

Changes in employment law from October 2008

A Guest Article by Ellie Hibberd
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Legislative changes introduced

As those of you responsible for managing employees in your business will know, there is now an established practice of introducing legislative changes in April and October of each year. October 2008 saw the introduction of a number of changes about which employers should be aware.

National Minimum Wage

With effect from 1 October 2008, the National Minimum Wage rates were increased as follows:

- Standard (adult) rate, for workers aged 22 and over: £5.73, rising from £5.52
- Development rate, for workers aged between 18 and 21: £4.77, rising from £4.60
- Young workers rate, for workers aged under 18: £3.53, rising from £3.40

Employers should ensure that the hourly rates of workers – particularly those who are paid by the hour – comply with the National Minimum Wage. A failure to do so is a criminal offence, for which employers can be fined and required to pay any arrears to the affected employee. Employers should keep records of any necessary reviews of employees' wages and any increases given, so that, if necessary, they can show compliance with the National Minimum Wage provisions.

Maternity leave

Employees who give birth or adopt a child on or after 5 October 2008 are now treated, for the purposes of non-monetary terms and conditions, in the same way during Ordinary Maternity Leave (OML) and Additional Maternity Leave (AML). As a result, an employee will now remain entitled to any additional benefits such as private medical insurance, increased contractual holidays and the use of a company car throughout any period of maternity leave.

A distinction is still retained between OML and AML in an employee's rights on her return to work. After a period of OML, an employee is entitled to return to the same job she held prior to her maternity leave. After a period of AML, that right reduces to a right to return to the same job, unless it is not reasonably practicable for her to do so, in which case it extends to another suitable and appropriate job.

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The changes to the legislation have also established that Compulsory Maternity Leave (the first two weeks of maternity leave beginning on the date of childbirth) must be regarded by an employer as time worked for the purpose of calculating an employee's pro rata entitlement to a discretionary bonus.

A prudent employer should review their existing maternity policies to check whether they are compliant with the new laws and, if necessary, amend them as appropriate. A failure to do so could result in a pregnant employee having a potential claim for breach of contract and sex discrimination, neither of which carries the requirement for a qualifying period of employment.

Sick pay for agency workers

From 27 October 2008, agency workers engaged on contracts of less than three months are entitled to Statutory Sick Pay. Until then, they were the only group of employees who were not entitled to claim Statutory Sick Pay.

Most employers will already have in place arrangements to deal with claims for Statutory Sick Pay and it should therefore only be a case of extending these arrangements to deal with this new category of employee.

Employers should take care, as a failure to pay Statutory Sick Pay where it is due could give rise to a claim for the unlawful deduction of wages.

The message for employers

Provided you approach the implementation of these changes to employment law in a systematic way, the new laws set out above should not present a particular challenge to established businesses. However, for organisations that do not have the infrastructure in place to deal with the modifications to the National Minimum Wage, maternity rights and agency workers' rights, the consequences can be significant.

- A failure to pay employees the National Minimum Wage is a criminal offence and the fine is likely to be uninsurable.
- Any breach involving maternity provisions carries with it the risk of a sex discrimination claim, for which damages are unlimited.
- Agency workers are a group particularly aware of their rights at a time when the Government is in discussions about their status and treatment in the workplace.

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The message for the prudent employer is clear: the current economic climate of uncertainty, coupled with employees increasingly prepared to bring claims to insist on their rights, means it is important to make sure your practices and procedures are up to date.

Ellie Hibberd – Dawsons LLP

If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.