



WORKMATTERS
The natural choice for human resources

NEWSMATTERS

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WELCOME TO THE THIRD NEWSLETTER FOR 2014

In This Issue

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

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

- National Minimum Wage changes in October 2014
- Illegal Workers fines increased
- Shared Parental leave due to be enforced in October 2014
- One to watch out for – the debate on zero hours contracts is continuing!!

Our helpful tip this month is giving you information on the new flexible working policy which is now available to all staff with 26 weeks service and who have not requested anything in the last 12 months.

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** or on **carolinefarnell@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.

Changes in the law:

- National Minimum Wage increase in October
- Increased Penalties for failing to carry out checks on Illegal Workers
- Shared Parental Leave
- Zero Hour Contracts

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Helpful Point:

Flexible Working

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CHANGES IN THE LAW

National Minimum Wage increase in October

The National Minimum Wage will again increase again on the 1st October 2014.

- Adults hourly rate will increase from £6.31 to **£6.50**
- 18 – 20 year olds hourly rate will increase from £5.03 to **£5.13**
- 16 – 17 year olds hourly rate will increase from £3.72 to **£3.79**
- Apprentices hourly rate will increase from £2.68 to **£2.73**.

If you take on an employee who is of compulsory school age they are not entitled to the National Minimum Wage.



Increased Penalties for failing to carry out checks on Illegal Workers

Employers need new HR procedures to address recent changes to the rules for checking that employees have the right to work in the UK.

On 16 May 2014 the maximum civil penalty that employers can receive for employing someone without the right to work increased from £10,000 to £20,000 per illegal worker. A new code of practice on avoiding discrimination, emphasises that checks should be made on all job candidates.

The checks themselves have also changed, particularly in relation to their timing and the records that must be kept.

Documents

Under the previous rules, employers can establish a defence against a civil penalty by carrying out pre-employment checks on documents provided by the employee. If these show that the employee is entitled to work permanently in this country by appearing on "List A" of the specified documents, which includes UK and EEA passports, the check will not need to be repeated. However, if documents are on "List B" - as is the case, for example, with a Tier 4 student visa - and show that a person's right to work is for a limited time only, further checks will have to be carried out during their employment.

Timing

It will only be necessary to carry out a repeat check when the right to work expires. For example, if a student has leave to remain in the UK from 1 September 2014 to 1 September 2017, and starts work on 1 October 2014, an initial check will be required before the start date (say on 22 September 2014), and a repeat check on or before the expiry date of 1 September 2017.

Employers must now diarise expiry dates for all new recruits and also for current migrant employees. Reminders should be sent out asking employees to provide new documentation in good time, to avoid last minute difficulties.

Where an employee applies to extend their leave to remain in the UK before their status expires, the immigration rules allow them to continue to work while the Home Office decides on their case or an appeal is considered - even after the expiry date shown on their documents. The Home Office provides an employer checking service that allows the employer to check if an application, including any appeal, is outstanding. Under the new checks, confirmation from this service will act as a defence for a fixed period of six months, whereas previously it gave a defence for 12 months.

However, an employer is now allowed an extra 28 days following the expiry date in which to obtain a check from the employer checking service, if they have good reasons to believe that an application has been lodged. This is helpful because the service might not always respond quickly.

Employers will now also have 60 days following a transfer of undertakings to conduct initial checks on any staff that have transferred to them. Previously the time limit was 28 days.

Records

It is now compulsory for the employer to make a record of the date on which a check was conducted. If no date for the check is recorded, it cannot be used to establish a defence. It is therefore essential that all copies of documents are dated and signed as proof of when the check took place.

In order to complete checks on migrant students, employers will now have to obtain evidence of the term dates for their courses, which may be different from those of the institution itself.

Shared Parental Leave

Shared parental leave will present many challenges and opportunities.

The timescale for bringing the new right into force is relatively short, given the internal administration changes that will be required to manage it. Those expecting babies in April 2015 will qualify for shared parental leave, so could start asking about their rights from early autumn this year. This may be challenging for employers, particularly where managers will require training in the new entitlement.

Take-up

Planning at this stage is difficult because of uncertainty around the likely level of take-up. Shared parental leave's flexibility may make it more attractive and result in increased take-up.

CHANGES IN THE LAW continued...

Enhanced pay

One issue that will drive take-up is whether employers choose to provide enhanced pay during shared parental leave.

Providing enhanced shared parental pay does not necessarily directly benefit the employer who is paying for it, particularly where it is fathers that are taking the leave. If mothers return to work sooner because the baby's father is taking leave, it will be the mother's employer that has an immediate advantage. The perceived risk of subsidising another employer, perhaps even a competitor, is likely to be a factor for employers deciding whether to provide enhanced shared parental pay.

Estimating the likely cost of enhanced pay is also proving tricky because the level of take-up is so uncertain. This makes it difficult to plan what level of shared parental pay would be affordable.

Discrimination

Whether employers enhance pay or not, they will have to consider the potential for discrimination claims when implementing the scheme. Employers that offer enhanced maternity and shared parental pay will need to think about how the policies interact to ensure employees cannot argue they have been less favourably treated because of their sex.

