



WORKMATTERS
The natural choice for human resources

NEWSMATTERS

January 2021



WELCOME TO THE FIRST NEWSLETTER FOR 2021

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, please feel free to give us a call for both guidance and support no matter what the issue.

Firstly we look at the changes in national minimum wage which will affect your business during 2021 followed by a brief look at the legislation planned for 2021/22. An update on some changes to the Employment Tribunals.

This month we have given you an update on the Immigration information having now finally left the EU.

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 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.

In This Issue

Changes to National Minimum Wage in 2021

page 2

Forthcoming changes

page 3

Employment Tribunal Update

page 4

Immigration Post Brexit

page 5





CHANGES IN THE LAW

CHANGES TO NATIONAL MINIMUM WAGE IN 2021

National Minimum Wage Rates

This will increase from £8.72 to £8.91. In practical terms, this will mean a pay rise of 2.2% for a person over 25.

The other rates will increase as follows:

Workers aged 21-24
From £8.20 to £8.36 an hour

Workers aged 18-20
From £6.45 to £6.56 an hour

Workers aged 16-17
From £4.55 to £4.62 an hour

Apprentice rate
From £4.15 to £4.30 per hour

The government also said it will press ahead with recommendations by the Low Pay Commission to allow workers over 21 to receive the national living wage by 2024 when it is set to reach £10.50 an hour.

Action Points for Employers

Keep a Record

There is a requirement under the NMW Regulations to maintain sufficient records to evidence that the NMW has been paid for at least the last 3 years. It is a criminal offence not to do so. As an added incentive, there is a presumption that an employee has not been paid the NMW unless an employer can prove to the contrary.

Be Mindful of 'Salary Sacrifice'

For example, this may be where employees opt for increased pension contribution or childcare vouchers by way of deduction from their gross salary. If so, it is important that this must not take the employee's average hourly pay below the NMW. The Government has confirmed (following concerns that this denies the lowest paid the benefit of the tax breaks brought by a salary sacrifice scheme), that, whilst an employer caught paying below the NMW on this basis alone would not be subject to a penalty, they could still be 'named and shamed'.

Consider Your Employees' 'Working Time'

This may or may not be applicable depending on your sector. The concept of 'working time' does not necessarily just mean the time spent by the employee doing his/her job. For example, if there any mandatory steps for an employee at the beginning or end of their working day, e.g. security checks or drug and alcohol tests, these processes may be included in working time. Additionally, staff working through unpaid breaks may raise issues as they are not being paid for working time.

FORTHCOMING CHANGES

1. New Immigration Law

From 1 January, free movement of persons is to end, and with it comes a whole new set of immigration laws. All foreign nationals will now need to seek to enter the UK in the same way, with many expected to use the 'Skilled Worker Route'. To be able to work in the UK legally, foreign nationals have to meet specified criteria in order to earn at least 70 points. Crucially, this involves being offered a job from an approved sponsor.

If a company intends to take on foreign workers from next year, it is essential that they apply for a license as soon as is possible.



2. The End of the Furlough Scheme

It is likely that the furlough scheme will finally come to end as coronavirus restrictions ease. Currently, this is currently expected to happen on 30 April 2021.

Organisations should start to plan the steps they are going to take when they no longer have this support from the government. If they are considering redundancies, they should remember to assess alternative options.

3. The Return of Gender Pay Gap Reporting

The compulsory production of gender pay gap reports was paused due to COVID-19. This is expected to return next year. Organisations with at least 250 employees are eligible to produce a report.

4. New IR35 Requirements

From April 2021, eligible large and medium sized organisations engaging contractors through intermediary companies will also be responsible for assessing the employment status of those contractors. Under the new rules, where workers are engaged through their own companies, responsibility to apply IR35, and to pay any associated tax and National Insurance contributions (NICs), will fall to the private company, agency or other third party paying the worker's company.

