FOR STAFF AND STAKEHOLDERS

CITY OF WOLVERHAMPTON COUNCIL

Benefits Bulletin

Universal Credit: Two Wage New Rule…

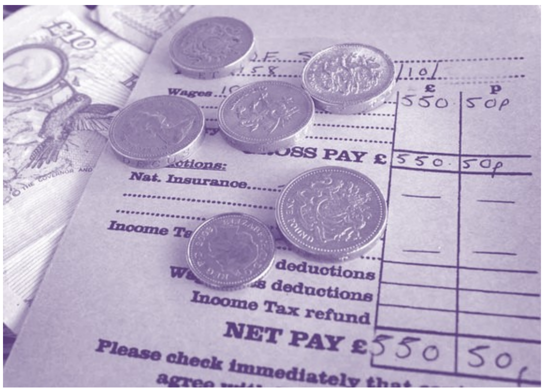
19th November 2020

Issue 7 [2020]

1. Background…

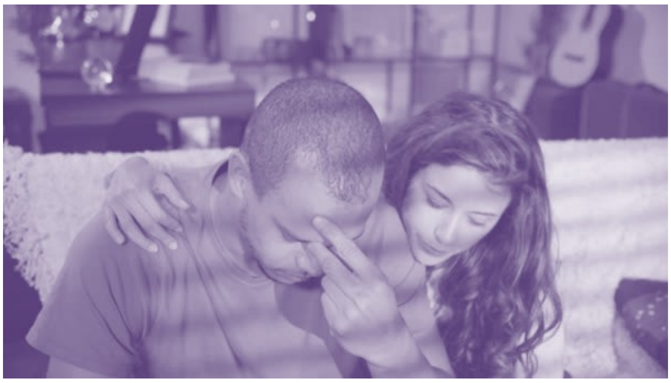
We are pleased to report that a change to the Universal Credit rules now means that people who are paid wages early this Christmas should not necessarily lose out as a result.

In Benefits Bulletin Issue 20 (2018), dated 20th December 2018, we shared news on how working families and disabled workers could have found themselves getting considerably less Universal Credit than they expected over the Christmas period if their employers paid them their wages early.



We explained that this was due to the fact that Universal Credit entitlement is assessed month to month during an 'assessment period', set with reference to the date on which Universal Credit was actually claimed.

How much is paid in any particular 'assessment period' is calculated according to a family's or individual's circumstances and income during that month. Therefore, if a person's employer paid them early then this could lead them to being assessed as though they had double the amount of wages in one month and no wages in the following month.



You would think that if this happened, things would even themselves out. However, as we showed, some families stood to lose substantial sums over any particular two-month period. This due to the way the 'Work Allowance' (the amount of a person's earnings that may be disregarded) calculation operates.

The New Rules…

Example: Jenny and Jim live together. They have one child. The couple's monthly Universal Credit 'assessment period' starts from the 26th of each month. This is because this is the day of the month on which they applied for Universal Credit. Jenny does not work. She gets Carer's Allowance because she cares for her elderly parents full-time. Jim works part-time. Therefore, any earnings Jim gets paid between the 26th of one month and the 25th of the following month are treated as part of the couple's income for that particular 'assessment period'. Jim normally picks up his wages on the 28th of each month. However, Jim's company has decided to pay him his December wage early, on the 21st (not the 28th) because it is Christmas. Before the rule change Jim would be treated as having **TWO WAGES** in his 26th December 2020 'assessment period' (26th November 2020 to 25th December 2020) and no wages during his 26th January 2021 'assessment period' (26th December 2020 to 25th January 2021). This would mean that he would be worse off overall. However, given the new rule change, the DWP can attribute his wage payments to the individual 'assessment periods' they were intended to cover.

Why do people stand to lose out?

The issue of losing out due to two payments of wages being treated as paid in the same 'assessment period' only really applies in the case of families (i.e. cases where a person or couple have a child) and disabled households (i.e. cases where the claimant and/or their partner are deemed to have 'limited capability for work'). This is because it is in these cases a 'Work Allowance' of either £292.00 (for people who live in rented accommodation) or £512.00 (for people who live in mortgaged accommodation) can be deducted from any earnings in any individual 'assessment period'.

Therefore, taking the Jenny and Jim example, if Jim earned £1,000 each 'assessment period' and qualified for the £512.00 Work Allowance he would only be treated as earning £488.00 per month (£1,000 less £512.00 = £488.00) in each 'assessment period'. Then because of the way Universal Credit entitlement is assessed, only 63% of that £488.00 (i.e. £307.44) would be deducted from his overall Universal Credit entitlement. Whereas, if Jim was treated as earning £2,000 in one particular 'assessment period' then he would be treated as having earnings of £937.44 (£2,000 less £512.00 = £1,488 @ 63% = £937.44) for that 'assessment period' and nothing in the next 'assessment period'. Taking his earnings into account this way (together with Jenny's income from Carer's Allowance), would mean that in the first 'assessment period' they would not qualify for any Universal Credit (because their assessed income would be too great) and whilst in the second 'assessment period' their entitlement would be worked out with a £nil earnings figure, all round they would stand to lose £131.91 across the two assessment periods.

This problem can also affect people who are paid early at other times - when their normal payday falls on a weekend or Bank Holiday date. For slightly different reasons the issue can also affect people who are paid weekly or fortnightly - because the nature of their payments means that they are treated as having greater earnings in some months than others. The issue will most likely occur in cases where people have applied for Universal Credit at the end of a particular month and whose paydays fall on the last day of the month. The problem has been caused by the fact that any earnings which are paid in a particular 'assessment period' may be treated as earnings for that period even if the earnings in fact relate to a different period.

2. The New Rules

The Universal Credit (Earned Income) Amendment Regulations 2020 (Statutory Instrument 2020 No. 1138) now mean that since 16th November 2020, the Department for Work and Pensions (DWP) can:

- reallocate a payment of wages reported in one assessment period to another assessment period; and
- allow a payment of wages that has been reported late, or otherwise paid in the wrong assessment period, to be treated as employed earnings in the assessment period in which it was actually received.

Moreover, the new rules provide that where a person is paid calendar monthly and they receive more than one wage in an 'assessment period' (for example, because of the way the dates fall) then the DWP can, in order to maintain a regular payment pattern, treat one of those payments as employed earnings for a different assessment period.

The rule change came following hearings first in the High Court (*Johnson v SSWP* on 11.10.2019) and then in the Court of Appeal (*SSWP v Johnson* on 22.6.2020) in which the DWP argued that it was consistent with the rules (Regulation 54 of the Universal Credit Regulations 2013) and that any change would undermine the operation of the Universal Credit automated system.

In final analysis, both the High Court and Court of Appeal held that the effect of two salary payments being counted in one 'assessment period' was ultimately irrational and, therefore, unlawful.

3. Our Advice…

Anyone affected by this issue should seek to contact their Work Coach, explaining that the payments they have received do not/should not relate to the same 'assessment period'.

They should, making reference to the new rules, ask that the payments be attributed to the 'assessment period' for which they were intended.

For more information on how wages are taken into account for Universal Credit purposes, please go to this DWP LINK. The information provided explains the way Universal Credit can be assessed depending upon different earnings' patterns of a family or individual.

Further Information and Advice: If you need further information or advice on any of the points raised in this Benefits Bulletin then do get in touch with our Specialist Support Team. You can email them at wrs@wolverhampton.gov.uk or ring them on (01902) 555351.

Welfare Rights Service
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