



Employers' Newsletter

April 2017 update



Hello, and welcome to HR Support for Business's latest Employers' Newsletter. There have been quite a few changes this April, so I thought a newsletter highlighting the key changes, would be useful.

For those who do not know me, I work as a freelance HR professional helping small businesses with HR support, advice and resources they need, when they need it. It could be getting the contracts and the documentation in place to help you comply with the law and manage your workforce, or help fix a workforce problem, help implement a change, or provide bespoke training. Whatever the need, I promise to use my 25 years' experience to do all I can to help you achieve what your business needs. If you think I can help you, please just give me a call and we can have a chat. But in the meantime, I hope this Newsletter helps. *Regards Carole*

Increase in statutory family related, sick and redundancy pay

6th April saw the limits on statutory redundancy pay (*for employees with 2 years' service*) increase. Qualifying weekly pay is now **£489**. In turn increasing the top redundancy award to £14,670. And when used for calculating compensation in unfair dismissals a maximum award of £80,541, aligned to a minimum basic award now of £5,970.

Statutory maternity, adoption, paternity and shared parental pay all increased on 2nd April to £140.98 (or 90% of an employee's normal pay if lower than the statutory rate).

Statutory sick pay increased on 6th April to £89.35. To be entitled to SSP an employee's average earning must be equal or greater than the lower earnings limit. The 6th April also saw a change to National Insurance threshold with an increase to £113 per week (Class 1 lower earnings) and an increase to £866 per week (class 1 upper earnings).

I feel it is also important to highlight here that one of the biggest changes for working parents is yet to come. We saw Chancellor Philip Hammond confirm in March that a new tax-free childcare scheme will be in place for eligible parents by the end of the tax year.

Its aim is to provide those with children under 12 with an equivalent tax credit of up to £2,000 per year per child.

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Minimum wage increases

We saw on the 6th April the National Living Wage (for those aged 25 and over) increase to £7.50 (a 4.2% increase). Other increases were seen in the National Minimum Wage:

- 21-24 year olds increased to £7.05
- 18-20 year olds increased to £5.60
- 16-17 year olds increasing to £4.05, and
- the apprentice rate increasing to £3.50

and talking about apprenticeships, let's have a look at:

The new apprenticeship levy. The new payroll tax

In brief, the Government want 3 million new apprenticeships by 2020. To help fund this 6th April saw employers in England, who have a pay role of more than 3 million pounds or more, now required to pay 0.5% of their monthly payroll into this levy via PAYE.

We also see a shift in how apprenticeships are organised, placing the responsibility on to employers away from the training providers.

A survey by the City of Guilds found a third of eligible employers were unaware of this levy. If you want to know more just give me a ring.

Salary sacrifice tax advantages change

Many businesses have used salary sacrifice schemes for all sorts of employee benefits, but this all changed on the 6th April 2017. Many of the tax and national insurance contribution advantages previously allowed by the HRMC came to an end.

For instance; gym memberships, computers, school fees, accommodation, private health and screening checks, and company cars are all examples of 'benefits in kind' that will now be taxed.

It is important for me to clarify that there are transitional arrangements in place for plans that were already in place prior to April 2017. They are variable seeing some protected until April 2018 and even a few until April 2021.

And, there are some that will continue to remain exempt from tax such as: childcare; cycle to work schemes and ultra-low emission vehicles. If this is something your business has historically done, or is thinking of doing in the future, it is best now to check. And whilst talking about tax:

IR35 - reformed

This will be of interest to any business that use contractors. Or, you are a small contractor who work for the public sector.

For the moment, please note that this reform only applies to public sector employers. From the 6th April 2017 central and local government employers (the NHS, the armed forces and the police -among others) will have to deduct tax and NIC from contractors' pay at source.

It has been reported that this could see a 30% drop in contractors' take home pay. It has also been voiced that contractors may now choose not to work for the public sector and concentrate on the private sector. Equally, it has been reported that some contractors will increase their rates. Only time will tell.

It is one however for us all to watch. I have read many an article that predict that if this works, and revenue is increased to the HRMC, it will be extended to the private sector in the future. We will all have to wait and see, but I

felt it was a change you should be aware of.

Immigration skills charge

None of us yet know how, but most feel Brexit will profoundly affect the very nature of skilled migration. But on 6th April 2017 any business that sponsor skilled workers under Tier 2 of the immigration 'points based' scheme will have to now pay a levy of £1000 per annum, per certificate of sponsorship. With a smaller fee of £364 applied to charities and small employers.

It was also reported to expect an increase to the salary threshold for migrants that are experienced workers to £30,000

Gender pay reporting

There are many reports that state that despite legislation and wide publication the gender pay gap remains a concern. In response, the Government has put in place a requirement from April 2017 for Organisations with 250 or more employees to publish the difference between mean and median hourly pay of full time male and female staff. And the difference between mean and median bonus payments for male and female employees. Including the number of male and female employees awarded a bonus.

It is also a requirement for employers to record the proportion of male and female full time staff in the; lower, lower middle, upper middle, and upper quartile pay bands. Most reports forecast this will lead to employers having to put in place complex 'number-crunching' calculations.

Private and voluntary organisations had to take this 'snapshot' of their data on 5th April. And the public sector did the same on 31st March 2017. Both then have 12 months to publish their findings on the given Government website and their own website, along with a written statement confirming its accuracy. This information must then be made accessible to both the public and all staff.

Will it be of any use? From the reports read, views are mixed and we will just have to wait and see. Many reports do seem to feel that if the Government consider it is working, it will be 'rolled out' to smaller employers.

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A contractor, worker or employee?

Not an April change, but a topic that comes up again and again, and has seen some recent case law development.