The changes to the IR35 rules will affect medium and large businesses within the private sector that use individual contractors. Small businesses will not be affected. The IR35 rules, when implemented in April 2021, will apply to all public sector clients (regardless of size) and medium or large-sized private sector businesses i.e. those who meet 2 or more of the following criteria:

- have over 50 employees
- have a net turnover in excess of £10.2m
- have over £5.1m on their balance sheet

From 6 April 2021, the business using the worker's services will be responsible for deciding their worker's employment status. Where the worker is employed for tax purposes after applying the IR35 test, the fee payer (client) will be responsible for deducting employment taxes. The new rules apply if a worker provides services to a client through an intermediary (which is usually the worker's own company i.e. personal service company), but would be classed as an employee if they were contracted directly. HMRC has published a Check Employment Status for Tax (CEST) tool online: <https://www.gov.uk/guidance/check-employment-status-for-tax>

Whilst small businesses are exempt from the new rules, these changes may affect self-employed contractors, as businesses may decide to limit their engagement to save the business from having to assess their tax status under the April 2021 changes, or contractors cease providing their services if they are caught by IR35.

These new rules were expected in April 2020 but were delayed due to the coronavirus pandemic. Please click here for more information on employment status.

5. More Companies to Produce Modern Slavery Statements

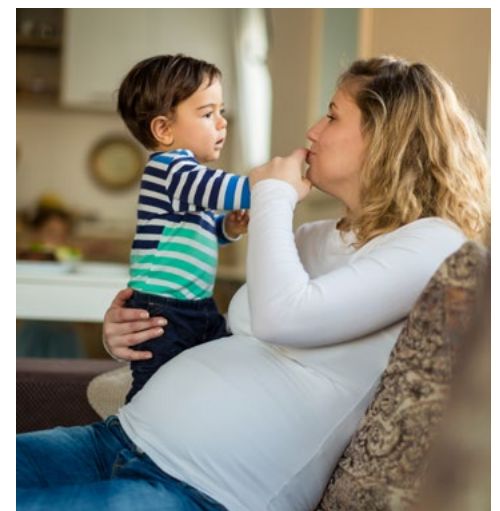
There are plans to require an increase the number of companies that need to produce a Modern Slavery statement. Under these new plans, public sector organisations with a budget of at least £36 million must publish a statement.

Statements will also be required to cover specific topics and be published on the government registry. It has not been confirmed when the new requirements will come into force, but it is expected that the registry will be launched in 'early 2021'.

6. Extended Redundancy Protection for Pregnant Employees

Currently, those on maternity leave who are at risk of redundancy must be offered suitable alternative roles in advance of others. This protection ends once the employee returns to work. Future changes will mean that this protection starts from the date the employee informs her employers that she is pregnant. It does not matter whether the employee informs you verbally or in writing. This protection will last for a further six-month period once the employee returns to work.

The extended protection will also be available to those on adoption leave and shared parental leave. It is currently not confirmed when this will come into force.



EMPLOYMENT TRIBUNAL UPDATE

A major update to the UK employment tribunal system came into force in December 2020 that could help to speed up employee claims.

But what are the new rules, and how will they affect your business?

Clearing the Tribunal Backlog

In the first quarter of 2020/21, single tribunal claims went up 18% compared to the same quarter in 2019.

This surge in claims, plus difficulties in holding in-person hearings during COVID-19, has led to a major backlog and delay in tribunal cases.

For example, in some areas of the UK, ordinary unfair dismissal claims have already been pushed back well into 2021.

The changes aim to help overcome the backlog by making the tribunal system more efficient. They may also make it a little easier for employees to submit claims.

Tribunal Changes Explained

Some of the updates to the tribunal system came into force as of the 8th of October 2020. These include changes that:

Permit a wider range of judges to give verdicts on tribunal cases, including high court judges,

circuit judges and deputy judges. Give legal officers more power to accept or dismiss claims. Allow multiple people to make a claim using the same employment tribunal forms. Loosen the rules around 'public hearings'. That means more cases can be heard through video conferences.

