



**WORKMATTERS**  
The natural choice for human resources

# NEWSMATTERS

July 2018



## WELCOME TO THE THIRD NEWSLETTER FOR 2018

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 took place in April 2018 make sure you are compliant
- Driving for Work – Employers Responsibility
- Dress Codes and Sexual Discrimination

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 [carolinebrode@gmail.com](mailto:carolinebrode@gmail.com).

As part of the GDPR we are mindful of the fact that you can choose to receive our e-newsletter. If you are happy to continue to do so no further action is required or if you no longer wish to receive our e-newsletter please reply to this email with 'unsubscribe' in the title and we will remove you from our list or go to our website and there is a removal button in our April newsletter – thank you.

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# CHANGES IN THE LAW



## National Minimum Wage

From 1 April 2018 the rates for the national minimum wage rose as follows (figures in brackets show the previous rate):

Workers aged 25 and over: **£7.83** (£7.50) (National Living Wage)

Workers aged 21 to 24: **£7.38** (£7.05) (National Minimum Wage)

Workers aged 18 to 20: **£5.90** (£5.60)

Young workers aged under 19 but above compulsory school age who are not apprentices: **£4.20** (£4.05)

Apprenticeship rate: **£3.70** (£3.50)

### Penalties and non-compliance

Employers need to ensure that they comply with the new rates as the penalties for failure to do so are now significant: 200% of arrears (halved if employers pay within 14 days) up to a maximum penalty of £20,000 per worker.

Many examples of non-compliance are not intentional but occur as a result of administrative failings. For example, employers need to make sure they have the correct systems in place to identify when workers have a birthday and move from one rate to another.

## 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 £116 from April 2018.

## Driving for Work

Most organisations take great care to ensure that anybody who drives a vehicle under their instruction is safe and healthy enough to do so. Simple procedures such as having regular checks on driving licences and vehicle safety are sensible. However, many business owners are under the impression that the law only applies to employees who drive a company owned vehicle. This is simply not the case: for example, if a person is asked/instructed to drive their own vehicle on behalf of their employer then that employer can be held responsible for any incidents or accidents that occur. It is the duty of all businesses to ensure that anyone driving on their behalf is safe and healthy.

It is not just people who need to be checked. Vehicles must be roadworthy and regular checks and maintenance records must be kept in case of accidents or incidents involving these vehicles. Copies of all records must be kept (up to date) as must MOT certificates, staff driving licences and any other relevant paperwork. As with every other work-related task, risk assessments are a legal requirement and these should also be recorded and reviewed.

## Driving for Work – Employers Responsibility – Information from the HSE

More than a quarter of all road traffic incidents may involve somebody who is driving as part of their work at the time (DoT). Health and safety law applies to work activities on the road in the same way as it does to all work activities and you need to manage the risks to drivers as part of your health and safety arrangements. You need to consider ways you can do this. Effective management of work-related road safety helps reduce risk, no matter what size your organisation is. It could also result in, for example:

- Fewer injuries to drivers;
- Reduced risk of work-related ill health;
- Reduced stress and improved morale.

Health and safety law does not apply to people commuting (ie travelling between their home and their usual place of work), unless they are travelling from their home to somewhere which is not their usual place of work.

## The Law

Employers have duties under health and safety law for on-the-road work activities. The Health and Safety at Work Act 1974 (HSW Act) states you must ensure, so far as reasonably practicable, the health and safety of all employees while at work. You must also ensure that others are not put at

# CHANGES IN THE LAW continued...

risk by your work-related driving activities. The self-employed have similar responsibilities. 'So far as reasonably practicable' means balancing the level of risk against the measures needed to control the real risk in terms of money, time or trouble. However, you do not need to take action if it would be grossly disproportionate to the level of risk.

The Management of Health and Safety at Work Regulations 1999 require you to manage health and safety effectively.



You must carry out an assessment of the risks to the health and safety of your employees, while they are at work, and to other people who may be affected by your organisation's work activities. You must consult with your employees and, where applicable, their health and safety representatives, on health and safety issues, including:

- Risks arising from their work;
- Proposals to manage and/or control these risks;
- The best ways of providing information and training.

