



**WORKMATTERS**  
The natural choice for human resources

# NEWSMATTERS

January 2012



## WELCOME TO THE FIRST NEWSLETTER FOR 2012

## In This Issue

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, but never be afraid to give us a call for both guidance and support.

This Quarter the focus is on changes in law which may affect your business during 2012. Increase to the values of SSP, SMP, SAP and SPP in April 2012.

This month we have various tips which will help you to review your business processes or traps which you may fall into which could affect your bottom line in the long run.

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](http://www.workmattershr.co.uk) and email us from there or on [info@workmattershr.co.uk](mailto:info@workmattershr.co.uk).

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.

### Changes in the Law:

- Statutory Payment for Maternity, Paternity and Adoption and Sick Pay
- Compensation Limits Increased

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# CHANGES IN THE LAW



## Statutory Payment for Maternity, Paternity and Adoption and Sick Pay

The above will all increase subject to Parliamentary approval in April.

SMP, SAP and SPP the flat rates will increase to £135.45 per week (or 90% of average weekly earnings if less).

The lower earnings limit for qualifying for SSP, SMP, SPP and SAP will rise from £102.00 to £107.00 per week from 6 April 2012

The flat rate for SSP will increase from £81.60 per week to £85.85 per week, again this is subject to Parliamentary approval.

## Compensation Limits Increased

A maximum amount of a week's pay for the calculation of redundancy increases from £400 to £430 from 1st February 2012

The limit on the amount of compensatory award for unfair dismissal increases from £68,400 to £72,300

The limit on the daily amount of statutory guarantee payment increases from £22.20 to £23.50

# WHAT IS BEING CONSIDERED IN 2012

## Radical Reforms are Planned

Various changes to the UK Employment Law system which have been proposed include the following:

- Reform of the Tribunal system
- The introduction of Tribunal fees. Currently, two options are proposed, an initial fee to lodge a claim and then a second fee to proceed to a hearing. The second option would require those seeking an award above £30,000 to pay more to bring a claim.
- "No Fault" dismissal for firms with fewer than 10 employees.
- Reduction of consultation period for collective redundancies.

The Government has already committed to increasing the qualifying period for unfair dismissal to 2 years (currently 1) from April 2012 (NB – this may be indirectly discriminatory to women, as fewer women acquire 2 years continuous service: employers should therefore not get too excited yet and watch this space). It has also committed to:

- Requiring all employment disputes to be offered ACAS pre-claim conciliation before going to a Tribunal.
- Consulting in 2012 on "Protected Conversations" to allow Employers to have discussions with staff about retirement or poor performance which could not be relied on in a Tribunal claim.
- Consulting on simplifying Compromise Agreements (renamed "Settlement Agreements").
- Considering how, and whether, to develop a "rapid resolution scheme" to offer a quicker and cheaper alternative to Employment Tribunals.

## Long Term Sickness Absence Review

The Government has published the results of an independent review of the sickness absence system which recommends the creation of an independent assessment service (IAS) to provide an in-depth assessment of individuals' physical and/or mental function when they have been signed off work for four weeks. The IAS would provide advice on how an individual on sickness absence could be supported to return to work. The review also analyses the current sickness absence system and makes a number of other suggestions to help combat the 140 million days lost to sickness absence annually. The review says that the current sickness absence system is failing e.g. because it pushes people away from the labour market towards inactivity. To address the failings, the review also suggests that (for example):

- There should be employer expenditure to keep sick employees in work or speed their return, e.g. medical treatments or vocational rehabilitation, which should attract tax relief;
- SSP record keeping obligations should be abolished, reducing administrative burdens on employers and saving them £44 million a year.

For further advice and support in changing your company policy on any of the above click on the link [www.workmattershr.co.uk](http://www.workmattershr.co.uk) or call **01442 870742**.

# Helpful Point

## Tips & Traps that as Employers you should be aware of

### References

There is no legal obligation to provide a reference. However, if you do provide one, it must be true, accurate and fair.

### Old Staff, New Methods

There is an implied duty on the part of the employee to accept reasonable adaptations to change e.g. to keep up with new technology. However, be aware that the implied term applies to the methods of performance of existing contractual duties and is not to be used to force through changes to those contractual duties themselves.

### Selection for Redundancy

It is essential that the criteria that you use for redundancy needs to be transparent to avoid complaints and possibly claims.

### Notice of Termination

Contracts of employment in which the period of notice to be given by the employer to the employee can be unlawful, if it does not constitute the statutory minimum. This is one week for every complete year the employee has worked up to a maximum of 12 weeks. The contract can provide for more than this but it cannot provide for less.

### Agency Worker Rules

If you have any temporary agency workers that you are familiar with, or obtain advice on, under the new Regulations and so as not to fall foul of denying the worker the employment rights to which they become entitled you must ensure they are receiving all information and benefits as if they were actually employed by you.

### Pay in Lieu of Notice (Pilon) Clauses in Contracts

These allow you to unilaterally terminate the contract immediately by giving the employee pay in lieu of notice (assuming you are terminating their employment for one of the statutory five fair reasons). It means that the contract is ended immediately, rather than at the end of what would otherwise have been the notice period. This can be important in the context of annual bonuses, which are often dependent on the employee still being a member of staff at a particular time of the year. It means that a judiciously timed PILON can permit you to exclude the employee from that bonus pool.

### Status of Your Staff

Be very careful if you are treating any of your staff as self-employed: perhaps you should take advice on whether in fact they may really be employees. Check against the rules of whether a person is self employed or an employee as otherwise this could be very costly.

### Questions on Health

Remember that under the Equality Act 2010, an employer must not ask about a job applicant's health (including any disability) before offering work. Such questions can be asked after a job offer is made in order to

make reasonable adjustments if necessary, and assess whether the health condition would render that person unsuitable for the position when there are no reasonable adjustments that could be made. The safest thing, therefore, is to remove health questions from application forms. Although it is not active disability discrimination merely to ask about a job applicant's health, if you rely on the information given, it could lead an Employment Tribunal to conclude that you have committed a discriminatory act. Similarly, although it is not unlawful to ask questions about the number of days absence that someone has had, it means that the use to which any answers may be put may prove problematic.

### Vicarious Liability

Remember that employers can be held vicariously liable for the conduct of its employees in certain circumstances, even when the conduct occurs outside normal working hours, ie. where the conduct is "closely connected" to the employer's employment.

### Request for Flexible Working

If a request for flexible working is made in the correct statutory way, you as an employer have a statutory duty to consider it by reference to specified criteria. A refusal can in certain circumstances lead to a claim of indirect sex discrimination.

### Abolition of Default Retirement Age Have Your Documents Been Amended?

All employees can now work beyond 65 it is essential that you have removed any compulsory retirement age from any contracts or handbooks upon which you rely. Other documents can include share incentive schemes, articles of association and shareholder agreements. These documents may all need to be amended, as your existing standard contracts might. Also, pension scheme retirement ages may need to be aligned.

### Employment Contracts

Still not done any? Make 2012 the year when you rectify all those unlawful omissions and minimise your employees reasons for complaining. You are legally obliged to issue a contract within 8 weeks from your employee joining your business.

**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 April 2012.