Welcome

We begin this month's bulletin with news that the Government has published a new list of 359 organisations that have failed to pay the National Minimum or National Living Wage.

Naming and shaming non-compliant employers is part of a push towards ensuring that UK workers are paid their full entitlement. The publicity, as well as the fines that are imposed, sends a very strong message: understand the rules and apply them properly. Don't earn yourself a place on that ever-growing list.

And with that in mind...

Paul Housego
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All Set for April's Rates Rises?

As usual, certain rates are set to increase next month.

From 1 April 2017, hourly National Minimum Wage levels will look like this:

Workers aged 25 and over - £7.50
Aged 21 to 24 - £7.05
Aged 18 to 20 - £5.60
Aged 16 to 17 - £4.05
Apprentice rate - £3.50

April will also bring increases in statutory maternity, paternity, adoption, and shared parental pay. The weekly rate for each will rise to £140.98 or 90% of the employee's average weekly earnings, whichever is lower. Statutory Sick Pay is set to go up from £88.45 to £89.35.

The annual increase in compensation payments will take effect, too:

- A week's pay (for redundancy and unfair dismissal basic award calculations) rises from £479 to £489.
- The maximum compensatory award increases from £78,962 to £80,541.

About Us

Beers LLP has a national reputation and is recognised and named in the Chambers and Partners and Legal 500 directories for expertise in employment law. From our offices in the South West of England our specialist solicitors provide advice, representation and training on all aspects of employment law.

We advise strategically and tactically on how to resolve problems and disputes arising from HR issues. We look to you for your intended outcome, agree a way forward and implement it. We work with you to solve problems in a constructive and cost effective manner.

We are experienced at dealing with unfair dismissal, capability, misconduct, discrimination, union related issues, redundancy exercises and ex-employee problems.

We will represent you cost effectively in the Employment tribunals and the County Court.

We will provide you with up to date employment contracts for your staff; update your policies and procedures handbook and provide training for your managers to help you maintain best practice throughout your organisation.

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Time Off for Religious Festivals

Gareddu v London Underground Ltd

Like many employers, London Underground limited the amount of holiday its staff could take in one go. Mr Gareddu, who is a practising Roman Catholic, argued that this policy, criterion or practice of not allowing more than three weeks' holiday at a time indirectly discriminated against him. It meant that he was not able to spend five weeks attending various religious festivals in Sardinia. He was prevented from manifesting his religious belief, he argued.

Mr Gareddu lost his claim. The employment tribunal found that when he had previously travelled to Sardinia for this purpose, he hadn't attended all of the festivals. This was more about a desire to be with his family in Sardinia than religious beliefs or their manifestation. The Employment Appeal Tribunal upheld that decision.

Employers may well be wary of delving into the details of an employee's request for leave but, as this case shows, there can be good reasons to stand your ground. Even where an employee's request has the necessary elements of genuineness and good faith (and bear in mind that attendance at religious festivals can be a genuine manifestation of religion or religious belief), you may be able to justify not allowing more leave than your policy prescribes. There will usually be a sound reason behind limiting the amount of leave employees can take at any one time, and that policy could well be a proportionate means of achieving a legitimate aim. But handle each case very carefully on its facts.

Are You Levy-Ready?

From April, some employers will have to pay a percentage of their pay bill towards funding the cost of apprenticeships. It's part of the Government's plan to give more opportunities to young people in the workplace.

The levy will apply to apprenticeships in England (the apprenticeship programmes for other parts of the UK are up to authorities in Scotland, Wales and Northern Ireland to manage) and not all employers will be required to pay up. It's only those with a pay bill of more than £3 million per year. They'll have to invest 0.5% of that amount into the cost of apprenticeships and will then be able to access funding to pay government-approved training providers.

We'd recommend a read through the Government's guidance on this.

https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work/apprenticeship-levy-how-it-will-work

'Self-Employed' Plumber Was a Worker

Pimlico Plumbers Ltd v Smith

Mr Smith brought a number of claims against Pimlico Plumbers. Some of those could only proceed if he was found to have been an employee. Others hinged on him having worker status, for which there needed to be a requirement to personally do the work for Pimlico, and for Pimlico to not be a client or customer of a business run by Mr Smith.

The working arrangement was an interesting one. Mr Smith wore Pimlico's uniform, he drove around in its branded van, and was normally obliged to work a 40-hour week for the company. He was not allowed to provide customers with his personal contact details, instead he had to give them Pimlico's office number, and his contract contained restrictive covenants. But, other factors hinted at self-employed status. For example:

- Mr Smith's contract with Pimlico stated that he was an independent contractor.
- Pimlico didn't have to offer him work, and he didn't have to accept work offered.

