



**WORKMATTERS**  
The natural choice for human resources

# NEWSMATTERS

July 2013



## WELCOME TO THE THIRD NEWSLETTER FOR 2013

Our newsletter is issued to you quarterly to ensure that you can be kept up to date with employment issues. We will offer helpful hints on how to handle situations within the workplace, but never be afraid to give us a call for both guidance and support. All newsletters are on our website ensuring easy access to current information just click on the newsletter you wish to view.

This Quarter the focus is on the changes in law which may affect your business.

- National Minimum Wage changes in October 2013
- Tribunal Fees now confirmed

Our helpful tip this month is giving you information on recruiting for the future and information on the DBS service which is now up and running.

We think you'll find the articles very interesting. Please call us on 01442 870742 to discuss any of these articles and see how we can help you and your business more effectively in the field of Human Resources. Alternatively have a look at our website [www.workmattershr.co.uk](http://www.workmattershr.co.uk) and email us from there or on [info@workmattershr.co.uk](mailto:info@workmattershr.co.uk).

If you would prefer not to receive any future newsletters from Work Matters (HR) Ltd, please reply to this email with 'unsubscribe' in the title and we will remove you from our list - thank you.

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# CHANGES IN THE LAW

## NATIONAL MINIMUM WAGE INCREASE IN OCTOBER

The National Minimum Wage will again increase again on the 1st October 2013.

- Adults hourly rate will increase from £6.19 to **£6.31**
- 18 – 20 year olds hourly rate will increase from £4.98 to **£5.03**
- 16 – 17 year olds hourly rate will increase from £3.68 to **£3.72**
- Apprentices hourly rate will increase from £2.60 to **£2.68**.



If you take on an employee who is of compulsory school age they are not entitled to the National Minimum Wage. For reference in 2013 this is up to 2013 and will increase to 18 from 2015.

## TRIBUNAL FEES NOW CONFIRMED

### The New Fees

The aim of introducing fees is to transfer some of the approximate £84m cost of running the employment tribunals and the Employment Appeal Tribunal from the taxpayer to those who use the system.

The Government believes that users of the employment tribunal system, who can afford to pay, should contribute to its running cost, particularly because the taxpayer already provides for free Acas conciliation and will continue to do so.

The Ministry of Justice has set a date for the implementation of tribunal fees of Monday 29 July. All employment tribunal claims and appeals to the Employment Appeal Tribunal (EAT) on or after that date will be liable for the following fees unless claimants qualify for a fee exemption:

**Level 1** - for straightforward claims, such as unpaid wages, redundancy, holiday and notice pay, it will cost £160 to start the claim, and £230 to take the claim to a hearing.

**Level 2** - for all other claims, such as unfair dismissal, discrimination, equal pay and whistleblowing, the fee will be £250 to issue the claim, and £950 to proceed to a hearing.

To make an appeal will cost £400, and a fee of £1,200 will be charged if the case goes to an EAT hearing.

Any claim or appeal already in the system before the 29th July 2013 fees are implemented will not attract any fee payments.

The introduction of fees brings about how Claimants will now apply to go to Tribunal some of which are answered here:

- Fees are paid at issue and before hearing, and also for several specified applications in the employment tribunal – there are a further five fees for certain applications once a claim has been accepted, such as an application to dismiss following settlement or to issue a counterclaim.
- The party that seeks the order initially pays the fees – this means the Claimant pays the issue and hearing fee but the Respondent will pay fees for any applications they make.
- Fees are payable in advance.
- If a Claimant lodges a claim with a number of different types of complaint, the fee payable will be that which relates to the highest level claim.
- The civil courts fee remission system (which is currently under review) will be extended to protect access to the tribunal for those who cannot afford to pay a fee.
- The fee to lodge an appeal in the EAT is £400 and £1,200 for it to progress to hearing and a failure to pay, or prove eligibility for remission, will result in the discontinuation of the appeal.
- The employment tribunal and EAT rules of procedure will be amended to allow tribunals to order an unsuccessful party to reimburse the fees paid by the successful party.
- Claimants will enter the ET system by submitting an online ET1 (in which case fee payments will be taken online via a debit/credit card) or by presenting their ET1 to the appropriate central office by post (and all payments and remission applications will be handled there). Only once the fee has been paid, or remission approved, will the ET1 be routed to the appropriate office for onward vetting, service and processing.



