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NEWSMATTERS

April 2019

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WELCOME TO THE SECOND NEWSLETTER FOR 2019

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 ensuring easy access to current information just click on the newsletter you wish to view.

This Quarter the focus is on changes to statutory payments, redundancy payments and the National Minimum Wage and the Living Wage.

We summarise the top tribunal cases hitting the headlines in 2018.

Our helpful tip this month is giving your support with taking on Apprentices.

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** and email us from there or on **carolinebrode@gmail.com**.

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

Statutory Payment for Maternity, Adoption and Paternity and Sick Pay

- Statutory sick pay (SSP). The rate of pay will be £94.25 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 £148.68 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 £148.68p.w.
- Ordinary statutory paternity pay. The lower of 90% of AWE or £148.68 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 £116 to £118 in April 2019.

The National Minimum Wage Rates

In line with the intention for the national living wage to increase to £9 per hour from 2020, it will increase from £7.83 to £8.21. In practical terms, this will mean a pay rise of nearly £800 per year for a full time worker.

The other rates will increase as follows:

Workers aged 21-24: from £7.38 to £7.70 an hour

Workers aged 18-20: from £5.90 to £6.15 an hour

Workers aged 16-17: from £4.20 to £4.35 an hour

Apprentice rate: from£3.70 to £3.90 per hour

Voluntary Living Wage

Payment	London	UK
2016/17	£9.75 an hour	£8.45 an hour
2017/18	£10.20 an hour	£8.75 an hour
2018/19	£10.55 an hour	£9.00 an hour

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 2019.

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 2019, this is £525. The maximum compensatory award for unfair dismissal is also increasing to £86,444.

The rise in the unfair dismissal award applies to terminations after 6th April 2019.

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.

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 2019 is the increase, from 6 April 2019, to the compulsory contributions to workplace pensions under auto-enrolment. The minimum employer contribution increases to 3%, with the employee contribution increasing to 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.

Additionally

6 April 2019 Requirement to include total number of hours worked on payslips comes in to force

6 April 2019 New right for workers to receive a pay slip introduced

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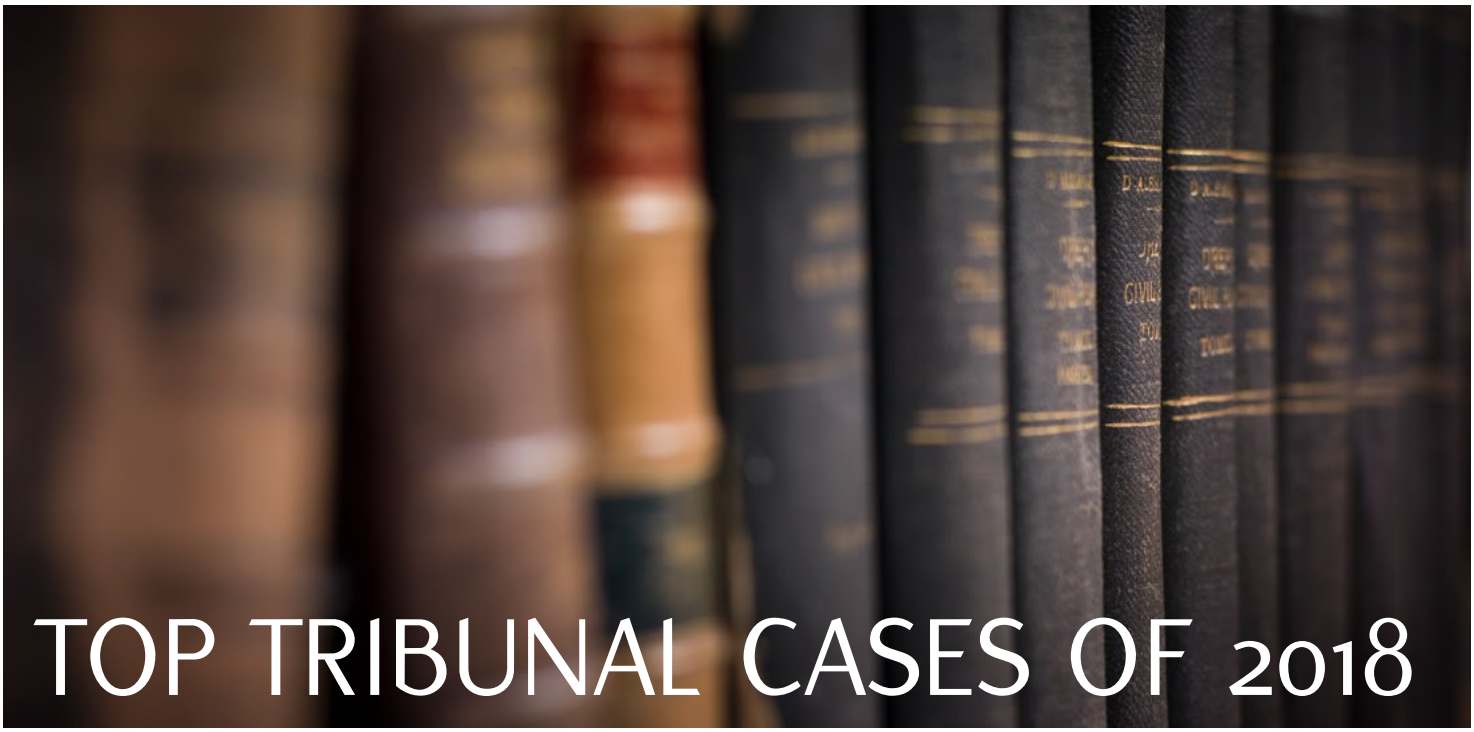

