



WORKMATTERS
The natural choice for human resources

NEWSMATTERS

October 2013



WELCOME TO THE FINAL NEWSLETTER FOR 2013

Our newsletter is written quarterly to ensure that you are kept up to date with employment issues, back copies are available on the website so you never miss out on the ever changing aspects of employment law. 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.

This Quarter the focus is on changes in the law which will affect your business immediately and a look at the zero hours contracts which have come under scrutiny recently by the Government and a look at Apprenticeships for small to medium sized organisation.

- The increases in the minimum wage in October 2013
- Zero hour contracts
- SARs
- Settlement Agreements
- What does 2014 hold in employment terms?

Our main topic this quarter is Apprenticeships as the economy starts to improve we look at how you can support your work force and develop future talent.

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** and email us from there or on **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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NEW MINIMUM WAGE RATES

The new rates that will apply from 1st October 2013 are:

- Workers aged 21 and over: £6.31 per hour
- Workers aged 18 – 20: £5.03 per hour
- Workers aged under 18: £3.72 per hour (above compulsory school age)
- Apprentices under 19: £2.68 per hour
- Apprentices aged 19+: £2.68 (if they are in the 1st year of their apprenticeship)

Apprentices aged 19 or over who have completed at least 1 year of their apprenticeship are entitled to receive the full minimum wage applicable to their age.

Employers are required to keep records sufficient to show they are paying workers at least the NMW. The records must be kept for three years and they may be kept on a computer or as a hard copy. However you choose to keep them you must be able to produce a single document when requested by HM Revenue & Customs or by the employee.

ZERO HOUR CONTRACTS

All employees must have a contract of employment within 8 weeks of joining an organisation.

Contracts come in many formats including permanent, fixed term, full time, part time, term time only and zero hour contracts.

A zero hour contract normally means that there is no obligation for employers to offer work, or for workers to accept it.

A zero hour contract will give staff employment status as well as employment rights including the right to minimum wage and annual leave.

The contract is based on an agreement between the employer and the employee neither giving the other more than a basic commitment to supply or carry out the work. The contracts are used to give flexibility within the workforce.

It is believed that these contracts offer employers the opportunity to have a wider pool of staff to choose from as and when the demand is needed. There is no on-going requirement for the employer to provide guaranteed levels of work for employees and it can be cheaper than using agency staff as there are no fees involved.

It is important that whilst the Government are considering the validity of this style of contract that as employers you ensure that you act fairly and reasonably in your treatment of any staff who have a zero hours contract and that both parties understand what the contract means.

Any hours worked by an employee under the zero hours contract must be paid at least the minimum wage and will accrue annual leave at the statutory level of 28 days per annum but at a pro-rata level.

If the employer wants to terminate an employee under this contract they must adhere to the notice period that has been put into the contract and if the employee no longer wants to carry out any duties they are under no obligation to do so but should consider resigning from the role.

If you employ a zero hour employee and they are expected to travel as part of their role they should be paid at least the minimum wage whilst travelling between locations, this is not for travelling to and from work which is not part of the contract. It is imperative that if a permanent employee gets additional costs from travel or additional pay and conditions for carrying out a similar role that as an employer you ensure that all workers doing similar jobs are treated the same regardless of the style of contract.

It is feasible that the Government will decide that these style of contracts should no longer be available for employers to use and if this becomes the case that as an employer you instigate an appropriate alternative contract which may involve carrying out a more thorough staffing analysis before agreeing types of contracts.



CHANGES IN THE LAW continued...

SUBJECT ACCESS REQUESTS

A new code of practice has been published on the SAR (subject access requests) which is a right under the Data Protection Act 1998 which entitles individuals to find out what information an organisation holds about them. The code explains that a request just has to be in writing to qualify as a SAR. Organisations can charge a maximum of £10 for dealing with it and they have a maximum of 40 days to respond. Failing to comply with a SAR could result in a fine of £500,000 if the breach is serious. The code's publication has been prompted by the 6,000 complaints about SARs that have been received in the last financial year. The office has also published an interactive online 10-point checklist for organisations to use when dealing with requests.



This includes:

1. Is it a subject access request?

YES Go to question 2

NO Handle as part of your normal course of business.

(Any written request by an individual asking for their personal information is a subject access request. You can choose to deal with it in one of two ways: as a routine enquiry, or more formally. If you can, treat requests that are easily dealt with as routine matters, in the normal course of business; for example:

- *How many cash withdrawals did I make from my account last month?*
- *What is my customer reference number?*

The following are more likely to be treated formally:

- *Please send me a copy of my staff records.*
- *I am a solicitor acting on behalf of my client Mr X and request a copy of his medical records. Appropriate authority is enclosed.*

2. Do you have enough information to be sure of the requester's identity?

YES Go to question 3

NO Ask the requester for any evidence you reasonably need to confirm their identity.

3. Do you need more information from the requester to find what they want?

NO Go to question 4

YES Ask them promptly for the other information you reasonably need so you can find the information they want.

4. Are you charging a fee?

NO Go to question 5

YES You will need to ask the individual promptly to pay the fee.