From the 1st of December, further changes to legislation include:

Extend the minimum 'early conciliation' period from one month to six weeks. This will give both parties more time to negotiate an agreement before the case is heard by a judge. Prevent claims from being rejected due to claimants providing the wrong early conciliation numbers.

What Do the Employment Tribunal Rules Mean for Employers?

The most important take away probably isn't the new rules themselves. It's why they're being made. The tribunal backlog has gotten worse in part due to the COVID-19 crisis, which has forced employers across the country to make tough decisions for their workers.

In particular, redundancies have surged across the UK, with some predicting that up to a million people could lose their jobs in 2020.

Of course, dismissing staff doesn't necessarily mean you'll end up in a tribunal. But it is true

that redundancy is complicated. Failure to follow the right process could put you at risk of costly unfair dismissal claims.

Plus, with some tribunal claims now expected to take much longer than usual to resolve, many employers may need to retain their lawyers and build up legal fees in the process.

How to Protect the Company From Claims

Now more than ever, employers should follow watertight procedures when managing their staff. Crucially, any decision to dismiss an employee must follow a fair process and be reasonable.

It's also important to remember that employment law stretches much further than just protecting employees from unfair dismissal.

For example, in the 12 months from April 2019 to March 2020, the highest sum awarded at an employment tribunal was £266,000 for a disability discrimination claim.

Employers should therefore make sure they follow core HR practices through the pandemic. This includes maintaining equality and diversity policies and meeting legal obligations towards disabled staff.





IMMIGRATION POST BREXIT

As we have now left the EU the rules for Employers have changed in relation to taking on anyone from Europe as well as for some of those who are still living and working in the UK.

European Nationals and Family Members Who Entered the UK Before 11pm on 31 December 2020

Virtually all European nationals (and their family members) will need to apply under the EU settlement scheme to continue living and working in the UK long term. Only those with indefinite leave to remain or who are Irish nationals are exempt from applying. Importantly, those with permanent residence documents must still apply, as well as family members of Irish nationals.

The application is an online process with no application fees. The deadline for applying is 30 June 2021, and failure to apply by then may mean the individual will not have the right to live and work in the UK after 30 June 2021. It is also likely to mean that it would be a criminal offence for a business to employ them.

Under the scheme, individuals will be granted either settled status or pre-settled status. Those with five years' continuous residence in the UK should be eligible for settled

status. Continuous residence means that the individual has been present in the UK for at least six months in every 12-month period.

Those with less than five years' continuous residence should be granted pre-settled status. Pre-settled status is granted for five years and it appears that this cannot be extended. Individuals must be careful to safeguard their ability to apply for settled status after five years in the UK and ensure they do not spend more than six months in any 12-month period outside of the UK.

Employers should consider the impact that regular business travel, overseas secondments or working remotely overseas may have on their staff's ability to apply for settled status. Businesses should also encourage their employees to apply under the scheme and check that everyone has obtained the relevant status by **1 July 2021**.

Do You Need to Change Your Recruitment Strategies?

Since 1 January 2021, European nationals coming to the UK for the first time will now be treated in the same way as non-European nationals. Therefore, businesses relying heavily on a European workforce will need to urgently make some key adjustments if they haven't already done so.

European Nationals and Family Members Arriving in the UK for the First Time After 11pm on 31 December 2020

These individuals will not be able to apply under the scheme. To live and work in the UK they will need to apply under the new immigration rules, which came into effect on 1 January 2021.

In many cases, employers will need to sponsor European nationals under the new skilled worker category and will need a sponsor licence. If the business does not already hold a sponsor licence, it should consider applying for one as soon as possible, with appropriate advice.

