

NEWS FROM THE HR TEAM



Struggling to get employees back into the workplace?



The temporary measure to work from home was due to Government intervention and guidance related to the global pandemic, and so long as any working from home arrangement was temporary and not formally agreed, employers can require their employees to return to work as per the terms of their employment contract.

Even where a temporary arrangement continued longer than anticipated, employees can be required to return to work.

Some employers have transformed their working practices and have arranged for all employees to work from home permanently, some have agreed a hybrid pattern of both working from the office and working from home, whilst others have fully resumed office working.

Where an employee makes an application under Flexible Working, the relevant procedure should be followed and any changes agreed would be a permanent change to their terms and conditions of employment.

Where employees are struggling with the transition back to the workplace, if any health issues are related to this, employers would discuss these with the employees and obtain any relevant medical advice, if relevant, to support the employee. Where employees may be experiencing any mental health issues, a similar approach would be taken providing a culture of support, in line with business needs.









For any further advice or questions you may have, please contact one of our HR specialists.

Covid-19 vaccination guidance for employers

The Government has published vaccination guidance for employers, which includes encouraging staff to have the vaccine, considering allowing them time off to have their vaccine and increasing awareness of how to get the vaccine, as well as an Employer's Communication Toolkit.

Please see the below for further information;
<https://coronavirusresources.phe.gov.uk/covid-19-vaccine/resources/employer-toolkit/>



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191 Employers, including John Lewis, Pret A Manger and The Body Shop, named and shamed by the Government for paying less than the National Minimum Wage (NMW).

Even where the breach is unintentional, the Government will name and shame employers who do not meet the minimum wage requirements.

Investigations by HMRC found that £2.1million was owed to more than 34,000 workers for the period of 2011-2018. They were further fined £3.2million, with the below being stated as the most common breaches;

- wrongly deducting pay from workers' wages, taking their pay below the NMW, e.g. deductions for uniforms and expenses (47% of employers)

- failing to pay workers for all the time they had worked, including overtime and additional work before and after a worker's shift (30% of employers)
- failing to pay the correct rate to apprentices (19% of employers).

Employers must ensure that correct salary is paid under NMW and also ensure that holiday pay is correctly calculated based on an employee's average salary, which may need to include regular overtime.

For further information please contact SFB Consulting.



EAT rules Indirect sex discrimination did occur where a community nurse was unable to work the new flexible working requirements due to childcare commitments

Dobson v North Cumbria Integrated Care NHS Trust
A Tribunal dismissed the employee's claim of indirect discrimination as she did not provide evidence to support that she was unable to work a new flexible working pattern which included weekends. The employee worked fixed hours totalling 15 hours over 2 days and had three children, two of whom were disabled.

The Claimant appealed, and the ET upheld her appeal on the grounds that the pool she was compared to was limited to her immediate working team only. The ET found that the Respondent should have made a comparison to all Community Nurses as the need to work

flexibly was required across the Trust for Community Nurses.

The ET also found the Tribunal had been in error for not considering that women, due to childcare responsibilities, may likely be more unable to commit to flexible working patterns compared to men.

The Claimant had explained to her employer that she was unable to accommodate the flexible working request and was subsequently dismissed.

The case has now been referred back to Tribunal for consideration for the claims of indirect discrimination and unfair dismissal.

Automatic unfair dismissal cases due to Covid safety concerns when returning to the workplace

Under The Employment Rights Act 1996, employees are protected from being subjected to unsafe working environments.

Rodgers v Leeds Laser Cutting Limited

The claimant Mr Rodgers raised concerns about returning to the workplace during the pandemic as he lived with a family member who was classed as 'vulnerable'. The claim was dismissed as Mr Rodger's employer had implemented the Government recommended measures for a Covid safe working environment.

Gibson v Lothian Leisure

On 30th May 2020, Mr Gibson's employment was terminated without any procedure being followed or without any discussions, but via a text message from the Director of his then employer, Lothian Leisure.

Mr Gibson had commenced employment with Lothian Leisure in February 2019, and Mr Gibson's father was shielding and suffering from a brain tumour, Colitis and other medical issues. The Judge was satisfied that the Claimant's evidence met the requirements of Section 100 of the Employment Rights Act, due to the Claimant raising concerns about the lack of PPE which he believed would have placed his father at serious imminent risk of danger relating to the pandemic.

In April 2020, the Claimant was asked to return to work as needed, but when he raised concerns about PPE, he was, in short, advised by the Respondent to 'shut up and get on with it', and was not provided any PPE.

The Claimant had not had any issues with his employer up to that point and he raised his concerns about Covid-19 and placing his father at risk. The Respondent had not taken steps to implement the recommended Government guidance for a Covid safe working environment.

