

2015.06.16

5.2 Deputy A.D. Lewis of St. Helier of the Minister for Social Security regarding the enforcement of minimum wage requirements:

Could the Minister advise how the enforcement of the mandatory requirement for all employers to pay the minimum wage is currently policed and what, if any, cases of non-compliance have been reported in the last 12 months?

Deputy S.J. Pinel of St. Clement (The Minister for Social Security):

Social Security compliance inspectors have powers under the Employment Law to monitor and enforce minimum wage. These inspectors undertake surveys of employers' records, focusing particularly on new businesses. During such a survey, an employer will be advised of their responsibilities under both the Social Security Law and the Employment Law and all employees' records will be checked to ensure that employees are being paid at least the minimum wage. Minimum wage infractions are rare. In the last 12 months to May 2015, only one case of non-compliance was reported to the Social Security compliance inspectors. As a result of the action taken by the department, the employer paid the amount owed to the employee and the minimum wage has been paid correctly going forward. In addition, a further 5 instances were proactively identified through the ongoing departmental inspection process. In all cases, the matter was resolved with the employers concerned and the employees have been paid the correct amount.

5.2.1 Deputy A.D. Lewis:

Can the Minister also advise as to how many cases concerning the non-payment of holiday pay relating to when the employee exits employment have been brought to the attention of the department in the last 12 months?

Deputy S.J. Pinel:

I thank the Deputy for his question. I do not have those figures, but I will get them and circulate them to him later.

5.2.2 Deputy G.P. Southern:

Is it not the case that her officers are only entitled to go into a company and investigate on the grounds of whether or not they are paying the minimum wage and they cannot enforce any other articles, including the nature of contracts that are contained in the employment law; the single thing they can do is check on the minimum wage and nothing else in Employment Law? Does she not think it is about time that we had some teeth in the system so that we can check on more than just that issue?

Deputy S.J. Pinel:

I do not think that is quite correct. During the year, May 2014 to 2015, Social Security compliance inspectors carried out a total of 448 surveys on businesses. Inspectors found, through their inspections, an additional 5 employers, as I mentioned before, between these dates who were not paying the current minimum wage, but contracts are checked all the way through the businesses.

5.2.3 Deputy G.P. Southern:

Can the Minister clarify whether the officers have the rules in place to enforce the proper application of contract law under the employment law?

Deputy S.J. Pinel:

The Employment Law obliges an employer to maintain certain records, including a record of the employee's actual hours, in the form of a single document for each pay period, for example, weekly, sufficient to establish that the employer is paying a rate at least equal to the minimum wage. The records need to be kept, because they will help any employee, employer, enforcement

officer, tribunal or court to determine whether the minimum wage has been paid. If there is a dispute, the burden is on the employer to prove that they have paid the minimum wage to an employee.

5.2.4 Deputy G.P. Southern:

Is that confirmation that it is only the minimum wage that can be checked on by her officers?

Deputy S.J. Pinel:

The inspectors or officers are not only there to check on the minimum wage, but when they do, that is what they do, yes.

5.2.5 Deputy J.A. Martin of St. Helier:

As the Minister said, only one case had been found that was being paid under the minimum wage and that the employer had then made the employee's money up. Were there any other sanctions brought on the employer and what are the sanctions if this continues?

Deputy S.J. Pinel:

The Social Security inspectors are there to make an assessment of whether the employer and employee are both operating under the minimum wage contract. If there is an issue following that, then J.A.C.S. (Jersey Advisory and Conciliatory Service) are involved and J.A.C.S. will advise whether any further detail with the tribunal should be involved. J.A.C.S. have only dealt with one tribunal complaint relating to the minimum wage in the past 12 months.

5.2.6 Deputy J.A. Martin:

A supplementary. I do not expect the Minister to have it on her, but could she check the scale of enforcement and what it would be for the employer if they ... well, it is not if they are caught and they pay the money back, it is what the scale of the fine should be in the courts. Can the Minister find out and circulate that later, please?

Deputy S.J. Pinel:

Yes. This is not something that would be enforced under the Social Security inspectors. It would be a tribunal, and as I say, there has only been one tribunal case in the last 12 months.

5.2.7 Deputy A.D. Lewis:

Can the Minister confirm that the only resolution can be sought from the tribunal process, and also, would she consider giving further powers to the Employment Forum to perhaps determine if the inspection regime is appropriate and adequate?

Deputy S.J. Pinel:

I do not think the Employment Forum necessarily need more powers than they have already. They refer to the tribunal if the case cannot be dealt with at employer and employee level, which is what we try to do to avoid any appeals or tribunal.