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Our knowledge, your language

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Essential Employer Update 2020

Guiding you through the latest issues in payroll practice, tax and employment law

Good Work Plan keeps on rolling

Save the date. The government's Good Work Plan, hailed as the 'biggest overhaul of employment law in 20 years', goes live on 6 April 2020.

In brief:

- right to a written statement becomes a day one right
- holiday pay reference period increases
- rules relating to agency workers change.

Written statement: who and what?

At present, employees working for you for longer than a month are entitled to receive a written statement of their main terms and conditions of employment. As employer, you are obliged to provide this within two months of their starting work. This is restricted to employees – 'workers' don't have this right.

Employee or worker?

- **employees and workers are different types of employment status in employment law**
- **traditionally, workers have had fewer employment rights than employees**
- **employees have a contract of employment, and more regular patterns of working**
- **workers may work on a more casual basis, say job by job.**

From 6 April, the rules on written statements change. In future, any worker or employee you take on has a day one right to a written statement. The content of the statement also changes, with a wider range of information to be provided.

You will have to provide information on:

- how long a job is expected to last, or the end date if it's a fixed-term contract
- how much notice employer and worker have to give
- eligibility for sick leave and pay
- other types of paid leave, such as maternity leave and paternity leave
- duration and conditions of any probationary period
- all remuneration (not just pay) – contributions in cash or kind, such as vouchers and lunch
- which days and times are to be worked.

This is in addition to the information currently required, which can be found here **bit.ly/36x3l0o**

Tip: ready to go

Your systems must be ready to go by 6 April: from this date, any new hire should get their written statement by the day they start work.

Holiday pay reference period

From 6 April, there is also a new basis for calculating entitlement to holiday pay. This is designed to even out problems with irregular hours or seasonal variation in pay for casual workers.

The reference period increases from 12 to 52 weeks, for any worker you have employed for at least 52 weeks. Essentially, this means that to calculate average weekly pay, you refer back to the previous 52 weeks, ignoring weeks where no pay was earned. The maximum period to refer back is 104 weeks before the start of the holiday period. For any worker you have employed for less than 52 weeks, use the number of weeks employed as the reference period. It would be wise to check with your payroll software provider that their software can cater for this.

Also

6 April brings changes impacting agency workers. 'Pay between assignments' contracts, technically known as the Swedish Derogation, are abolished: and agency workers have to receive a key information document setting out various terms and conditions of their employment when they agree terms with an employment business. This is to increase transparency of information, particularly as regards pay.

Coming soon?

Political events delayed confirmation of the start dates for key pieces of legislation this year, including the right to leave and pay for bereaved parents, which is expected to take effect from April 2020. Measures to ensure that employers pass gratuities to staff without deductions are also likely to be legislated in due course. So, too, are the right to request a more 'stable' contract at work: and a range of family-friendly policies, such as redundancy protection for pregnant women and new parents, though no dates have yet been set.

Employment Allowance: what's changing

6 April 2020 is the critical date for change to the Employment Allowance (EA).

Currently, EA can reduce employers' secondary Class 1 National Insurance Contributions (NICs) by £3,000 each year. EA has been reduced in scope over the years; in 2016, for example, companies where the director is the only employee paid earnings above the Class 1 secondary threshold were excluded from eligibility.

The new development focuses EA on smaller businesses, but brings new compliance obligations:

- only employers with total secondary Class 1 liability under £100,000 in the previous tax year are eligible
- EA claims will need to be submitted each tax year. They won't automatically roll over from the previous tax year, via RTI on the Employment Payment Summary
- EA will be classified as de minimis state aid – bringing another set of rules to watch, as receiving any other de minimis state aid may impact ability to claim EA.

Changing the cost of a company car

Major change to rules on employer provided cars takes effect from 6 April 2020. This impacts benefit in kind (BiK) calculations and incentivises the use of electric vehicles. For you as employer, this could significantly alter the cost profile involved in providing vehicles to your employees.

