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Essential Employer Update 2018

We look at recent developments in employment law and payroll practice.

HMRC takes hard line on illegal working

HMRC require any employer using labour supplied by a third party to undertake stringent checks to guard against illegal working practices.

Employers need to establish where their workers come from, how they are paid and whether those arrangements are legal. HMRC advise that there are four main areas for employer consideration:

- is the supplier of labour legitimate, with no history of non-compliance
- does the employer understand and approve of the labour supply chain used
- are agency workers paid the contractual rate – and does this comply with National Living Wage/National Minimum Wage legislation
- is there pro-active employer involvement to eradicate modern slavery and illegal working in the labour supply chain?

The key point to note is that employers must be able to demonstrate compliance: there must be evidence that relevant checks have been carried out – that they have checked that appropriate licences are held, such as a Gangmaster Licensing Authority licence or a Security Industry Authority licence, for example.

Failure to comply can have severe repercussions. If non-compliance is established, employers may become liable for unpaid tax and National Insurance contributions, and if HMRC consider that non-compliance has involved the employer in VAT fraud, the right to reclaim input tax may be lost. Be aware that employers connected with a non-compliant labour supply chain are likely to be deemed to be complicit by HMRC, unless they can prove otherwise.

These penalties come on top of government rules which can see employers facing fines and even prison sentences of up to five years where they take on people who don't have the right to work in the UK. The risk of reputational damage is also considerable, and offenders may be named and shamed in the press.

In a further development, the Chancellor announced in the autumn Budget that the construction sector will soon come under the spotlight, with new rules likely in 2019 on VAT fraud in labour supply chains in construction.

Business Tax Account: changes for employers

As part of the Making Tax Digital (MTD) programme, HMRC are gradually making changes to the Business Tax Account (BTA). Most recently there have been changes to the way employer PAYE liabilities and payments are presented. There have been problems with the way HMRC have processed RTI data in the past, so that the figures employers have submitted haven't always matched what's shown on the BTA. To fix this, HMRC are gradually working on the way that RTI data is pulled into the BTA. There are also changes to overall online design, with new pages showing annual and monthly statements, and added detail such as the Apprenticeship Levy. It is important that employer clients check their BTA – even if payroll is outsourced – to make sure that HMRC have processed data and payments correctly.

Please be aware that we as agents are not able to access your BTA directly. However, should you have any questions, we will be happy to assist or contact HMRC on your behalf.

Losing staff: check termination payments

Changes from 6 April 2018 were in sight for the tax and National Insurance treatment of termination payments, and particularly payments in lieu of notice (PILONs). But there have been further developments here, and employers need to be aware of the latest government timetable. Many employers will have seen publicity on this issue earlier, and should note the revised timetable which delays the introduction of some changes by a year.

When an employment is terminated, tax treatment of payments to employees depends on whether the payment represents earnings or compensation. Compensation payments attract a £30,000 exemption for tax (and are exempt from NIC), whereas earnings don't. But it has

been difficult to establish which category some payments fit into – and PILONs have been especially problematic. Where PILONs are made and the employee has a contractual entitlement or strong expectation of receiving one – say if the business is known to make PILONs – these have been treated as earnings, and so do not fall within the exemption. But where there isn't a contractual entitlement, or where payment represents damages for failure to give notice, the exemption has usually applied.

Coming in April 2018 - change for PILONs

From 6 April 2018, the way PILONs are taxed is changing. The employer will need to calculate the pay that the employee would have received if employment had carried on throughout the period of notice, the post-employment notice pay (PENP). PENP will always be taxable. It is also subject to Class 1 NIC. Broadly, anything above this will be treated as a compensation payment and attract the £30,000 tax exemption. Calculating PENP is likely to prove challenging.

Postponed to April 2019 – change to National Insurance treatment

Termination payments treated as compensation payments (rather than earnings) at present do not attract NIC. This will continue to be the case until April 2019, when there will be an employer-only NIC charge on any amounts in excess of the £30,000 limit. Note that instead of a start date of 6 April 2018, this will not now take effect until 6 April 2019. Proposals at present suggest that this is likely to be collected in real time via RTI.

Planning employee termination packages can be complex, and we are happy to offer advice.

Corporate tax evasion

Companies and partnerships should be aware that since September 2017, they can be prosecuted if they fail to prevent staff facilitating criminal tax evasion.

