

Issue 1 – 2009: Travel Schemes and Umbrella Companies

This Brief contains guidance for GLA licence holders who operate 'travel schemes' (also known as 'travel and subsistence schemes', 'dispensation schemes' or 'mobile workers schemes') and for those who use the payroll services of an 'umbrella company'. It has also been issued to labour users, and organisations representing workers.

These schemes may breach Licensing Standards regarding minimum wage (2.2), work-finding fees (7.1), and tax /National Insurance (2.1).

Background

The GLA is aware that a growing number of labour providers are operating 'travel schemes', or referring their workers to 'umbrella companies' who operate travel schemes. Under these schemes, workers generally sacrifice income before tax in respect of travel and subsistence expenses, and in return receive tax free travel and subsistence payments from their employer under a Dispensation issued by HM Revenue and Customs (HMRC).

We have previously confirmed that umbrella companies, or payroll companies who employ workers directly, must hold a GLA licence. The use of an unlicensed umbrella company would constitute a criminal offence as well as a breach of GLA Licensing Standard 8.1.

Application of GLA Licensing Standards to Travel Schemes

Following HMRC advice, we can now confirm that some travel schemes operated by labour providers or umbrella companies could breach GLA Licensing Standards. In particular, travel schemes may breach the requirement to pay national minimum wage (Licensing Standard 2.2), the prohibition of work-finding fees (Licensing Standards 7.1), or the requirement to accurately calculate and pay tax and National Insurance (Licensing Standards 2.1). GLA and HMRC will be reviewing existing schemes in joint inspections of labour providers to establish whether they are compliant.

This new guidance will affect all licence holders who operate travel schemes or use the services of an umbrella company that operates a travel scheme.

With effect from **17 February 2010**, we will assess compliance with Licensing Standards in relation to travel schemes in accordance with the guidance set out below.

Existing schemes may now be deemed to fall foul of Licensing Standards such as the national minimum wage, even if they had previously been classed as compliant with those standards.

National Minimum Wage and Travel Schemes

Licensing Standard 2.2 stipulates that all workers must be paid at least the national minimum wage or, if applicable, in accordance with the appropriate Agricultural Wages Order.

Under travel schemes, workers typically sacrifice salary in return for travel and subsistence expenses. Part of their pay will therefore be a reimbursement of expenses rather than a wage.

Expenses in connection with workers' employment do not count towards their wages for the purposes of calculating whether workers are paid at least national minimum wage. In some schemes expenses paid may actually be in connection with the workers' employment. This would mean that such payments would not count toward national minimum wage and the licence holder would be in breach of Licensing Standard 2.2.

Licence holders that operate travel schemes will be asked to produce evidence to confirm that expenses paid by labour providers to workers have, in the first instance, actually been incurred by the workers.

Some schemes reduce pay further below national minimum wage through charges for the operation of the scheme.

With effect from **17 February 2010** the GLA will normally revoke the licence of any licence holder whose workers are deemed to receive less than national minimum wage on this basis.

Work-Finding Fees and Travel Schemes

Licensing Standard 7.1 stipulates that a licence holder must not charge a fee to a worker for any work-finding additional service, that have been agreed. Labour providers must not charge their employees for providing work, although they may charge for additional services.

Under some travel schemes, employers charge employees an 'administration fee' or similar for use of the travel scheme. In practice, the administration of a travel scheme is often limited to the operation of a payroll that accounts for salary sacrifice and expense allowances. Calculating and arranging pay is **not** an additional service but an integral part of the employer's responsibilities. Where a worker is obligated to pay a fee to an employer for such a service, and it is a requirement of the employer as part of the employment, it constitutes a fee within the meaning of Licensing Standard 7.1 "Fees and providing additional services".

With effect from **17 February 2010**, any such charge to workers for the provision of a travel scheme will be deemed a fee that breaches GLA Licensing Standard 7.1. The GLA will normally revoke the licence of any licence holder who charges such a fee.

Tax / NI and Travel Schemes

Licensing Standard 2.1 stipulates that a licence holder must accurately calculate and pay tax and National Insurance from workers' pay and pay the correct amount to HMRC.

Travel schemes typically reduce the amount of tax and National Insurance payable. Such a reduction is permissible under GLA Licensing Standard 2.1 provided the licence holder can show evidence that expenses (including the level of those expenses) have actually been incurred by all workers to whom tax free expenses are paid.

Licence holders who have a HMRC dispensation will be in breach of Licensing Standard 2.1 if the dispensation is not applied correctly. Licence holders should only use dispensations that they have been granted by HMRC. They should not use dispensations granted to other licence holders or employers.

With effect from **17 February 2010**, the GLA will normally revoke the licence of any licence holder who is found to have breached Licensing Standard 2.1 in either respect.

Action to Take

If you currently operate a travel scheme, you should check that your scheme is compliant with GLA Licensing Standards under the guidance set out above. If your scheme does not currently comply with this guidance you must amend your systems and, where applicable, contracts with workers to ensure that your scheme is compliant by **17 February 2010**.

If you currently use the services of an umbrella company, or if you are considering using an umbrella company, you must check that the company holds a GLA licence. You should also ask the company to explain how its scheme complies with Licensing Standards 2.1, 2.2 and 7.1. You should not use an umbrella company unless you are satisfied that its scheme is compliant with GLA Licensing Standards.

Labour Users should also note HMRC guidance for labour users on how to operate due diligence checks on the labour providers they intend to use, to identify risks to their own reputation, and the risk of losing the right to recover VAT on transactions with the labour provider.

Other Guidance

HMRC Brief 50/2009 ([short cut to HMRC Brief](#))

HMRC Use of Labour Providers: advice on due diligence ([short cut to HMRC due diligence leaflet](#))

GLA Licensing News – Issue 9 ([short cut to licensing news 9](#))

If you have any queries please contact us on **0845 602 5020** or enquiries@glg.gsi.gov.uk