TOP TRIBUNAL CASES OF 2018

1. Sleep in Care Workers and the National Minimum Wage

Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad and another (Court of Appeal)

The Court of Appeal controversially held that a "sleep-in" care worker in residential accommodation was not entitled to the national minimum wage while asleep.

The decision, which looks likely to be appealed to the Supreme Court, was big news in the care sector. The judgment also has an impact on other sectors where staff are allowed to sleep at work until called upon, for example in some emergency services and security roles.

The case revolves around what is meant by a worker being "available" in complex national minimum wage provisions designed to cover sleep-in workers. Is a sleep-in worker "available", and therefore entitled to the national minimum wage, only when he or she is awake, or should the worker be paid the minimum wage even when asleep?

The result is a welcome relief for care-sector employers. However, the case is expected to reach the Supreme Court, which may consider the financial disadvantage that the Court of Appeal's stance causes to care workers who are expected to work long shifts during which they can be called upon at any time.

2. Should Employers Postpone Disciplinary Hearings to Accommodate a Companion?

Talon Engineering Ltd v Smith (EAT)

The EAT dealt with a common scenario faced by HR professionals: a worker seeks to postpone a disciplinary hearing on the basis that his or her preferred companion is unavailable.

Here, the employer refused to reschedule the disciplinary hearing of a long-serving employee after it had already been postponed because of her sick leave and holiday. Had the hearing been postponed for a couple of weeks, the trade union official she wanted as a companion would have been available.

In finding that the employee was unfairly dismissed, the EAT essentially warned employers that this scenario requires them to bear in mind two distinct employment laws.

On the one hand, the statutory right to be accompanied allows a worker to propose an alternative time that is both reasonable and within five working days of the original hearing. On the other hand, unfair dismissal legislation means that employers that are thinking about going ahead with the disciplinary hearing must consider the impact of this on the overall fairness of the procedure.

As a result of this case, Employer have to think more carefully before refusing to reschedule a disciplinary hearing to allow a particular companion to attend.

3. Worker Supreme Court Confirms That "Self-Employed" Plumbers Are Workers

Pimlico Plumbers Ltd and another v Smith (Supreme Court)

In 2018, the highest profile employment law cases involved the status of "self-employed" individuals who work within the gig economy for the likes of Uber and Deliveroo. However, this was the key employment status case in 2018.

