

## Employment Newsletter April 2019

### National Minimum Wage

From 1 April 2019 the following rates will apply: Apprentice rate: £3.90 an hour; Youth Rate (16-17 year olds): £4.35 an hour; Development Rate (18-20 year olds): £6.15 an hour; Adult Rate (21-24 year olds): £7.70 an hour; National living wage (aged 25 and over): £8.21 an hour; Accommodation offset: £7.55 per day.

### Payslips

From 6 April 2019 payslips will have to be provided to all workers and not just employees. Where a worker is paid on an hourly rate basis, the payslip will have to show the total number of hours worked. If a worker is paid different rates of pay for different types of work, a breakdown must be provided.

### Statutory Payments

From 6 April 2019 statutory sick pay will increase to £94.25 per week. From 7 April 2019 statutory maternity, paternity, adoption and shared parental pay are all going up to £148.68.

### Employment Tribunals

Where the effective date of termination is on or after 6 April 2019 the cap on a week's pay for calculating a statutory redundancy payment (SRP) and a basic award will be £525, the maximum basic award and SRP will be £15,750, and the maximum compensatory award will be £86,444 (or 52 weeks' pay if less). The maximum penalty for aggravated breach of employment law will quadruple from £5,000 to £20,000 from 6 April 2019.

### Apprenticeship Levy

From April employers who pay the apprenticeship levy will be able to invest up to 25% of their levy to support apprentices in their supply chain.

### Section 1 Statements

From 2020 employers will have to provide information about the terms and conditions of employment to all staff (including workers) from day 1 of their employment. There will be no "grace" period. Even before these changes take place, it is good practice to provide written particulars as soon as possible as this protects both you and your staff.

### House of Commons debates mental health first aid in the workplace

In January, the House of Commons debated the issue of mental health first aid provision in the workplace. It follows an open letter to Theresa May signed by 50 executives of large companies asking her to deliver on her pledge to give mental



health the same legal status as physical health at work. The main proposition was that the Health and Safety at Work Act 1974 should be amended to require a trained mental health first aider in every workplace.

### Mrs E Jolly v Royal Berkshire NHS Foundation Trust ET/3324869/2017

We acted for Mrs Jolly in her successful claim against the NHS Trust for unfair dismissal, age discrimination and disability discrimination. This case hit the headlines as Mrs Jolly, an octogenarian, was one of the oldest claimants in the Employment Tribunal. The Tribunal found that Mrs Jolly had been treated less favourably than a younger person or a person who did not have her disabilities. The NHS Trust did not follow their own procedures for conducting an investigation into capability or for dealing with grievances. Mrs Jolly was not afforded an appeal – her letter was simply ignored. It is key that employers have up to date policies and procedures and that these are followed. For the full case study please visit our website [www.rowberrymorris.co.uk/site/services/employment\\_solicitors/employment-law-case-studies](http://www.rowberrymorris.co.uk/site/services/employment_solicitors/employment-law-case-studies).

### New Acas guidance on age discrimination for employers

Acas has published new guidance on age discrimination for employers, managers, HR professionals, employees, trade union representatives and job applicants. It offers advice on necessary actions to prevent age discrimination in the workplace, provides examples of the forms this discrimination may take and suggests different methods of dealing with cases of age discrimination should it occur. The guidance highlights the legal requirements on employers in this area but also suggests good practice measures which can be adopted to supplement these. This guidance was published alongside two further documents on the top ten things for employers to consider and the top ten age discrimination myths.

### Hermes creates "self-employed plus" status for couriers

Delivery company Hermes has reached a deal with the GMB union to create a new "self-employed plus" status for couriers. The offer comes after an employment tribunal found Hermes couriers to be workers in 2018. Under

the new status workers can choose to receive 28 days of paid holiday per year and can also opt for pay rates of £8.50 an hour. The new arrangement has been criticised by tax experts who warn that HMRC could require those who opt-in to pay national insurance as an employee.

### **Equal Pay Claim**

The Court of Appeal in *Asda Stores Ltd v Brierley and other [2019] EWCA Civ 44* has held that a group of mainly female supermarket workers could compare themselves to a group of predominantly male distribution depot employees for the purposes of an equal pay claim, on the basis that the employer observed common terms and conditions of employment. This was despite that fact that the two groups worked at geographically and different establishments, and that the groups could not have swapped workplaces.

### **New guidance to help employers close their gender pay gap published**

In February 2019, the Government Equalities Office (GEO) published two sets of guidance to help employers close their gender pay gaps. The first guide; Eight ways to understand your gender pay gap aims to help employers understand the root causes of pay discrepancies between male and female staff in their organisations. The second guide; Four steps to developing a gender pay gap action plan, is based on feedback from employers with effective action plans in place. It encourages employers to revise, assess and integrate their plans into the everyday running of the company.

### **DWP: grant to support disabled workers**

In February 2019, the Minister for Disabled People, Health and Work, Sarah Newton, revealed plans to provide £59,200 annually to help pay for additional support for disabled individuals in the workplace. The new fund will be available from 1 April 2019 and forms part of the government's Access to Work scheme, a funding project to ensure that those with a disability or health condition are not restricted at work. In 2018, over 27,000 people were supported by the scheme.

### **Mental health first aiders: new guidance on boundary-setting**

Training provider Mental Health First Aid England has published guidance to help employers understand their roles and responsibilities when introducing mental health first aiders into the workplace. The guidance sets out the requirements when instructing a mental health first aider, for example they must be provided with clear documentation of the expectations and

limits of their role. Through setting these boundaries, the guidance aims to resolve potential safety concerns surrounding mental health first aiders who work in a voluntary capacity.

### **BEIS: new holiday pay guidance after "alarming" lack of awareness revealed**

The Department for Business, Energy and Industrial Strategy (BEIS) has published guidance and an online calculator on how to calculate holiday pay for workers whose hours or pay are not fixed. The guidance, which is not binding, complements pre-existing government guidance on holiday entitlements for the majority of workers.

A BEIS spokesperson said, "We want to see more businesses getting holiday pay right for their workers, helping to maintain a fair working environment for all. The onus is on you, as a responsible employer, to check your workers are receiving the correct amount".

### **New Acas guidance on neurodiversity in the workplace**

Acas has published new guidance on handling neurodiversity in the workplace. Neurodiversity, which refers to the different ways the brain can use and interpret information, affects one in seven people in UK through forms such as attention deficit disorder, autism and dyslexia. The new guidance explains what neurodiversity is and highlights the different types of neurodivergence and the unique difficulties they may bring. Employers may be obliged to treat certain types of neurodivergence as a disability under the Equality Act 2010 and make any necessary reasonable adjustments.

For advice about any of the issues raised in the newsletter or other issues relating to employment law, please contact Anna Illingworth.

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