



WORKMATTERS
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NEWSMATTERS

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WELCOME TO THE SECOND NEWSLETTER FOR 2022

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.

- National Minimum Wage and the Living Wage
- Please can I have a Salary Increase? How to respond
- The extra Bank Holiday and what to do
- COVID19 Mandatory vaccinations
- Four day working week
- Top 10 tribunal cases of 2021

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

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PAY VARIATIONS AND MINIMUM WAGE

Statutory Payment for Maternity, Adoption and Paternity and Sick Pay

- Statutory sick pay (SSP). The rate of pay will be £99.35 per week
- 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 £156.66 per week 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 £156.66 per week
- Ordinary statutory paternity pay. The lower of 90% of AWE or £156.66 per week.

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 to £123 per week.

National Minimum Wage Rates

This will increase from £8.91 to £9.50 for workers aged 23 and over

The other rates will increase as follows:

Workers aged 21-22:
From £8.36 to £9.18 an hour

Workers aged 18-20:
From £6.56 to £6.83 an hour

Workers aged 16-17:
From £4.62 to £4.81 an hour

Apprentice rate:
from £4.30 to £4.81 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.

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 April 2022.

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.

Minimum basic award for specific types of unfair dismissal (including health and safety dismissals) from April 2022 will be £6,959

The weekly pay is subject to a maximum amount. From April 2022, this is £571. The maximum compensatory award for unfair dismissal is also increasing to £93,878. Whilst this compensatory award has increased it is limited to a payment of 52 weeks' pay, if that is lower than the maximum compensatory award.

The rise in the unfair dismissal award applies to terminations after 6th April 2022.

PLEASE CAN I HAVE A PAY RISE?

In terms of the effects on wages of the rise in the cost of living this year, the Institute for Fiscal Studies has used the example of an individual with a salary of £30,000 in April 2021 needing to see wage growth of 7.1 per cent to April 2022 in order to maintain the same standard of living based on cost of living rises. This compares with average predicted pay rises of 3% for 2022. Employees may use the online ONS calculator to see if their wages are keeping pace with inflation. Employers will of course also be affected by the rise in costs for goods and energy, as well as the rise in employer National Insurance Contributions, which many have lobbied hard against.

The Legal Aspect

In most cases, there is no contractual right to a salary increase and it would be rare, in a non-unionised environment, for wages to be linked to inflation. Contracts of employment which provide for salary reviews will typically state that a salary review does not guarantee a salary raise. This is at the discretion of the employer. Where employees are refused a pay rise, this will have an effect on employee morale and employers should be honest but constructive in their rationale for rejecting a request for a pay rise. If this is due to company financial performance, or because an employee has not met their work objectives, employers should feed this back in a constructive manner. It will also provide transparency and motivate the employee, if the employer sets out what is required for the employee to achieve a pay rise e.g. by successfully completing a training programme, or achieving certain work targets, which are kept under review, so the employee understands what is required to achieve these and are kept apprised of their performance, so that there are no nasty surprises.

Going Forward

Employers should avoid making inconsistent decisions about pay between employees, which cannot be justified on their own merits, when salaries are reviewed by the employer or when the employer receives a request for a pay rise. Although these are most common among larger and public sector employers and most small business employers don't usually have policies relating to pay rises, introducing a pay structure, brings order and clarity for both employers and employees in managing pay rises and career development.

It can also help ensure fairness and that employers are acting within the law, for example by avoiding pay discrimination along the lines of employees' protected characteristics and avoiding arbitrary decision making regarding employees' pay, which may lead to grievances, poor morale, loss of staff or even employment tribunal claims, such as equal pay claims.

A pay structure is generally the introduction of wage grades, levels or bands that link related jobs within a hierarchy of roles and/or seniority. It's important that arrangements for pay increases are fair and free from unlawful bias due to an employee's age, gender, ethnicity or other protected characteristics under UK law, or because the individual works part time or on a fixed-term contract.

Pay rises under a pay structure are typically made according to set criteria at a yearly salary review. Criteria commonly includes achieving individual performance targets, or company wide financial targets, or a mixture of both; or other criteria set by the employer and communicated in advance to staff.

Employees will often want to know how their pay compares with colleagues doing the same or similar roles. Employers cannot prohibit employees from discussing pay where the discussion is with a view to determining whether or not a difference in pay is connected to an employee's protected characteristic. However, employers can include a term in the employment contract requiring employees to keep pay rates confidential, although in practice it is difficult to enforce this.

