



CHILTERN HR

OCTOBER 2015

NEWSLETTER

110 Butterfield, Great Marlings
Luton ■ Bedfordshire ■ LU2 8DL

T: (01582) 439 795

F: (01582) 439 796

E: philip.ivinson@chilternsolicitors.co.uk

www.chilternsolicitors.co.uk

1. Employers can now refer employees on long term sick leave to the Fit for Work service

On 8 September the Fit for Work service was opened up to employers. This means that employers can now refer their employees who have been, or are likely to be, off sick from work for four weeks or more and who have a realistic outlook of returning to work for a voluntary occupational health assessment. The free and confidential service includes an in-depth assessment followed by a personalised Return to Work Plan and managed support to get employees back to work.

Employers can refer eligible employees to the service through the Fit For Work website www.FitforWork.org or by calling 0800 032 6235.

The Fit for Work service has produced a guide for employers providing more information about the service. The service will also be organising road shows around the country and online webinars and ACAS is running training courses on the new service.

2. New National Minimum Wage Rates

On 1 October new National Minimum Wage (NMW) rates come into force.

The standard adult rate, which applies to workers aged 21 or over, rises to £6.70 an hour. The development rate, which applies to workers aged between 18 and 20 inclusive, rises to £5.30 an hour. The Young workers rate, which applies to workers aged under 18 but above the compulsory school age who are not apprentices, rises to £3.87 an hour. The apprenticeship rate, which applies to apprentices under the age of 19 or those aged 19 and over but in the first year of their apprenticeship, rises to £3.30 an hour.

The accommodation offset, which allows an employer who provides a worker with free accommodation to count some of its value towards NMP pay, rises to £5.35 per day.

3. The National Living Wage

In the summer budget the Government announced that a new mandatory National Living Wage (NLW) will be introduced in April 2016 for workers aged 25 and over. (This should not be confused with the Living Wage set by the Living Wage Foundation, a campaigning organisation which promotes a voluntary minimum hourly rate of pay calculated according to the basic cost of living).

BIS has now published a policy paper explaining the National Living Wage. The policy paper explains the reasoning behind the introduction of the NLW and the rates which will apply. At present adult workers must be paid a minimum of £6.50 per hour. This will increase to £6.70 in October and from April, if the worker is aged 25 or over, to £7.20 meaning that the pay for a full-time worker aged 25 or over currently being paid the National Minimum Wage (NMW) will increase by £1,200 per annum.

4. New measures to improve compliance with minimum wages

The Government has announced a package of measures to improve compliance with the National Minimum Wage (NMW) and, when it is introduced next year, the National Living Wage (NLW).

The measures include:

- Doubling the penalties for non-payment of the NMW and the NLW, meaning that the penalties faced by those who do not comply will rise from 100% of the arrears to 200%, although this will be halved if the employer pays within 14 days (the overall maximum penalty of £20,000 per worker will remain unchanged).
- Increasing the enforcement budget in 2016.
- Setting up a new team of compliance officers in HMRC to take forward criminal prosecutions for those who deliberately do not comply. The team will have the power to use all available sanctions, including penalties, prosecutions and naming and shaming employers.
- Ensuring that anyone found guilty will be considered for disqualification from being a company director for up to 15 years.
- Appointing a new Director of Labour Market Enforcement and Exploitation to oversee enforcement of the NMW, the Employment Agency Standards Inspectorate and the Gangmasters Licensing Authority. The Director will set priorities for enforcement based on a single view of the intelligence about exploitation and non-compliance.
- Improving the guidance and support made available to firms on compliance and working with payroll providers to ensure that payroll software contains checks that staff are being paid what they are entitled to.

No details have been given as to when the new measures will come into force.

5. Time spent by peripatetic workers travelling to and from home amounts to 'working time'

The European Court of Justice has held that time spent by workers, who do not have a fixed or habitual place of work, on travelling each day between their homes and the premises of the first and last customers designated by their employer is 'working time' for the purposes of the Working Time Directive.

What does this mean?

Such time should be taken into account when calculating rest break entitlements and the 48 hour limit on average weekly working time.

What should employers do?

Employers who are concerned that workers might take advantage of the journeys to conduct their personal business at the beginning and end of the day may wish to put into place monitoring procedures to avoid potential abuse.

6. ACAS guidance on employment issues that could arise over the Rugby World Cup period

ACAS has published guidance to help employers prepare for time off demands and performance Issues that could arise during the Rugby World Cup period.

The guidance advises employers and small businesses to have agreements in place that cover requests for time off, sickness absence, website use during working hours and to be fair and consistent throughout.

It recommends that employers speak to employees and see who is thinking of booking time off, monitor sickness absence, consider having a more flexible working day for example by allowing employees to change their hours of work, swaps shifts or by allowing staff to listen to the radio or watch the TV. It also recommends that employers have a clear policy on internet usage as there may be an increase in the use of social media, for example, and to ensure that if internet usage is monitored that this is made clear.

7. Guidance on recruiting staff and carrying out inductions

ACAS has published two new guides to help employers recruit and settle in staff.

The first guide 'Recruiting Staff' goes through the stages of hiring a new employee up until their first day. It provides guidance on the various hiring options, what essential documents are needed, how to advertise a job, choosing the right candidate and what to do when the right candidate has been found.

The second guide 'Starting Staff: Induction' goes through the stages of settling in a new employee once they have accepted the job offer. It also includes sections on inductions for school, college and university leavers and for home workers.

8. Investigation heavily influenced by HR may render dismissal unfair

The Employment Appeal Tribunal has held that where an investigating officer's recommendations are heavily influenced by input from human resources dismissal may be unfair.

What does this mean?

Although a dismissing or investigating officer is entitled to seek guidance from human resources or others, such advice should be limited to matters of law and procedure and to ensuring that all necessary matters have been addressed and achieve clarity.

What should employers do?

Employers should always take legal advice before dismissing an employee or taking steps short of dismissal. However, it is for the investigating officer to carry out the investigation and establish the facts.

9. Associative victimisation claim should not have been struck out

The Employment Appeal Tribunal has ruled that an associative victimisation claim should not have been struck out because the tribunal had been wrong in conducting an assessment of the degree of connection or association between the employee and the third parties. What mattered was whether the employee was subjected to a detriment by reason of his association with another who had made protected acts.

What does this mean?

Previously claims based on association were understood to be limited to direct discrimination and harassment as the wording of the victimisation provision of the Equality Act 2010 is more narrowly drafted, requiring the victim to have performed the protected act. This case, therefore, represents a significant change in the law.

What should employers do?

Employers should not subject employees to a detriment because the employee or someone associated with him/her has done, or might do, a 'protected act' for example where an allegation of discrimination has been made (or because it believes that the employee or someone associated with him/her has done, or might do, such an act).

10. Challenge to employment tribunal fees is dismissed

The Court of Appeal has dismissed Unison's challenge to the introduction of fees in the employment tribunals and the Employment Appeal Tribunal.

What does this mean?

Unless Unison persuades the Supreme Court to grant permission to appeal and it is successful in an appeal the current regime of tribunal fees will remain as it is.