



**WORKMATTERS**  
The natural choice for human resources

# NEWSMATTERS

April 2018

## WELCOME TO THE SECOND NEWSLETTER FOR 2018

As part of the GDPR we need you to re-consent to us continuing to send you our e-newsletter after 25th May 2018. If you are happy to do so please click on the Re-consent Me link or if you no longer wish to receive our e-newsletter please click on the Remove Me link.

Our newsletter is issued to you quarterly to ensure that you can be kept up to date with employment issues. We 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 the website [www.workmattershr.co.uk](http://www.workmattershr.co.uk) ensuring easy access to current information just click on the newsletter you wish to view.

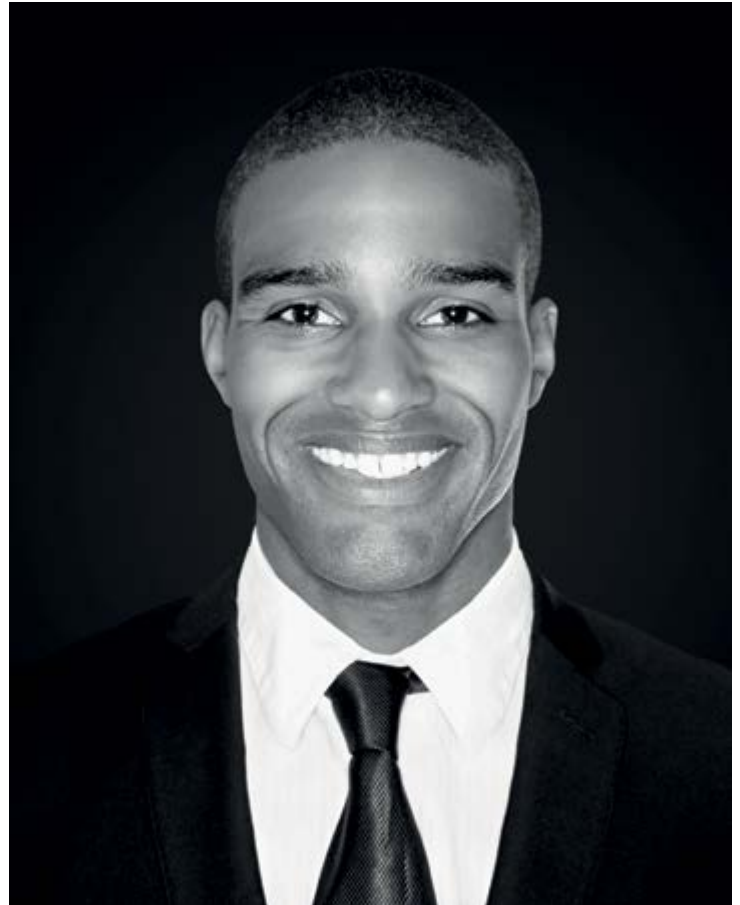
This Quarter the focus is on the changes in law which will affect your business during 2018.

We focus on changes to statutory payments, redundancy payments and the National Minimum Wage and the Living Wage. We summarise the top 5 tribunal cases of 2017.

Our helpful tip this month is giving your support with managing stress in the workplace.

We think you'll find the articles 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 [carolinebrode@gmail.com](mailto:carolinebrode@gmail.com).

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# CHANGES IN THE LAW

## EMPLOYMENT LAW CHANGES 2018

### 30 March 2018

Gender pay gap reporting for public sector employers  
Public sector employers must publish first reports before this date (with a snapshot date of 31 March 2017).

### 1 April 2018

National Living Wage  
The national minimum wage (NMW) rates will increase.

New statutory rates change.

### 4 April 2018

Gender pay gap reporting for private sector employers  
Private sector employers must publish first reports before this date (with a snapshot date of 5 April 2017).

### 6 April 2018

Statutory sick pay increases.

### 6 April 2018

Taxation of termination payments  
Changes to the way in which termination payments are taxed come into force from 6 April 2018.

New rules will apply to any termination of employment that takes place on or after 6 April 2018 whereby all notice pay is to be treated as earnings and subject to tax and national insurance contributions – irrespective of whether or not there is a pay in lieu of notice clause (PILON) in the employment contract.

For these purposes, the amount of notice pay may need to be calculated pursuant to a specific formula set out in statute, so it may not be as straightforward as operating a contractual PILON. For a termination of employment that takes place before 6 April 2018 the old rules will apply (even if the termination payment is paid after this date).