# Helpful Point

## RECRUITING FOR THE FUTURE

As we move slowly forward and firms start to feel more confident about the future there is a subtle change from the reduction of staff to the recruitment of staff. This in turn brings new risks to businesses:

- Additional costs
- Recruiting the wrong person
- Facing the prospect of a claim from unsuccessful candidate.

In the marketplace there exists a number of individuals who submit applications for roles under various names and if they fail to get an interview can raise a claim of discrimination. Companies such as Virgin Atlantic have been in tribunal for just such a claim.

The Equality Act makes it unlawful to discriminate against job applicants on the grounds of sex, race, colour, nationality, ethnic origin, disability or any other protected characteristics. Given the number of people unemployed and applying for the same job candidates are more than prepared to challenge a decision as without a job they have time to complete claims.

It is therefore essential that you have a recruitment process which helps to ensure you don't leave yourself open to a claim.

### Points to Consider

1. Make sure you are clear on what the requirements of the job are and write these down in a job description and ideally have a supporting job specification.
2. Use an application form rather than relying on CVs alone. An application form makes it harder to hide gaps in employment history and makes a fair comparison of candidates easier.
3. If possible, consider asking technical questions or for demonstrations of how a task is completed during an interview to test whether or not the candidate really does have the necessary experience.
4. Consider requiring your recruiters to use interview forms, so that each candidate is asked the same questions or use a competency based questionnaire. This ensures consistency in approach.

5. Always take thorough interview notes and keep them. They may be used in evidence, so make sure that all comments about candidates remain professional. Ensure that all interviewers complete their own set.

6. Consider using psychometric profiles to add extra support to the information the candidate supplies throughout the interview process.

7. Those who are carrying out the interviews should receive training. Interviewing is a skill that not everyone has. Businesses may also want to consider investing in equality training.



8. Make sure that you ask to see a candidate's original examination certificates

9. Consider carrying out independent background checks, to verify employment history.

10. Take written references. Try to call the writer to verify that the reference is valid. Often former employers are more willing to speak on the telephone and 'off the record'. It is also not unheard of for employees to get friends to write references for them rather than the HR department or their manager, or to write their own reference using their employer's headed paper.

11. Review your offer letters and make sure that you can terminate an employee during their probationary period if they fail to give proper references or if they do not supply original documentation.

For further advice and support in changing your company policy on any of the above click on the link [www.workmattershr.co.uk](http://www.workmattershr.co.uk) or call **01442 870742**.

## THE DISCLOSURE AND BARRING SERVICE

The Disclosure and Barring Service was originally set up in October 2009 and many of the parts of the Scheme that were implemented remain in place, and in particular:

- It is a criminal offence for a barred person to work, or volunteer, in regulated activity.
- It is a criminal offence for an employer to knowingly employ (either on a paid or voluntary basis) a barred person in regulated activity.
- Where a person is removed from regulated activity by an employer because the person has caused harm to a child or vulnerable adult, the Independent Safeguarding Authority (now the DBS) must be notified.

The Criminal Records Bureau merged with the ISA on 1 December 2012 to form the Disclosure and Barring Service (DBS).

### Changes under the Protection of Freedoms Act 2012

Under the Protection of Freedoms Act 2012 a number of changes to the Vetting and Barring Scheme were implemented on 10 September 2012 and a new Update Service was launched on 17 June 2013. The changes and the Update Service are discussed under the following headings:

#### Regulated activity

There is a revised definition of regulated activity.

