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Essential Employer Update

Pensions auto-enrolment

In a move to encourage more people to save for their retirement the government has confirmed that it intends to proceed with the roll out of measures that will place new duties on employers to automatically enrol employees into a work based pension scheme. To enable employers to comply with their new obligations the National Employment Savings Trust (NEST) has been introduced although employers will be able to set up or use an existing qualifying pension scheme if they prefer.

The initial law is contained within the Pensions Act 2008. However, refinements have recently been proposed and are contained in the Pensions Bill 2011. Under the Act employers must 'auto-enrol' eligible employees into a pension scheme (broadly those aged between 22 and state pension age).

The start date varies depending on the size of the employer and their PAYE reference number.

The rules which come into force from October 2012 will only initially impact on the largest employers. For those employers with a more modest number of employees the compulsory start date varies. For example, the start date is 1 January 2014, where there are between 350 and 499 employees. There is no exemption for small employers.

The Pensions Regulator will write to all employers around 6-12 months before their 'staging date' (start date) so that they know when to automatically enrol their eligible employees. There will be a further reminder issued three months prior to the enrolment.

Minimum contribution levels for qualifying schemes are:

Minimum contribution	Employee pays	Tax relief	Employer pays
8%	4%	1%	3%

Employees will be able to opt out of the scheme if they so wish. However, for those employees within the scheme it is expected that the employer will have to contribute at least 3% of their 'qualifying' earnings. These earnings are their basic salary plus commissions, bonuses and overtime between £7,475 and £33,540 a year (2006/07 terms).

Employer contribution levels will be phased in over a period starting at 1% rising to 2% from October 2016 and 3% from October 2017.

The introduction of auto-enrolment will involve more costs for the majority of employers. If you would like more details of the scheme please do get in touch.

National Insurance Contributions (NIC) increases

Employers will face additional NIC costs for many of their employees from 6 April 2011. This is due to the increase in the percentage rates as a further 1% will apply to the rates payable by employers (ERS) and employees (EES).

The increase in the threshold at which employers and employees start to make contributions will offer some protection for those at the lower end of the earnings scale. Indeed employees earning less than £458 a week will see a reduction in the amount of NIC due.

	2010/11		2011/12	
	weekly		weekly	
EES	£110-£844	11%	£139-£817	12%
	above £844	1%	above £817	2%
ERS	above £110	12.8%	above £136	13.8%

The form-filling starts here

If you are an employer the end of the tax year marks the start of the form-filling season! Here's a reminder of important deadlines for sending information (and money!) to HMRC.

19 April 2011 (22 for cleared electronic payments) - Interest will run on any 2010/11 PAYE, NIC, student loan and CIS deductions not paid over by this date.

19 May 2011 - Employers' year end returns (P35 and P14s) due for submission. No grace period this year.

31 May 2011 - Employees must be provided with their P60 (certificate of pay and tax deducted). These may be digital this year.

6 July 2011 - Submission of P11Ds and P9Ds for 2010/11 which show details of expenses paid and benefits provided to employees and directors. Employees must also be given a copy of their P11D/P9D by this date.

19 July 2011 (22 for cleared electronic payments) - Class 1A NIC for 2010/11 on most benefits provided to employees must be paid. Interest runs from this date on late payments.

19 October 2011 (21 for cleared electronic payments) - PAYE settlement agreement liabilities for 2010/11 are due, together with Class 1B NIC. Interest runs from this date on late payments.

Electronic filing

Generally all employers (regardless of the number of employees) must file their end of year returns (P35 and P14 (P60)) electronically.

Employer supported childcare

There is currently a £55 per week limit on the amount of exempt income associated with childcare vouchers and directly contracted childcare for employees in qualifying employer schemes. From 6 April 2011 this will be restricted in cases where an employee joins a scheme and their earnings and taxable benefits are liable to tax at the higher or additional rates.



There are procedures for estimating taxable income and benefits for the year. Where the income:

- is within the basic rate band, the employee will be entitled to relief on up to £55 per week
- exceeds the 50% rate threshold for the year, the employee will be entitled to relief on £22 per week
- is between the above two bands the employee will be entitled to relief on £28 per week.

These changes will apply to directly contracted childcare and childcare voucher schemes but will only affect individuals **joining** a scheme from 6 April 2011. The existing tax and NIC exemptions for workplace nurseries are unaffected by these changes.