You also have duties under road traffic law, eg the Road Traffic Act and the Road Vehicles (Construction and Use) Regulations, which are administered by the police, and other agencies such as the Driver and Vehicle Standards Agency (DVSA). In most cases, the police will continue to take the lead on investigating road traffic incidents on public roads. HSE will usually only take enforcement action where the police identify that serious management failures have been a significant contributory factor to the incident. If one of your employees is killed, for example while driving for work, and there is evidence that serious management failures resulted in a 'gross breach of a relevant duty of care', your company or organisation could be at risk of being prosecuted under the Corporate Manslaughter and Corporate Homicide Act 2007.

## How to Manage Work-Related Road Safety

Organisations have a legal duty to put in place suitable arrangements to manage health and safety. This is a wide-ranging requirement, so HSE encourages a common-sense and practical approach. It should be part

of the everyday process of running an organisation and part of good management generally. An HSE leaflet explains how you can follow a 'Plan, Do, Check, Act' approach to help you achieve this. Here are some examples of how this approach can be applied to work-related road safety.

### Plan

Describe how you manage health and safety in your organisation and plan to make it happen in practice

- Assess the risks from work-related road safety in your organisation.
- Produce a health and safety policy covering, for example, organising journeys, driver training and vehicle maintenance.
- Make sure there is top-level commitment to work-related road safety in your organisation.
- Clearly set out everyone's roles and responsibilities for work-related road safety.
- Those responsible should have enough authority to exert influence and be able to communicate effectively to drivers and others.
- Do – Prioritise and control your risks, consult your employees and provide training and information
- In larger organisations, make sure departments with different responsibilities for work-related road safety co-operate with each other.
- Make sure you have adequate systems to allow you to manage work-related road safety effectively. For example, do you ensure your vehicles are regularly inspected and serviced according to manufacturers' recommendations?
- Make sure you involve your workers or their representatives in decisions. This is a good way of communicating with them about health and safety issues.
- You must provide training and instruction where necessary.



# CHANGES IN THE LAW continued...



## Check

Measure how you are doing

- Monitor performance to ensure your work-related road safety policy is effective and has been implemented.
- Encourage your employees to report all work-related road incidents or near misses. Act – Review your performance and learn from your experience.
- Make sure you collect enough information to allow you to make informed decisions about the effectiveness of your existing policy and the need for changes, for example targeting those more exposed to risk.
- Regularly revisit your health and safety policy to see if it needs updating, this practice reflects the new requirements of the GDPR.

## Assessing Risks on the Road

As an employer or self-employed person, you are responsible for assessing the risks to health and safety in your business. Risk assessment for any work-related driving activity should follow the same principles as for any other work activity. You can delegate the task, but you will need to make sure it is carried out by someone who:

- Is competent to do so (has the right skills, knowledge and experience);
- Involves your workers in the process;
- Understands when specialist help may be needed.

Risk assessment is about identifying and taking sensible measures to control the risks in your workplace, not about creating huge amounts of paperwork. You may already be taking steps to protect your employees, but your risk assessment will help you decide whether you should be doing more. The aim is to make the risk of someone being injured or killed as low as possible. A hazard is something in your business that can cause harm. A risk is the chance, however large or small, that a hazard could cause harm.

### Identify the hazards

Look for hazards that may result in harm when driving on public roads. Remember to ask your employees, or their representatives, what they think

as they will have first-hand experience of what happens in practice. You need the views of those who drive extensively, but also get the views of those who only use the roads occasionally. The main areas to think about are the driver, the vehicle and the journey.

## Who Might be Harmed?

Decide who might be harmed and how. This will usually be the driver, but it might also include passengers, other road users and/or pedestrians. Also consider whether there are any groups who may be particularly at risk, such as those new to the job and those driving long distances and working long hours.

### Evaluate the risks

Having identified the hazards, decide how likely it is that harm will occur. You are not expected to eliminate all risks, but you must make sure you know about the main risks and how to manage them responsibly. You need to do everything reasonably practicable to protect people from harm.

