HR Support for Business

A simple and affordable solution to HR

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Employers News letter October 2014

Hello, and welcome to our October 2014Newsletter.

I'm Carole Thomson and I founded HR Support for Business to give small and medium businesses access to a trusted and practical HR Support Service when they need it. With so many changes in the world of Employment Law, this newsletter will provide you with a 'short and sweet' overview. The idea is to give you an insight of what's new, what is to come, and how it will affect you and your business.

1st October 2014 - law changes

In the world of employment law 1st October is a key date for new legislation or changes to be implemented. Not too much this time, but here is an overview.

New right: Time off for antenatal appointments

Pregnant employees already have the right to paid time off for antenatal appointments. Not paid, but from 1st October their partners now have a statutory right to take time off to accompany their pregnant partners for up to two of these appointments. The change implements Part 8 of the new Children and Families Act 2014.

Who does it apply to?

It applies to employees and agency workers who are in a *"qualifying relationship"* with a pregnant woman. It is from day one of employment so no continuous period of employment is required.

What is a qualifying relationship I hear you say?

A pregnant woman's: husband, partner or civil partner, the father of the child; the parent of the child. And, the intended parents in a surrogacy situation who meet specified conditions.

There are some restrictions

It is only for **two** antenatal appointments (not all of them) and each absence cannot be for longer than 6.5 hours. The appointments must also have been made on the advice of a Doctor or Registered Midwife or Nurse.

A question of pay

Unlike your pregnant employees you won't have to put your 'hand in your pocket' as there is no corresponding right to be paid during this time. As an employer you are of course, free to pay an employee if you wish to.

Asking for proof

You won't be able to ask for proof of an antenatal appointment as such. I would however recommend you have a template document within your procedure. This is so you have a written declaration confirming they meet the above criteria together with the date and time of the appointment. If you then find out that they've misled or deceived you, there will be grounds for disciplinary action as a potential misconduct issue.

Managing all the 'family friendly' legislation, which is not so friendly for employers to manage, as it is quite detailed and complex, can be a nightmare. If you need any help putting in a suite of policies and procedures to help you manage these areas and stay compliant with the law, just Contact us | HR Support for Business and we can discuss how we can help you.

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New Minimum Wage Increase

The National Minimum Wage (NMW) rate is dependent on age and whether your employee is an apprentice. To qualify for the NMW a person must be school leaving age. Whether a person is considered school leaving age is dependent on exactly when in the year they were born. **It is always best to check.**

The NMW is usually updated every October. The rates from 1st October 2014 are below. If you would like us to advise you of these and other changes as they happen in the future, then please just register here HR Newsroom | HR Support for Business and we will send you the updates as they happen.

	21 & over	18-20	16-17	Apprentice*
Current rate	£6.50	£5.13	£3.79	£2.73

**Important note:* *the apprentice rate is for those who are 16-18, and those who are 19 or over, but who are in their first year. Otherwise the apprentice would be entitled to the NMW for their age.*

Government fines

I have to mention that the Government considers there is still widespread abuse by some employers. Their response is any person found guilty of not paying the NMW is served a notice. The notice will state the arrears of NMW to be paid and, a financial penalty to be paid to the Secretary of State. This must be paid within 28 days.

The financial penalty is 100% of the total NMW underpayment and is further subject to a minimum £100 and a maximum £20,000 penalty. Penalties will be reduced by 50% if complied with within 14 days.

The Penalty used to be per employer, but in the recent Small Business, Enterprise and Employment Bill (*25th June 2014*), this changed. Penalties will now apply on a 'per worker' basis rather than per employer basis.

This could quite simply put a small business out of business. This would be a very high risk strategy for a business to take.

Military Reservists – October changes

Under a program called Army 2020 the Government intends to reduce regular soldiers and increase reservists. They also plan to increase training days from 19-29 to 40 per year. Because of the extra burden, particularly on small and medium sized employers, the following has been implemented as from 1st October 2014.

Military Reservists. The Reserve Forces (Payments to Employers and Partners) Regulation When called up, military reservists are paid by the Ministry of Defence. However, Employers are entitled to claim up to **£110 per day** in respect of additional costs incurred whilst replacing the reservist. Now to further help reduce the financial burden faced by small and medium employers you will also be able to receive up to **£500 per month** for each full month a reservist who is absent from work (*reduced pro rata for parts of a month, or part-time workers*).

However the Government has also recognised it is difficult for reservists to achieve the necessary service needed to claim unfair dismissal. This is due to time on active service or training not counting towards continuous service. Made worse when the qualifying period for claiming unfair dismissal increased from one year to two back in April 2012. Therefore the:

Defence Reform Act 2014. Extra protection for employees implements new provisions to enhance the employment rights of those serving in the Reserve Forces.

Now an employee who alleges their dismissal was connected with being a member of the Reserve Force (*or absence connected with this*) will not need the usual two-year qualifying period required to take an unfair dismissal claim to a Tribunal.

It is important to note; they will not be treated as being 'automatically unfairly dismissed' as they will still have to prove that their dismissal was unfair. But now will not need 2 years service to take their employer to a tribunal.

Tribunal Powers to order Equal Pay Audits

From 1 October, Tribunals will now have the power to order employers found to be in breach of Equal Pay Legislation (Equality Act 2010) to carry out an Equal Pay Audit. To qualify this provision, you will have needed to

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have been taken to a Tribunal and lost your case on or after the 1st October for this to apply to you.