- He decided his own working hours.
- He used his own tools.
- He was able to swap jobs with other plumbers.
- He took care of his own insurance and tax.

Was Mr Smith a worker or was he self-employed?

A worker, held the Court of Appeal. There were two big deciding factors. The first was that he had to provide personal service for a minimum number of hours per week or on days agreed with Pimlico. There was no express right to substitute or delegate (which would have pointed towards self-employed status). His ability to swap jobs with other engineers didn't wipe out the personal service requirement. As the Court put it:

"Even if [Mr Smith] could choose to give a job to another operative on a day he preferred not to work that is still not an unfettered right to substitute at will, but more akin to swapping a shift between workers."

The second factor was that, given the degree of control exercised over him (including the 40-hour working week requirement), Pimlico couldn't be said to have been a client or customer of a business run by Mr Smith on his own account. Mr Smith was actually an integral part of, and was subordinate to, Pimlico.

Ultimately, this was about the reality of the relationship between the parties. Remember that a label employers might use – like 'independent contractor' or 'self-employed operative' – isn't binding on a tribunal.

Reduced Workload Was a Reasonable Adjustment

The Home Office v Kuranchie

An employer must make reasonable adjustments to ameliorate a disabled employee who is at a substantial disadvantage at work. This is not always an easy thing to get right, particularly when it comes to judging what is 'reasonable' in particular circumstances.

Ms Kuranchie had dyspraxia and dyslexia. Her employer agreed to her request for a flexible working arrangement. It meant that she would work compressed hours of a 36-hour week over four days rather than five. She was still given the same amount of work as her colleagues and this, she said, placed her at a substantial disadvantage. It took her longer to do the work because of her disabilities, which meant that she ended up working longer hours.

The tribunal found that the employer ought to have reduced her workload. That would have been a reasonable adjustment. The Employment Appeal Tribunal held that that was the right decision, even though Ms Kuranchie hadn't asked to be given less work, nor had the report on her dyslexia suggested that that needed to happen.

The decision emphasises the importance of employers looking at the whole situation and thinking very carefully, and laterally, about how best to avoid or remove disadvantage. Ask yourself whether the adjustments you are making go far enough.

Guide to Gender Pay Gap Reporting

A new Acas and Government Equalities Office guide has been published ahead of the introduction of The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 in April.

The guide is aimed at helping larger employers – those with more than 250 employees – comply with the new obligations to report gender pay gaps in their organisations. It explains how to do the calculations and implement family-friendly

working arrangements that could help narrow the gap. There is also good advice on record-keeping and on monitoring differences in the salaries paid to men and women throughout the employment lifecycle.

Remember that the gender pay gap (differences in the average pay between men and women) is not the same as equal pay (pay differences between men and women who are doing the same/similar/equivalent value work). If you are an employer that is required to report on your gender pay gap, then that information becomes publicly available. As Acas Chief Executive Anne Sharp states:

"...The new requirement provides a great opportunity for organisations to look at the issue in depth and to consider whether they can do more to develop their talented women and secure the benefits of greater gender diversity at all levels.

The UK has made progress in reducing the gender pay gap but we still have lots to do - tackling the issue is in the interests of individuals, organisations and the economy as a whole."

The guide is available here: http://www.acas.org.uk/media/pdf/l/6/Gender_Pay_Reporting_GUIDE.pdf

And Finally...

Banning the Booze

Lloyd's of London has been in the news for apparently telling staff that they are not to drink alcohol between 9.00 am and 5.00 pm. This met with some interesting reactions, including from one worker who was reported in the London Evening Standard to have said:

"Did I just wake up from my drunken induced slumber to find we are now living in Orwell's 1984?"

There are, of course, very good reasons for keeping a clear head while at work and insisting that those around you do the same. In some industries, particularly those where health and safety risks lurk around every corner, sobriety has always been a firm requirement. That said, being under the influence of alcohol while at work is a pretty standard ground for disciplinary action across organisations, and it's for employers to weigh up the reasonableness of taking that path in particular situations.

Of course, an employer's decision to curb a culture of excessive daytime drinking reflects modernisation and an ongoing change in expected workplace behaviour generally. Excluding alcohol consumption from the working day, save for appropriate and sensible client entertainment, has become a cultural norm. It is important to ensure all staff are clear on the house view, and why any changes have been implemented, so these expectations can be met avoiding messy complications.

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