Other Considerations

In addition to considerations around pay, cost of commuting or childcare costs, as well as the convenience of home working for some, is also a factor in employees asking to work from home where their roles can be done remotely, or pushing back on instructions from their employers to return to the usual workplace (either under a hybrid model or entirely). To help ensure consistency and fairness, employers may wish to deal with informal requests to continue to work from home, by asking their staff to submit their requests as formal flexible working requests, in line with a Work From Home Policy. Doing so means that these can be accepted or rejected based on one or more of the statutory permitted reasons for rejecting a request and so that employees are restricted to making one formal flexible working request per year under this regime. If requests are dealt with informally (as is often the case), it is still advisable to reject a request based on one or more of the statutory permitted reasons for rejecting a flexible working request, to help ensure consistency, fairness and to avoid potential indirect discrimination claims.

The Bigger Picture

Employers should of course also look beyond pay rates to help attract and retain staff. Offering a better work/life balance, working conditions, a supportive working environment where everyone is encouraged to achieve their full potential, good training opportunities, or even opportunities to work from home, or work flexibly, can be important factors for retaining existing employees and attracting new recruits.



THE EXTRA BANK HOLIDAY AND WHAT TO DO

What Is Happening

This year, the Government has announced an extra bank holiday, on Friday 3 June, to celebrate the Queen's Platinum Jubilee. In addition, the late May bank holiday has been moved to Thursday 2 June. Whilst this sounds like good news for employees, the question of how to treat the extra bank holiday may be problematic for employers.

Most employees will assume that they will be given the bank holiday automatically but, depending on the wording of the employee contract, that is not necessarily the case. Employers need to start planning now to avoid possible staffing issues later in the year.

2022 Bank Holidays

In a normal year, there are eight bank holidays a year in England and Wales (nine in Scotland). In 2022, however, there are nine bank holidays in England and Wales, falling on the following days:

- Monday 3 January;
- Friday 15 April;
- Monday 18 April;
- Monday 2 May;
- Thursday 2 June (instead of Monday 30 May);
- Friday 3 June (Platinum Jubilee bank holiday);
- Monday 29 August;
- Monday 26 December; and
- Tuesday 27 December (substitute bank holiday: 25 December is a Sunday).



What Are Employers' Obligations in Respect of the Extra Bank Holiday?

As stated above, this will depend largely on what the employment contract says and employees do not have an automatic right to paid time off on a bank holiday.

If the employment contract states that the employee has an entitlement to a certain number of days' annual holiday plus bank holidays, then it follows that the employee is automatically entitled to the extra bank holiday.

If the employee is entitled to, say, 5.6 weeks of annual leave inclusive of bank holidays, the employee is entitled to the extra bank holiday but this has to come out of the consolidated holiday entitlement.

If, however, the employee's employment contract states that the employee is entitled to a specified number of days' holiday plus eight bank holidays, then they are not automatically entitled to the additional bank holiday.

Even if an employer is not contractually obliged to grant the extra day as leave, they may choose to do so as a goodwill gesture to employees.

Do Employees Have a Statutory Right to Extra Pay For Working on Bank Holidays?

There is no statutory right to extra pay, such as time and a half or double time, when an employee works on a bank holiday. Any right to extra pay depends on the wording of the employment contract. Employees are not entitled to be paid a higher rate than normal for working on a bank holiday, unless this is provided for in the contract.

The position of part-time workers in relation to public holidays is not straightforward. There is no statutory right to paid public holidays but employers must ensure that part-time workers still receive 5.6 weeks' leave, pro-rated in accordance with the hours they work. Some employers only give this benefit on the public holiday if the holiday falls on a day the worker normally works. This can be unfair for those who don't work on Mondays (when most bank holidays fall).

The question whether an employer should give time off in lieu for missed bank holidays is not addressed in the WTR. Employers who only give part-time workers paid time off for public and bank holidays that fall on days on which they normally work may breach the Part Time Worker Regulations 2000 and leave entitlements under the WTR, because those part-time workers who do not normally work on Mondays, or whose working days are variable, will be treated less favourably than comparable full-time workers and/or may not receive their full statutory entitlement. The same considerations apply to contractual holiday rights above 5.6 weeks.

The simplest way to achieve equality in such cases is to give part-time workers a pro-rata entitlement to public holidays, regardless of whether they normally work on days on which those holidays fall, and to monitor the days on which they work.

COVID19 MANDATORY VACCINATIONS

Mandatory vaccination for NHS and social care workers is set to be scrapped. Sajid Javid, Health and Social Care Secretary, said he believes that the position has now changed with the Omicron variant proving to be milder than previous versions of the virus. No doubt the shortage of workers in health and social care was also a consideration, with the U-turn preceded by warnings of shortages of up to 80,000 workers in the sector.

On top of existing absence figures within those sectors, further workforce shortages could have pushed the sector to the brink, with unions warning it could have had a catastrophic impact on services. Mr Javid has said that the government will launch a consultation on ending the mandate and, subject to responses, the regulations will be revoked.