Cover

Managing cover for shared parental leave is likely to be more problematic. Asking other staff to provide cover may be unrealistic because of existing workloads and risks creating a backlash from staff without families. Engaging temporary cover represents an extra cost for the business, may be less suitable for skilled roles, and obviously provides no guarantee that the same person will be available to cover several periods of leave.

Opportunities

The new right is a chance to review an organisation's entire offering for working parents, to ensure policies support business objectives and to give the organisation an advantage over its competitors in attracting and retaining staff.

Zero Hour Contracts

The Labour party has promised to reform the law on zero hours contracts if the party wins the next election. The plans include giving zero hours workers the right to a fixed-hours contract after 12 months with an employer, and the right to request a "minimum amount of work" after six months.

Additional proposals include:

- workers having the freedom to work for other employers while engaged under a zero hours contract;
- the right to compensation if shifts are cancelled at short notice;
- and employers making the terms of the contract and the employment status of the worker clear.

Some further research suggests that employers would respond by using very low minimum hours contracts or increasing the use of agency staff if these types of restrictions on zero hours were introduced. It is agreed however that there is a need for measures to "increase transparency over zero hours contracts, as well as ensuring that zero hours workers have the freedom to work for more than one employer."

The government consultation on zero hours contracts closed in March but there is no date yet for the publication of its response.

Helpful Point

Flexible Working

On 30 June, the rules on the right to request flexible working will be relaxed. Instead of the right only being available to Carers, it will be open to all employees with 26 weeks' service who haven't made a previous request in the past 12 months. The current statutory procedure for responding to requests will be replaced by a requirement for employers to deal with them in a 'reasonable manner' and within three months unless an extension of this time period has been agreed.

Employers can only reject a request for one or more of the following reasons:

- additional costs;
- inability to meet customer demand, reorganise work among other staff, or recruit cover staff;
- a detrimental impact on quality or performance;
- lack of work during a proposed alternative work period;
- or planned structural changes.

Based on the code of Practice issued by ACAS the following should help provide guidance with applications.

Introduction

Every employee has the statutory right to ask to work flexibly after 26 weeks continuous employment. An employee can only make a statutory request once in any 12 month period. This Code is intended to help employers deal with written requests made by employees to change their working hours or place of work under the statutory right in the Children and Families Act to request flexible working.

The Request

A request from an employee under the regulations must include the following information:

1. The date of their application, the change to working conditions they are seeking and when they would like the change to come into effect.
2. What effect, if any, they think the requested change would have on you as the employer and how, in their opinion, any such effect might be dealt with.
3. A statement that this is a statutory request and if and when they have made a previous application for flexible working.

Helpful Point continued...

You should make clear to your employees what information they need to include in a written request to work flexibly – you may choose to ask for less information in requests and if so they will still be compliant with the regulations (You may need to review your current policy to decide whether to upgrade the terms to accommodate this).

What should you do with a request?

Do not ignore this request.

Once you have received a written request, you must consider it. You should arrange to talk with your employee as soon as possible after receiving their written request. If you intend to approve the request then a meeting is not needed.



As with any consultation meeting you should allow an employee to be accompanied by a work colleague for this and any appeal discussion and the employee should be informed about this prior to the discussion.

Discuss with employee

You should discuss the request with your employee. It will help you get a better idea of what changes they are looking for and how they might benefit your business and the employee. Make sure you take notes to refer back to.

Wherever possible the discussion should take place in a private place.

Considering the request

You should consider the request carefully looking at the benefits of the requested changes in working conditions for the employee and your business and weighing these against any adverse business impact of implementing the changes. In considering the request you must not discriminate unlawfully against the employee.

Once you have made your decision you must inform the employee as soon as possible. You should do this in writing as this can help avoid future confusion on what was decided. If you accept the employee's request, or accept it with modifications, you should discuss with the employee how and when the changes might best be implemented.

If you reject the request it must be for one of the following business reasons as set out in the legislation:

- the burden of additional costs
- an inability to reorganise work amongst existing staff
- an inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- detrimental effect on ability to meet customer demand
- insufficient work for the periods the employee proposes to work
- a planned structural change to your business.

If you reject the request you should allow your employee to appeal the decision.

It can be helpful to allow an employee to speak with you about your decision as this may reveal new information or an omission in following a reasonable procedure when considering the application.

Deal with requests promptly

The law requires that all requests, including any appeals, must be considered and decided on within a period of three months from first receipt, unless you agree to extend this period with the employee.

If you arrange a meeting to discuss the application including any appeal and the employee fails to attend both this and a rearranged meeting without a good reason, you can consider the request withdrawn.

For further advice and to discuss a review of any policies in relation to your organisation please contact us at Work Matters (HR) on info@workmatters.co.uk.



Thank you for taking the time to read our Newsletter which I hope you found informative.

An e-newsletter will be sent on a quarterly basis to help keep you up to date with current legislation changes, as well as giving you some helpful hints and tips to help your business run smoothly.

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

Have an enjoyable quarter and we look forward to issuing you with our next newsletter in the early part of October 2014.