### Record your findings

Record your significant findings – make it simple and focus on controls. If you have five or more employees, you are required by law to write it down. If you have fewer than five employees you don't have to write anything down, but it is good practice to keep a record. An easy way to record your findings is to use HSE's risk assessment template: [www.hse.gov.uk/risk/risk-assessment-and-policy-template.doc](http://www.hse.gov.uk/risk/risk-assessment-and-policy-template.doc). This also includes a section for your health and safety policy.

### Regularly review your risk assessment

It makes sense to review your risk assessment on a regular basis. There is no set frequency for carrying out a review, but you need to ensure that the risks to those who drive, and others, are suitably controlled. For this to be effective you need to know about any road incidents, your drivers and vehicle history. Changing circumstances may also prompt a review, eg introducing new routes, new equipment or a change in vehicle specification. If anything significant changes, check your risk assessment and update it.



# WORK-RELATED ROAD SAFETY CHECKLIST



Working through this checklist and thinking about the three areas of safe driver, safe vehicle and safe journey will help you manage work-related road safety effectively. Safe driver Are your drivers competent and capable of doing their work in a way that is safe for them and other people?

- Have you specified what levels of skill and expertise are required to do the job safely and how do you ensure these are met?
- Do you check the validity of driving licences on recruitment and periodically afterwards?
- What are you doing to make sure your drivers are aware of company policy on work-related road safety and understand what is expected of them?
- Could you use written instructions and guidance, training sessions or group meetings to help you communicate your policy more effectively? Are your drivers properly trained?
- Do you provide general induction training for drivers?
- Do you arrange for drivers to be trained – giving priority to those at highest risk, eg those with high annual mileage, poor accident records, or those new to the job?
- Do you find out whether drivers require extra training to carry out their duties safely, such as using defensive driving techniques, or how to load and unload safely?
- Do you consider training about other road users, eg cyclists or motorcyclists?
- Do you assess training needs periodically, including the requirement for refresher training?
- Do you ensure your training providers are competent to deliver the training you need?

## Do you ensure your drivers have clear instructions about how to keep themselves safe while on the road?

- Do drivers know how to carry out routine safety checks, such as those on lights, tyres and wheel fixings, and report any faults?
- Do drivers know how to correctly adjust safety equipment, eg seat belts and head restraints?
- Do drivers know what to do to ensure they are safe if their vehicle breaks down, eg use safety warning triangles and high-visibility jackets?

- Do drivers know how to use anti-lock braking systems (ABS) properly?
- Do you need to provide a handbook for drivers giving advice on road safety?
- Do drivers know they must not drive under the influence of drink or drugs?
- Do drivers know they must not use a hand-held mobile phone while driving and that even using a hands-free phone can seriously affect concentration?
- Are drivers aware of the height of their vehicle, both laden and empty? There are estimated to be around three to six major bridge strikes every day.
- Do you make sure crash helmets and protective clothing for motorcycle and bicycle riders are of the appropriate standard?

## Are your drivers sufficiently fit and healthy to drive safely and not put themselves or others at risk?

- Do drivers of heavy lorries, for whom there are legal requirements for medical examination, have the appropriate medical certificate?
- Do you remind drivers that they must satisfy the eyesight and other health requirements of the Highway Code6 and DVLA?
- Have you told drivers they should not drive while taking medicine that might impair their judgement? If there is any doubt, they should ask their GP.
- Are drivers aware of how dangerous tiredness can be and do they know what to do if they start to feel sleepy?
- Do you encourage drivers to report any health concerns?

## Do you know your duties under health and safety law when employing contractors and subcontractors?

- Did you know that both you and the contractor you use have duties under health and safety law?
- Do you ensure contractors are competent to do the job safely and without risks to health and safety?
- Do you provide contractors with information on the risks from your activities and the controls you have in place?
- What arrangements do you have in place to ensure contractors tell you about any additional risks from their contracted work?
- Have you set up liaison arrangements for co-operation and co-ordination with all those responsible to ensure the health and safety of everyone concerned?
- Do you decide what you need to do to manage and supervise the work of contractors and agree any controls before work starts?