### 6 April 2018

A week's pay  
The maximum amount for a week's pay (used to calculate statutory redundancy payments) will increase.

Maximum compensatory award will increase.

### 25 May 2018

General Data Protection Regulation (GDPR)  
To replace existing data protection laws.

### June 2018

EU Trade Secrets Directive  
To introduce an EU-wide definition of "trade secret" and provide protections against unlawful acquisitions, use or disclosure.

## EMPLOYMENT LAW CHANGES 2019

### April 2019

Taxation of termination payments  
Employers to be liable to pay employer's national insurance contributions on termination payments above £30,000.

# STATUTORY PAYMENT FOR MATERNITY, ADOPTION AND PATERNITY AND SICK PAY

- Statutory sick pay (SSP). The rate of pay will be £92.05 p.w.
- Statutory maternity pay. 90% of the woman's average weekly earnings (AWE) for the first six weeks of the maternity pay period followed by the lower of 90% of average weekly earnings or £145.18 p.w. for the remainder.
- Statutory adoption pay. Where the child is placed for adoption 90% of AWE for the first six weeks of the adoption pay period, followed by the lower of 90% of AWE or £145.18p.w.
- Ordinary statutory paternity pay. The lower of 90% of AWE or £145.18 p.w.

To be entitled to these statutory payments, the employee's average earnings must be equal to or more than the lower earnings limit.

The lower earnings limit is increasing from £113 to £116 in April 2018.

## The National Living Wage & Minimum Wage

The National Living Wage has now been introduced and will be increased in April 2018 for all working people aged 25 and over, and will increase to £7.83 per hour. The current National Minimum Wage for those under the age of 25 will continue to apply. From April 2018 the following rates are applicable:-

|             |       |
|-------------|-------|
| 25 and over | £7.83 |
| 21 to 24    | £7.38 |
| 18 to 20    | £5.90 |
| Under 18    | £4.20 |
| Apprentice  | £3.70 |

# STATUTORY PAYMENT FOR MATERNITY, ADOPTION AND PATERNITY AND SICK PAY continued...

## Non-payment of the NMW or NLW

It is against the law for employers to pay workers less than the NMW or NLW, or to falsify payment records.

If an employer doesn't pay the correct rate, a worker should talk to their employer and try to resolve the issue informally first. If an informal approach does not work an employee has the option of raising a formal written complaint (also known as a grievance).



If the situation cannot be resolved internally a worker could choose to make a complaint to an Employment Tribunal. For most tribunal claims there is a three-month time limit a claim to be submitted. However this time limit does pause if Early Conciliation is taking place. For more information, go to Employment tribunals.

Alternatively, a worker can make a complaint to HMRC who will investigate. This can be done anonymously if the worker wishes. If HMRC find that an employer hasn't paid at least the NMW, they can send a notice of arrears plus a penalty for not paying the correct rate of pay to the worker.

The maximum fine for non-payment will be £20,000 per worker. However, employers who fail to pay will be banned from being a company director for up to 15 years.

A worker can either pursue the issue through the Employment Tribunal or a complaint to HMRC. They cannot do both.

## The Difference Between the National Living Wage and the Living Wage

The Government's NLW is different from the Living Wage, which is an hourly rate of pay and updated annually.

The Living Wage is set independently by the Living Wage Foundation and is calculated according to the basic cost of living in the UK. Employers choose to pay the Living Wage on a voluntary basis.

The value for the Living Wage is £8.75 throughout the UK and £10.20 in London for anyone over the age of 18 this is a voluntary rate set by the Foundation based on the cost of living and a basket of household goods and services. By paying this within your Organisation you may apply for an accreditation with the Foundation.

## Redundancy Pay and Tribunal Awards

The maximum amount of statutory redundancy pay and the limit on the amount employment tribunals can award for unfair dismissal increase from 6 April 2018.

Employers that dismiss employees for redundancy must pay those with two years' service or more an amount based on the employee's weekly pay, length of service and age.

The weekly pay is subject to a maximum amount. From 6 April 2018, this is £508 which is an increase of £19 from £489. This means that the top award of statutory redundancy pay also increases to £15,240.

The maximum compensatory award for unfair dismissal is also increasing to £83,682.

The rise in the unfair dismissal award applies to terminations after 6th April 2018.

