

Legislation Update

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April 2020 and holiday pay calculations

From April 2020 the way in which you work out the correct rate for holiday pay is changing. Currently where you are required to amend the holiday pay rate due to perhaps involuntary overtime or commission, instead of working out the total pay and hours worked in the previous 12 weeks, this will change to the previous 52 weeks or pro rata where 52 weeks hasn't been paid.

Further guidance on this can be found at:

<https://www.gov.uk/calculate-your-holiday-entitlement>

What do you need to do? You will need to advise the rate as it is now when requesting holiday pay to be paid. (Please note we are working on some enhancements to help businesses in this area and we will share details with payroll clients once available.)



Parental Bereavement leave and pay

From April 2020 new legislation is planned to provide pay and leave for parents who lose a child or suffer a stillbirth from day one of employment. Current statutory leave is two weeks and those eligible will be entitled to two weeks statutory pay. Guidance is expected, but the bulletin does provide the definition along with the notice and evidence required. If taking the leave within the first 8 weeks of death, then the employee will need to notify the employer before they would be due to start work on the first day of absence, but if later than 8 weeks then at least one week's notice before the leave. This will be known as SPBP and written notice must be supplied. This only applies to GB and not therefore Northern Ireland at this time.

What do you need to do? If Armstrong Watson runs your payroll you will need to advise your payroll administrator of someone taking this leave and their entitlement to pay.

Apprenticeship levy - remember to use the funds!



For Armstrong Watson payroll clients, if you are required to pay the apprenticeship levy then we take care of this for you; this includes any connected companies. However, research suggests that nearly half of employers do not utilise their apprenticeship levy pot, thinking it is just a tax, rather than a training pot to be used to help fund valuable training/apprenticeships for their people. Ensure you are not one of these employers. For further information on the apprenticeship scheme visit:

<https://www.gov.uk/government/news/key-facts-you-should-know-about-the-apprenticeship-levy>



Company car changes

In the December 2019 edition of the Employer Bulletin reference was made to proposed changes that will impact Ultra-Low Emission Vehicles from the turn of the new tax year. The changes were first addressed in the preceding issue of the Employer Bulletin – the October 2019 issue (Employer Bulletin 80) - where it was advised that the Government wanted to support its commitment to improving the air quality in towns and cities.

In order to achieve these new targets, adjustments have been made to car and car fuel benefit calculations, with lower tax bands for cars that are less detrimental to the environment. 11 new bands will be introduced for Ultra-Low Emission Vehicles (ULEVs) including a separate zero emissions band.

Where a car's Co2 emission figure is between 1-50g/km, the car's zero emission mileage will need to be recorded in place of the Co2 emission figure for the purpose of tax calculations. The zero-emission mileage figure relates to the maximum distance the car can travel in electric mode prior to having to recharge the battery.

In the most recent Employer Bulletin, further guidance is provided in relation to reporting a new company car, or one that is made available to an individual for the first time in the 2020/2021 tax year.

From 6 April 2020, the form P46 (car) will include a new field and where the car has a Co2 emission figure of 1-50g/km, the car's zero emission mileage will need to be stated here.

The bands have not yet been released but the proposed revisions can be found here. The percentage of tax applied to the company car benefit will be based on miles travelled and not just Co2 emissions. The guidance provided is as follows:

"From 6 April 2020, the graduated table of company car tax bands will now include a differential for cars with emissions of 1 to 50 gCO₂ per km based on the electric range of the car. For cars with an electric range of 130 miles or more, the appropriate percentage is 2%; for cars with an electric range of between 70 to 129 miles, the appropriate percentage is 5%; for 40 to 69 miles, the appropriate percentage is 8%; for 30 to 39 miles, the appropriate percentage is 12% and for less than 30 miles, the appropriate percentage is 14%. For cars that can only be driven in zero-emission mode, the appropriate percentage is 2%."

