a break in learning. This should protect funding and completion of apprenticeships and should be reflected in the July completion rules. The normal breaks in learning process should be followed and therefore we only need notifying once a break in learning has exceeded 4 weeks. A break in learning must occur before the learner is recorded as completed. Apprentices can go on a break in learning between completing the learning activity (learning actual end date) and the assessment, but there would be no requirement to record in this in the ILR as it will not have an effect on funding.

2. Apprentices who experience gaps in training due to Covid-19 related illness in the workplace or off the job can classify this period as a break in learning. The normal breaks in learning process should be followed and therefore we only need notifying once a break in learning has exceeded 4 weeks.

3. Usually breaks in learning are only permitted where they are learner driven, however we are aware that there may be occasion where an employer who is following government advice may take action that results in an apprenticeship have to be paused. In these occasions a break in learning can be used where there will be a break of longer than 4 weeks. The normal breaks in learning process should be followed.

4. In order to maintain the integrity of high quality assessment of apprenticeships we are going to monitor the situation and will issue further advice and modifications relating to specific assessment methods if necessary.

5. We advise adhering to the current escalation process of raising EPA (end-point assessment) issues through EQAPs (external quality assurance providers) in the first instance.

There is a need for everyone (employer, provider, EPAO, Apprentice) to take a reasonable and balanced approach in these situations and to recognise that the health and wellbeing of individuals is a higher priority than performance measures.

We know that good communications between each of these parties is important to the successful delivery of EPA anyway. So, in these circumstances communication becomes even more important.

The Institute for Apprenticeships and Technical Education (IfATE) will shortly be publishing further guidance for this area in response to potential disruption from Covid-19.

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