The change comes just before a looming deadline for NHS workers. With mandatory vaccines set to come into force in April 2022, Thursday 3rd February 2022 was the last day for staff to get their jobs in order to be fully vaccinated in time for the deadline. NHS guidelines to employers said staff should be invited for formal meetings from 4th February to warn them that they face dismissal. The potential U-turn comes too late for care home staff, for whom mandatory vaccination was introduced in November.

It is expected that those 40,000 who lost their jobs will be able to return to the sector if the mandate is overturned which will be a relief both for those employees and the care home employers alike.



FOUR DAY WORKING WEEK

Is the two-day weekend set to become a thing of the past? The pandemic has highlighted the importance to employees of work-life balance and wellbeing.

Remote and flexible ways of working have proven to be far more effective than expected. Some businesses are now considering a four-day working week - with reduced hours but no loss of pay - to see if that pattern could work for them. Many businesses are actually in the process of live trials.

Businesses that have already introduced the measure are reporting increased productivity which more than makes up for the loss of the fifth day. Pursuit Marketing in Glasgow introduced a four-day working week in 2016 and said the pattern increased productivity by 30 per cent. The Chief Operating Officer, Lorraine Gray, says that the reduced week focuses the mind and helps employees to identify parts of the day where they can be more productive. She says it has also stopped the Monday morning sickies. Staff turnover is low and there have been mental health benefits. With productivity up, and sickness down, it seems to be a no brainer. Other businesses are looking to get on board.

Unilever has extended a trial in New Zealand because of the recent lockdowns and Morrisons supermarket has said it will introduce the measure for its Bradford headquarters. The pandemic has shown how important work-life balance is for employees but there are environmental benefits to the move, reducing commuting and work-related energy consumption by a fifth with no cost to productivity.

A pilot is due to start in June 2022 and will put the four-day working week to the test across a group of businesses. The six-month trial is being overseen by campaign group 4 Day Week Global and will be run in conjunction with Oxford and Cambridge academics, Boston College, the UK 4 Day Week Campaign and thinktank Autonomy.

Camera company Canon is the latest to sign up its 140 Edinburgh based employees to the trial, which is hoping to attract 20 to 30 businesses.

The results from the pilot will make for interesting reading. If it follows the trend, and results show no loss in productivity (or even a gain) for fewer hours of work, it could be a game changer for many businesses. The best talent will want to work for those businesses that embrace new and flexible ways of working which help them to live happier, more balanced lives, as well as thrive at work. Hard work doesn't always have to mean long hours.



TOP TEN TRIBUNAL CASES OF 2021

1. Worker absent for 800 shifts during career was unfairly dismissed

A worker who was absent for 808 shifts over a 20-year career – costing the firm an estimated £95,850 in sick pay – won an unfair dismissal claim after a tribunal found his former employer had not followed its own absence management procedures.

The Birmingham employment tribunal found Jaguar Land Rover (JLR) unfairly dismissed Mr V Rumbold, who had worked in various car assembly roles for the manufacturer from February 1999 until his dismissal on 7 December 2018.

Because of its failure to follow these procedures, the tribunal ruled that by the time JLR decided to end Rumbold's employment, dismissal was "not a sanction which fell within the range of reasonable responses available to them".

2. Office Manager denied remote working because boss 'knew what was best for her' awarded £60k at tribunal

An office manager was discriminated against after she was told she was not allowed to work remotely from her son's hospital bedside as he underwent treatment for cancer.

The Leeds employment tribunal found that Lorraine Hodgson, who worked for Martin Design Associates until her resignation in July 2019, was directly discriminated against on the grounds of sex and was constructively unfairly dismissed after her boss denied her remote working request in part because of "his belief that he knew best for the claimant".

Judge Wade found the firm's managing director, Chris Martin, made the decision that Hodgson "could not work and look after her son's needs in hospital, whatever she thought", and that Martin "gave her views no credit and had a closed mind to the idea that she could fulfil all or part of her role remotely". This was despite the fact a company laptop and telephone was available and much of her work could have been completed remotely.

3. Worker unfairly dismissed for complaining about boss on Facebook

A paint sprayer was awarded £28,000 for unfair dismissal after a judge ruled his employer's investigation into whether he had breached social media policy was inadequate.

The tribunal ruled that the managing director of A1M Retro Classics "unreasonably confused what was required of an employee by the [company's] social media policy" after a worker for the firm, Michael Austin, posted a Facebook status referring to an argument the pair had had.

A number of Austin's Facebook friends made comments on the post, some of which were homophobic and in which the commenter suggested Austin should "punch his boss in the face because it would make him feel better".

However the judge ruled that the company's social media policy "did not require the employee to police the comments of others" and that there was no evidence that would have supported to a reasonable employer the contention that the employee was engaging in a prohibited discussion.