<https://www.gov.uk/government/publications/personal-tax-changes-to-bands-for-ultra-low-emission-vehicles-in-company-car-tax/personal-tax-changes-to-bands-for-ultra-low-emission-vehicles-in-company-car-tax>

In addition to the above highlighted topics more information is available in the **February Employer Bulletin** including the following and other interesting information for employers:





Information & important guidance on the review of off payroll working

Please visit the Armstrong Watson website for updated information on this topic. Revised guidance can be found [here](#).

HMRC has confirmed after its latest review published 27 February 2020 that:

- Customers will not have to pay penalties for errors relating to off-payroll in the first year, except in cases of deliberate non-compliance
- Their previous commitment that information resulting from changes to the rules will not be used to open new investigations into Personal Service Companies for tax years prior to 6 April 2020 - unless there is reason to suspect fraud or criminal behavior
- In response to feedback from roundtables that an immediate change would be beneficial; the Government has already announced that the rules will only apply to services carried out from 6 April 2020 onwards
- The Government will place a legal obligation on clients to respond to a request for information about their size from the agency or worker and update the legislation to address concerns raised over the rules as they apply to off-shore companies
- Following publication of detailed guidance on the reform⁸, HMRC have clarified their position on a range of concerns raised, for example the client led status disagreement process, including by making explicit the time limits within which a disagreement can be raised. The Employment Status Manual guidance has also been further updated in line with other outcomes from this review
- Having already published a factsheet to support contractors to prepare for the changes, HMRC are continuing to step up their communications in the run up to implementation and launching further products to support contractors in understanding the changes, including a self-help guide on how to spot tax avoidance schemes.

The Government will continue to listen to stakeholders and monitor and evaluate the operation of the rules. HMRC will commission external research into the impacts of the reform six months after implementation, including on how status assessments are being made.

Whilst I am disappointed that the legislation has not been delayed to allow businesses more time to prepare, the compromise on no penalties for the first 12 months is welcomed, as is the commitment from HMRC to actively help businesses and keep improving the CEST and its related guidance. There are still too many occasions whereby the CEST is not providing a determination and whilst Armstrong Watson's tax advisors can assist businesses in this area, the tool really should be able to provide a status determination.





Latest National Insurance and statutory payment thresholds for 2020/2021 (unless changed at the budget)

The values are as follows:

- o Lower Earnings Limit (LEL) - £120 / week, £520 / month, £6,240 / year
- o Primary Threshold (PT) - £183 / week, £792 / month, £9,500 / year
- o Secondary Threshold (ST) - £169 / week, £732 / month, £8,788 / year
- o The Upper Earnings Limit (UEL) - £962 / week, £4,167 / month, £50,000 per year
- o The UEL remains unchanged from the current tax year.
- o The primary (employee) and secondary (employer) thresholds are disappointingly set at different rates for 2020-21 after several years of alignment.

Statutory Maternity, adoption, paternity and shared parental pay - £151.20 per week

Statutory Sick Pay - £95.85 per week

The increases to Student Loan plans 1 and 2



National Minimum Wage Rates

YEAR	25 AND OVER	21 TO 24	18 TO 20	UNDER 18	APPRENTICE
April 2019 (current rate)	£8.21	£7.70	£6.15	£4.35	£3.90
April 2020	£8.72	£8.20	£6.45	£4.55	£4.15

What do you need to do? If Armstrong Watson runs your payroll we will require you to confirm the uplift of the rates to ensure you are compliant with legislation.



Trivial benefits legislation

HMRC has reiterated the rules around what and when you can apply the trivial benefit legislation along with some good examples. To recap:

- The cost of the benefit must not be over £50;
- The benefit must not be in the form of cash or a voucher redeemable for cash;
- The benefit must not be provided as part of salary sacrifice arrangements or any other contractual obligation; and
- The benefit must not be provided in recognition of particular services.