The Supreme Court unanimously held that a plumber whose employer labelled him as "self-employed" in fact qualified as a "worker", entitling him to basic employment rights such as paid annual leave.

Factors that suggested to the Supreme Court that Mr Smith was a worker included the company's "tight control" over him (such as the requirements to wear a branded uniform and to follow its instructions closely); the requirement to provide his services personally; and the suite of restrictive covenants to which he had to agree.

Employers that have crafted written agreements with their workforce to disguise them as "self-employed" when they are really workers should be reviewing their contracts as a matter of urgency.

As well as pressure from the courts, these employers may soon find their hand forced by the Government, with suggestions that legislation may be introduced to draw a clearer distinction between workers and the genuinely self-employed.

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TOP TRIBUNAL CASES OF 2018 continued...

4. Employer Liable for Data Breaches by Employee With "Grudge"

WM Morrison Supermarkets plc v Various claimants (Court of Appeal)

The Court of Appeal held that the supermarket giant was liable for the criminal actions of an ex-employee who disclosed the personal data of staff online.

Could Morrisons have done more?

This well-publicised case arose after a disgruntled former IT auditor with the company sent the personal data of around 100,000 staff to newspapers and posted the data on a file-sharing website.

The Court of Appeal endorsed the earlier High Court ruling that there was a sufficient connection between the position in which the IT auditor was employed and his wrongful conduct for Morrisons to be liable. This was despite the supermarket's security steps and the criminal nature of the IT auditor's actions.

This case highlights that the job is not done for organisations that have been pumping resources into complying with the General Data Protection Regulation (GDPR).

Employers should continue to review their data security measures, which might include stringent rules on bringing your own device to work policies, access to external emails on work computers and the use of USB sticks. Employers can also take steps to flag up unusual activity, such as large files being emailed from work email addresses and suspicious periods of work computer use outside core business hours.

5. Employer Liable for Managing Director's Christmas Party Violence

Bellman v Northampton Recruitment Ltd (Court of Appeal)

Could an employer be liable for a Managing Director's random act of violence at a post-Christmas party drinking session, or was there sufficient distance between the employer's event and the director's actions? That was the question for the Court of Appeal in this case.

The Managing Director paid for taxis to take staff to a hotel bar to continue drinking after the workplace Christmas party. The director, who was inebriated, got into an argument with staff over his managerial decisions and punched an employee, who was seriously injured.

In the employee's civil claim, the question for the Court of Appeal was whether or not the company could be liable for damages.

The Court of Appeal accepted that the employer was liable for the employee's injuries. The managing director was still acting in his role with the company, having organised, and paid for, staff to continue drinking on the same night as the sanctioned workplace event. The Court accepted that the assault arose out of the director's misuse of his position.

This decision suggests that senior staff are more at risk than ever of being found to be acting on behalf of their employers because of the wide ambit of their responsibilities. In advance of the 2018 Christmas party, employers warning staff to behave on the night out should ensure that senior staff are given the same warning as everyone else.

Helpful Point

APPRENTICESHIPS

Overview

Apprentices are a method of training individuals, usually within a skilled profession, whilst they undertake work at the same time. Although they are often perceived as a way into employment for younger people, apprentices are open to all who are aged over 16.

The government is encouraging organisations to use apprentices as a method of creating a skilled workforce, with a governmental target of 3 million new apprenticeships by 2020.

In England, funding of apprenticeships has been amended in recent years, with the apprenticeship levy introduced for large employers and co-investment introduced for smaller employers.

The Institute for Apprenticeship was launched in 2017 as a non-department public body who aim to create and develop quality apprenticeships.