Additional award for failure to comply with reinstatement or re-engagement order:

From 6 April 2018: £13,208 – £26,416 (26-52 weeks' pay maximum)

Minimum compensation for employees excluded/expelled from trade union:

From 6 April 2018: £9,474

Failure to allow right to be accompanied correctly:

From 6 April 2018: £1,016 (two weeks' pay capped at the statutory amount)

Failure to give written statement of particulars:

From 6 April 2018: £1,016 or £2,032 (two or four weeks' pay capped at the statutory amount)

Flexible working regulations:

From 6 April 2018: £4,064 (eight weeks' pay capped at the statutory amount)

## Changes to Payments in Lieu of Notice on Termination

The tax treatment of payments in lieu of notice ('PILONs') made to employees on termination of their employment will change on 6 April.

The tax treatment will no longer depend on the category of PILON or its contractual status. Instead tax will be charged on the basic pay the employee would have received if he or she had worked his or her notice. When notice is not worked, you must now treat a part of the termination payment (excluding statutory redundancy pay and approved contractual pay) as an amount to reflect the basic pay for the notice period, and you must tax it.

# STATUTORY PAYMENT FOR MATERNITY, ADOPTION AND PATERNITY AND SICK PAY continued...

There is a formula set out in the relevant tax legislation (Income Tax (Earnings and Pensions) Act 2003) to guide you. Basic pay is employment income, not including overtime, bonuses, commissions etc.

You should follow HMRC guidance which will assist with the calculations and provide you with more information on the trickier areas, such as how to deal with contributions to pension schemes on termination. Your payroll teams should take tax advice on the relevant changes and ensure their payroll systems are updated before 6 April.

## Increase in Auto-enrolment Contributions

A significant cost for both employers and workers in 2018 is the increase, from 6 April 2018, to the compulsory contributions to workplace pensions under auto-enrolment. The minimum employer contribution increases from the current 1% to 2%, (3% from 6 April 2019), with the employee contribution increasing from the current 1% to 3% (5% from 6 April 2019). A recent survey suggests 62% of workers are unaware of the increases and it could prompt them to opt out. Employers are being encouraged to "sell" the benefits of auto-enrolment (as well as the benefit of the corresponding increase in contribution from the employer) to workers in good time to avoid this happening.

# TOP 5 TRIBUNAL CASES OF 2017

## 1. Employment Tribunal Fees Abolished

The key case of 2017 was the Supreme Court's decision in *R (on the application of Unison) v Lord Chancellor* that employment tribunal fees were unlawful. The number of claims has already started to increase. On 14 December 2017, statistics published by the Ministry of Justice for July to September 2017 showed a 64 per cent increase (compared to the same period in 2016) in single applicant claims. Single claims lodged at employment tribunals increased by a remarkable 90 per cent between October to December 2017 compared to the same quarter in 2016, according to new Ministry of Justice latest statistics published on 8 March.

However, the disposal of single claims – made on the basis of an individual claim such as unfair dismissal, rather than multiple claims – has increased by 21 per cent over the same quarter in 2016. The backlog of single claims going through the system also rose by 66 per cent.

The ruling found that the introduction of fees by the government was unlawful and discriminatory against women who were more statistically likely to have short term employment and therefore have to pay the required fees.

As well as new claims, employers may have to defend old claims that were struck out because the claimant did not pay the fee or was deterred from bringing their claim because of the fees. It will be decided case by case whether such claims can be brought 'out of time'.

Following the launch of a fee refund scheme in autumn 2017, as at 31 December 2017, the Ministry of Justice had made 3,337 refund fee payments, with a total value of almost £2.8m.

If employers are faced with claims lacking substance, they can apply to have claims struck out where they believe the claim is vexatious or has no reasonable prospect of success, and applications can also be made for deposit orders as a condition of the employee continuing with their claim.

## 2. Backdated Pay for Untaken Holiday Could Be Recouped by Workers

In *King v The Sash Windows Workshop Ltd*, the European Court of Justice (ECJ) ruled that Mr King, who had established 'worker' status, was entitled to pay for both unpaid holiday he had taken and holiday he did not take because he thought it would be unpaid.

Unlike holiday, which carries over during sick leave and can be lost after a certain period, the ECJ found that there was no time limit on the untaken leave that had accrued because of the company's failure to provide King with his right to paid holiday as a worker. King could claim untaken leave for his 13 years' engagement. The Court of Appeal will now decide whether the ECJ judgment is consistent with UK law.



# TOP 5 TRIBUNAL CASES OF 2017 *continued...*

## 3. Worker Status in the Gig Economy

Uber continued to have problems following the EAT decision to uphold the employment tribunal's 2016 decision that its drivers were 'workers' and not self-employed (*Uber BV v Aslam*). Uber's request to leapfrog its appeal to the Supreme Court was refused and a Court of Appeal hearing is expected. Other gig economy cases followed the same trend, namely the Court of Appeal ruling in *Pimlico Plumbers v Smith*, in addition to several employment tribunal decisions that couriers at CitySprint, Excel and Addison Lee were workers.

