

EMPLOYMENT LAW UPDATE SPRING 2020

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RECENT DEVELOPMENTS



New rules on employment particulars

From 6 April 2020 employers will be required to give new employees and workers the written statement of employment particulars at the start of employment and not during the first two months. Additional particulars are also required.

Background - Section 1 Statement

Employers are required to give employees a written statement of certain employment particulars ('Section 1 Statement'). These include names of the parties, the date when employment and continuous employment began, details of pay and benefits, hours, holidays, job title or description and the place of work. These particulars must be included in a single document. Before 6 April 2020 the Section 1 Statement had to be given within two months from the start of employment. Other particulars could be given in instalments over the two month period.

Changes

From **6 April 2020**, employers will be required to give the Section 1 Statement *on or before the first day of employment*. The right to a Section 1 Statement has also been extended to workers and not just employees. It does not apply to self-employed contractors.

Workers are "semi-employees" who have some autonomy and certain employment rights such as the National Minimum/Living Wage and paid holiday leave. Self-employed contractors have no employment rights.

The Statement will be required to contain the following additional particulars:

- The days of the week the worker/employee is required to work, whether the days and working hours are variable and how any variation will be determined;
- Any (additional) paid leave to which the worker is entitled;
- Details of any other benefits provided by the employer that are not already included in the Statement;
- Any probationary period including any conditions and its duration;
- Any training entitlement provided by the employer, including whether any training is mandatory and/or must be paid for by the worker/employee.

Transitional Provisions

The changes to Section 1 Statements set out above will only apply to those workers/ employees starting work on or after **6 April 2020**. The existing rules will continue to apply to those individuals who started work before 6 April 2020.

If the statement is not provided, employees and workers (after 6 April 2020) are entitled to request a Section 1 Statement from the employer and this must be provided within one month of the request. If made after 6 April

2020 it should include the additional information. It can be requested either during employment or within three months of termination.

Remedies for failing to provide Particulars

If an employee/worker is not given the Section 1 Statement s/he may make a complaint to an Employment Tribunal as to the particulars which should have been given. Compensation would only be awarded for failure to provide written particulars if the employee/worker brings another claim after termination eg unfair dismissal (employee only) or unlawful deduction of wages. If successful, the Tribunal may make an award of up to 2-4 weeks' pay at the statutory rate of £538 per week (from 6 April 2020).

Comment

Most of the particulars required under the Section 1 Statement are included in a standard employment contract. Employers need to ensure that their contracts contain the additional particulars and are provided to workers, not just employees on or before the start of employment.

The new rights for workers could lead to increased challenges to self-employed status imposed by certain employers, particularly in the gig economy sector on the basis that they are, in reality, workers and not genuinely self-employed.

Good Work Plan – workplace reforms

The Good Work Plan (GWP) was published in December 2018. It aimed to implement various recommendations set out in the Taylor Review of Modern Working Practices 2017 after various consultation periods. From **6 April 2020** the following changes proposed under the GWP will come into effect:

- The reference period for calculating an average week's pay for holiday pay purposes will increase from 12 weeks to 52 weeks. Any weeks in which the worker has received no pay should be disregarded and earlier weeks should be used instead. This is relevant for casual or seasonal workers who will receive higher payments when calculating holiday pay.
- The Agency Workers Regulations will be repealed to prevent agents from employing agency workers between assignments to prevent the workers from enforcing their rights under the Agency Regulations for comparable pay and conditions to permanent staff.
- Temporary work agencies must also provide agency work seekers with a key information document including information on the type of contract, the minimum expected rate of pay, how they will be paid and by whom.
- The Information and Consultation of Employees (ICE) Regulations impose an obligation for employers to inform and consult on developments, threats and changes to employment within an organisation. The threshold for employees to request an employer with more than 15 employees to set up information and consultation arrangements will be reduced from 10% to 2% of employees. The Government believes that high levels of employee engagement improve organisational performance and productivity and lead to more fulfilling work. However, the regulations have not been used very much in practice since their introduction in 2006.

Comment

The Taylor Review was commissioned to address growing concerns that the balance of power in many working arrangements had tipped too far in favour of businesses particularly with forced self-employment, agency workers and zero hours contracts. Although the Government has accepted some of the recommendations, they are unlikely to make a significant difference. The main recommendations regarding worker status has not yet been addressed and any changes are unlikely to be imminent.

Family Friendly Policies

Parental Bereavement Leave

From **6 April 2020**, employed parents who have lost a child will be entitled to two weeks' Parental Bereavement Leave. This will apply in the event the parent(s) lose a child under the age of 18 or suffer a still birth from 24 weeks of pregnancy. The leave must be taken in either blocks of two weeks or two separate weeks and must be taken within 56 days of the child's death.

One of the employed parents will also be able to claim statutory Parental Bereavement Pay for this period if they have been employed for a minimum of six months. The rate of pay is at the statutory rate of £151.20 per week.