- In brief, carbon dioxide (CO_2) emissions for cars first registered from 6 April 2020, are based on a new test procedure, with new percentages and bands from 2020/21 replacing those announced earlier. These reduce most appropriate percentages for new cars by 2% for 2020/21. BiK rates are then realigned over the two following tax years. The new appropriate percentages are set out here **bit.ly/39yffsY**. Of particular note:
- there is especially favourable treatment for wholly electric cars and hybrids with a long electric-only range
- this means there is no company car tax for drivers of wholly electric cars in 2020/21, compared with 16% currently
- lower rates apply for some other hybrid cars.

Staying the same

For cars registered before 6 April 2020 (other than pure electric vehicles registered before this date), there's no change to the BiK percentages previously announced. These rates are now fixed until 2022/23.

Employer National Insurance bill

The changes are particularly important for employers because:

- providing a car for an employee creates a taxable benefit, based on the CO_2 emissions and car list price
- for employers, there is a Class 1A NICs cost, being 13.8% of the amount assessed as a benefit on the employee.

A zero tax rate for wholly electric cars could significantly cut the employer NICs bill. A further point to consider is that though the income tax and NICs benefit of optional remuneration arrangements to employers has mostly disappeared, there is still an advantage to salary sacrifice schemes for ultra-low emissions vehicles.

These changes make need-to-know news for employers and we have only been able to outline the headline issues here. Please do contact us for further advice on the increasing tax incentives for greener motoring.

IR35 counting down to change

6 April 2020 brings reforms to the off-payroll working rules – often referred to as the IR35 rules. Though small private sector employers are not affected,

medium and large private sector employers take on responsibility for deciding if the IR35 rules apply to a contract when engaging someone working via an intermediary. HMRC has adapted the questions on its online employment status checker tool (CEST) to help employers, although the area is very complex and the CEST tool may still struggle to cope with the reality of contractual arrangements **bit.ly/37vhADe**.

What's an intermediary?

Many contractors work through their own personal service company (PSC). Here the PSC is the intermediary. But intermediaries can also be partnerships, managed service companies or individuals.

Why it matters

- **a decision on employment status determines if the contractor is treated as employed or self employed on a contract**
- **if IR35 rules apply, tax and NICs must be deducted from the worker's fees and paid to HMRC. Employer NICs are also due.**

Who's small?

Uncertainty around this issue is quite common. It isn't the worker, but the hirer, who has to measure up.

For IR35 purposes, to be a 'small' employer means you meet two or more of the following conditions: your annual turnover is £10.2 million or less: your balance sheet total is £5.1 million or less: you have 50 or fewer employees. If the business receiving the work of the individual is not a company, then only the turnover test applies.

Making a status determination and getting the IR35 rules right can be a worry for employers, and the government is just concluding a review intended to facilitate a smooth transition to the new rules. Expect refreshed input from HMRC, in terms of online advice and webinars on gov.uk, and please don't hesitate to contact us if you need more information.

New minimum wage rates

Significant increases in minimum wage take effect from 1 April 2020. The National Living Wage (NLW) - the rate for workers aged over 25 years - goes up by 6.2%. This equates to an annual pay rise of up to £930 for a full time worker, according to the government. The government has also committed to raising NLW to around £10.50 per hour by 2024, and set out a phased plan to bring younger workers within scope of NLW rates. Those aged 23 and over are expected to be paid NLW rates from April 2021, with workers aged 21 and over following suit within the next five years.

From 1 April 2020, the new hourly rates are:

- National Living Wage: £8.72 for those over 25 years old
- National Minimum Wage: £8.20 for 21-24 year olds: £6.45 for 18-20 year olds: £4.55 for under 18s: £4.15 apprentice rate for apprentices under 19, and those 19 and over in their first year of apprenticeship.

Making plans when the climate's uncertain

With a decision on Brexit ... an election ... delays to key legislation ... not to mention a delay to the Budget and setting tax rates, it's recently been no mean feat for a business to find reliable information and make plans for the future.

A Brexit deal has now been agreed in principle with the EU, and is likely to involve considerable change for businesses – especially employers with EU, European Economic Area or Swiss workers. Advice on preparing for Brexit can be found here **www.gov.uk/brexit** and employers may also find this advice on the EU Settlement Scheme for workers useful **bit.ly/2tvapfp**.

We can help when the climate is uncertain. For information on Brexit, or concerns about the workplace, please don't hesitate to talk to us. We are always delighted to provide the latest updates, and advise on contingency planning.