Get it wrong as an employer and you risk unexpected costs to your business. And most feel this has always been a 'grey area' of the law. In brief, any person doing paid work in the UK will fall into one of these main categories:

- an employee (enjoys most employment rights), or;
- a worker (has a distinct legal standing and has limited employment rights);
- or a self-employed, or independent contractor (limited rights);
- and the rarer, employee shareholder (has reduced employment rights).

Getting employment status right is therefore significant. And there has been a recent case law trend finding 'so called' self-employed contractors as workers. It has evolved particularly within business agreements that seek to control people as if they were employees, but pay (and tax) them as if they were not.

For instance; the Court of Appeal ruled a plumber was entitled to basic rights. Gary Smith had worked happily for Pimlico Plumbers for six years as a self-employed plumber. However, following ill-health he wanted to reduce his working days and Pimlico said no and took away his hired company van. The working relationship dissolved and Smith then took Pimlico to a tribunal claiming he was entitled to basic workers' rights, including: Minimum wage, paid holiday and the right to bring a discrimination claim (presumably disability).

Pimlico stated he was an independent contractor and not a worker or employee. In short, they lost, although not deemed an employee, the ruling was he was a worker, despite technically being self-employed.

Other high profile cases you may have seen is the bike courier firm, City Sprint, and the taxi service App, Uber. Labelled the 'gig' economy in the press. But notably all found in the 'workers' favour. Uber has been granted the right to appeal against the ruling made by a tribunal last

year (due this September) that its minicab drivers should not be viewed as self-employed.

This is aligned to an appeal launched in a separate case involving the use of umbrella companies in the construction industry. Combined, this could all have significant implications for the nature of self-employment in the UK. Many voice that this remains a 'grey and confusing area of law.' And I agree.

Why significant? In employment law many rights like the right not to be unfairly dismissed, only apply to employees. However, there are increasing statutory rights being applied to those who traditionally were considered self-employed now being deemed a worker – and workers have rights. For instance, a worker is entitled to; holiday pay, the National Minimum and Living wage; 48-hour average working week and rest breaks.

For now, it is just clear that this is a changeable area, and a vital area to get right. If you are in any doubt please take professional advice, as these decisions are made on individual factors to working arrangement.

It is important to highlight that working status is based on the facts of the working arrangement, and not the wishes of either party. But once a decision is made it is then vital you have robust documentation and checks in place to support this working relationship. Including using the HRMC recently published 'employment law status helping to determine IR35 status.

If you would like to read more, I am happy to provide you with a Free Guide – just email me.

Latest in the holiday pay saga

The Supreme Court has now refused British Gas the right to appeal against the ruling that holiday pay should include results based commission.

Not quite the end story yet, as whether Mr Lock was underpaid and what the reference point for any calculation should be, has yet to be decided. Reports state that the outstanding matters should be finalised sometime this month. This will then give us all clarity on how to calculate holiday pay for those earning results based commission.

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Update on Sentencing guidelines

Finally, we all know accidents do happen even in the best run business. And we know the consequences are devastating in many ways. I thought I would end this Newsletter with a brief overview of some of the many cases I have read about since the new sentencing guidelines came into force in February 2016.

- June 2016. The death of a young tyre fitter a decade earlier saw a fine of £1,000,000;
- July 2016. 2 died from a fall, company fined £550,000
- August 2016. Following a fatal fall both the company and its director were found guilty of manslaughter. The Director was sentenced to a 2-year suspended prison sentence and the company fined £600,000
- A finding of inadequate site supervision found to have led to the death of a worker at Heathrow airport saw a construction firm fined £800,000

A sad fact, that these are just a small example of the fatality cases reported with loss of a life. But they also highlight how the new sentencing guidelines are being implemented and the level of fines now being applied.

And let's remember there needs to be no loss of life or even a person injured to warrant a significant fine. For example Conoco Philips UK Ltd were fined 3 million in 2016 following a series of unexpected and uncontrolled gas releases at an offshore gas installation.

It was found that the company had failed to identify and controls risks. The Judge stated the fine would have been £5 million if the company had not entered an early guilty plea and fully cooperated with the HSE. For a prosecution to succeed it will need to be established that:

- The accused had a duty of care and breached that duty;
- the breach caused the death, or it was such a severe breach of duty as to be considered a crime (gross negligence);
- The accused is a 'controlling mind – or the will of the company.

When considering if gross negligence it will be considered if the duty fell considerably below what would be reasonably expected of a company in the circumstances. It will be considered how serious the failure was, how real the risk of death was, the attitude and policies which lead to the failure. And there is the health and safety guidance relating to the breach to be aware of.

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If you want to read more about these guidelines you can access my guide: [Dramatic changes to health and safety & corporate manslaughter enforcement | HR Support for Business](#)

Finally, I hope you have found this useful

Please keep in mind, this is just an overview to highlight some of the recent changes in April and some interesting case law developments. I cannot include every aspect of the topics covered, or take into consideration various individual circumstances.

But as always, please just give me a call if you need more information bespoke to your situation – always happy to help. Just contact me (details below).

HR Newsroom

And as mentioned, you are also very welcome to access any of the other free HR resources and law updates and guides posted.

A little about HR Support for Business



One of my clients (after finding me via Google) recently told me: "I did not know people like you existed to help a small business like me. Well I do.

As a fellow of the CIPD, a technician member of IOSH and over 25 years' practical experience in delivering HR solutions, I provide ad hoc freelance HR and health and safety support and advice to small businesses.

I also help out fellow HR professionals as and when they need it.

Basically, if you have any HR need, why not phone for a no obligation chat to see how I can help you:

Call Carole at
HR Support for Business

T: 01295 788 579 M: 07899 425 916

Or email me on:

carole@hrsfb.co.uk

And please feel free to be sociable and share this newsletter with anyone you feel it would be of interest to.