It is for employers to ascertain the true employment status of their workforce, regardless of what the parties agree. Engaging staff on a self-employed basis when in reality they are 'workers' means they are entitled to the national minimum wage, paid holiday and pension auto-enrolment. The Supreme Court has started to hear *Pimlico Plumbers'* high-profile appeal on 20 February 2018. The outcome of this case is expected to set a clear precedent for employment rights disputes within the gig-economy, with many speculating that its outcome will have far-reaching consequences for a range of companies and industries.

## 4. Voluntary Overtime to Be Included in Holiday Pay

In *Dudley Metropolitan Borough Council v Willetts and others*, the EAT held that regular voluntary overtime should be included when calculating holiday pay. Consequently, guaranteed compulsory, non-guaranteed compulsory and voluntary overtime must all be included in holiday pay. For voluntary overtime, the test is whether the 'pattern of work' extends for a sufficient period of time on a regular and/or recurring basis to justify the description 'normal'.

Deciding what is 'regular' could be tricky, and in this case voluntary overtime once every four-five weeks was enough. This ruling only applies to the four weeks' leave guaranteed under EU law, not the additional 1.6 weeks' under UK law or any other contractual leave.

While *Dudley* could leave employers exposed to claims of underpayment of holiday pay, employees with a break of more than three months between payments will not be able to argue that they have suffered a series of unlawful deductions.

## 5. Enhanced Shared Parental Pay for Fathers?

Should shared parental pay (ShPP) be enhanced for fathers on shared parental leave (SPL) if maternity pay is enhanced for mothers on maternity leave? The answer was yes in *Ali v Capita Customer Management Ltd*, where Mr Ali successfully argued that enhanced maternity pay for his female colleagues but no enhanced ShPP for him constituted direct sex discrimination.

But in *Hextall v Chief Constable of Leicestershire Police*, the employment tribunal decided that the correct comparator was a woman on SPL, not a woman on maternity leave.

The Employment Appeal Tribunal (EAT) heard Ali's appeal in December 2017 and the *Hextall* appeal was in January 2018

If the *Ali* decision is upheld, employers will need to treat ShPP and maternity pay equally and enhance (or not enhance) both. However, with two EAT judgments pending, employers should defer any changes to their family-friendly policies for now.

## Helpful Point

### STRESS IN THE WORKPLACE

According to the Health and Safety Executive, in 2015/16 over 480,000 people in the UK reported that work-related stress was making them ill. This amounts to nearly 40% of all work-related illness.

Yet many employees are reluctant to talk about stress at work. There is still a stigma attached to stress and people still think they will be seen as weak if they admit they are struggling. But stress is not a weakness, and can affect anyone at any level of an organisation.

It is therefore important that an employer takes steps to tackle the work-related causes of stress in its organisation and encourages staff to seek help at the earliest opportunity if they begin to experience stress. ACAS offer additional guidance on aspects of managing stress.

#### What is Stress?

Stress is defined as the 'adverse reaction people have to excessive pressures or other types of demand placed on them'. Most staff benefit from a certain amount of pressure in their work. It can keep them motivated and give a sense of ambition. However, when there is too much pressure placed on them, they can become overloaded. Stress

can affect the health of staff, reduce their productivity and lead to performance issues.

Stress is not an illness, but the psychological impact can lead to conditions such as anxiety and depression. Stress, anxiety and depression can also increase the risk of conditions like heart disease, back pain, gastrointestinal illnesses or skin conditions.

#### What Causes Stress?

There can be a variety of causes of stress. For example, financial problems, difficulties in personal relationships or moving house can all cause stress. Work can also cause stress. The HSE (Health and Safety Executive) has identified the six primary causes of work-related stress to be:

- The demands of the job – staff can become overloaded if they cannot cope with the amount of work or type of work they are asked to do
- Amount of control over work – staff can feel disaffected and perform poorly if they have no say over how and when they do their work

# Helpful Point continued...

- Support from managers and colleagues – levels of sickness absence often rise if staff feel they cannot talk to managers about issues troubling them
- Relationships at work – a failure to build relationships based on good behaviour and trust can lead to problems related to discipline, grievances and bullying
- How a role fits within the organisation – staff will feel anxious about their work and the organisation if they don't know what is expected of them and/or understand how their work fits into the objectives of the organisation
- Change and how it is managed – change needs to be managed effectively or it can lead to huge uncertainty and insecurity.

