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Essential Employer Update 2021

Guiding you through the latest issues in payroll, tax and employment law.

Minimum wage: easy mistakes to make this year

1. Minimum wage rates rise from 1 April 2021. Check that payroll is set up for the right dates.
2. More workers will qualify for the National Living Wage (NLW), the highest wage band. From April 2021, workers aged 23 and 24 qualify for NLW; at present, it's paid only to those aged 25 and over. Check you're ready to comply, with details of staff dates of birth to hand.
3. If the change brings rates of pay close to minimum thresholds, there's little headroom for error. Review minimum wage compliance generally: policy around deductions from wages for example, will need consideration, to be sure deductions won't now take workers below the new limits.
4. Remember Covid-19 doesn't take away the obligation to pay minimum wage. Even with the furlough scheme, workers should get at least minimum wage for hours worked.

Wage rates	Until April 2021	From April 2021
National Living Wage	£8.72	£8.91
21-22 year old rate	£8.20	£8.36
18-20 year old rate	£6.45	£6.56
16-17 year old rate	£4.55	£4.62
Apprentice rate	£4.15	£4.30
Accommodation offset	£8.20	£8.36

Furlough scheme compliance

The Coronavirus Job Retention Scheme (CJRS) now runs until 30 April 2021. But each new twist of the rules creates the potential for errors.

HMRC is undertaking compliance activity, backed with the power to charge penalties. Its focus is deliberate non compliance and fraud: not inadvertent mistakes. Initially, it has been writing to employers where it believes they may need to repay CJRS monies, asking these businesses to review their claims. With the public encouraged to report suspected fraud, gov.uk now publishes details of the most recent CJRS claims.

Employers must keep a copy of all records for six years, including the amount claimed and claim period for each employee, and claim reference number. HMRC can ask for more information, so you should be able to substantiate figures for actual hours worked, plus usual hours worked, for employees put on flexible furlough, providing details of supporting calculations where relevant.

Factsheet CC/FS48 <http://bit.ly/38NT1Ue> explains the position if you receive a grant when ineligible, or are 'overpaid'. Overpayment includes not being entitled to receive a grant, perhaps because employees kept working while furloughed. It would also apply to keeping a grant when a change in circumstances meant you became ineligible, say if someone leaves your employment. Such monies must be repaid to HMRC.

There are two procedures: notifying HMRC of overpayment and repayment. Time limits apply to each. You must notify HMRC within 90 days of receiving a grant you are not entitled to, or 90 days after the change in circumstances rendering you ineligible. Strictly, penalty is for non-notification, but the repayment period and any penalty are both determined by whether failure to notify is treated by HMRC as deliberate. Where you didn't know you had overclaimed a grant when it was received; or when your circumstances changed such that you were no longer eligible; and the grant is paid back within particular time limits, HMRC won't charge a penalty. For sole traders and partnerships, this means by 31 January 2022. For companies, by 12 months from the end of your accounting period.

For HMRC guidance on repaying CJRS monies, see <http://bit.ly/2GmvGhL>.

Underclaiming can also create problems. You are required to pay furloughed employees the correct amount in all circumstances, but there is limited time to amend your claim with HMRC. Deadlines are here <http://bit.ly/3hsEHo8>.

Getting redundancies right

Redundancy is a specific form of dismissal, occurring where a business ceases, or a particular job is no longer required. Employers have an obligation to act fairly and reasonably throughout the process. This means warning employees of your plans, consulting with them, and implementing fair selection procedures. Special rules apply where 20 or more employees are dismissed, but best practice would suggest following a similar process, no matter how many staff are involved. Breach of the rules, particularly around redundancy consultations, has the potential to lead to a claim for unfair dismissal at an Employment Tribunal. The Advisory, Conciliation and Arbitration Service (Acas), offers a range of guidance and outlines the steps involved <http://bit.ly/37U1Dta>:

- check all available alternatives
- hold redundancy consultations with staff, remotely if necessary
- identify a pool for selection and select who to make redundant
- provide the correct notice
- calculate redundancy pay
- support staff, including survivors and managers.

Alternatives: redundancies should be a last resort when other options are exhausted. These normally include voluntary redundancy, early retirement, flexible working, limiting overtime, short-time working and temporary lay-offs. There is also a requirement to offer suitable alternative work (if you have it) to someone who would otherwise be made redundant: see <http://bit.ly/34Pf9ww>. Staff may ask why redundancy is proposed while the furlough scheme is in operation, so be prepared

to explain that furlough is not cost-neutral for employers.