Spring Statement 2019 Confirms Apprentice Changes

Chancellor Philip Hammond used the 2019 Spring Statement to confirm the incoming changes to apprenticeships will take place from April 2019. These changes include:

- organisations who pay the apprenticeship levy will be able to transfer up to 25 per cent of their levy funds to organisations within their supply chain
- organisations who don't pay the levy and pay part of the costs of apprenticeships, known as co-investment, will have their contribution reduced from 10 per cent to 5 per cent; with the government paying the remaining 95 per cent of costs
- £5 million will be allocated to the Institute for Apprenticeships and National Apprenticeship Service in 2019-20 to ensure all new apprentices are starting on employer-designed apprenticeship standards from September 2020.

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Helpful Point continued...

Employment Status of an Apprentice

The Employment Rights Act 1996 defines employees as any individual who has entered into or works under a contract of employment. A 'contract of employment' is further defined as including a contract of service or apprenticeship.

This means apprentices working under a contract of apprenticeship have employee status. There are, however, additional protections in place for those working under these contracts (see 'Contract of apprenticeship' below).

Under the Apprenticeship, Skills, Children and Learning Act 2009, those engaged on an apprenticeship agreement are also employees (see 'Apprenticeship agreements' below for more information).

As apprentices are classed as employees they should be afforded all normal employee rights, such as normal working time rules and statutory sick pay. There are, however, exceptions in relation to minimum wage (see 'National minimum wage' below).

Apprenticeship Agreements

An apprenticeship agreement can be used in England and Wales. These agreements are treated the same as a 'normal' employment contract eg the job and performance of work is the focus of the contract.

Before 26 May 2015, apprenticeship frameworks applied to all apprenticeships in England and Wales. Frameworks were developed by sector bodies and focused on acquiring a competency-based qualification.

To be employed on an apprenticeship agreement using a framework, the agreement contained the normal elements required in a written statement of main terms of employment. Additionally, the following three elements are required in the agreement:

- statement of the skill, trade or occupation that the individual is receiving training in
- details of the relevant qualifying apprenticeship framework
- a statement that the agreement is governed by the law of England and Wales.

In England, frameworks are being phased out and replaced with standards. Standards focus on the occupation, rather than the qualification, to ensure the apprentice has the necessary knowledge and skills to carry out the role.

Where a framework exists, an Approved English Apprenticeship Agreement can be used. This agreement has the normal elements required in a written statement of main terms of employment but no longer needs to contain the above three elements. Instead, from January 2018, the agreement must include:

- the length of the apprenticeship, and
- the amount of "off-the-job" training the apprentice will receive (see 'Off the job training' below).

In Wales, and in England where no apprenticeship standard exists, the traditional apprenticeship agreement will continue to be used.

As well as the above information, all apprenticeship agreements must include the required main terms of employment as required by the Employment Rights Act 1996.

Finally, employment under an apprenticeship agreement is a requirement for completing an apprenticeship. Without the agreement, an apprenticeship certificate cannot be issued.

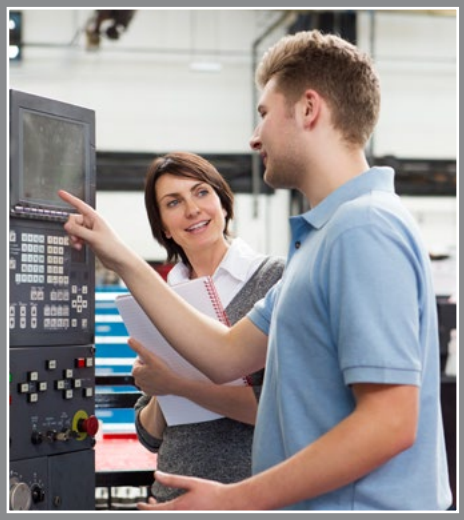
Additional Contractual Provisions

As well as the required information contained within an apprenticeship agreement, employers may wish to consider including the following provisions in an apprenticeship contract or agreement:

- if the apprentice is under 18, signature from their parent or guardian
- a probationary period before the formal apprenticeship begins, to make it easier to remove any unsuitable candidates at the outset
- the appointment of a mentor or person with special responsibility for apprentices who will take care of their welfare
- details of how progress will be reviewed and monitored, and at what intervals
- the ability to terminate the relationship if the apprentice does not attain the necessary standards after a sufficient opportunity to do so
- requirement for those who leave at the end of the apprenticeship to pay back certain training fees if they do not stay with you for a stated period of time
- arrangements to transfer the apprentice in the case of redundancy, or at least to make reasonable efforts to find alternative work for them to enable them to complete their training.