Further checklists include the safe vehicle and the safe journey these can be found on <http://www.hse.gov.uk/roadsafety/employers.htm>



# DRESS CODES AND SEXUAL DISCRIMINATION

The Government Equalities Office (Information below as supplied by GEO) has issued new guidance on dress codes and sex discrimination. The guidance follows a high profile case in 2016 when a Receptionist was sent home for wearing flat shoes. It looks at how to set a fair workplace dress code. The guidance acknowledges that dress requirements for men and women may not be identical. However, any policy must not discriminate against one gender.

The guidance gives employers helpful examples of policies which might discriminate and ones that do not. Asking all employees to wear smart shoes is fine as it applies to everyone equally. Asking women to wear high heels is not fine – high heels can negatively affect women because they are uncomfortable and can cause health issues. You can ask men to wear a shirt and tie as long as your female staff are also asked to wear smart clothes. The guidance also says that both men and women should be allowed to wear trousers in work.

## Summary

- A workplace dress code is a set of standards that employers develop about what is appropriate for employees to wear to work.
- Dress codes can be a legitimate part of an employer's terms and conditions of employment.
- Dress policies for men and women do not have to be identical, but standards imposed should be equivalent. Dress codes must not be a source of harassment by colleagues or customers, for example women being expected to dress in a provocative manner.
- It is best to avoid gender specific prescriptive requirements, for example the requirement to wear high heels. Any requirement to wear make-up, skirts, have manicured nails, certain hairstyles or specific types of hosiery is likely to be unlawful.
- Consulting employees and trade unions over any proposed dress code or changes to an existing code will help ensure that the code is acceptable.

A dress code could be unlawful, for example, if it requires female employees to wear high heels, with all the discomfort and inherent health issues these can cause, because it treats women less favourably than men.

## Setting a workplace dress code – your responsibilities as an employer

Dress codes can be a legitimate part of an employer's terms and conditions of service.

There are different ways of achieving a professional "look" among employees, but it is important that a dress code does not discriminate, for example, by allowing both men and women to wear trousers in the workplace.

Dress policies for men and women do not have to be identical. However, the standards imposed should be equivalent. This means there must be similar or equivalent rules laid down for both male and female employees. Any less favourable treatment because of sex could be direct discrimination. Dress codes must not lead to harassment by colleagues or customers, so any requirements on women to dress in a provocative manner are likely to be unlawful on those grounds.

It is advisable to avoid gender specific prescriptive requirements. For example, any requirement to wear make-up, have manicured nails, wear hair in certain styles or to wear specific types of hosiery or skirts is likely to be unlawful, assuming there is no equivalent requirement for men. A dress code that requires all employees to 'dress smartly' would be lawful, provided the definition of 'smart' is reasonable. For example, a two-piece suit in a similar colour for both men and women, with low-heeled shoes for both sexes.

It is good practice when setting or revising a dress code to consider the reasoning behind it. Consulting with employees, staff organisations and trade unions may better ensure that the code is acceptable to both the organisation and staff. Once agreed it should be communicated to all employees.

## Health and safety

When setting a dress code, employers should have regard to any health and safety implications. For example, if an employer requires staff to wear particular shoes (as part of a dress code rather than for personal protective equipment purposes), then they should consider whether this may make staff more prone to slips and trips or injuries to the feet.

# DRESS CODES AND SEXUAL DISCRIMINATION continued...

## Reasonable adjustments for disabled employees

Where someone meets the definition of a disabled person in the Act, employers are required to make reasonable adjustments to any elements of the job which place a disabled person at a substantial disadvantage compared to non-disabled people. This could include not applying dress code requirements, where their impact is more onerous on a disabled employee.



## Transgender staff

There are some people whose gender identity (the gender with which they identify) does not match the gender they were assigned at birth – these are transgender people. Many will undergo the process of aligning their life and physical identity to match their gender identity, and this is called transitioning.

Transgender employees should be allowed to follow the organisation's dress code in a way which they feel matches their gender identity. If there is a staff uniform, they should be supplied with an option which suits them.