FUTURE PROPOSALS

New Employment Bill 2020

The Government is proposing a new Employment Bill in 2020 which is expected to include the following measures – some recommended under the GWP:

- **Protecting tips and service charges for workers** – employers will be required to pass on all tips and service charges to workers. There will be a code of practice to ensure that tips will be distributed on a fair and transparent basis.
- **The right to request a more predictable contract** – workers on zero hours contracts will have a “right to request” a more predictable and stable contract after 26 weeks' service. There is, however, no obligation for the employer to accept the request.
- **Extending redundancy protection to prevent pregnancy and maternity discrimination** – this is designed to extend the redundancy protection which applies to employees on maternity leave to pregnant employees and until six months after they have returned from maternity leave.

Off Payroll Working Rules (IR35)

The Off Payroll Working Rules which currently apply in the public sector will be extended to the private sector. This means that payments to contractors supplied to large and medium sized companies (250 plus employees) by personal service companies (PSCs) will be treated as payments of employment income and subject to income tax and national insurance contributions. This shifts responsibility for tax compliance from the personal service company (usually owned by the contractor) to the client or intermediary. It is up to the client or intermediary to prove that the contractor is genuinely self-employed if they do not wish to deduct tax and NI. The regulations

are in the process of being finalised but the government has recently announced they will not be introduced until 2021 due to the Covid-19 Virus situation. However, they are already taking effect with some large companies employing contractors directly through PAYE instead of PSCs on a self-employed contractor basis.



CURRENT RATES

The National Minimum Wage (NMW) provides a minimum hourly rate of pay for workers between ages 16-24. The National Living Wage (NLW) applies to workers aged 25 and over. The rates for the NMW and the NLW are increased in parallel in April of each year. The new rates from **1 April 2020** are as follows:

	Apprentices	16 and 17	18 – 20	21 – 24	25+
National Minimum Wage	£4.15	£4.55	£6.45	£8.20	
National Living Wage					£8.72
Previous rate before April 2020	£3.90	£4.35	£6.15	£7.70	£8.21

The penalties for failing to pay the NMW and NLW are high and can be up to £20k per worker.

Employment Protection Awards

The maximum limits on employment protection awards are increased in April each year. From **6 April 2020** the rates are as follows and apply to all dismissals after this date:

Award	Current Rate Applies to dismissals from 6 April 2020	Previous Rate for dismissals before 6 April 2020
Unfair dismissal compensatory award (maximum)	£88,519 (maximum or 12 months' pay whichever is lower)	£86,444 (maximum or 12 months' pay whichever is lower)
One week's pay for statutory redundancy pay and basic award	£538	£525
Maximum statutory redundancy payment and basic award	£16,140	£15,750

Awards for discrimination claims have no maximum limit.

Maternity and Paternity Pay

Statutory Maternity Pay and Statutory Adoption Pay are payable for a period of 39 weeks. Statutory Paternity Pay is payable for a period of two weeks following the birth. Under the Shared Parental Leave scheme, it is possible for parents to share up to 37 weeks of the mother's maternity pay.

The rates are increased in April each year and from **6 April 2020** are as follows:

Type of Payment	Current Rate from 6 April 2020	Payment Period	Previous Rate from April 2018
Statutory Maternity Pay and Statutory Adoption Pay (higher rate)	90% of normal weekly earnings	First 6 Weeks	
Statutory Maternity Pay (basic rate)	£151.20 per week*	Next 33 Weeks	£148.68
Statutory Paternity Pay	£151.20 per week*	Up to 2 Weeks	£148.68

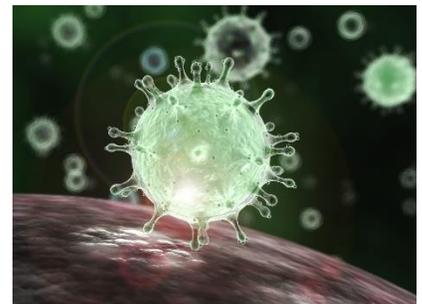
*or 90% of normal earnings, if lower.

Statutory Sick Pay

Statutory Sick Pay is payable if an employee is incapable of work for 4 or more consecutive days. The entitlement starts from the 4th qualifying day up to a maximum of 28 weeks. From **6 April 2020**, the SSP rate is **£95.85** per week (previous rate - £94.25).

Covid-19 Virus – changes to SSP

For employees suffering from the Covid-19 Virus or who are self-isolating or shielding others, SSP will be paid on the first day of absence rather than the fourth day. Small to medium sized employers will also be reimbursed for the full amount of two weeks' SSP rather than having to pay it themselves. SSP is, however, minimal - £95.85 per week, but there is now the option to furlough employees instead, if appropriate. This would entitle employees to 80% of salary up to £2,500 per month.



SSP only applies to employees but self-employed individuals or workers can also make a claim for universal credit or contributory employment and support allowance.

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