It is estimated that the previous definition of regulated activity would eventually cover over nine million people. The revised definition means that the number of people covered will be closer to five million.

#### Regulated activity relating to children

The new definition of regulated activity relating to children comprises only:

1. Unsupervised activities: teaching, training, caring for or supervising children; driving a vehicle solely for children; providing advice/guidance on well-being
2. Work for a limited range of establishments where there is opportunity for contact (for example children's homes, schools, childcare premises. This does not include supervised contact by volunteers.

# Helpful Point continued...

Work in categories 1 and 2 is only a regulated activity if it is done regularly.

3. Relevant personal care, for example washing, dressing, health care supervised by a professional.
4. Registered child minding and foster caring.

## Regulated activity relating to adults

Regulated activity in relation to adults no longer refers to 'vulnerable adults'. The focus is on the type of care that the adult requires, rather than the setting within which the adult receives that help. There is no longer a requirement for an activity to be carried out a certain number of times before it is categorised as a regulated activity.

Six categories of people fall within the definition of those carrying out a regulated activity. In addition, anyone supervising those in these six categories falls within the definition. The categories are:

- Those providing health care.
- Those providing personal care (for example help with washing and feeding).
- Those providing social care.
- Those providing assistance with handling cash, paying bills or shopping.
- Those assisting a person in his/her personal management of his/her affairs.
- Those who transport an adult because of their age, illness or disability from their place of residence to a place where they are receiving health or social care. This does not include taxi drivers or family and friends.



## Controlled activity

The category of controlled activity has been removed. This category was previously used to cover people who were involved in care, but had less interaction with children or adults – maybe someone who was responsible for the management of records.

## Registration and continuous monitoring

Under the proposed Vetting and Barring Scheme all employees who worked in a regulated or controlled activity were required to register with the ISA. There would also be a continuous monitoring scheme whereby any new criminal information would be identified. This never came into force and the Protection of Freedoms Act 2012 repeals it. Therefore registration and monitoring will not be implemented.

## Vetting process

The DBS provides a system of background checks on employees and volunteers, known as 'disclosures'.

If an employer considers that an individual will be engaged in a regulated activity then an enhanced disclosure will be required. In addition, the employer must ask for a check against the barred list (for adults or children, as appropriate – see below).

## Minimum age for DBS checks

A minimum age of 16 years for applying for a DBS check has been introduced

## Repeal of additional information

The process of 'additional information' has stopped. This was a process whereby the police were able (under the Police Act 1997) to provide additional sensitive information to an employer about an applicant, without telling the applicant. This will no longer occur, but police will be allowed to use common law powers to give information to employers when there is good reason to do so – for example to stop a crime or to stop individuals being harmed.

## 'Relevancy' test

There is now a more rigorous 'relevancy' test. Previously, the police provided information held locally on enhanced CRB checks (now DBS checks) if they considered it to be relevant, in light of the reasons that the check was applied for. Before 10 September 2012 they included

information if they thought 'it might be relevant'. Now they will include information 'if they reasonably believe it to be relevant' and consider that it should be disclosed.

It is also important to note that an individual can challenge any information that is disclosed on a DBS certificate relating to an enhanced disclosure. They can ask the Independent Monitor to review the certificate and the Independent Monitor can ask the DBS to issue a revised certificate.

## Challenge to information on DBS certificates

The Protection of Freedoms Act 2012 also allows for individuals other than the applicant to challenge a DBS certificate if it is believed that it is inaccurate.

## Update Service

Under a new Update Service which was launched on 17 June 2013, applicants can apply once for a DBS check and then, if they need a similar check again, the organisation will be able to carry out an instant on-line check to view the existing check and see if anything has been added since the original check was carried out. This will be called a 'status check'. The employer will need to have the applicant's verbal or written permission before carrying out a status check. This will mean that individuals will not need to make an application for a new check each time they start work in a new regulated activity. Job applicants will have to pay an annual fee of £13 to be registered with this service.

