LITRG support NHS personal budget holders to use CEST tool

Employment Tax

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New employment status help for disabled people who take on a carer.

The government are giving people more choice on how their health and wellbeing needs are met. One way they have done this is by allowing the NHS to give some people money – called a personal health budget (PHB) – so that they can pay a carer to provide them with the help and support they need.

HMRC's view is that a carer providing care in a person's home is likely to be an employee. However, there is an unfortunate lack of understanding of this by recipients of PHBs. The result is that carers can often be treated as 'self-employed' incorrectly, exposing the PHB holder to penalties for PAYE failures, amongst other things.

The situation is compounded because understanding and answering HMRC's Check Employment Status for Tax (CEST) tool questions with the accuracy that HMRC might expect, currently requires a reasonable degree of sophistication and an understanding of the underlying case law tests. Yet even the initial questions present difficulties in the PHB holder/carer context, for example:

The first question asks 'Which of these describes you best?' Options include '*Worker*', '*End client*', '*Agency*'. The correct answer for a PHB holder to enter would be 'End client'. But the explanation on the tool says that 'The end client is the public body, corporation or business that the worker is providing services to'. This would make no sense to a PHB holder who would not consider themselves a business.

The third question asks 'How does the worker provide their services to the end client?' – a PHB holder should choose 'As a sole trader' to access the part of the tool that they need (that is, the bit that deals with 'general' status enquiries). But how

would they know to pick that if they do not know what a sole trader is? And, indeed, their carer is not technically a sole trader (given its technical meaning is someone who is the exclusive owner of a business).

Furthermore, when it comes to some of the substantive questions on control, substitution etc, often you are asked to click on ‘statement’ answers. However, these can be too mechanical to apply to ‘care’ situations where naturally the lives of both parties tend to be more closely intertwined than in other sectors where the boundaries between employer/employee or engager/contractor are more clearly demarcated.

In light of all this, LITRG are developing a factsheet to explain the complex and difficult rules around employment status to PHB holders in a way that they can understand, and to give them some pointers on how to use HMRC’s tool. The key message is that the employment status of a carer is not a choice. We have shared a draft with HMRC, so that they can see what we are trying to achieve and how it differs from their own guidance provision.

It is worth mentioning that while the factsheet has NHS PHB holders in mind, it may be useful more widely: for example for other potential domestic employers. If you are struggling to get a client to understand employment status or need to help them use the CEST tool, our factsheet may be useful. Please do not hesitate to get in touch and, once finalised, we will happily email you a copy.