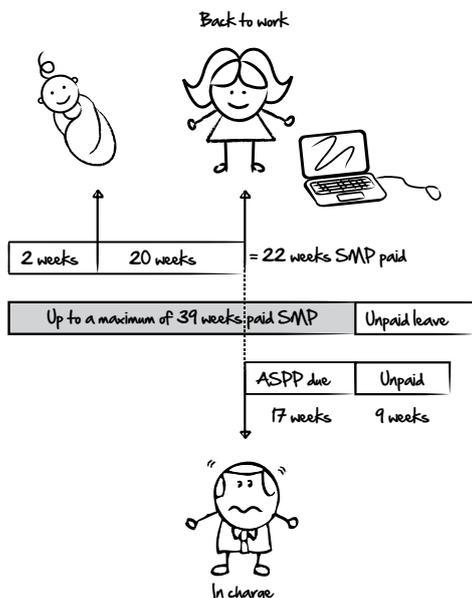
Paternity pay and leave

For many years now qualifying employees have been able to take two weeks paternity pay and leave, on the birth of a child. This pay and leave continues but has now been renamed Ordinary Statutory Paternity pay and leave. The leave is generally paid at £124.88 a week (£128.73 for 2011/12).

Additional Statutory Paternity Pay (ASPP) and leave

The government is to introduce a new entitlement of up to a further six months additional paternity leave (APL). The idea being that the mother returns to work 20 weeks after the baby is born and the person with the main responsibility for the baby's upbringing, apart from the mother, takes over care for the child for up to the next six months. This entitlement is due to the father of the baby and/or the husband or partner (including same-sex partner) of a woman who is **due** to give birth on or after 3 April 2011.

However, although six months APL is available, only up to a maximum of 19 weeks can be paid, which coincides with the mother's unused paid Statutory Maternity Pay (SMP) period of up to 39 weeks. The amount of ASPP is dependant on the mother returning to work, as the following diagram illustrates.



The current rate is the lower of either:

- the standard weekly rate - £124.88 (£128.73 for 2011/12)
- 90% of their average weekly earnings.

For ASPP and leave to be due, the mother and employee taking the leave must meet certain length of employment and earnings tests.

Given the level of ASPP, few employees are expected to take up their entitlement.

Employers who offer more than SMP should be aware that following a European Court of Justice ruling employers who offer extra benefits to women on maternity leave, in excess of their SMP entitlement, should also offer these additional benefits to a father on APL, to avoid any possibility of sex discrimination.

Right to request flexible working

The right to request flexible working was originally introduced in April 2003. It currently applies to employees with children under the age of 17, or if disabled under 18, as well as carers of certain adults. From April 2011 the right is extended to employees with children under 18.

The flexible working law gives employees, with at least 26 weeks service, the right to request flexible working.

There are set procedures which should be followed by the employee and employer. These cover requests, grounds for refusal and appeals.

Employers are obliged to seriously consider an employee's request which may be for a change to the hours they work, start and end times and location. Requests could include home working, compressed hours and annualised hours.

Best practice

Employers are advised to consider requests from employees who do not meet the eligibility rules. Many employers have found that allowing flexible working can, in the right circumstances, increase employee retention, improve profitability and employee morale.

The Equality Act – beware!

The Equality Act introduces changes to the discrimination legislation and extends an employer's liability in respect of those with 'protected characteristics'.

The Equality Act replaces all previous equality legislation and covers age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, pregnancy and maternity. These are now called 'protected characteristics'.

Discrimination

There are five definitions of discrimination:

Direct Discrimination: treating someone less favourably than another person because of their protective characteristic.

Not promoting someone because of their sexual orientation.

Indirect Discrimination: having a condition, rule, policy or practice in your business that applies to everyone but disadvantages people with a protective characteristic.

Not allowing employees to work the Christmas holidays where this is not their religious festival. Where the business is closed during the period this may not be indirect discrimination.

Associative Discrimination: directly discriminating against someone because they associate with another person who possesses a protected characteristic.

Not giving an expected promotion to an employee because they care for a disabled relative.

Perceptive Discrimination: directly discriminating against someone because others think they possess a particular protected characteristic.

Not allowing an employee to carry out some duties as other employees believe they are much younger than they actually are!

Discrimination arising out of disability: treating a disabled person unfavourably because of something connected with their disability.

Disciplining an employee who makes spelling mistakes which does not take into account their dyslexia.

Employers need to be mindful of the law and the situations which are covered.

National Minimum Wage rates

There are different levels of National Minimum Wage, depending on the employee's age and circumstances. The current rates are:

£5.93	the main rate for workers aged 21 and over
£4.92	the 18-20 rate
£3.64	the 16-17 rate for workers above school leaving age but under 18
£2.50	the apprentice rate, for apprentices under 19 or 19 and over and in the first year of their apprenticeship

Default retirement age to be abolished

The government is to abolish the default retirement age (DRA) of 65 (for both men and women). The DRA is to be phased out over a six month period ending on 30 September 2011. The phasing out means that:

- Employers with a retirement age of 65 can still use their compulsory retirement age to retire employees who are 65 on 30 September or any earlier date, provided that they follow the statutory retirement procedure and give six months notice generally by 30 March 2011.
- Retirements using the DRA will cease completely from 1 October 2011. Instead employers must follow a fair procedure under the ordinary unfair dismissal rules and rely on one of the potentially fair reasons for dismissal.

Acas has issued guidance, 'Working without the default retirement age' and this is available at www.acas.org.uk.