Off-the-Job Training

Under apprenticeship agreements using both apprenticeship frameworks and apprenticeship standards, all apprentices must receive off-the-job training. This training must be for a period which equals at least 20 per cent of the apprentice's employed time.



Helpful Point continued...

Off-the-job training is any learning which takes place outside of the normal day-to-day working environment, although it can be delivered at the normal place of work so long as it is not part of the apprentice's normal working duties. The Education and Skills Funding Agency (ESFA) further clarifies that the training must be directly relevant to the apprenticeship framework or standard. As such, off-the-job training will look to teach the apprentice new knowledge, skills and behaviours that contribute towards their apprenticeship.

The following are specifically excluded from contributing towards off-the-job training:

- studying English and maths up to level 2
- progress reviews or on-programme assessments that are required under the framework/standard, or
- training which takes place outside of paid working hours.

Whether the training meets the 20 per cent requirement will be measured over the course of the whole apprenticeship. As this is a requirement for EFSA funding, employers should keep a record of any off-the-job training to ensure they can evidence the total amount of training received.

National Minimum Wage

Since 2010, certain apprentices are no longer entitled to the National minimum wage or National living wage rate based on their age. They may, however, be entitled to the apprenticeship rate.

The apprenticeship rate is the legal minimum for apprentices who are employed under an apprenticeship agreement or a contract of apprenticeship, and are either:

- aged under 19 years or
- aged over 19 years but in the first year of their apprenticeship.

Once the apprentice is aged 19 or over and has been an apprentice for more than 12 months, they will become entitled to the minimum wage rate that is applicable for their age.

Costs and Funding for Small Employers

Employers with fewer than 50 employees receive 100 per cent of apprenticeship costs from the government where the apprentice is:

- aged 16 to 18, or
- aged 19 to 24 and has previously been in care or has a Local Authority Education, Health and Care plan.

As well as receiving 100 per cent governmental funding, employers of the above apprentices will also receive £1,000 per apprentice to meet any extra costs.

Non-levy paying employers with more than 50 employees, or fewer than 50 employees but training an apprentice who does not fall within the above categories, will receive government contributions under the 'co-investment' scheme.

'Co-investment' requires employers to contribute 10 per cent towards the cost of apprentice training, with government funding covering the remaining 90 per cent of costs.

As announced in the 2018 Budget, the level of co-investment will be halved, meaning employers will only be required to pay 5 per cent of costs, with the government funding the remaining 95 per cent. This change to funding is expected to take effect from April 2019.

Terminating an Apprenticeship Agreement

As apprenticeship agreements are considered to be the same as a 'normal' contract of employment, where work is the focus of the contract, these agreements can be terminated as any normal fixed term contract (see our Fixed-term employees page for more information). Employers should include a contractual provision allowing for the early termination of the apprenticeship agreement by giving notice. In the absence of this provision, damages may need to be paid for the remainder of the contract where employers do terminate the contract early.

Employers can apply their normal capability and disciplinary procedures to apprenticeship agreements, and dismiss as they usually would for acts of misconduct or where normal redundancy situations arise.

Although there is some uncertainty about this issue, it is believed that the expiry of an apprenticeship agreement will constitute a dismissal under the Employment Rights Act 1996. The potentially fair reason for dismissal will be some other substantial reason, although the employer will still be required to prove they followed a fair procedure and dismissal was reasonable in all the circumstances.

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 2019.

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