



WORKMATTERS
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NEWSMATTERS

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**WELCOME TO THE FINAL
NEWSLETTER FOR 2011**

Our newsletter is written quarterly to ensure that you are kept up to date with employment issues, back copies are available on the website so you never miss out on the ever changing aspects of employment law. 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 the law which will affect your business immediately and a summary of the Agency Workers Regulations which come into effect from 1st October 2011.

- 1) The increases in the minimum wage in October 2011
- 2) Default Retirement Age from 1st October 2011
- 3) Ones to watch to watch out for in the future.
- 4) Pension Changes
- 5) Agency Workers Regulations

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 and email us from there or on 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.



CHANGE FOR OCTOBER 2011

New Minimum Wage Rates

The new rates that will apply from 1st October 2011 are:

- Workers aged 21 and over: £6.08 per hour
- Workers aged 18 – 20: £4.98 per hour
- Workers aged under 18: £3.68 per hour (above compulsory school age)
- Apprentices under 19: £2.60 per hour
- Apprentices aged 19+: £2.60 (if they are in the 1st year of their apprenticeship)

Apprentices aged 19 or over who have completed at least 1 year of their apprenticeship are entitled to receive the full minimum wage applicable to their age.

Employers who deliberately flout the National Minimum Wage will be publicly named from 1 January 2011. It is a criminal offence for an employer to refuse or to wilfully neglect paying NMW to workers, or to refuse or to neglect to provide information to enforcement officers.

Employers are required to keep records sufficient to show they are paying workers at least the NMW. The records must be kept for three years and they may be kept on a computer or as a hard copy. However you choose to keep them you must be able to produce a single document when requested by HM Revenue & Customs or by the employee.



Default Retirement Age

As of 1st October 2011

- You will no longer be able to have a retirement age within your terms and conditions
- You can no longer single out older employees to consult with them regarding retirement
- You cannot force any person over 65 to retire
- You need to look at a more flexible approach to working arrangements for your workforce who are over 65

Ones To Watch Out For In The Future!

A variety of proposals for the reform of employment law and health and safety regulations have been floated by ministers and others close to them in recent months. Some are said to be 'under active consideration' others are the subject of formal consultation processes.



There are also proposals in the EU pipeline that may or may not ultimately come into our law.

These include the following:

- going back to a two-year qualifying period for unfair dismissal
- increasing the number of situations in which costs are awarded by employment tribunals imposing fines equivalent to half the value of the award made (capped at £5,000) when a tribunal case is lost by an employer
- extension of duties on Acas to conciliate early on – that is, within a month of an ET3 being submitted
- doubling the (forfeitable) deposit payable by claimants who are held to be pursuing cases with little chance of success to £1,000
- doubling of the costs that can be awarded against parties in tribunal claims to £20,000 requiring that claimants include a full schedule of loss in their ET1 forms allowing tribunals to award costs or reduce compensation when a claimant unreasonably refuses an offer to settle a case ahead of a tribunal hearing
- various measures to speed up tribunal cases such as taking witness statements as read and dispensing with wing members in unfair dismissal claims
- empowering tribunal officials to carry out interlocutory hearings that are concerned with setting dates and exchange of information in place of employment judges
- radically reducing health and safety requirements in low risk workplaces (for example, an exemption from the need to undertake formal risk assessments)
- paying full pay for the first 20 weeks of maternity leave
- a requirement that employers must carry out an equal pay audit whenever they lose an equal pay claim in the tribunal, unless such an audit has been carried out within three years
- amending the Working Time Regulations 1998 in order to comply with recent ECJ decisions on the interaction between annual leave with sick leave, maternity leave and parental leave.

CHANGE FOR OCTOBER 2011 continued...

Pension Changes

The Pensions Act 2008 contained most of the resulting measures. The Coalition Government is not planning to make any radical changes.

The major new requirements will be as follows:

- From October 2012 everyone who is employed will either have access to an occupational pension scheme or to the government's 'personal pension account scheme' which will invest monies through a body to be known as the National Employment Savings Trust (NEST).
- People will be able to opt out if they wish, but otherwise they will be automatically enrolled into one scheme or the other when commencing a new job. Employers will not be able to opt out, but they will have 12 weeks in which to enrol new staff.

Minimum contributions will be as follows:

- employees will contribute 4% of earnings
- employers will contribute 3%
- tax relief will mean that a further 1% is effectively contributed

It has now been established that the employer involvement will be phased in over three years.

For employers running defined benefit schemes the full three years will be allowed.

