



Do you employ staff?

March Employment Law Update

This newsletter covers the employment law changes that will take place in April 2020.

Statutory Payments Are Increasing

On the 1st April 2020, national minimum wage rates are increasing as follows:

- the hourly apprentice rate will increase from £3.90 to £4.15
- the hourly rate for those aged 16 -17 will increase from £4.35 to £4.55
- the hourly rate for those aged 18 – 20 will increase from £6.15 to £6.45
- the hourly rate for those aged 21 – 24 will increase from £7.70 to £8.20.
- The national living wage, payable to those aged 25 and over, will also increase on the 1st April 2020, from £8.21 to £8.72 per hour.

On the 5th April 2020, the weekly statutory payments for Maternity, Paternity, Adoption and Shared Parental Leave will also increase from £148.68 to £151.20 per week.

On the 6th April 2020, the weekly statutory sick pay amount will increase from £94.25 per week to £95.85.

Also on the 6th April 2020, the statutory compensation limits are increasing, as follows:

- The maximum amount of “a week’s pay” will increase from £525 to £538
- The daily guarantee payment will increase from £29 to £30 per day
- The minimum basic award that can be offered by an employment tribunal will increase from £6,408 to £6,562
- The maximum compensatory award that can be offered by an employment tribunal in the event of an unfair dismissal will increase from £86,444 to £88,519.

Several Employment Law Changes Introduced on 6th April 2020

- As of this date, the way holiday pay is calculated for employees who work variable hours, such as part-time employees, or employees on zero-hour contracts, is changing. Prior to this date, employers would calculate holiday pay by looking at how much pay the employee earned in the previous 12 weeks where work was completed, and use the average pay for that period. However, the Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 will change the reference period from 12 weeks to 52 weeks. When calculating how much holiday pay the employee should receive, you need to calculate their pay based on the average of what they have earned over the last 52 weeks where the employee worked. If the employee has not yet been employed for 52 weeks, it should be calculated based upon all of the weeks they have worked since the start of their employment.
- On 6th April 2020, the IR35 tax rules will be extended to the private sector, in an attempt to reduce tax avoidance for off-payroll contractors who work through personal service companies (PSC), such as agencies. HMRC believe that contractors who supply their services through an intermediary are classed as “disguised employees” and should therefore be taxed in the same way as general employees, via PAYE and NI payments. When deciding if IR35 rules apply, both the contract and working practices should be examined. There is plenty of information on the HMRC website on how to decide employment status, and the Government has confirmed that more information will become available to help employers deal with the implementation of the new IR35 rules, such as webinars, etc. Many private sector employers have voiced their concern that there has not been enough information provided about the new rules, and similarly, many self-employed contractors have voiced concerns that they will be wrongly categorised. In response to these concerns, the Government did agree to review the implementation of the new IR35 tax rules, but it was decided that the implementation date would not be changed. However, the Government and HMRC have agreed that a “light touch” will be taken in the first 12 months and any inaccuracies identified within that period will not result in financial penalties unless there is clear evidence that the law was deliberately disregarded. The new IR35 tax rules will not apply to your company if you meet two or more of the following criteria:
 - An annual turnover of no more than £10.2 million
 - The Company balance sheet totals no more than £5.1 million
 - The Company employees no more than 50 employees.
- From April 2018 employers were expected to be required to pay National Insurance Contributions (NICs) on termination payments over £30,000. However, this was postponed until April 2019 and is now being implemented on 6th April 2020.
- As of the 6th April 2020, the new Parental Bereavement Leave and Pay Regulations, otherwise known as “Jack’s Law”, will come into force. This means that employed parents, or adults with a parental responsibility (adopters, foster parents, or guardians) who have suffered the loss of a child under the age of 18, will be entitled to two weeks’ leave from day one of their employment. This leave will also be available to parents who suffer a stillbirth after 24 weeks of pregnancy (although, in this instance, the female employee will still be entitled to up to 52 weeks of maternity leave and / or pay). If the employee has accrued 26 weeks continuous service, and they have received pay above the lower earnings limit for the 8 weeks prior to the leave, they will also be entitled to receive pay for the bereavement leave. This will be paid at 90% of the employee’s average earnings, or £151.20 per week, whichever amount is lower. This leave can either be taken in one or two separate blocks, but it must be taken within 56 weeks of the date of the child’s death. If an employee loses

