Is Your GP Locum Truly Self-Employed?

HM Revenue & Customs (HMRC) have been challenging the status of locums who are registering as self-employed, but whose services are being used by GP practices as though they are employees. The key focus of this article is to ensure that there is no dispute over the employment status of your GP locums.

There are a number of elements involved in ensuring that a locum is self-employed, but there are three elements that are key. Adhering to these would make it difficult for HMRC to argue that these locums are employees of the practice.

The first is that your locums should be able to provide a substitute. When a GP is self-employed, they are required to provide a service. Should they be unable to provide services on a specific day, this service should be able to be undertaken by someone else provided by them. It is the locum’s responsibility to find another locum to provide cover on this day and the original locum will still raise the invoice to the practice. What is being stressed here is that the locum is not treated like an employee. When an employee is unable to attend work, they are not responsible for finding someone to cover their position; the responsibility lies with the employer. The implication of a locum finding their own substitute suggests there could be a time where a locum unknown to the patients is in attendance. We recommend each practice keeps a list of locums and this list is made available to the practice’s regular self-employed locums.

The second is that the locum is not entitled to holiday or sick pay. HMRC would not accept a self-employed locum as having the same rights as an employed member of staff. Equally, they should not come to the Christmas staff party unless they pay for themselves.

The third is that the locum (although providing GP services) is entitled to deliver the service required as they desire. They can organise their sessions as they wish and should not be controlled by the practice. The locum is responsible for the quality of the work that they provide, however, it would be in their favour to work in accordance with the practice ethos to ensure that the patients are receiving the same quality of care they have come to expect from their practice.

For further information, the HMRC website has an easy-to-read leaflet which explains employment versus self-employment that can be found [here](#).

**Effects on Taxation**

If your locum is self-employed, they must tell HMRC as soon as they begin to provide locum services to avoid any potential fines. This is so that HMRC can assess the type of tax and National Insurance contributions that should be paid. When you have an employee (who is on the payroll and has a standard employment contract), you will pay the PAYE, employee’s and employer’s NIC’s on their behalf.
However, a self-employed locum will be responsible for paying over their own tax and National Insurance contribution liabilities.

**Effects on Superannuation**

With effect from 1st April 2013, a 14% Employer’s superannuation contribution is charged by the locum to the practice through [Locum Form A](#). This is calculated as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Calculation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Locum Fee</td>
<td>Sessional Rate</td>
<td>£100.00</td>
</tr>
<tr>
<td>Pensionable Pay</td>
<td>90% x Sessional Rate</td>
<td>£90.00</td>
</tr>
<tr>
<td>Employer Contribution</td>
<td>14% x Pensionable Pay</td>
<td>£12.60</td>
</tr>
</tbody>
</table>

The practice therefore pays £100.00 + £12.60 = £112.60

Therefore, the cost of locums has increased by 12.6% despite only an additional 0.15% increase to the Global Sum. This 0.15% increase equates to about 10 days’ worth of locum cover each year and is distributed equally between all practices regardless of whether locum services are used or not.

The 12.6% is in addition to the employee tiered contribution rate which ranges from 5% - 13.3% depending on the total pensionable pay for the year shown in [Locum Form B](#). It is the locum’s responsibility to document their earnings so that the correct contributions can be calculated and paid over to the Pensions Agency on a monthly basis.

Practices should be aware that hiring the services of a locum who is either retired or trading under a limited company will not have to pay the employer’s 14% contribution as, in these circumstances, they are not members of the NHS Pension Scheme.

**Model Contract**

HMRC have been known to challenge locum employment status and as noted above, it is essential to adhere to the basic principles of self-employment. Should HMRC query the status of any of your locums, you should ensure that a contract can be presented to further prove the locum’s status as self-employed. A basic contract between the practice and each locum should reiterate that the practice is seeking the services of a contractor and not those of a permanent employee.

For a model contract, Ramsay Brown & Partners have prepared a basic pro-forma that can be tailored to your individual practice needs and can be found [here](#).