Employment Allowance changes from April 2020

New [guidance](#) has been published to aid employers and payroll professionals.

Budget 2018 announced that from 6 April 2020 the EA would be restricted to employers whose secondary NIC contributions were less than £100,000 in the preceding tax year. Due to this restriction, the Employment Allowance is now considered to be de minimis state aid and will require eligible businesses to monitor and reconcile the total de minimis state aid that they receive over a three year period, which for the purposes of Employment Allowance will include de minimis aid received in the previous two years from all sources, including the employment allowance, plus the year ahead from 6 April 2020.

A public authority that grants de minimis state aid will have provided written evidence of the amount granted and so it is important that all records relating to state aid are retained for three years. HMRC will issue such a notification to confirm that the employer has eligibility to claim Employment Allowance to the employer concerned.

Unlike now, whereby once employment allowance is granted it remains, going forward employers will need to claim EA each year, payroll software will no longer automatically carry forward authorisation without reconfirming their eligibility, which will be based on the employer's secondary NICs in the preceding tax year - which will include all secondary NIC liability for connected or group situations - as well as the amount they have been granted in de minimis state aid.

The Employment Payment Submission (EPS) will be used to indicate that an employer is making a claim and will need to include which sector the employer operates, which will be:

- Primary production of agriculture products maximum €20,000
- Fisheries and aquaculture sector maximum €30,000
- Road freight transport sector maximum €100,000
- Other maximum €200,000

Class 1 secondary liability will not include the liability incurred from the 'deemed payments' processed for off-payroll workers (IR35).

What do you need to do? If Armstrong Watson processes your payroll you will be required to notify your payroll administrator of your entitlement and include:

- **Declaration you have less than £100,000 employer NICs (your payroll administrator can help confirm this if we have processed your payroll for the full previous 12 months)**
- **Confirmation of your industry(s)**
- **And confirmation you can claim and have not exceeded your de-Minimis aid amount as per your industry(s)**

This information will be required in April to ensure you can receive the full amount of employment allowance permitted. Armstrong Watson are not permitted to automatically apply this and therefore you must advise your payroll administrator.





Government confirms that employers who fail to meet the requirement to pay staff minimum wage will be 'named and shamed'

HRMC and the Department for Business, Energy & Industrial Strategy (BEIS) have confirmed, in a press release, that employers who fail to pay the National Minimum Wage (NMW) or National Living Wage (NLW) to their employees will be publicly named in an attempt to deter unscrupulous businesses from flouting their employment law duties.

Following a review of the public naming scheme, the decision was made that it should continue, but that increased support should be provided by government departments to enable employers to comply with existing NMW legislation, which is highly complex and many employers admit that they grapple with. The announcement also confirms that the naming rounds will become more frequent in a bid to combat the issue of non-compliance.

Previously, the government has published the names of employers who owed arrears of £100 or more in NMW payments to their workforces, but that threshold will be increased to £500. This is in an attempt to stop the publication of company names where there has been a genuine mistake or oversight, or where there has been incorrect interpretation of NMW legislation. The employer will still be required to correct any errors and will need to pay workers back accordingly and can be handed fines of up to 200% of the arrears, but without the added embarrassment of having their name published for all and sundry to see. The change to the naming and shaming will be applied to those who have had a review or are undergoing a review and would have normally been named and shamed if £100 breach, so if under £500 will not now be named and shamed.

The press release provides further information relating to plans to amend regulations to increase the range of pay arrangements available to companies employing 'salaried hours workers'. 'Salaried hours workers' are those that receive an annual salary in equal instalments for a set number of contracted hours. The changes will mean that workers who have varied hours and therefore, pay cheques, each period can be classified as salaried workers in the future. This will mean that there is more flexibility around how salaried workers are paid but that protections for workers are not compromised in any way. It also means that employers are less likely to fall foul of the convoluted NMW legislation which historically caused issues when individuals were paid drastically differently values from one month to the next.