4. Lorry driver sacked for refusing to wear a facemask was not unfairly dismissed

The East London Hearing Centre ruled that a delivery driver fired for refusing to wear a face covering inside his cab while delivering to a supplier during the UK's first Covid lockdown was not unfairly dismissed.

The tribunal found that Kent Foods Limited had lost confidence in delivery driver Deimantas Kubilius' future conduct after his refusal to wear a face mask led him to be banned from a supplier's site.

The landmark tribunal held that while Kubilius was not at the time aware of his requirement to wear a mask inside his cab, his "continued insistence" that he had done nothing wrong and "lack of remorse" made the employer's decision to dismiss a fair and reasonable response.

The judge added that it was "not feasible for the claimant to continue in his contractual role" because of the ban.

5. NHS Worker subjected to 'stressful' practical joke by manager was unfairly dismissed

An NHS worker "ostracised" by her team and subjected to an "extremely stressful" prank was awarded almost £10,000 for bullying and harassment.

Carol Hurley, who worked as deputy finance business partner for East Sussex Healthcare NHS Trust from October 2016 until her resignation in September 2018, was sent fake emails by her line manager, who pretended that Hurley had to give a presentation the next day as a practical joke, the tribunal heard.

After she raised the prank as an issue with another manager, Hurley began to be excluded by her colleagues and was subjected to other incidents.

The tribunal heard that shared spreadsheets she had updated were tampered with and information deleted, and at one point the contents of her desk drawers had been removed while she was away from it, including useful notes from her training.

TOP TEN TRIBUNAL CASES OF 2021 continued...

6. Forklift driver who mistakenly broke Covid self-isolation guidelines by attending work was unfairly dismissed

Mr D Lewis, who had been employed by the Benriach Distillery Company for 23 years before his dismissal, was accused of being “highly irresponsible” and “reckless” by the company’s HR team when he attended work while his son awaited the results of a Covid test.

However, the tribunal ruled that Lewis had nothing to gain by pretending his son didn’t have Covid because he would have been paid while he was self-isolating, and that he did not knowingly breach Scottish government guidance.

7. Worker made homeless after removal of onsite accommodation was constructively unfairly dismissed

The East London Hearing Centre ruled that a maintenance worker who, alongside his family, was made homeless when his employer took away his onsite accommodation was unfairly constructively dismissed and a victim of breach of contract.

Mr G Mason, who worked as a maintenance supervisor for Park Holidays from May 2012 until his resignation in March 2020, was given two weeks’ notice without any consultation from his employer to vacate himself and his family from the onsite premises, which had been his family home for eight years.

Judge Ross said giving Mason and his family just two weeks’ notice to vacate their home “fell some distance short of what was required. The claimant had lived onsite with his family for eight years. Reasonable notice would have been substantially longer than two weeks.”

8. Postman fired for urinating in lay-by was unfairly dismissed

A postal worker who was dismissed from his job at Royal Mail for urinating in a public lay-by during his rounds was unfairly dismissed.

The Watford Employment Tribunal ruled that Royal Mail unfairly dismissed Mr R Rawal for gross misconduct, finding the main reason for dismissal was a “poor relationship” with his line manager, who “did not see eye to eye” with Rawal because of his trade union activities.

Rawal was an assistant area health and safety workplace representative and a Communication Workers Union (CWU) branch editor, as well as the deputy area safety representative for the Northern Home Counties CWU branch for a period. Rawal claimed his union activities “brought him into conflict with his direct line manager” because, according to Rawal, he “did not like Rawal questioning Royal Mail practices”.

9. Manager with cancer fired after steroids altered his behaviour awarded £2.5 million for unfair dismissal

The London South Employment Tribunal awarded a manager who was forced out of his job when steroid medication altered his mood more than £2.5m.

The tribunal said it had “little difficulty” in concluding that engineering and infrastructure firm Kellogg, Brown and Root (KBR) “dressed up” David Barrow’s termination as a breakdown in trust and confidence.

It also agreed with witness testimony that the company created a “ruse” to dismiss Barrow, who was a victim of unfair dismissal, disability-related harassment and unfavourable treatment for something arising in consequence of disability.

10. University warden sacked for ‘aggressive’ text messages was unfairly dismissed

A lecturer accused of sending “aggressive” messages to colleagues was awarded £15,000 for unfair dismissal after an employment tribunal ruled there had not been a proper investigation into the allegations made against him.

Employment judge Adkinson said there had not been so much as the “beginning of an investigation” into a number of allegations made against Dr Binoy Sobnack by his employer, Loughborough University.

However, the tribunal reduced the compensation awarded to Sobnack because the “brusque, blunt and unnecessarily aggressive” tone of messages he sent to colleagues amounted to “culpable and blameworthy conduct that contributed to everything that happened”.



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 2022.