



**WORKMATTERS**  
The natural choice for human resources

# NEWSMATTERS

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## WELCOME TO THE FIRST 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.

Firstly we look at the changes in statutory payments which will affect your business during 2018 followed by a brief look at the legislation planned for 2018/19.

This month we have given you some information on the GDPR which will affect your businesses in the very near future regardless of size and MUST not be ignored. A breach of GDPR carries a maximum fine of €20million or 4 per cent of the organisation's global turnover. Finally the year ended with a tribunal case regarding holiday pay which went to the ECJ and has put up for question an employee v self-employed status entitlement to holiday and can it be back dated answer seems to be yes!

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).

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 TO STATUTORY PAYMENTS IN 2018

## April 2018

### 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 £7.50 to £7.83, representing a 4.4 per cent uplift. In practical terms, this will mean a pay rise of around £600 per year for a full time worker.

The other rates will increase as follows:

Workers aged 21-24: from £7.05 to £7.38 an hour  
 Workers aged 18-20: from £5.60 to £5.90 an hour  
 Workers aged 16-17: from £4.05 to £4.20 an hour  
 Apprentice rate: from £3.50 to £3.70 per hour

## April 2018

### SSP

Payment from	6 April 2016	6 April 2017	April 2018
Statutory sick pay	£88.45	£89.35	£92.05
Lower earnings limit (per week)	£112	£113	£116

## April 2018

### Family Friendly Payments

Payments from	2 April 2017	April 2018
Statutory shared parental pay (ShPP) Statutory rate or 90% of employee's weekly earnings if this is lower.	<b>£140.98</b>	<b>£145.18</b>
Statutory maternity pay (SMP) First six weeks – 90% of employee's average weekly earnings. Remaining weeks at the statutory rate or 90% of employee's weekly earnings if this is lower.	<b>£140.98</b>	<b>£145.18</b>
Statutory adoption pay (SAP) First six weeks – 90% of employee's average weekly earnings. Remaining weeks at the statutory rate or 90% of employee's weekly earnings if this is lower.	<b>£140.98</b>	<b>£145.18</b>
Statutory paternity pay (SPP) Statutory rate or 90% of employee's weekly earnings if this is lower.	<b>£140.98</b>	<b>£145.18</b>
Lower earnings limit (per week)	<b>£113</b>	<b>£116</b>

## 2018

### Forthcoming changes

This table shows forthcoming changes.

10 March 2018	'Check off' restrictions to be applied to certain public authorities
30 March 2018	Gender pay gap reporting date for larger public sector organisations
4 April 2018	Gender pay gap reporting date for larger private sector organisations
April 2018	Changes to taxation of payments in lieu of notice  All payments in lieu of notice (PILONs) will be subject to tax and national insurance contributions (NICs), regardless of whether there is a contractual right to make the payment or not.  The government had intended to require employer NICs to be paid on termination payments (for example, settlement agreements) of over £30,000 with effect from the same date, however, this will not now take place until April 2019.
April 2018	Increase to national living/minimum wage rates (see above)
April 2018	Increase to statutory rates eg statutory sick pay (see above)
April 2018	Increase to employment tribunal maximum awards and limits eg statutory guarantee pay (to be confirmed)
April 2018	Auto-enrolment minimum contributions increase; employees contributing 3%, employers contributing 2%
25 May 2018	General Data Protection Regulation comes into force
March 2019	UK to leave the EU
April 2019	Changes to taxation of termination payments
April 2018	Auto-enrolment minimum contributions increase; employees contributing 5%, employers contributing 3%
2020	Paid parental bereavement leave to be introduced
Mid-2020s	Reforms to automatic enrolment to be introduced
To be confirmed	Clarification of protection against caste discrimination
To be confirmed	Extension of shared parental leave to grandparents



## Definitions

The GDPR will place obligations on 'data controllers' and 'data processors'. The 'controller' determines the purposes and means of processing the data; the 'processor' is responsible for processing personal data on behalf of the controller.

'Personal data' is any information relating to an identifiable person ('data subject') who can be directly or indirectly identified by reference to that information and, under GDPR, will include location data or an online identifier eg IP address. In HR terms, data subjects will be an organisation's employees.

Data known as 'sensitive data' under existing definitions is known under GDPR as 'special categories of personal data', including genetic and biometric data but not data relating to criminal convictions.

GDPR covers data which is kept by automated means and manual filing systems where personal data are accessible according to specific criteria, potentially including information ordered according to its chronology.

## Individual rights

Data subjects have the following rights regarding their personal data under the GDPR:

### The right to be informed

Individuals should receive certain information about the processing of their data, such as the categories of data and the purpose of processing. The information must be concise, transparent and written in clear and plain language. A fee cannot be charged for providing this.

### The right of access

Individuals have the right to access their personal data and other supplementary information. A fee can only be charged in certain circumstances.

### The right to rectification

Individuals have the right to rectify their personal data if it is inaccurate or incomplete. A request for rectification must be responded to within 1 month, or 2 months if the request is complex.

### The right to erase or "the right to be forgotten"

Individuals can request removal or deletion of personal data where there is no compelling reason to keep processing the data. This includes where consent is withdrawn.