Further plans involve simplifying the rules for accessing the state pension and state second pension and making the system more accessible to people who take periods out of the workforce for the purposes of raising families and caring for elderly dependants.

Additional financial incentives will also be introduced to encourage more people to work beyond the state pension age.

The state pension age will also rise. The Blair / Brown government plan foresaw a rise from age 65 to 66 in 2024, to age 67 in 2034 and to age 68 from 2044.

The Agency Worker Regulations 2010

The Regulations have been introduced to ensure that agencies act appropriately and in accordance with Company equality and diversity policies.

The main principle of the directive is give equal treatment to someone who has been with the hirer for 12 continuous weeks in a given job.

The agency worker will be entitled to at least the basic working and employment conditions such as pay and working time which are equal to the hirers own employees.

Agency workers are classed as "workers" rather than as employees. All workers, including agency workers, are entitled to certain rights which include:-

- **Paid annual leave**
- **Rest breaks and limits on working time**
- **The National Minimum Wage**
- **No unlawful deductions from wages**
- **Discrimination rights under the Equality Act 2010**
- **Health and Safety at Work**

Under the new regulations an agency worker will be entitled after 12 weeks in a given job to all of the above and basic working and employment conditions the same as directly recruited permanent staff. The rights on pay apply not just to the basic hourly rate but to all pay for work done, including bonuses and commission that are directly related to the performance of the agency worker personally.

This, however, does not extend to occupational pensions and sick pay.



The Agency Worker Regulations 2010 continued...

The Agency Workers Entitlement

From the first day of their assignment, an agency worker is entitled to:-

- Information about relevant internal job vacancies and the hirer has to give them the same opportunity as other workers to find permanent employment.
- Equal access to on-site collective facilities such as child care and transport services.
- Additional rights for new and expectant mothers, including a right to reasonable time off to attend ante-natal appointments and adjustments to working conditions and hours.

Tribunals

Employment Tribunals now have a jurisdiction to hear complaints from agency workers who consider their rights have been breached, or that they have suffered a detriment for asserting their rights, subject to a time limit of three months from the alleged breach or detriment.

To ensure that workers are not deprived of their rights by unscrupulous agencies and hiring employers, the Agency Workers Regulations include provisions that deal with repeat assignments designed to prevent workers acquiring equal treatment rights. Agencies and hiring employers face having to pay an additional award of compensation of up to £5,000 to the worker if a tribunal finds that anti-avoidance rules have been breached.



What Is Not Covered?

The regulations don't cover the genuinely self-employed, individuals working through their own limited liability company, or individuals working on managed service contracts.

Is the 12 week qualifying period continuous?

No, most breaks between or during an assignment to the same job that are less than six weeks in length will simply pause the accrual of the 12 week qualifying period. Most breaks between or during an assignment to the same job that are six weeks or more will reset the 12 week qualifying period.

The accrual of 12 weeks qualifying period can be paused by:

- Absences for sickness and jury service (for up to 28 weeks)
- Annual leave, shut downs (eg factory closures and school holidays) and industrial action (for the duration of the absence)

However, note that Pregnancy and maternity related absences, maternity leave, paternity leave and adoption leave will not pause

the 12-week accrual, instead the 12 week accrual period will continue throughout the duration of the absence and include these weeks as counting towards the 12 week qualifying total.

What if the Agency Worker has more than one assignment?

Under the terms of the Regulations each assignment carried out by an Agency worker accrues separately. A worker would need to work for 12 weeks on each assignment for the rights to apply.

The Regulations require that a new assignment would need to be made up of "substantively different work or duties" for the qualifying period to start again.

Who does the agency worker compare themselves to?

The Regulations aim to ensure that any agency worker is engaged on the same relevant terms and conditions as a "comparable employee". Agency workers would need to ensure the question asked is – If I was recruited into this role would I be on the same terms and conditions as other permanent members of staff?

An employee is a "comparable employee" if at the time of an alleged breach of the regulations:-

- Both employee and agency worker are working for and under the supervision and direction of the hirer.
- Both employee and agency worker are engaged in the same or broadly similar work (this could include an examination of qualification and skills)
- The employee works or is based at the same establishment as the agency worker (the employee can work or be based at a different establishment but only where such an employee cannot be found working or based at the same establishment).

The Government's Employment Agency Standards Inspectorate is responsible for enforcing the rules and handling complaints about employment agencies and employment businesses. The maximum penalty for breaches of the Regulations is an unlimited fine for each offence and a maximum ban of ten years.

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 January 2012.

May you have a Happy and Prosperous New Year.