They now become liable for failure to prevent employees, agents or others who provide services on their behalf from facilitating criminal tax evasion. Previously liability arose only for senior members of the organisation, such as directors. Please contact us for more information on how we can help you to risk assess and put appropriate measures in place to protect your business.

Childcare: where are we now?

New government scheme

The implementation of Tax-Free Childcare, the new government scheme to help working parents with the cost of childcare, has been rolled out in stages.

The scheme first made its debut in April 2017 and although there have been initial systems problems, HMRC expect that the scheme will be open to all eligible parents by 14 February 2018. Application is made online through the Childcare Choices site **goo.gl/2jWL4z** and application can be made for all eligible children at the same time.

Under Tax-Free Childcare, for every £8 the parent pays, the government provides a £2 top-up, to a maximum of £2,000 per child each year – with a higher limit of £4,000 for disabled children. This gives a total childcare pot of £10,000, or £20,000 for disabled children. To be eligible, parents must generally have minimum weekly earnings of at least £120 each. There is also an upper earnings limit of £100,000.

Employers may like to advise affected employees that there may be the possibility of compensation if a parent is unable to complete an application for Tax-Free Childcare; is unable to access their childcare account; or doesn't get a decision about whether they are eligible, without explanation, for more than 20 days. Those employing a nanny should be able to use the childcare account to pay their PAYE tax and National Insurance. Delays in getting this system working may also give grounds for compensation. Application is made online **goo.gl/AfnQh9**

Existing employer schemes close to new joiners

Many employers already help employees, often by providing childcare vouchers by way of salary sacrifice, and existing Employer-Supported Childcare (ESC) will run alongside the new scheme. However, these schemes must close to new joiners from April 2018. Employees can choose whether to remain in existing schemes or switch to Tax-Free Childcare, but parents cannot be in both Tax-Free Childcare and ESC at the same time. The Childcare Choices website provides useful guidance on the options available to affected employees. As with any remuneration package, care is needed with the detail. Please do contact us for help in this area.

Salary sacrifice: wider rules

From 6 April 2017 rules on Optional Remuneration Arrangements (OpRAs) were introduced, with a bearing on salary sacrifice and optional remuneration schemes. They can potentially affect any arrangement where an employee can choose between cash and a benefit, such as a company car. Broadly, where these rules apply, the taxable value is now the higher of the cash foregone or the taxable value under benefit in kind rules. The rules affect any arrangements made or varied since 6 April 2017.

This does not apply to: employer-provided pension savings and advice, childcare vouchers, workplace nurseries, ultra-low emission company cars and some other benefits.

Following a transitional year, the rules apply to all pre-6 April 2017 salary sacrifice contracts from 6 April 2018, with the exception of a few specific benefits. These benefits are protected from the rules until 6 April 2021, (so long as not varied or renewed before then): cars, vans, fuel, living accommodation and school fees.

Pensions auto-enrolment: going forwards

Employers need to remember that there are increased minimum contributions into workplace pensions from 6 April 2018. From this date, the minimum contribution for employers becomes 2%, with the overall contribution level increased to 5%, making the balancing contribution due by employees 3%. The current overall minimum contribution rate is 2%, with a 1% minimum for employers, and most employees currently paying the balancing 1% contribution. The Pensions Regulator (TPR) recommends early preparation, including checking that payroll software will cope with the change, and ensuring employees are aware of their increased pension payments. TPR provides a template letter **goo.gl/nHCUSJ**

Re-enrolment duties are also on the auto-enrolment calendar for an increasing number of employers. Every three years, employers must re-enrol in a pension scheme any eligible staff who have left the pension scheme or reduced their contributions below the minimum level. The exact date will vary from employer to employer. TPR site has a useful re-enrolment tool which will help calculate your compliance date **goo.gl/UpbRxV**

National Minimum Wage: new compliance scheme for social care sector

Some employers in the social care sector have had problems with back payments of National Minimum Wage for workers carrying out sleeping time shifts.

There is now a new voluntary compliance scheme, the Social Care Compliance Scheme, introduced from 1 November 2017. This provides time to pay arrangements, and means employers are not penalised or named and shamed. HMRC have published guidance **goo.gl/3c58Mx**, but professional advice has been recommended by leading tax bodies. We will be happy to be of assistance.

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