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Essential employer update 2023

The latest issues in payroll, tax and employment law.

National Insurance round-up

Repeated change to National Insurance contributions (NICs) in 2022, plus the cancellation of the Health and Social Care Levy as a separate tax from April 2023, meant a challenging year for payroll. Where do things stand now?

Employees: primary Class 1 contributions

Contributions are paid at the main rate on earnings above the primary threshold, up to the upper earnings limit (£967 per week, £4,189 per month, £50,270 per year) and at the additional rate on earnings above this.

For the period 6 April 2022 to 5 July 2022 the primary threshold was £190 per week (£823 per month, £9,880 per year): with contributions at 13.25% main rate and 3.25% additional rate.

For the period 6 July 2022 to 5 November 2022 the primary threshold was £242 per week (£1,048 per month, £12,570 per year): with contributions at 13.25% main rate and 3.25% additional rate.

For the period 6 November 2022 onwards the primary threshold is £242 per week (£1,048 per month, £12,570 per year): with contributions at 12% main rate and 2% additional rate. These limits are now frozen until April 2028.

Employers

With NICs thresholds now frozen until April 2028:

- the point at which employers start to pay secondary Class 1 NICs for employees (the secondary threshold) did not change in July 2022. This threshold has now been frozen until April 2028. It therefore continues to be £175 per week (£758 per month and £9,100 per year) until April 2028. In a time of inflation, this is likely to impact employers significantly.
- note that separate rules apply to Freeports and various categories of workers, such as apprentices.

From 6 April 2022 to 5 November 2022, employer secondary Class 1 NICs were payable at 15.05% over the secondary threshold: and from 6 November 2022 to 5 April 2023, at 13.8%.

Company directors

The position is complex for company directors, who have an annual earnings period. To take account of the in-year changes, the primary threshold for directors for 2022/23 is averaged at £11,908. The annual main primary rate is 12.73%, and annual additional primary rate 2.73%. The annual secondary threshold is £9,100 and annual secondary rate 14.53%.

Dividend tax rates

Dividend tax rates rose in April 2022, to spread the cost of the government's health and social care measures, and the change remains in place. After 6 April 2023, therefore, rates remain at 8.75% for basic rate taxpayers, 33.75% for higher rate taxpayers and 39.35% for additional rate taxpayers.

News on employment status

Off-payroll working clarification: in September 2022, it was announced that off-payroll workers providing services via an intermediary, such as a personal service company, would resume responsibility for making the decision on employment status, and paying the relevant tax and NICs, with effect from 6 April 2023. However, this decision was reversed in the Autumn Statement.

The procedure is therefore unchanged. A worker supplying their services through an intermediary to a medium-sized or large client (as defined by the small companies' regime), who would have been an employee if supplying their services directly, rather than through their intermediary, does not make the status determination. The client does. It also falls to the client to deduct tax and NICs.

Consultation on employment status: the government response to the consultation on employment status, set in train following the Taylor Review and Good Work Plan, was published in July 2022: but it does not bring any far-reaching change. Concluding that the current 'three-tiered employment status framework for rights provides the right balance for the UK Labour Market', it

took the view that it is 'not the right time' for a fundamental overhaul.

To recap, employment status governs both the tax someone pays and their employment rights. The problem is that tax law and employment law are different. Where there are two types of employment status for tax purposes (employed and self-employed), there are three types of status for employment rights (employee, worker and self-employed). In practice, this can give rise to practical difficulties, with the boundary between different types of status sometimes unclear. It is possible for someone to be classed as employed or self-employed for tax purposes, for example, whilst being a worker in terms of employment rights. One of the original aims of the consultation was to explore the possibility of aligning employment status for both tax and employment rights.

Rather than undertaking this fundamental reform, the government is instead providing clearer guidance to help workers and employers navigate the rules. This extends to new guidance on employment status and updated information on minimum wage calculations for gig and platform workers.

Supporting staff through the cost of living crisis

The Money and Pensions Service (MaPS) suggests that nearly 8 in 10 UK employees take money worries to work, and that every year, 4.2 million worker days are lost because of illness related to such worries.