The maximum fee you can charge is £10, unless the requested information is medical or education records – see chapter 5 for more on this.

The 40 calendar days in which you must respond starts when you receive the fee and all the information you need to help you find the information.

5. Do you have the information the requester wants?

YES Go to question 6

NO Tell the requester you do not have the information they want.

6. Will the information be changed between receiving the request and sending the response?

NO Go to question 7

YES You can still make routine amendments and deletions to personal information after receiving a request.

You must not make changes to records as a result of receiving the request, even if the information is inaccurate or embarrassing.

7. Does it include information about other people?

NO Go to question 8

YES You will not have to supply the information unless the other people mentioned have given their consent for the disclosure, or it is reasonable to supply the information without their consent.

If you decide not to disclose the other people's information, you should still disclose as much information as possible by redacting the references to them.

8. Are you obliged to supply the information?

YES Go to question 9

NO If all the information that the requester wants is exempt from subject access, then you can reply that you do not hold any of their personal

There are some circumstances when you are not obliged to supply certain information.

9. Does the information include any complex terms or codes?

NO Go to step 10

YES You must make sure you explain the codes so that the information can be understood. Go to step 10

CHANGES IN THE LAW continued...

10. Prepare the response

You must provide a copy of the information in a permanent form unless the individual agrees otherwise, or doing so would be impossible or involve disproportionate effort.

The code confirms that employers cannot refuse to supply information in response to a SAR simply because it is requested in connection with legal proceedings, unless that information is protected by 'legal privilege' (this covers confidential litigation-related communications between clients and their legal advisers). There is a possibility that SARs may be used more often by claimants trying to establish grounds for a discrimination claim when questionnaires are removed from the Equality Act 2010 in spring 2014.

SETTLEMENT AGREEMENTS

New statutory provisions on settlement agreements and pre-termination negotiations came into force on 29th July 2013. Compromise agreements have been replaced with settlement agreements and our agreements have been amended accordingly.

A Settlement Agreement (formerly called a Compromise Agreement) is a legally binding agreement, usually between an employee and employer, setting out the financial and all other terms on which the employment relationship will end. This might be for reasons of redundancy, dismissal or by mutual consent. Usually, the Settlement Agreement provides for a severance payment by the employer, in return for which the employee agrees not to pursue any claim he or she may have to an employment tribunal.

Settlement Agreements are useful in circumstances where the employer wishes to avoid the costs or uncertain outcome of an employment tribunal. A number of different Settlement Agreements suited to employees at different levels of seniority within the company are available.



2014 AND BEYOND...

6 April 2014

From next spring, the following provisions in the ERR Act 2013 are due to come in to force:

- early conciliation - in the future all claims will have to be filed with Acas first, and only proceed to a tribunal if no settlement has been reached after a month (extendable by two weeks by agreement of the parties to

the dispute). Details on how the scheme will operate, including sample forms, are available in the government's response to its consultation on the issue.

- discrimination questionnaires - used by employees to establish whether there is the basis for a discrimination claim against their employer will be removed from the Equality Act 2013.

October 2014

There are proposals in the ERR Act 2013 to introduce on this date:

- compulsory equal pay audits - for those employers that breach the equal pay legislation. The consultation on these proposals closed on 18 July.
- caste discrimination - provisions in the Act will make caste discrimination unlawful under the Equality Act 2010. Consultations are planned for the spring and autumn of 2014, with a view to the new measures being in force by the summer of 2015.



No date fixed

- financial penalties - for employers who breach employees' rights where there are 'one or more aggravating features'.
- whistleblowing - the government has issued a call for evidence on the laws protecting those who blow the whistle. It believes the labour market and ways of working have changed so much since the laws were introduced in 1998, that the legal framework may need altering to keep pace. The consultation closes on 1 November 2013.

GROWTH AND INFRASTRUCTURE ACT 2013

This statute received Royal Assent on 25 April 2013.

1 September 2013

Among other measures, the Act introduces a new status of employment called:

- employee shareholders - these employees will receive between £2,000 and £50,000 worth of shares, exempt from capital gains tax. In return, employee shareholders will give up their right to claim unfair dismissal (apart from automatically unfair dismissal) or redundancy pay, and the right to request flexible working (except within four weeks of their return from parental leave) and time off for training. They will also have to give 16 weeks' notice of their return from maternity leave instead of the usual

CHANGES IN THE LAW continued...

eight. Prospective employee shareholders will be entitled to legal advice, paid for by the employer, before taking up a job offered on the new terms.

CHILDREN AND FAMILIES BILL

This bill, stemming from the Modern workplaces consultation, introduces a new system of shared parental leave and extends the right to request flexible working. The legislation began its progress through Parliament in 2012.



Spring 2014

During 2013 the government plans to legislate on:

- flexible working - the right to request flexible working (currently only available to parents and carers) is to be extended to all employees with at least 26 weeks' continuity of service. The statutory procedure for considering requests is to be replaced with a duty on employers to consider all requests in a reasonable manner. Organisations will be able to refuse requests on business grounds. The government plans to legislate on this during 2013 and the changes are currently scheduled to become law in 2014.