Businesses will also need to budget for the significant costs associated with the sponsorship system and factor in lead in time for the individual to obtain their visas before starting their role in the UK. In addition, employers should consider how the changes will impact workers coming to the UK temporarily and whether the visitor or new frontier worker permit scheme (for those overseas residents who have previously worked in the UK) may be appropriate.

IMMIGRATION POST BREXIT continued

The Brexit transition deadline has now passed, and we are faced with a new post-Brexit era. With such significant changes having taken place, employers should take the necessary action now, if they haven't already done so, to ensure they safeguard their current workforce and plan for their future recruitment needs.

Checklist for taking EU nationals on:

Be aware of the EU Settlement Scheme, through which EU nationals already working for your organisation, who have lived in the UK by 31 December for five years, can apply to remain in the UK indefinitely through achieving settled status. Those who haven't reached this five-year mark by then can apply for pre-settled status, which can be upgraded to settled status when they have lived in the UK for five years.

Encourage staff to apply for the EU Settlement Scheme. They should not be coerced into doing so, but you can raise awareness through training, and providing access to computers. Applications for the scheme close on 30 June 2021.

Understand that you cannot make staff provide proof they have successfully been granted status under the EU Settlement Scheme, but you can ask for this proof. Successful applicants will receive a share code, which you can use to check their immigration status through the government website.

Understand that, up until 30 June, EU nationals currently working for you can continue to provide their passport or national identity card to prove they have the right to work in the UK.

Understand the new 'skilled worker route', the method that most foreign nationals seeking to come and work in the UK from 1 January 2021 are expected to follow. Individuals will need to attain 70 points to work lawfully in the UK, including that their employer is licensed to sponsor them.

Decide which sponsor license you want to apply for. They differ depending on whether you are taking on staff temporarily or more long-term. Small companies will pay £536 for each application. Larger organisations will pay £1,467 for a licence to take on long-term staff, and £536 for temporary staff – you are likely to be a large organisation if your annual turnover is over at least £10.2 million and you have at least 50 employees.

Understand that sponsorship carries certain eligibility requirements. You must not have any unspent convictions for immigration offences or certain other crimes, such as fraud or money laundering. You must not have had a sponsorship licence revoked in the previous 12 months.

Be aware that it can take up to eight weeks for a license to be provided, so one should be applied for as soon as possible.

The Immigration System

Under the new immigration system, points will be awarded for a job offer at the appropriate skill level, knowledge of English and being paid a minimum salary. Skilled worker visas will be awarded to those who gain enough points.

The Home Office believes that it will encourage employers to focus on training and investing in the UK workforce, driving productivity and improving opportunities for individuals, especially those impacted by coronavirus.

People will normally need to be paid at least £25,600 per year unless the 'going rate' for that job is higher. Applications are made online, and as part of this, people will need to prove their identity and provide their documents.

Ms Patel said: 'This Government promised to end free movement, to take back control of our borders and to introduce a new points-based immigration system. Today, we have delivered on that promise. This simple, effective and flexible system will ensure employers can recruit the skilled workers they need, whilst also encouraging employers to train and invest in the UK's workforce.'

A decision will usually be provided to an applicant outside the UK within three weeks and the visa lasts for up to five years before it needs to be extended.

Applicants will need to have enough money to pay the application fee (ranging from £610 to £1408), the healthcare surcharge (usually £624 per year) and be able to support themselves (usually by having at least £1270 available).

Other Routes

Alongside the **Skilled Worker Visa**, a number of other routes include:

Global Talent Visa for people who can show they have exceptional talent or exceptional promise in the fields of science, engineering, humanities, medicine, digital technology or arts and culture;

Innovator Visa for a person seeking to establish a business in the UK based on an innovative, viable and scalable business idea;

Start-up Visa for a person seeking to establish a business in the UK for the first time; and

the **Intra-company Transfer Visa**, which is for established workers who are being transferred by the business they work for to do a skilled role in the 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. A copy of the Newsletter is also available on our website www.workmattershr.co.uk

In the mean time 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 2021.