The press release lists the following changes:

- Fortnightly and 4-weekly pay cycles will be permitted for salary workers. This is a big win as it means that it will include a large proportion of individuals who work within the retail sector, where there seems to be higher levels of non-compliance with NMW regulations
- Employers will now be allowed to choose the 'calculation year' appropriate to their workers, which will enable them to monitor the hours worked by salaried workers to try and prevent underpayment of wages
- Salaried workers will be entitled to receive premium pay, for example, for working on a Bank Holiday, without forfeiting their entitlement to equal and regular instalments in pay.

The announcement also detailed some changes to salary sacrifice. Unfortunately there have been a number of misinterpretations. Whilst HMRC will not penalise employers if they inadvertently allow an employee to enter/remain in the salary sacrifice scheme, which then results in them being taken below the NMW, penalties will not be levied, if this is the only breach during a compliance visit and or no previous NMW breaches. It doesn't, however, allow for employers to knowingly permit employees to enter a salary sacrifice scheme whereby they will fall below the NMW after the sacrifice.





This is what BEIS said if the following are met:

- 1.) The whole amount of the underpayment in the reference period needs to be attributable to a salary sacrifice scheme, or a purchase from the employer which is not for items required for the employee to undertake their work (e.g. uniform), or a savings scheme operated by the employer for the benefit of the employee
- 2.) No part of the underpayment when it relates to condition 1 relates to deductions as respect to a worker's expenditure or as a respect to living accommodation
- 3.) The worker has consented to the reduction or deduction
- 4.) The worker has received the relevant goods or benefits, or repayment of monies into the saving scheme in full compliance with the terms and conditions
- 5.) Employers that have been convicted of NMW offences, been party to a labour market enforcement undertaking or order, or who have been issued a Notice of Underpayment (NoU) in the past six years will still receive penalties

To reiterate, NMW should not be reduced by a salary sacrifice or deduction arrangement. BEIS has confirmed the rationale behind the decision to remove financial penalties relating to the scenarios where this does happen, and stated that employers will still need to pay employees back for any underpayment in relation to NMW and salary sacrifice, but the removal of the associated financial penalties provides employers with an opportunity to reassess their practices and ensure that they are compliant with NMW law.

"The intention of the direction is to ensure that historical liabilities are repaid to workers, whilst providing employers with an opportunity to ensure their practices going forward are compliant with the law."

Armstrong Watson's payroll team are very disappointed with this statement as they, along with others, had been lobbying to allow employees, where they choose to, be a part of a salary sacrifice scheme and receive the benefits their fellow colleagues above the NMW receive. However, we haven't given up yet!

The new changes are due to come into effect from 6 April 2020 but are subject to standard Parliamentary approvals at the time of writing.

The upcoming Employment Bill is expected to follow on from the update to the NMW regulations and discusses plans to create a Single Enforcement Body to give the government greater powers to clamp down on employment law breaches and to stop unscrupulous employers.





HMRC to discontinue providing paper P45 and P60 stationery

HMRC has confirmed at the Employment & Payroll Group (EPG) on 27 February 2020 that they will from 2021, no longer be supplying paper P45s or paper P60s.

For Armstrong Watson payroll clients this will have no impact as our software is capable of producing this information on plain paper now without the use of HMRC stationery.

If you run your own payroll please note this change.

HMRC recommends that any business that uses HMRC stationery order what they need now or at least by the end of March 2020. P60s will be available into May but after that will cease. P45s will also be available throughout the year, but they will be running their stock down so will not have available from April 2021.

Most payroll software will have the provision to print on plain paper, but there are some that cannot. HMRC will be working with software providers to make them aware of this change. In addition, HMRC has a Basic PAYE Tool and this has the ability for a customer to print P45s and P60s.

Those who are paper filers (specific groups authorised by HMRC) will continue to be supported.

If this change impacts you please act now.

