

# The Human Resource

## The small business HR consultancy

### Key Employment Law Changes for 2017 What you need to do

There are a few things that you can guarantee in life. Death, taxes, and.... employment law changes. As we make our way into a new year, it's essential that as a business owner, you know exactly what's coming, and how to prepare for it.

Let's take a look at the changes that you need to pencil in your diary, and practical guidance around what you need to do as an employer to head off any problems from non-compliance. Just as important, you'll have the right information at the ready if your savvier employees raise questions!

#### Increase in the minimum wage

From April 2017 the minimum that employers have to pay employees aged 25 and older increases from £7.20 to £7.50 an hour, the National Living Wage.

The other National Minimum Wage rates increase a little too:

- age 21 to 24 increase from £6.95 to £7.05 per hour;
- age 18 to 20 increase from £5.55 to £5.60 per hour;
- age 16 or 17 increase from £4 to £4.05 per hour;
- apprentice rate: increase from £3.40 to £3.50 per hour for those under age 19 or over 19 in their first year.

Employers paying below the national minimum wage now face a maximum £20,000 fine per person underpaid.

#### This is what you will need to do:

- Check age and pay data for your employees to identify whether any will have to receive an increase to their hourly rate from April
- Write to employees affected to notify them of the increase in their hourly pay.
- If you will need to increase some individuals' hourly rate, budget for the increase from April 2017
- Contact The Human Resource for help and advice on maintaining pay differentials, calculating additional costs, planning to offset them and the policy implications, plus communicating the change to your employees.
- Make sure there are no pay practices within your organisation that mean you're contravening the law. Hefty fines have been meted out to companies using tips to top up pay, docking workers' wages to pay for their Christmas party, deducting uniform costs from staff pay and not allowing for travel time in calculating working hours.

## Calculating holiday pay

This is a continuation of the changes resulting from a long-running case dating back to 2012 where court judgements established that holiday pay must be an individual's normal remuneration. It must be calculated to include pay for results-based commission, guaranteed overtime and non-guaranteed overtime (i.e. where there's no obligation by the employer to offer overtime but if they do then the worker is obliged to work it).

Such earnings may vary significantly over time and there was no guidance from the courts about how long a period of time they should be averaged over.

ACAS has now published guidance that the averaging period should be the previous 12 weeks.

Where overtime is voluntary, i.e. the employer is not obliged to offer it and the employee is not obliged to work it, and it's irregular, it's not considered part of the individual's normal pay. But if a settled pattern has developed over time to justify the label of normal pay, it should be included in the holiday pay calculation too.

### **This is what you need to do:**

- Review how holiday pay is calculated in your business at the moment.
- Check whether a settled pattern has developed to voluntary overtime.
- If a change is required to include all the elements of normal pay, you will need to action this promptly. Contact The Human Resource for practical advice and help.
- Uncertainty still remains over the way employers should treat other variable elements of pay such as bonuses. This might be a good time to conduct a risk assessment to identify the financial impact on your organisation if case law decides in a certain way. The Human Resource will be pleased to refer you to employment law solicitors.

## Changes to apprenticeship

At the moment employers may receive a £1500 apprenticeship grant for their apprentices age 16-24 if they have less than 50 employees, and the government funds the whole cost of an apprentice's qualification if they are age 16-18, and half if they're aged 19-23.

From 1<sup>st</sup> May 2017 there will be changes in the way all apprenticeships are funded which affects all businesses, large or small:

. Employers in all sectors with an annual wage bill over £3million will have to pay an apprenticeship levy from 6 April. The levy is 0.5% of their wage bill and will be used to fund their apprenticeships. The government will top up these funds by 10% each month.

- Employers who aren't paying the levy because their wage bill is less than £3 million p.a. will make a 10% contribution to the costs of training their apprentices, and the government pays the remaining 90%. Businesses with less than 50 employees won't pay anything for training if they employ apprentices under the age of 19, and will receive a £1,000 payment.

If you already employ apprentices who were accepted before 1<sup>st</sup> May 2017, they will be funded for the full duration under the terms and conditions that were in place when the scheme started.

### **This is what you need to do:**

if your business will be paying the apprenticeship levy, review your strategy for employing apprentices and how best to use the funding in your new digital service account.

review whether it would be more favourable for your business to take on apprentices under the terms that apply before 1<sup>st</sup> May or whether you should consider delaying offers to new apprentices until 1<sup>st</sup> May when the new funding becomes available.

take advantage of the improved online process for apprenticeships. The government's new digital service will help employers to select an apprenticeship framework, choose training providers and assessment organisations, and post their apprenticeship vacancies.

### **Gender pay gap reporting begins**

For the first time, employers with 250+ staff will be required to publish information relating to the gap in pay between men and women in their organisation. Annually from April 2018 they will be required to publish data for the last 12 months to show:

- the difference between the mean and median hourly rate of pay paid to male and female employees;
- the difference in mean and median bonus paid to male and female employees;
- the proportions of male and female employees who receive bonuses;
- the relative proportions of male and female employees in each quartile pay band.

### **This is what you need to do (if you have 250 + employees):**

Review your contractors, consultants and freelance arrangements to identify whether any may fall within the reporting requirements. If they do, set up systems to collate their pay data.

Capture your company's first set of gender pay gap data in April 2017.

Over the next 12 months, collate the information required, decide what to publish - and whether to go beyond the requirements within the Regulations to explain any differentials and how you'll deal with any potential equal pay issues and bonus arrangements.

## **Employment of foreign workers**

From April 2017, employers sponsoring foreign workers with a tier 2 visa will have to pay an immigration skills charge of £1,000 per worker. This will be reduced to £364 for small employers and charities.

In addition to this, the minimum annual salary threshold for 'experienced workers' applying for a tier 2 visa will be increased to £30,000.

### **This is what you need to do:**

If you employ foreign workers, or plan to open up your recruitment channels in the near future, make sure you're compliant. The Human Resource will be pleased to refer you to immigration specialists for advice.

## **Review of freelancer arrangements**

Now is the time to carefully review your arrangements with any freelancers, and whether they're genuinely self-employed. Or whether they could be legally categorised as "workers" and therefore have the same rights not to be discriminated against, to minimum wage, to paid annual leave and to rest breaks as employees, and depending on earnings, need to be included in pension auto enrolment.

Following the Uber decision and the Pimlico Plumbers case, [employment status is a hot topic](#) and the government review of the gig economy is underway.

### **This is what you need to do:**

If you're in doubt about whether your people are genuinely self-employed, or workers, or employees, contact The Human Resource for expert advice. We can give you confidence that the terms and practices applying to your workers and employees are all in order.

**All things considered, there's plenty of employment law change to think about and plan for in 2017. And of course, there's the tricky issue of Brexit... There's still a grey area over what we should really expect, though things are likely to become clearer in the coming months.**

**Make sure that you keep an eye on our updates for practical, no-nonsense guidance on what you really need to know. If you need help ensuring compliance we can help. Give us a call today on 01249 811506 to arrange your no-obligation discussion.**