more than one child, they will be entitled to take a separate period of leave for each child. There is no rule on how much notice an employee must give of the leave, and employers are expected to be flexible given the circumstances. The notice does not have to be in writing, and employers are not legally entitled to receive a copy of the death certificate. Employees retain the right to return to their job after their leave, the only exception to this is if the employee combines their bereavement leave with another statutory leave, which means their absence from work is for more than 26 weeks. If this is the case, the employee has the right to return to the same or similar job, with the same or similar terms and conditions. During their leave the employee is entitled to all of their contractual terms and agreements, other than remuneration. Employees cannot be subjected to any detriment because of their use of parental bereavement leave. A dismissal for such a reason will be automatically unfair.

- On this date, “Pay Between Assignments” for agency contracts, commonly referred to as “Swedish Derogation Agreements” are being abolished and will no longer be legal to use. Workers who are engaged with these contracts via a Temporary Worker Agency give up their right to pay parity with their permanently employed counterparts, in return for a guaranteed payment between assignments. However, the Government wants to encourage more employers to take on permanent employees, which is why these types of contracts will no longer be permitted. For agency workers, this means that they will now be entitled to pay parity after a 12-week qualifying period. Temporary Worker Agencies must provide any worker employed on a “Swedish Derogation Agreement” style contract, with a written statement informing them that the provision no longer applies, by no later than 30th April 2020. A failure to do this could result in an Employment Tribunal claim.
- The Employment Rights (Miscellaneous Amendments) Regulations 2019; requires the statutory provision to lower the threshold required to set up Information and Consultation arrangements from 10% to 2% of employees, to improve the levels of employer / employee communication and also employee engagement across the UK. Changes will not be made to the rights that representatives have, or the number of employers affected by this legislation. This change will only affect employers with 50 or more employees, or employers who receive a request for an “information and consultation agreement” from a minimum number of fifteen employees.
- Also on this date, changes to the Employment Rights Act 1996 will require employers to provide workers with an itemised pay statement when any wages or salary payment is made. This itemised pay statement must state the number of hours worked in respect of the payslip, where the individual’s wage or salary varies depending on how much time is worked. Where the employer fails to provide a legally compliant statement, the worker will have the right to raise a claim to an employment tribunal.
- Another change to the Employment Rights Act 1996, which also comes into force on this date, will extend the entitlement to a statement of “written particulars” to include workers as well as employees. It will also change the right to a statement of written particulars (contractual terms and conditions) to a “day one right”, instead of it being something that should be provided within the first eight weeks of employment. The terms and conditions must now include the following information:
 - How long the job role is expected to last (and a specified end date, if the contract is “fixed term”).
 - How much notice is required to terminate the contract of employment, from either party.
 - Whether or not the employee is eligible for statutory sick pay, and what is needed to become eligible.
 - Details on any statutory or company paid leave that is offered by the Company.
 - The duration of the probationary period, and the conditions by which the probationary period is judged and may or may not be deemed successful.

- Details on the remuneration and benefits offered by the Company. This should not just be limited to pay, but must also include any bonuses or commission, etc.
- Details on the training that will be offered to the employee, the training that they will be entitled to, what training is mandatory, and what training will or will not be paid for by the Company.
- Details on what specific hours the employee will be completing each week, and on which specific days those hours will be completed. If the days of work, or even the hours, will be variable, information should be provided on how variable they are, why they will be variable, and how scheduling decisions are made within the Company.

How Can We Help

If you have any queries relating to the content of this newsletter, or any other HR related topic, please don't hesitate to contact us via hradvice@hasslefreehr.co.uk