Audits are time consuming and the minimum the audit will have to achieve is to identify if there are any differences in pay between men and women doing 'like work' in your business, and the reasons for these differences. You will also need to identify the reasons for any equal pay breach and how you are planning to avoid further breaches in the future.

An extra 'sting in the tail' is you are required to publish the relevant gender pay information on your website for at least three years. This means it is there for all to see – your competitors, customers, your employees, those who work with you and any potential job applicants. Ouch!

Government announcements

Zero hour contracts – decision announced

Following much consultation, the Government has shied away from trying to introduce the complete ban on zero hour contracts that many seemed to call for.
Instead they have taken the somewhat easier option and announced their intension to legislate and ban the '**exclusivity provisions'** in Zero-hour Contracts. This clause previously prevented employees on zero hour contracts from accepting other work. The relevant provision is Clause 139 of the newly published Small Business, Enterprise and Employment Bill.

Basically, if there is "no certainty" that any work will be required of the worker (*many situations can be envisaged where work is highly probable, but not necessarily certain*) a Zero-hour Contract cannot prohibit the worker from working under another contract or 'other arrangement' without your consent. To do so would be unenforceable.

It has been drafted to give the Secretary of State wider powers to make further amendments. In particular, the Government continues to consult on how to tackle employer avoidance of this ban and, what penalties there should be in place where the law is broken.

The Government also announced it will work with businesses and unions to develop a code of practice by the end of the year on the fair use of zero hours contracts. This will be a relief to the many employers and employees who equally appreciate the flexibility offered by such working arrangements. And, the fact that employers will no longer be able to prevent their zero hours staff from accepting work elsewhere if no work, should go some way towards protecting the most vulnerable employees.

Bereavement, grief and work

Despite calls for legislation to allow bereaved parents five days' bereavement leave, there is still no direct relevant legislation in place for any bereavement.

Current legislation like Time off for Dependants and Parental leave does not really cover absence for bereavement. The only direct provision, in fact, is within the Maternity, Paternity and Adoption legislation in relation to babies who die or are stillborn.

In response to this ACAS has issued a new guidance entitled "Managing Bereavement'. To me, and many I have spoken to, it only states what any reasonable person would do – but read if you wish.

On its way

Changes to Adoption Leave

For a long time there has been an inconsistency between the Maternity and Adoption rights. Those adopting needed 26 weeks employment service to qualify, pregnant employees do not.

The new draft Paternity and Adoption Leave (Amendment) Regulations 2014 have been published. The 26 week qualification period for the entitlement of adoption leave has now been removed making the right to leave an immediate right for all employees. Changes have also been made to the rules for paid time off for adoption appointments.

These should both be with effect from **5 April 2015. We will update you nearer the time**

Shared Parental Leave

Heads up! The new Shared Parental Leave Regulations are due to come into force on 1st December 2014, and will

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apply to babies with an expected week of childbirth (EWC) starting on or after 5 April 2015.

Prior to this date Additional Parental Leave Regulations will continue to apply for babies with and EWC up to 4th April 2015.

This is just an overview for you, as until the legislation is published there still could be some changes (*nothing major is envisaged*). I will post, nearer the date, a **HR Micro Guide on Shared Parental Leave** on my website which you are free to access.

If you would like me to send you a copy when posted let me know here. Contact us | HR Support for Business

This legislation will allow a person on Maternity or Adoption Leave to bring their leave and pay period to an end early (*following the 2-4 compulsory period required in maternity leave*). Then the remainder of the outstanding period of leave and pay can be converted into Shared Parental Leave and Pay. This can be taken by either parent, but must be taken before the child's first birthday.

The right to Shared Parental Leave only applies to employees who individually meet the relevant eligibility criteria. Parents can then choose how to split up the remaining weeks of leave (and pay) between them. There is more flexibility as leave can be taken in periods of a week or multiples of a week at a time. And, the leave can be taken by each parent separately or at the same time.

How it fits with current legislation

Shared Parental Leave is in addition to the right to Parental Leave. So Parental Leave can still be taken as well. Additional Paternity Leave will be repealed when Shared Parental Leave comes into force, but the right to Ordinary Paternity Leave will remain in force and can still be taken.

As a reminder Maternity and Adoption gives a right to 52 weeks leave and 39 weeks pay. It is therefore the remainder of both that can be shared if the mother/prime adopter goes back to work (*taking holiday or going on sick leave will not count*).

Each parent can make up to three requests for periods of Shared Parental Leave. Whether the employer can refuse a request depends on whether the employee has asked for a continuous or discontinuous periods of leave. Rights will mirror those on maternity/adoption leave in relation to employment terms and conditions.

Employees have the right to bring a complaint to a Tribunal if they consider they have suffered a detriment, or have been dismissed due to asking/taking Shared Parental Leave.

The aim is noble one, as it will allow moms and dads greater flexibility in raising their child and balance their parental responsibilities to suit their individual needs.

Over time it is hoped it will allow dads to play a more active role in their child's first year and support women to have a family and a career. However, despite the Government's pledge to simplify legislation for employers, most who have read the full legislation have agreed that it is going to be complex to manage.

We can offer Shared Parental Leave model policy and procedure and template documents to help you cover everything you need to know and do just Contact us | HR Support for Business for more information.

HR Newsroom

We regularly post free employer resources, law updates, **HR Micro Guides** and employee related information to help you keep ahead of the game. Please help yourself.

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Or just contact us:

We offer a free 30 minute, no obligation personal HR Consultation to discuss your business needs – and how we may help.

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