### The right to restrict processing

Individuals have the right to restrict or block processing of personal data in specific circumstances, including where the accuracy of the data is questioned. The personal data can continue to be stored but no further processing can take place.

### The right to data portability

Individuals can obtain their personal data for personal use across different services. A fee cannot be charged and requests must be responded to without delay and within 1 month, or 2 months if the request is complex.

### The right to object

Individuals have the right to object to the processing of personal data in specific circumstances, including for processing on the basis of a legitimate interest or direct marketing.

### Rights in relation to automated decision making and profiling

Individuals have rights regarding decisions made without human intervention that have a significant effect on the individual. This right does not apply to all automated decisions, including where these are authorised by law.

## Data protection principles

**There are six data protection principles under GDPR rather than the eight existing ones. The principles under the GDPR are that data must be:**

Processed lawfully, fairly and in a transparent manner in relation to individuals.

Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes.

Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

Accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that is inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay.

# GDPR for Employers? continued...

Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals.

Processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.”

## ICO's "12 Steps To Take Now"

The ICO (Information Commissioners Office) has published a document setting out steps that organisations can take in preparation for the introduction of GDPR. These are:

**Awareness** – let the relevant people in your organisation know that the law is changing

**Information audit** – check what data you hold and who you share it with

**Privacy information** – check your current privacy notices and make a plan for change

**Individuals' rights** – check how you currently comply with individuals' rights e.g. complying with a subject access request or deleting personal data

**Subject access requests** – plan how you will make changes to the process when the new law is here

**Lawful basis** – check you have a lawful basis for processing data. Employers who process data for employment purposes are likely to be able to rely on the lawful basis of “performance of a contract” for most data processing, but potentially not all processing

**Consent** – review how you obtain consent for processing data

**Children** – reviewing procedures for verifying ages and obtaining parental/guardian consent (not likely to have a great impact on the area of employment)

**Data breaches** – review how you would notify a breach

**Impact assessments** – consider how to implement data protection impact assessments

**Data Protection Officer** – do you need a DPO? Who will ensure your compliance with GDPR?

**International** – if you operate in more than one member state, determine a lead data protection supervisory authority.

## Finally A Tribunal Case With An Interesting Outcome From December 2017

In a decision that will have a significant impact for workers, the European Court of Justice have decided workers who are prevented from taking paid leave can carry over their leave without restriction.

In **King v The Sash Window Workshop Ltd and anor**, King was engaged as a salesman for 13 years. Both parties mistakenly believed King was self-employed so he took various amounts of unpaid holiday leave during his engagement. In 2008, the organisation offered a contract of employment to King but he turned this down. King retired in 2012 and he brought claims for holiday pay and pay in lieu of accrued, but untaken, holiday for the whole of the relationship.

At tribunal, King's status was determined to be that of a worker, and he was awarded pay for the holiday accrued in his final year and all holiday taken during his engagement. He was also awarded pay for holiday accrued, but untaken, over the 13 year period. This decision was appealed and the Employment Appeal Tribunal decided workers can carry over holiday where they are unable to take it for reasons outside their control, not just in cases of sickness. A further appeal led to the Court of Appeal referring questions to the European Court of Justice (ECJ).

In a landmark decision, the ECJ have decided workers are entitled to carry over and accumulate their accrued but untaken holiday where the organisation doesn't allow the worker to exercise their right to paid



leave. This carry over right is not subject to any limitation and cannot be extinguished. In addition, the worker is not required to take the leave first before establishing whether they have the right to pay for this. Therefore, on termination, the worker will be entitled to a payment in lieu for this carried over leave.

# Finally A Tribunal Case With An Interesting Outcome From December 2017 continued...

## Significance of this decision

The ECJ is reiterating the importance of the right to take paid holiday for the purpose of rest and relaxation. Where organisations are not putting workers in the position to exercise this right, the first four weeks of holiday leave provided under European law will carry over indefinitely.

Workers are likely to be placed in this position where their status has been wrongly classed as self-employed. It will not matter whether classing the worker as self-employed is intentional or a mistake; the ECJ says the employer has to "bear the consequence". For many workers in the so-called 'gig economy', this decision is a further reason to argue their true employment status at tribunal.

The ECJ decision also casts doubt over the current domestic limitations on holiday back pay liability. The government introduced a 2 year cap on holiday pay claims for any claim brought after 1 July 2015. The EATS

decision in *Bear Scotland* also introduced a break in the chain of liability where there was a gap of more than three months between holiday pay underpayments. The ECJ decision suggests these are incompatible with EU rights to paid holiday so these may be subject to future challenge.

This decision does not affect the current 18 month restriction on carry over of leave for workers who are unable to take holiday leave because they are absent from work due to sickness. As established by the EAT in *Plumb v Duncan Print Group Ltd*, workers who are off sick can only carry over untaken leave for a maximum of 18 months after the end of the leave year it was accrued in.

**King v The Sash Window Workshop Ltd** will now return to the domestic courts to determine the amount of compensation available to the worker. The ECJ decision suggests King will be entitled to a payment in lieu for accrued, but untaken, holiday for the whole of his 13 year engagement.



**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. A copy of the Newsletter is also available on our website [www.workmattersshr.co.uk](http://www.workmattersshr.co.uk)**

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 April 2018.