

Up Where We Belong

PSA MEMBERS IN DISABILITY AND MENTAL HEALTH SUPPORT ■ JUNE 2011



Payments for sleepover shifts

a report on progress

The PSA, along with the Service and Food Workers Union, is in negotiations with the government and employers over payments for sleepover shifts in disability and mental health support services.

On behalf of members, the unions are claiming the legal minimum wage for each hour worked on a sleepover shift and backpay for underpayments in the past 6 years. The total amount of backpay owing is around \$300 million.

The union claim follows decisions by both the Employment Court and the Court of Appeal that sleepover shifts should be paid at least the minimum wage.

The employers have now appealed to the Supreme Court to have the courts' decisions overturned. The appeal is to be heard on the 13th September 2011.

Frequently asked questions

Why are employers spending so much on court cases?

They say they can't afford to pay a proper wage for sleepover shifts and some will go bankrupt if they have to pay backpay.

The PSA accepts that providers don't get enough funding from government to settle our claim on behalf of members.

If employers can't afford to pay, how are we going to fix this?

It's the government's job to fix it.

For years, governments have agreed to cheap funding contracts based on paying illegal wages. Now it's time to pay up and properly fund these important support services.

Are unions putting services at risk?

No. The risk comes from the government's cheapskate approach to mental health and disability support services. The PSA and SFWU are demanding that the services be put on a firm footing through funding based on decent pay and quality services. This is what service users and their families are also calling for.

Could the government be sued for not funding services adequately?

The government has a legal obligation to fund the sector to comply with minimum legal requirements, including the minimum wage. This opens the door for potential legal proceedings against the government to ensure adequate funding.

You may remember that after the Court of Appeal said sleepover shifts must be paid the minimum wage, the government said it would look at changing the law. To do that would be an abuse of power.

The two unions and organisations representing disabled people and their families signed a joint statement calling on the government to adequately fund the sector.

It also called for a meeting with government to discuss how all parties can achieve our joint interest of lawful rates of pay and high-quality community support.

Am I covered by the union claim?

If you are a current PSA member or former PSA member who has filled out an authorisation form and sleepovers have been worked in the last six years where you work or where you did work, legal proceedings will be filed in your name and you will be covered by the case. If you are not sure, talk to your organiser or phone the PSA on 0508 367 772.

Overleaf

Where things stand in the negotiations with government.

What's happening in the sleepover negotiations

The negotiations involve representatives of the PSA and the SFWU; the government; and the service providers. PSA national secretary Richard Wagstaff is the PSA's representative.

The government has made an offer and the unions have put forward a counter proposal to try and reach a settlement. The two positions are set out below. There is a wide gap between them.

SUMMARY OF UNION PROPOSAL

Payment of minimum wage

- Immediate payment of half the adult minimum wage (currently \$6.50 an hour) for sleepover shifts.
- Full minimum wage (currently \$13 an hour) paid within six months.

Backpay

- Half the backpay owing to all those who have filed, plus interest.
- Paid to both current and former members who have filed a claim.

Working party

- A working party be set up to address pay rates across the sector.

Ongoing funding

- The settlement must not affect any future funding increases for the sector.

Supreme Court appeal

- That this be withdrawn.

SUMMARY OF GOVERNMENT OFFER

Payment of minimum wage

- Staggered implementation of the minimum wage, spread over 4 years.

Backpay

- 25% of backpay owing or up to a combined total of \$45 million, whichever is the lesser.
- The government would pay half of this; providers would have to pay the rest.
- Would apply to current staff in services funded by Vote Health.

Working party

- To be set up to consider future workforce requirements and models for delivery of services.

Supreme Court appeal

- Withdrawn if settlement reached.

Notes

1. Refer to the letter of offer for details of government offer.
2. The government's offer closes at 5pm on 15 July 2011.
3. For a settlement, the offer would have to be voted on and agreed to by both unions and service providers.

What happens now

There is a huge gap between what the unions' proposal and the government's offer. The PSA believes the unions' proposal is a reasonable compromise and the government proposal is unrealistic and well short of what is owed.

Meetings

The PSA is meeting with members to discuss where we go to from here. We are recommending that members reject the government's offer. We are also asking members to support the union's efforts to get a much better deal for those who do sleepover shifts and to make a commitment to a lobbying campaign to build strong community and political support.