## Guidance

Information on regulated activity when working with adults and children, DBS checks and the new Update Service is available on the GOV.UK website.

- View information on regulated activity
- View information on DBS checks
- View information on Update Service
- Filtering of old and minor cautions and convictions

**From 29 May 2013, under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 certain old and minor cautions and convictions will no longer be disclosed on a DBS certificate.**

# Helpful Point continued...

For those 18 years or over at the time of committing an offence the conviction will be removed from a DBS record if:

- 11 years have elapsed since the date of conviction, and
- it is the person's only offence, and
- it did not result in a custodial sentence.



However, it will not be removed if it appears on the list of offences relevant to safeguarding. If a person has more than one offence, then details of all their convictions will always be included.

A caution issued to an adult will be removed after six years have elapsed since the date of the caution and if it does not appear on the list of offences relevant to safeguarding.

#### **For those under 18 years at the time of committing the offence:**

The same rules apply as for adult convictions, except that the elapsed time period is five and a half years.

The same rules apply as for adult cautions, except that the elapsed time period is two years.

There is also a long list of convictions that will never be removed, which is available on the DBS website.

#### **View list**

In addition, Question e55 on the DBS application form has been changed. It asks 'have you ever been convicted of a criminal

offence or received a caution, reprimand or warning?'. Applicants should now ignore this question and treat it as if they were being asked 'do you have any unspent convictions, cautions, reprimands or warnings?'

#### **Barred lists**

Barred individuals are placed on one of two barred lists: the Children's Barred List and the Adults' Barred List.

If an individual will be working in a regulated activity they will be checked against the relevant barred list.

Employers and personnel providers have a legal duty to refer relevant information about individuals to the DBS. They must do this if they remove an individual from a regulated activity on the basis that they have caused harm to a child or adult.

The DBS must act and make decisions on all information referred to it (this includes referrals made by employers).

In all but the most serious cases a person has the right to make representations before a barring decision is made and the right of appeal.

Where a person has been convicted for the most serious criminal offences, they have no right to make representations or right of appeal.

#### **Criminal offences**

The Vetting and Barring Scheme creates a variety of criminal offences to ensure compliance.

- For individuals it is a criminal offence to work or volunteer in regulated activity whilst barred. Potential penalties include up to five years' imprisonment or an unlimited fine.

For employers and personnel suppliers it is a criminal offence to:

- knowingly allow someone to work in a regulated activity while barred - potential penalties include up to five years' imprisonment or an unlimited fine, and managers and directors can be liable as well as the company itself,
- allow someone to work in regulated activity without carrying out the required checks.

The potential penalty is a fine of up to £5,000.

As employers it is worth doing the following to ensure you are compliant if any of your staff require checks:-

- Read and understand the definition of regulated activities.
- Getting to grips with the regulated activities definition is key to understanding whether a business, or certain activities within it, are potentially affected by the Vetting and Barring Scheme.
- Review all work activities to see if any job role might fall within the definition of regulated activities.
- Employers may find that some job roles within their organisation do fall within the definition of regulated activities.
- If an organisation has any job roles that fall within the definition of regulated activities, review recruitment procedures.

Areas that will need to be considered include:

- recruitment advertising;
- job specifications;
- terms and conditions of employment;
- employment application forms;
- carrying out the necessary checks;
- data retention.

For further advice and to discuss a review of any policies in relation to using the DBS service and what is applicable to your organisation please contact us at Work Matters (HR) on [info@workmatters.co.uk](mailto:info@workmatters.co.uk)

**Thank you for taking the time to read our Newsletter which I hope you found informative. An e-newsletter will be sent on a quarterly basis to help keep you up to date with current legislation changes, as well as giving you some helpful hints and tips to help your business run smoothly.**

In the meantime please contact us if we can be of service to you or your company.

Have an enjoyable quarter and we look forward to issuing you with our next newsletter in the early part of October 2013.