The Claimant was awarded £6,562 as a basic award and £14,500 as a compensation award for unfair dismissal. Further, £1,200 for accrued annual leave at the date of dismissal, plus £720 for unpaid furlough pay, £142.85 for pension payments and £500 for one weeks' notice pay.

With more and more businesses resuming working from the Office or work site, employers should work with their Health and Safety to ensure that the relevant Government guidance for their industry is being followed to provide a Covid safe working environment for their employees.



The smart way for employees to contribute to workplace pensions

So what is the "smart way" to contribute to pensions? Well you may have heard it referred to as salary exchange, salary sacrifice or smart pension. Ultimately they all refer to the same method of contributing which is employees making a gross pension contribution from their gross salary rather than the traditional "relief at source" process where the employee makes a net contribution from their net earnings. The benefit for the employee are considerable; tax relief received at highest marginal rate at source so no need to reclaim higher rate tax relief and lower national insurance contributions which equals an increase in net take home pay. Another benefit is lower employer national insurance contributions. For example an employer with 50 employees with total monthly employee net contributions of £5,000 per month would save approximately

£10,350 per annum in employer national insurance contributions.

I expect your next question is does HMRC allow this, as it seems too good to be true. The answer is yes and more information can be found on the government website <https://www.gov.uk/guidance/salary-sacrifice-and-the-effects-on-pay>. Ultimately the government is keen to encourage pension saving.

However for it to be recognised by HMRC as a valid scheme it must be documented appropriately because ultimately it is a contractual change. This means the definition of salary used to calculate other employee benefits such as life cover will need to be amended to avoid a reduction in benefit entitlement. With the employee choosing

The smart way for employees to contribute to workplace pensions Cont...

to exchange salary for an additional employer pension contribution. This can be done on an opt in basis by completing and signing a suitable form or an opt out basis by issuing communications confirming this is the default option which an employee can opt out of. Due to its contractual nature we would recommend employees are advised they are unable to alter their contributions mid-year but instead only on the anniversary of them entering the scheme, unless they suffer a lifestyle event which alters an employee's financial circumstances such as:

- changes to circumstances directly arising as a result of coronavirus (COVID-19)
- marriage
- divorce
- partner becoming redundant or pregnant
- birth of a child or adoption

in addition the reduction in salary could increase or decrease an employee's entitlement to statutory benefits, such as the state pension, maternity/paternity pay, child and working tax credit, universal credit, child benefit and statutory sick pay. For example maternity/paternity pay entitlement would be lower because Ni'able earnings are reduced. However means tested benefits such as working tax credit, universal credit and child benefit could increase. There is unlikely to be an impact on mortgage applications as most providers take into account the 'reference pay' (basic salary before any SMART pension deductions) when assessing a mortgage application so do not consider SMART disadvantageous to the amount of capital to be borrowed. Many providers now base their lending on affordability linked to net take home pay rather than basic salary so contributing via the Smart

basis could enhance borrowing potential due to the increased net take home pay.

If you don't already operate your pension scheme on this basis now is the time to consider switching to this contribution basis as it would help reduce the financial impact of the expected increase in employer and employee national insurance contributions being discussed by government to pay for long term reform of social care and reduce NHS waiting lists following the pandemic.

We can provide support and guidance on how to operate a compliant scheme. If this of interest please get in touch.

Employment tax health check



Photo by Markus Frieauff on Unsplash

With the myriad of changes to tax legislation in recent years it can often be difficult for employers to keep completely up-to-date and ensure that no employment tax issues have arisen.

Whether you've got some specific concerns that you require some assistance with or want a general review of your employment tax compliance

position, we have colleagues who can assist. Often an objective review can uncover issues which can be corrected in advance of any possible future HM Revenue & Customs (HMRC) enquiry

Now is therefore an optimal time to undertake an Employment Tax Health Check for your business.

The employment taxes health check will cover and include the following areas:-

- Payroll operation (including salary sacrifice arrangements)
- Expenses and benefits (including PSA and P11D processes)
- National Minimum Wage issues
- Termination payments
- Homeworking and Coronavirus claims
- Employment status (including compliance with the new IR35 rules)
- The Construction Industry Scheme
- Equity based incentives
- Global mobility issues (including short term business visitors and international homeworkers)

Health check benefits

Having a health check will provide your business with the following benefits.

- Provides compliance comfort
- Identifies process and control deficiencies and opportunities for improvement
- Offers best practice approaches to achieve optimum efficiency
- Pinpoints underpaid (and overpaid) taxes, keeping penalties and interest to a minimum (and potentially improving cash flow)

If you are interested in discussing a health check for your business, then please do not hesitate to contact us