The employer legal duty of care for employees extends to reasonable care for their wellbeing. Best practice around financial wellbeing is likely to involve elements such as:

- a workplace where financial concerns can be raised without stigma
- employer commitment to paying a fair wage
- enhancing staff skills for career progression
- procedures to deal swiftly with any errors or discrepancies in pay
- making staff aware of all available support – whether inside the workplace or outside it. MaPS, for example, provides free, confidential help

on areas like debt and pensions. Employers can signpost staff to its MoneyHelper website for advice on bills, payments, talking to creditors and redundancy.

Employers may want to consider a diverse range of financial support, from a pay increase or one-off bonus, to changing pay frequency or introducing a salary sacrifice scheme. Staff receiving universal credit may need special consideration as such support could negatively impact their claim. But support is not just about an employer providing cash solutions. Providing flexibility around hours and location can also be helpful. Allowing staff to work from home can cut the cost of commuting, for instance; whilst varying start and finish times can cut peak travel costs. Making sure that any support offered is tax-efficient, both for employees and for you as employer, is obviously very important, and we should be pleased to advise further.

PAYE when employees access salary before payday

In response to the cost of living crisis, some employers are allowing employees to draw part of their salary in advance of their normal payday. Technically, this is a payment on account of earnings, and would normally mean that an extra RTI report is needed.

In view of the extra admin burden created, HMRC has announced that the relevant legislation will be amended and as a result, salary advances will not require an additional RTI report. Instead they can be reported on - or before - the contractual payday, so that each payment of salary need only be reported once. As the wording of HMRC's announcement stands, this would in fact change the deadline for filing the PAYE full payment submission (FPS). The FPS is currently filed on or before the date someone is actually paid, rather than the contractual date. The two may be aligned when the new legislation is actually made, and we can keep you updated here.

Monitoring staff at work: data protection implications

The Information Commissioner's Office (ICO) is reviewing its guidance on monitoring employees

at work. The move is spurred by the increase in remote working during the pandemic, and rise in the use of software to track employees and monitor productivity. In due course, the revised guidance will replace the guidance in the ICO's current Employment Practices Code.

The aim is to enable employers to carry out monitoring in a way that complies with data protection law: the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018. Employers must, for example, make workers aware of the nature, extent and reasons for any monitoring, unless there are exceptional circumstances where covert monitoring is necessary. They must also be clear about their purpose for monitoring. Information collected must not be used for a new purpose unless this is broadly compatible with the original purpose: and where monitoring is likely to result in a high risk to the rights of workers and other people captured by the monitoring, a data protection impact assessment should be carried out.

The guidance also covers specific types of monitoring, such as monitoring emails and messages, video and audio monitoring, monitoring work vehicles, dashcams, monitoring activity on devices such as laptops, and use of biometric data for time and attendance control.

Minimum wage from 1 April 2023

	New hourly rate
National Living Wage: for those aged 23 and over	£10.42
National Minimum Wage: for 21-22 year olds	£10.18
for 18-20 year olds	£7.49
for 16-17 year olds	£5.28
Apprentice rate	£5.28

The accommodation offset also rises to £9.10.

The table above provides details of the increased rates applying from 1 April 2023. The National Living

Wage (NLW) applies to all workers over the age of 23, while the National Minimum Wage, (NMW) is the banded rate for those below this age. The NLW and NMW are the statutory minimum rates an employer must pay.

For the avoidance of confusion, the NLW and NMW are completely different from the 'Real Living Wage'. This is set by an independent organisation called the Living Wage Foundation and is a voluntary scheme adopted by some UK businesses. It is a higher rate, based on their evaluation of living costs.

In addition to the new rates from April 2023, there are other changes on the horizon which employers should be aware of. By 2024, 21 and 22 year olds are likely to be entitled to the NLW rather than NMW. There is also a proposal to align pay for apprentices with the 16-17 year old rate.

The offset for employer provided accommodation is another area likely to change. Provisions being considered range from a requirement for greater assurance of the quality of accommodation to which the offset applies; a stipulation for minimum hours to be worked before deduction of accommodation costs; an exemption for seafarers while on board ship; and a review of how the offset interacts with the Seasonal Agricultural Workers scheme.

A salary sacrifice arrangement must not reduce earnings below the relevant minimum wage, and processes need to be in place to ensure this. As minimum wage rates increase, it's important to check that employees with salary sacrifice arrangements still qualify to do so: it is the figure for pay after sacrifice that determines minimum wage compliance.

Working with you

The employer to-do list rarely seems to get any shorter, but please be assured that we are on hand to advise on any areas of importance to your business.