Acas has published a draft Code of Practice to accompany the changes. Consultation on this closed in May 2013.

2015

The Children and Families Bill also contains measures on:

- shared parental leave - employed mothers with partners, both of whom meet the qualifying criteria, will be able to end the mother's maternity leave and pay and share the balance as flexible parental leave and pay. Existing rights to maternity and paternity leave and pay are unaffected. Mothers will still have two weeks' compulsory maternity leave (four weeks for manual workers), but they can then share the remaining 50 weeks' maternity leave and 37 weeks' pay.
- adoption - the same rights to maternity leave and pay, and shared parental leave, will be available to adoptive and surrogate parents. One prospective adoptive parent can have five occasions of paid time off, and the other can have two occasions of unpaid time off, for pre-adoption contact visits.

- ante natal care - fathers will be given the right to take unpaid leave to attend two antenatal appointments.

TUPE 2006

January 2014

Tupe - consultation on reforming the Transfer of Undertakings (Protection of Employment) Regulation 2006 closed earlier this year. In September 2013 the government confirmed that it will be proceeding with proposals to make the following changes to Tupe provisions:

- allow terms in a collective agreement that has transferred to be renegotiated one year after the transfer, provided the changes are no less favourable to employees
- amend the ETO (economic, technical or organisational) reason for a transfer-related dismissal so that the relocation of a workforce is included. This prevents genuine place of work redundancies from being automatically unfair
- service provision changes will need to be 'fundamentally or essentially the same' as before the transfer
- microbusinesses (those with few than 10 employees) will be allowed to inform and consult directly with employees if there is no recognised trade union and no elected employee representatives
- the time frame for giving employee liability information to the transferee will be extended from the current 14 days to 28 days
- pre-transfer consultation will count towards collective redundancy consultation provided that the consultation has been 'meaningful'.

The government has confirmed that it will not be going ahead with proposals to:

- remove service provision changes
- remove the requirement to provide employee liability information to transferees
- allow a transferor to rely on a transferee's ETO reason in relation to pre-transfer dismissals.

New regulations are expected to be laid before Parliament by December 2013. Changes would be introduced no earlier than January 2014.

Pensions Auto-Enrolment

Auto enrolment on pension schemes continues to be rolled out. Organisations come within the scope of the legislation by size, according to the number of employees they have on PAYE at the Pensions Regulator website. Remaining compliance dates are:

Number of employees	Date
1,250 - 1,999	1 September 2013
800 - 1,249	1 October 2013
500 - 799	1 November 2013
250 - 349	1 February 2014
50 - 249	1 April 2014 - 1 April 2015
> 50	1 June 2015 - 1 April 2017
New businesses from 1 April 2012	1 May 2017 - 1 February 2018

Helpful Point

APPRENTICESHIPS

The Apprenticeship Grant for Employers of 16 to 24 year olds supports businesses to recruit new 16 to 24 year olds onto the Apprenticeship programme. Employers now have until December 2014 to claim up to ten grants of £1.5k each (subject to eligibility and availability, grant applications are considered on a first come first served basis).

What is an Apprenticeship?

An Apprenticeship is a way for young people and adult learners to earn a wage while they train in a real job, gaining a real qualification and laying the foundations for a successful future.



Depending on the business, an Apprenticeship will take between one and four years to complete.

All Apprenticeships have set content. However, you can add extra content that meets your specific business needs.

Most Apprenticeships are delivered in partnership with a training organisation (a college or training provider).

In general, apprentices work for at least 30 hours a week. However, the number of hours an apprentice works each week can be reduced

if the length of the Apprenticeship programme is also extended. An apprentice must receive the appropriate minimum wage. The rate will be £2.68 for those under 19 or in their first year of an Apprenticeship. If an apprentice is 19 or over and past their first year they get the rate that applies to their age.

This will be £5.03 for 18- to 20-year-olds and £6.31 for those aged 21 or over.

An Apprenticeship is made up of separate qualifications. The diagram below shows how the individual qualifications are combined to create an Apprenticeship framework.

Apprenticeship qualifications

Apprenticeships are available at intermediate, advanced and higher (degree) level, covering more than 170 industries and 1500 roles from advertising to nuclear decommissioning.

Recruiting an apprentice

If you have less than 250 employees, the National Apprenticeship Service has a Small Business Team specialising in meeting the needs of smaller employers. They can guide you through the three 'Ds' – decide, deliver and develop – in the process of hiring an apprentice.

Decide on your needs and recruit apprentices through the free Apprenticeship vacancies service.

Deliver the Apprenticeship, working with a training organisation to reduce the burden on your business.

Develop your apprentice and enter them into awards and competitions to put your business on the map.

Apprenticeships vacancies service

If you want to recruit an apprentice, you can advertise the positions for free on the National Apprenticeship Service's Apprenticeship vacancies website. This will help you to identify candidates that match your criteria. There are almost half a million people who currently use the Apprenticeship vacancies website to search and apply for vacancies.

For more information on this contact <http://www.apprenticeships.org.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 January 2014. May you have a Happy and Prosperous New Year.