



Do you employ staff?

## Employment Law Update - January 2023

Happy New Year. In this January Employment Law Update, we firstly provide you with a recap on the developments which took place during 2022 and then provide you with an overview of planned developments for 2023. It is expected that there will be more planned developments throughout 2023, which we will update you on in due course.

### A Recap on 2022:

Notable employment law changes during 2022 were as follows:

#### Digital Right to Work Checks became Permanent

In April 2022 the temporary legislation that enabled employers to instruct a third-party Identity Service Provider (IDSP) to carry out digital identity checks for British and Irish nationals, via Identification Document Validation Technology (IDVT), became permanent. This put the temporary measures introduced during covid on a permanent footing, albeit in a changed format.

#### Sickness 'Fit Note' Certification

From 1 July 2022 a change to who could issue sickness Fit Notes was introduced, which allowed a wider group of medical professionals, i.e., nurses, occupational therapists' pharmacists, and physiotherapists, who worked in a hospital or clinical setting only, the authority to certify and issue Fit Notes.

#### Agency Workers allowed to Cover for Striking Workers

From 1 July 2022 the ban on employers using agency workers to cover for striking workers was repealed. How long this change will remain in place is unclear, as unions have been granted permission to raise a Judicial Review of this law over the lack of consultation prior to its introduction.

## Holiday Entitlement for Part-Year Workers

In July 2022, the results of the Harpur Trust v Brazel case were determined, following a claim for unlawful deduction from wages. Under the Working Time Regulations, all employees/workers are entitled to a minimum of 5.6 (12.07%) weeks paid holiday leave per year. Brazel was a visiting music teacher who worked on a part-year, term-time only, zero-hours, permanent contract and was therefore classed as a part-year worker, rather than a part-time worker. A part-year worker works for part of the year only, whereas a part-time worker, works all year, for part of the week. The Supreme Court concluded that there is no legal requirement to pro-rata part-year workers holiday entitlement. This means that a part-year worker is entitled to the full 5.6 weeks of paid holiday leave per year and holiday pay should be calculated based upon the average weekly earnings over the preceding 52 weeks, and not the preceding 12 weeks. The practice of calculating a pro-rata holiday entitlement for part-time employees (those employees that work less hours than a full-time employee but work every week of the year) has not changed.

## Employment Related Payments

On 6 November 2022, the “health and social care levy”, which was introduced in April 2022, and which increased national insurance contributions by 1.25% to fund the NHS, health and social care, was repealed.

## Ban on Exclusivity Clauses Extended

On 5 December 2022, the ban on the use of exclusivity clauses in contracts that guarantee the employee equal to or less than the lower earnings limit, currently set at £123, was extended. This ban means that employers who were trying to circumvent the pre-existing ban for zero hours contracts by guaranteeing a small number of weekly hours could no longer do so.

## 2023 Planned Employment Law Updates:

### Statutory Payment Increases

### National Minimum Wage

From 1 April 2023 the National Minimum Wage rates will increase as follows:

- Apprentices under 19 or over 19 and in the first year of their apprenticeship, the NMW rate will increase from £4.81 to £5.28 an hour.
- Young Workers aged 16 and 17, the NMW rate will increase from £4.81 to £5.28 per hour.
- Development rate for workers aged 18 and 20 will increase from £6.83 to £7.49 per hour.

- Workers aged 21 and 22, the NMW rate will increase from £9.18 to £10.18 an hour.
- Workers aged 23 and over, the NMW rate will increase from £9.50 to £10.42 per hour.

## Family Friendly Payments

From 3 April 2023 Family Friendly Payments i.e., Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP), Statutory Shared Parental Pay (ShPP), Statutory Paternity Pay (SPP) and Statutory Parental Bereavement Pay (SPBP) will increase from £156.66 to £172.48 per week.

From 6 April 2023 Statutory Sick Pay (SSP) will increase from £99.35 to £109.40 per week, with the Lower Earnings Limit (LEL) remaining at £123 per week.

## Compensation Payment Limits

From 6 April 2023 Compensation Payments limits will increase with specific amounts to be confirmed in due course.

## Additional National Bank Holiday

On 8 May 2023 there will be an additional UK specific national bank holiday to mark the Coronation of His Majesty King Charles III.

## How Can We Help?

If you have any queries relating to the content of this newsletter, or any other HR related topic, please do not hesitate to contact us at [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk).