[How to Avoid Payroll Pitfalls When Making Subsequent Payments to Ex-Employees]

Companies don't pay just employees who work for them now; sometimes they also cut cheques for employees who worked for them in the past. These subsequent payments to former employees raise payroll challenges that can get both your organization and the former employee into trouble with Service Canada.

Subsequent Payments May Result in EI Overpayments

Subsequent payments affect an employee's entitlement to Employment Insurance (EI) benefits. That includes EI benefits previously paid to a **former** employee. In cases of retroactive impact, Service Canada may consider former employees as having been overpaid and seek to recover the EI benefit overpayment amount from them.

At a minimum, this will create serious inconvenience for the former employee. And if Service Canada thinks the former employee should have directly reported the subsequent payment, it may result in significant penalties and limit the former employee's ability to collect EI benefits for at least five years.

How Subsequent Payments Get Employers into Trouble

There are two common situations where subsequent payments can also cause trouble for employers:

1. Need for a New ROE

The first is where a former employee does subsequent work for the employer. **Example:** Six months after laying him off, Company ABC recalls mechanic Alan Wrench to perform equipment repairs on a short-term basis. After the employment ends, ABC must issue a new Record of Employment (ROE) for Alan, not as a replacement or amendment to the original ROE issued at initial lay-off but as an additional ROE listing the recall start and stop dates and related insurable hours and earnings.

2. Post-Settlement Termination Notice Payments

The second situation involves payments to a former employee stemming from the initial lay-off. **Example:** Alan sues ABC for wrongful dismissal. As employers often do when termination is going to be contested, ABC pays the minimum wages in lieu of notice required by the province's employment standards law while the case is pending. After the case settles, ABC pays Alan any additional amounts agreed to in the settlement. These additional payments are typically made months after the actual layoff date. In addition to potentially having to report such payments, an employer has two other obligations in this situation:

Obligation 1. Contact Service Canada: The employer must contact Service Canada to see if the subsequent payment triggers a retroactive overpayment of EI benefits. If so, the employer must recover the overpayment at source from any settlement amounts otherwise payable. This is true even where such settlement amounts wouldn't themselves be insurable earnings for regular EI source deduction purposes or reportable on the ROE in Block 15B or C. The employer must also refrain from adding the EI overpayment recovered to regular CRA remittances and should ask Service Canada how such EI benefit overpayments **should be** remitted.

Obligation 2. Amend ROE: The employer must also amend the original ROE it issued for the employee upon initial termination. The amended ROE must list the settlement amounts, including any retiring allowances or other payments on termination, to the amounts previously reported on the original ROE. In effect, the full initial ROE must be reproduced unchanged, other than for the subsequent amounts now being paid. In addition, it must list the serial number of the initial ROE to Block 2 of the amended ROE.