



Employment Law update April 2016

Statutory family-related pay and sick pay rates remain the same

Unlike in previous years, there will be no increase to statutory adoption, maternity, paternity or shared parental pay rates in April 2016. All rates will remain as at April 2015.

Introduction of the national living wage

Workers aged 25 and over will be entitled to the national living wage rate of £7.20 per hour from the first pay reference period beginning on or after 1 April 2016.

The minimum wages from 1 April 2016 will be:

age 25+ = £7.20 per hour

21 – 25 = £6.70 per hour

18 – 21 = £5.30 per hour

less than 18 = £3.87 per hour

apprentices = £3.30 per hour

The national living wage is a new top rate of the national minimum wage.

Employers should check, in particular, that employees' pay is not brought below the new rate by salary-sacrifice arrangements.

Penalties for non-payment increased

The penalty for employers found not to have paid the national minimum wage 1 April 2016. There is a minimum penalty of £100 and a maximum penalty of £20,000. The maximum penalty applies for each worker who has been underpaid, not to the total payment for all workers.

The enforcement regime is the same for non-payment of the national living wage.

Employer NICs are abolished for apprentices under age 25

As part of the Government's drive to encourage employers to create more apprenticeships for young people, from 6 April 2016, employers will not pay employer national insurance contributions for apprentices aged under 25.

A salary requirement is introduced for tier 2 workers

Employers can sponsor skilled foreign workers to come to the UK to work for them, under tier 2 of the immigration points system.

A new requirement for a minimum salary of £35,000 will apply from 6 April 2016. This tightening up of sponsorship is likely to have implications on existing sponsored employees too.



Corporate Manslaughter and Health and Safety Offences

Since 1 February, new sentencing guidelines have applied to Corporate Manslaughter and Health and Safety Offences.

From now on the court will look at the “culpability” and harm done by the offence. In determining “culpability” or what blame the offender has for the offence, a range of factors from very high — where a “deliberate or flagrant disregard for the law” will be considered, through to low — where “failings were minor and occurred as an isolated incident”.

In issuing fines, the court would look at an organisation’s annual turnover.

Fines will start at £200 and go up to over £10,000,000. Any proposed fine will be proportionate to the overall means of the offender.

Where an early guilty plea has been made by an offender, this may be taken in account by the court and the fine reduced.

QUESTION AND ANSWER CORNER

Q: *We have an employee who is on maternity leave and we have just received her resignation. The resignation states that she will leave from the end of her paid maternity period e.g. 39 weeks. Does this mean that she is still entitled to notice pay?*

A: Yes, under the Employment Rights Act 1996 s88, if an employee is “absent from work wholly or partly because of pregnancy or childbirth or on adoption leave” the employee is entitled to be paid at the normal rate of pay for the length of statutory notice period (i.e. in the case of resignation by the employee, one week).

In this case the employee would be entitled to full pay for the period of her statutory notice, which, on resignation.

Q: *We have an employee who has resigned. Last Friday was her last day of employment. However, she was off from the Tuesday, using her accrued annual leave. We have now heard that, from the Wednesday, she was working for her new employer. Do we still have to pay her for those holiday days now we know she was working for someone else?*

A: Unfortunately there is little you can do about this as the employee has left your employment. You do need pay her for the holiday as she accrued it legitimately.



The risk that you face should you try to withhold the pay for those last three days, is facing a claim of failing to pay holiday pay under the Working Time Regulations, and then breach of contract for not paying the remaining pay. Galling as it is, you will have to pay up.

Q: *We are going through redundancy consultation with three employees who are employed at a location that we are closing. We have three identical alternative roles available across two other sites. Two roles are based at a site, which is just one mile away from their current location, and the other position is at a site which is 10 miles away. Of the three that are at risk of redundancy, one holds a valid driving license but the other two do not. Can we offer the two that do not drive the roles at the closer location, and the one that drives the role at the more distant location?*

A: This suggestion seems reasonable from a common sense point of view, but in order to establish a fair dismissal in a redundancy situation, you need to explore all possible alternative roles with the employees. Therefore, if you were to only suggest the role at the more distant location to the employee that drives and they were to refuse it then that individual could look to pursue a claim for unfair dismissal. The fact that only they can drive and the others are unable to would not be a fair reason for not giving that person the opportunity to work at the more local alternative site. At this stage, you should identify the situation to all three affected employees and propose the alternatives, making clear that these are available to any of those affected.

If all three wish to work at the closer location then you would need to go through a fair and objective selection process for the two roles at the closer site. The employee that misses out on those either of those positions would then still have the opportunity of the more distant role as an alternative.

If you have a particular question that you would like answered email training@scottishwholesale.co.uk or call 0800 9995 121 and we will publish next month – all names will be removed to ensure confidentiality.