



Do you employ staff?

Employment Law Update for 2021

Wishing you all a healthy and happy New Year. Please find below new and forthcoming employment legislation for 2021.

From 1 January 2021

In our December Employment Law Update, we confirmed that free movement would end on 31 December 2020 and the new UK Point Based Immigration System would be introduced from 1 January 2021. From this date all foreign nationals will now need to seek to enter the UK in the same way, with many expected to use the 'Skilled Worker Route'. To be able to work in the UK legally, foreign nationals have to meet specified criteria in order to earn at least 70 points. This involves being offered a job from an approved sponsor. For further details please refer to our December 2020 Employment Law Update [here](#)

From April 2021

Increase to Statutory Payment Rates

The Government have confirmed that National Minimum Wage (NMW) rates, including the National Living Wage (NLW), will still to increase from April 2021 despite the Coronavirus pandemic. Additionally, the NLW, currently paid to those aged 25 and over, is to be expanded to include those aged 23 and over. The rates are to increase as follows:

- NLW (23+ Years) - from £8.72 to £8.91 per hour
- NMW for 21-22 Years - from £8.20 to £8.36 per hour
- NMW for 18-20 Years- from £6.45 to £6.56 per hour
- NMW for 16-17 Years - from £4.55to £4.62 per hour
- NMW Apprentice Rate- from £4.15 to £4.30 per hour
- Accommodation Offset - from £8.20 to £8.36 per hour
- Statutory Maternity, Paternity and Adoption Pay - from £152.20 to £151.97 per week
- Statutory Sick Pay - from £95.85 to £96.35 per week

New IR35 Requirements

From April 2021, eligible large and medium sized employers engaging contractors through intermediary companies will also be responsible for assessing the employment status of those contractors. Under the new rules, where workers are engaged through their own companies, responsibility to apply IR35, and to pay any associated tax and National Insurance contributions (NICs), will fall to the private company, agency or other third party paying the worker's company. These new rules were expected in April 2020 but were delayed due to the coronavirus pandemic.

Coronavirus Job Retention (furlough) Scheme

It is expected that the Coronavirus Job Retention (furlough) Scheme will come to end on 30 April 2021. This may change, depending upon the UK's progress at managing the pandemic but nevertheless it is important that employers start to plan ahead and think what steps they may need to take in order to continue operating after the Government support ends.

30 June 2021

From this date the EU Settlement Scheme will close to further applicants, after which the new UK Point Based Immigration System will apply. For further details please refer to our December 2020 Employment Law Update [here](#)

Other Expected Legislative Changes during 2021 - Implementation dates to be confirmed

Implementation dates for the following changes have been delayed due to Brexit and the Coronavirus pandemic. We will provide updates regarding confirmed implementation dates, in due course.

Modern Slavery Statements

There are plans to require an increase to the number of employers that need to produce a Modern Slavery statement. Under these new plans, public sector employers with a turnover of at least £36 million must publish a statement. Statements will also be required to cover specific topics and be published by the Government.

Return of Gender Pay Gap Reporting

The compulsory production of gender pay gap reporting was paused due to the Coronavirus. However, this is expected to return during 2021 for employers with at least 250 employees.

Changes to Confidentiality Clauses in Contracts and Settlement Agreements

New Government proposals have been announced to reduce the use of non-disclosure agreements (NDAs) in the workplace (in contracts of employment or settlement agreements). Traditionally NDAs are used to restrict the disclosure of highly sensitive or commercial business information such as trade secrets or purchase negotiations. However, due to misuse, reports that NDAs have been used to prevent victims of sexual harassment from speaking out and increased focus on fairness, the practice of using them has been under the spotlight recently. As a result of increased scrutiny, the Government have announced consultation measures aimed at regulating the use of NDAs. These measures include:

- placing a provision in law clarifying that those who are subject to NDAs are not restricted from reporting crimes, discrimination, or harassment.
- workers who sign NDAs will be required to receive independent advice before entering into the agreement
- Introducing requirements for the wording of confidentiality clauses to specify limitations on disclosure

Consultation closed on 29 April 2019 however we are now expecting resulting legislation to be introduced sometime during 2021.

Changes to the Criminal Record Checking Process

The current criminal record checking process, which requires employers to receive certain disclosures from the Disclosure and Barring Service (DBS) before recruiting an employee in a particular position, has faced a number of legal challenges due to concerns from job seekers and campaigning groups that employment opportunities can be greatly hindered by the disclosure of a historic criminal conviction or charge.

Although employers are encouraged to make recruitment decisions based on the suitability of the individual, considering all the circumstances and evidence gathered during the recruitment process, it is believed that criminal record checks are used to easily reject applicants. A legal challenge has also concluded that some disclosure rules are disproportionate to an applicant's right to privacy under the Human Rights Act 1988 and that the process needs to be more balanced for both parties, i.e., the applicant and the employer, not just the employer. Following this judgement, the Government has committed to reviewing disclosure for custodial sentences of 4 years or less to ensure the process does not breach an applicant's human rights and employers are also advised to apply the process appropriately and proportionately with disclosures only being sought where necessary and not as a 'blanket rule'.

Extended Redundancy Protection for Pregnant Employees

Currently, employees on maternity leave who are at risk of redundancy must be offered suitable alternative roles in advance of others. This protection ends once the employee returns to work. Future changes will mean that this protection starts from the date the employee informs her employers that she is pregnant. It does not matter whether the employee informs you verbally or in writing. This protection will last for a further six-month period once the employee returns to work. The extended protection will also be available to those on adoption leave and shared parental leave.

Good Work Plan

The Government's 'Good Work Plan', which was published in response to the Taylor Review which was published in July 2017, included the following changes which are expected to be formalised during 2021;

- the right to request a more predictable and stable contract of employment after 26 weeks of continuous employment, predominantly benefiting those on zero-hour contracts.
- an increase to what is technically viewed as a 'break' in service from one week to four weeks

- rules preventing an employer from making deductions from the employee for tips received during their working time
- increased clarity to the employment status tests for employee, worker and self-employed
- introduction of employment tribunal sanctions for employers who breach employment tribunal outcomes and who do not pay compensation awarded to the claimant

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