Consultation: redundancy consultation should be 'meaningful,' allowing you to communicate the business rationale for redundancy and allowing employees to make suggestions. For fewer than 20 redundancies, there's no set time period for the consultation to last. For 20-99 redundancies, you must consult for at least 30 days before any dismissals take effect.

Document each stage, showing why decisions have been made. Selection for redundancy should not discriminate with regard to protected characteristics like age, disability, sex, or race, so the more transparent the selection procedure, the better. A points system, scoring candidates for redundancy against agreed criteria, can be valuable here. In all, good workforce communication and careful compliance are key.

Brexit transition: how to recruit beyond the UK now

The EU exit transition period finished on 31 December 2020, meaning workers no longer have an automatic right to move between the UK and the EU. The UK now applies broadly the same immigration rules to all prospective arrivals, whether from the EU or elsewhere.

Tip: two sets of rules

The EU Settlement Scheme (EUSS) rules apply to EU citizens in the UK before 1 January 2021. The UK's new points-based immigration system (PBS) applies to anyone arriving in the UK after this.

EUSS: key messaging for staff

The government has materials to help employers provide information to staff (<http://bit.ly/34PDJNI>), though you are under no legal obligation to do so.

The Scheme applies to EU, EEA or Swiss citizens already living in the UK by 31 December 2020 (and in some circumstances, to family members of Northern Irish individuals, whether or not EU, EEA or Swiss citizens). It provides a route to allow them

to continue living and working here, and helps protect social security rights.

The procedure isn't automatic: and staff may need this fact highlighting. The application cut-off date is 30 June 2021, with only minor exceptions.

Tip: minimise your risk

As we near the June deadline, a judicious reminder to staff may be appropriate. Employing an EU national without lawful status in the UK after that date potentially leaves you in breach of the rules on legal working.

Application can be made here <http://bit.ly/3saJ7oC>. Successful applicants are awarded either settled or pre-settled status, depending on how long they have lived in the UK. Different rights attach to each.

Right to work checks and social security arrangements

Right to work checks for EU, EEA and Swiss citizens don't change until 30 June 2021. Such workers can still use a passport or National Identity Card for this purpose until then.

You may need to explain or implement new procedures for social security contributions for staff arriving in the UK from the EEA or Switzerland after 1 January 2021. Where such contributions are paid will depend on individual circumstances, and the country someone comes from, and the position is complex. An overview may be found here <http://bit.ly/2KFpGn0>.

New immigration rules

It's a two-part equation. Under the new PBS, your business must be eligible to sponsor staff, and staff eligible to work in the UK.

There is a useful overview of the PBS here <http://bit.ly/34SoPGA>. A worker with enough points is eligible for a work visa. There are various qualifying pathways, but the skilled worker visa

route will be particularly relevant. Just as workers are awarded points for a job offer at a particular skill level, salary level and for specific language skills, so from an employer perspective, the job offered has to meet these minimum thresholds. There is no low skilled visa route: any business traditionally reliant on migrant workers to fill lower skilled or lower paid roles could therefore need to reappraise its plans.

To hire workers from outside the UK, you must now register as a licensed sponsor with the Home Office. With limited exceptions, however, this does not apply to staff who are Irish citizens or EU citizens qualifying under the EUSS.

As a sponsor, you can recruit skilled workers from across the world: and licences are valid for four years. The process involves deciding which type of skilled worker licence to apply for (see <http://bit.ly/2WWQ4v2>) and appointing appropriate people within your business to manage the sponsorship process and ongoing compliance. Application is then made online (<http://bit.ly/3b6i0tR>) with the appropriate fee. UK Visas and Immigration may visit your business to check its suitability and ensure you have systems in place to monitor sponsored employees.

Tip: factor in time and costs

Sponsorship registration takes about eight weeks. Fees for registration start at £536 for 'small' sponsors. These are businesses meeting two of the following tests: they have annual turnover of £10.2 million or less: total assets worth £5.1 million or less: 50 or fewer employees. Other charges also apply.

New procedures, such as registering as a licensed sponsor, and subsequent compliance, will add considerably to employer workload.

2021 brings new challenges for employers. Do please remember we are on hand to help with any area of workforce planning, tax or compliance.