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National Minimum Wage Increase

The National Minimum Wage is a minimum amount per hour that most workers in the UK are entitled to be paid.

The National Minimum Wage increases each year on the 1 October; the increases for 2011 are set out below:

- the main rate for workers aged 21 and over will increase to £6.08 per hour
- the 18-20 rate increase to £4.98 per hour
- the 16-17 rate for workers above school leaving age under 18 will increase to £3.68 per hour
- the apprentice rate, for apprentices under 19 or 19 and over and in the first year of their apprenticeship will increase to £2.60 per hour

Agency Workers Regulations 2010 Introduced

The Agency Worker Regulations 2010 (AWR) is a new piece of legislation which, after a qualifying period of 12 weeks, gives agency workers the right to the same basic pay and working conditions that they would receive if they were directly employed to do the same job.

Under the AWR, after a qualifying period (of 12 weeks), an agency worker has the right to the same basic pay and working conditions that they would receive if they were employed directly to do the same job. An agency worker includes an individual provided via an umbrella company or a self employed person who is not working in a direct business to business arrangement. Generally speaking;

- Equal Treatment includes
 - basic rate of pay
 - overtime pay
 - rest breaks including holiday entitlement
 - individual bonuses
- But, Equal treatment does not include
 - maternity, paternity and adoption pay
 - redundancy pay
 - occupational sick pay
 - company bonuses and other financial participation schemes

Equal treatment does not apply until the agency worker has completed 12 weeks in the assignment. Any week in which the agency worker works in their assignment counts towards the 12 weeks even if only one day a week is worked. The agency that supplied the agency worker is immaterial.

If the agency worker is away from the assignment for more than 6 weeks their qualifying service stops accruing unless the reason for their absence is due to sickness, jury service or strike action in which case their qualifying service accrual pauses and is carried over when they return to their assignment. If the absence is due to reasons of maternity, paternity or adoption leave their qualifying service will continue to accrue whilst they are on leave.

A comparable worker is an employee within your organisation who undertakes the same or a broadly similar role requiring similar levels of skills and experience. Normally the pay and working conditions of an actual comparable worker are used to determine the equal treatment rights of a temporary worker, however, a hypothetical comparator could be used as a comparison for working conditions if no real life comparator exists.

With immediate effect from 1st October 2011 an agency worker has the right to access any on-site collective facilities and amenities that are available to employees at that site. Typical examples would be facilities such as car parking, staff canteens, workplace crèche, shower facilities, locker facilities, common rooms, prayer rooms etc.

Access to facilities and amenities should be on the same basis as access offered to employees, i.e. if there is a waiting list for a car parking space based on length of service then the temporary worker would also be placed on the waiting list.

Access to facilities and amenities does not mean offering temporary workers the same financial benefits package as comparable employees. Therefore, financial benefits such as staff discounts on company products or subsidised meals do not have to be offered to temporary workers, although you are not necessarily restricted from doing so.

As an end user of temporary workers you also have an obligation to provide details of any relevant employment vacancies you have within your organisation to the temporary workers working for you.

Default Retirement Age Abolished

From 1 October 2011 the Default Retirement Age was abolished. Dismissals from this date must be due to capability, conduct, redundancy or some other substantial reason and any future retirements would need to be objectively justified.

Salary Sacrifice VAT Changes

VAT changes to the treat of certain supplies made by employers under salary sacrifice arrangements have resulted following a case heard before the Court of Justice of the European Union.

Following earlier decisions by the UK courts, HM Revenue & Customs' (HMRC) policy was to make a distinction between the VAT treatment of supplies of goods and services to employees by a deduction from salary and those provided under a salary sacrifice arrangement.

Businesses providing benefits under arrangements, which qualify as salary sacrifice schemes for VAT purposes, must account for output VAT on these supplies, where they are subject to VAT. In order to allow businesses time to make the necessary adjustments, HMRC will not require output tax to be accounted for on taxable benefits provided under salary sacrifice schemes, until 1 January 2012. Further guidance is available on the HMRC website: www.hmrc.gov.uk

Parental Leave Increase

Member states have until 8 March 2011 to introduce the Parental Leave increase. The minimum parental leave following the birth or adoption of a child increases from three to four months. At least one of the four months will not be transferable between parents.

Forthcoming Employment Law

06 April 2012 – Unfair Dismissal Qualifying Period Increase:

The qualifying period for the right to claim unfair dismissal will be extended from one to two years on 6 April 2012. There will also be a fee payable for bringing an Employment Tribunal complaint from April 2013; although that fee will be refunded if the claim succeeds.

06 April 2012 – Contracting out of Additional State Pension Abolished:

From 6 April 2012 contracting out of the additional State Pension, on a defined contribution basis, will be abolished with the introduction of the relevant provisions of the Pensions Act 2007 and the Pensions Act 2008. Further guidance is available on the Directgov website: www.direct.gov.uk or download an employer factsheet from the Department of Work and Pensions website: www.dwp.gov.uk

06 April 2012 – Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR):

RIDDOR workplace accident reporting is to be aligned with the Statement of Fitness to Work (fit-note). From 6 April 2012 employers will have to report any employee absences following a work related injury after seven consecutive days, rather than the current three days.

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