Any existing consultation and/or negotiating arrangements should be followed so that staff and/or their representatives can contribute their views.

An employer should then develop an action plan that includes:

- what the problem is
- how it was identified
- the proposed solution/s
- actions to be taken to achieve the solution/s
- dates by which each action should be achieved
- how staff will be kept informed on progress
- a date to review the plan and see if it has achieved its aim.

Once solutions have been implemented, the review should check that agreed actions have been done and evaluate how effective these have been. The views of staff, and data collected on employee turnover, sickness absence and productivity, can help compare the organisation against how it was before the action plan was implemented.

An employer will then need to consider what, if any, further action is needed.

## Spotting When Staff May Be Experiencing Stress

While identifying work-related risks and taking preventative measures should help minimise stress for most staff, it may still affect some team members due to issues inside or outside of the workplace. Managers should be prepared to help and support a team member experiencing stress.

Although training on stress can be very useful, a manager should not be expected to be an expert.

It is important to never make assumptions, but signs that a team member may be stressed include:

- changes in the person's usual behaviour, mood or how they interact with colleagues
- changes in the standard of their work or focus on tasks
- appearing tired, anxious or withdrawn and reduced interest in tasks they previously enjoyed
- changes in appetite and/or increase in smoking and drinking alcohol
- an increase in sickness absences and/or turning up late to work.



## Why Should Employers Try to Reduce the Causes of Stress at Work?

Firstly, reducing work-related stress can be hugely beneficial to an employer:

- Making staff healthier and happier at work
- Improving performance and making staff more productive
- Reducing absence levels
- Reducing workplace disputes
- Making the organisation more attractive to job seekers

Secondly, an employer has a legal obligation to ensure the health, safety and welfare of its employees. As part of this, an employer must conduct risk assessments for work-related stress and take actions to prevent staff from experiencing a stress-related illness because of their work.

## Taking Steps to Reduce Work-Related Stress

If a risk assessment identifies areas where the organisation is performing poorly, an employer should work with its staff to agree realistic and practical ways to tackle it.

# Helpful Point continued...

## Talking to a Team Member Who May Be Experiencing Stress

Where a manager thinks a team member may be experiencing stress, knowing how to best approach and talk to them may seem difficult, and it can be tempting to avoid the matter.

However, it is much better to try to resolve concerns at an early stage and nip issues in the bud before they can escalate further or worsen.



A manager who believes a team member may be experiencing stress should take the lead and arrange a meeting as soon as possible to talk to the team member in private. The conversation should be approached in a positive and supportive way.

A manager should also be prepared for a team member to come and talk to them about their stress. This can be very difficult for both the team member and the manager, so it is vital that the manager stays calm and patient, is supportive and offers reassurance.

A manager should:

- Hold the meeting in a private space, where they will not be disturbed
- thank the team member for coming to talk to them
- allow them as much time as they need
- focus on what the team member says
- be open minded
- try to identify what the cause is
- think about potential solutions
- be prepared for the unexpected
- adjourn the meeting if it is necessary to think through what has been discussed before making a decision. This is because without talking to the team member, it is impossible to know what is affecting them and therefore a consistent approach should be taken.

Additionally, companies should encourage staff to talk to their manager if they think they are becoming unwell. Creating a working environment

that proactively supports staff who become unwell will make it easier for staff to tell their manager if they are experiencing stress.

## Supporting a Team Member Experiencing Stress

Where it is possible to identify a work-related problem, a manager (in discussion with the team member) should consider what support or changes would rectify the situation. They could be temporary or permanent.

Usually small, simple changes to working arrangements or responsibilities will help ease pressures affecting the team member.

It may take a number of informal meetings with the team member to agree the best way forward.

If changes are agreed and made, a manager should also agree with the team member what their work colleagues will be told.

Even if the cause of stress may not be work-related, changes to the team member's working arrangements may help reduce some of the pressure they are experiencing. For example, temporarily changing their working hours may reduce stress caused by caring responsibilities for an ill-relative.

## Monitoring the Situation

A manager should regularly check on how a team member experiencing stress is feeling and whether any changes in place are still needed and/or working as required. This could be through planned one-to-one meetings or through informal chats in the workplace.

Even once the team member is able to resume their normal working arrangements, their manager should continue to monitor their health and offer support where necessary.



**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 July 2018.**