## Dress codes and religious symbols

Britain is an integrated and cohesive society with a proud tradition of religious tolerance within the law. Employers should be flexible and not set dress codes which prohibit religious symbols that do not interfere with an employee's work.

## Dress codes – employee rights

If an employee thinks that your dress code is discriminatory, they should speak to their manager in the first instance, explaining the reasons. He or she should engage constructively with their concern. If the Company reacts badly to the complaint, for example by criticising or penalising the employee, this could be unlawful victimisation, which employees are protected from under the Equality Act 2010.

If this approach does not resolve the issue, the employee can follow the HR processes for your organisation, or ask for help from your trade union representative. They can also contact the Advisory, Conciliation and Arbitration Service (ACAS) or the Equality Advisory and Support Service if they think they have experienced discrimination. Ultimately, they may take their case to an employment tribunal, but it is usually best to seek an agreement or compromise with the Company before this stage is reached.

## Examples to consider

An employer requires female staff to wear high heels as part of a dress code but places no footwear requirements on men or merely requires them to look smart. This is likely to constitute direct discrimination on grounds of sex because there is not an equivalent standard imposed on male staff. It may also amount to indirect discrimination against employees with a disability, where heels could exacerbate any difficulties with their mobility, or for those who are visually impaired, where walking in heels can pose an extra risk of falling.

A company requires their receptionists to dress smartly, to portray a positive public facing image. This would be lawful, as there are no gender specific requirements for men or women.

An employer requires all employees to wear smart shoes but does not require female employees to wear high heels. This would be lawful.

A clothes shop expects staff, both male and female, to dress in a provocative or revealing fashion. This might not amount to direct discrimination since it imposes equivalent requirements on men and women, but it could contribute to an environment in which employees may be vulnerable to unwanted sexual attention and inappropriate comments.

## Harassment

In the clothes shop example above, a female shop assistant makes a complaint that the dress code amounts to harassment. Shortly after, she is dismissed from her job, with no valid reason given. This is likely to constitute unlawful victimisation even if the employer did not say it was because of her complaint. This would be the case even if the shop assistant's harassment complaint was not upheld.

## Frequently asked questions

### Is it lawful for an employer to set different dress codes for men and women?

Dress codes must apply to both men and women but may have different requirements so long as these are of a similar standard, and not applied more strictly to one sex over the other. For example, a requirement for men to wear a shirt and tie is not unlawful if women are also expected to wear smart office attire.

### Is it lawful for an employer to require female employees to wear high heels?

It is likely to be unlawful under the Equality Act 2010 for employers to require women to wear high heels, with the discomfort or health issues that may entail, and as there is no male equivalent.

# DRESS CODES AND SEXUAL DISCRIMINATION continued...

## Can I be fired just for making a complaint about a sexist dress code?

No. The Equality Act 2010 provides protection from victimisation, meaning that you cannot be legally dismissed or badly treated by an employer for bringing a complaint, even where the complaint is not subsequently upheld. If you experience victimisation, you can get advice from your HR Department, or trade union representative, Acas or the Equality Advisory and Support Service (EASS). If it is not resolved, you can take your employer to an employment tribunal.

## How do I enforce my rights?

If you think your employer or potential employer has discriminated against you in their dress code or in any other way and you cannot resolve the issue informally, you should speak to your HR Department or trade union representative if you have one, who will advise you of your options. You can also apply for early conciliation at Acas, which you

and your employer would attend. If this conciliation does not resolve the dispute, you may take your case to an employment tribunal. If the tribunal upholds your claim, you may be entitled to compensation and repayment of any costs.

## Where can I find out information about work wear or jewellery that an employee might ask to wear for religious reasons?

If you decide you want to implement a dress code or uniform policy, you must ensure that this does not directly or indirectly discriminate against employees with a particular religion or belief or no religion or belief. The Equality and Human Rights Commission publishes guidance on dress codes and religious symbols.

For further advice and to discuss a review of any policies in relation to your organisation please contact us at Work Matters (HR) on [carolinebrode@gmail.com](mailto:carolinebrode@gmail.com)



**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 2018.