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# PENSIONS AUTO-ENROLMENT ARE YOU READY?

A new scheme of pension auto-enrolment is set to begin on 1 October 2012 and will be phased in over the next five years.

The scheme will require employers to automatically enrol workers into a pension scheme which meets certain minimum requirements, and make contributions into the scheme thereafter.

Employers will be given a 'staging date' based upon the number of workers that were in their PAYE scheme on 1 April 2012. The staging date will be the date upon which the auto-enrolment provisions will begin to apply to each employer.

In a nutshell, three categories of worker will be caught by the new provisions. Employers should conduct an exercise to identify which of the following categories each worker will fall into:-

1. Eligible jobholders – those aged between 22 and the state pension age, earning in excess of £8,105 gross per annum. Workers falling within this category must be automatically enrolled into a qualifying pension scheme if they are not already active members of a qualifying scheme, within one month of the relevant staging date (but may opt out if they wish). Employers will then be under a statutory duty to make contributions into the scheme.
2. Non-eligible jobholders – those aged 16 to 74 who earn more than £5,564 but less than £8,105 gross per annum OR those aged 16 to 21 or between the state pension age and 74 who earn more than £8,105 gross per annum. Workers falling within this category may choose to opt into a qualifying pension scheme but will not be auto-enrolled. For those who opt in, employers will be under a duty to make contributions into the scheme.
3. Entitled workers – those workers aged between 16 and 74 who earn below £5,564 gross per annum. Workers falling into this category will not need to be auto-enrolled and will not be entitled to join a qualifying pension scheme. There is no statutory duty to make employer contributions for these individuals. However, they must still be offered access to a pension scheme.

Contributions into a qualifying pension scheme must be made by employers and workers (eligible jobholders and non-eligible jobholders who opt into the scheme). The total minimum contributions into a qualifying pension scheme will begin at 2%. They will then increase to 5% on 1 October 2017 and increase further, to 8% on 1 October 2018.

Under the new scheme, employers are prohibited from engaging in conduct which encourages workers to opt out of a pension scheme. This applies to existing workers and job applicants alike. During recruitment, employers may not ask questions or make statements to suggest that success would depend on a job applicant opting out. The Pensions Regulator has the power to compliance notices and to impose financial penalties of up to £50,000 to employers who engage in prohibited recruitment conduct or inducement. Furthermore, an employer who "wilfully" fails to comply with certain key duties will be guilty of a criminal offence, liable on conviction to a fine, imprisonment or both.

It is clear that the auto-enrolment scheme will have significant financial implications for employers and there are potentially very serious consequences for non-compliance. Furthermore, the scheme imposes many more requirements on employers than the scope of this article allows. For that reason, employers are advised to obtain guidance on the issue to put plans for auto-enrolment in place at an early stage.

## From an HR practitioners point of view:

The company will be sent a letter twelve months before their 'staging date'. Best practice suggests that firms start planning sooner rather than later; ideally on receipt of the twelve month notification. Work with colleagues to design, develop and implement HR systems to monitor auto-enrolment and who "opts out", as the onus is on the employer to auto-enrol opted out members every three years. Also, liaise with colleagues who run your payroll as they will be sorting the contributions, which if the firm goes down the "qualifying earnings" option, contributions may change monthly depending on overtime and bonuses etc.

If you require any assistance from a HR point of view please contact Joanne Pickering on 01254 580000 or email **joanne.pickering@forbessolicitors.co.uk**

## PENSIONS AUTO-ENROLMENT SEMINAR

The Employment Team at Forbes Solicitors are running a breakfast seminar to guide employers through the process of pensions auto-enrolment on **31st January at Samlesbury Hall**. The programme is yet to be finalised but to register your interest early please contact **Rachael Hull on 01254 222388 or email rachael.hull@forbessolicitors.co.uk**

For further information or advice please contact Jonathan Holden on **01254 222359** or email **jonathan.holden@forbessolicitors.co.uk**

# PAY THE MINIMUM WAGE OR RISK BEING NAMED AND SHAMED!

**In addition to potentially facing Employment Tribunal proceedings, Employers who fail to pay the National Minimum Wage (NMW) to their employees now run the risk of becoming named and shamed by the UK Department for Business, Innovation and Skills (BIS).**

This recently happened to one employer, Rita Patel, who failed to pay almost £3,500 in NMW to a former worker, following an investigation by HM Revenue and Customs (HMRC). As a result of the failure, HMRC enforced the debt through the courts. The matter was then referred to BIS and swiftly publicised, as a means of future deterrent to the employer and any other employer who may consider paying below NMW.

While the BIS scheme came into effect on 1 January 2011, this is the first time that an employer has actually been named and shamed. The Government sees this case as a watershed moment and intends through the BIS, to publicise cases much more readily in future. Guidance on the criteria which must be met before an employer is named and shamed has been issued and is set out below.

**An employer may be named and shamed provided that there is evidence that the employer has:**

- knowingly or deliberately failed to comply with their obligations to pay NMW;
- previously received advice from HMRC about the steps that they need to take to ensure compliance, which they have failed to comply with;
- failed to take adequate steps to keep or preserve NMW records;
- delayed or obstructed a NMW compliance officer in the performance of their duties;
- refused or neglected to answer a NMW compliance officer's questions;
- refused or neglected to provide information or produce documents to a NMW compliance officer; or
- refused or neglected to pay arrears of NMW to workers, following HMRC intervention, which has resulted in HMRC taking action against the employer to ensure payment of arrears to workers.

Employers need to be reassured however, that HMRC will not automatically refer any employer to BIS. They will only do so if there is evidence that at least one of the above criteria are met and the total arrears owed to workers is at least £2,000, where the average arrears per worker are at least £500.

**THE NATIONAL MINIMUM WAGE RATES (WITH EFFECT FROM 1 OCTOBER 2012) ARE AS FOLLOWS:-**

| | |
|---|---|
| **Workers aged 21+** | **£6.19 per hour** |
| **Workers aged 18-20** | **£4.98 per hour** |
| **Workers aged 16-17** | **£3.68 per hour** |
| **Apprentices** | **£2.65 per hour** |

If you require advice or assistance in relation to the National Minimum Wage or pay issues generally, please contact Emma Newbould on **01254 54374** or **emma.newbould@forbessolicitors.co.uk**

# DON'T INTERFERE WITH OUR SELECTION POOL

**Where the Employment Tribunal (ET) considers a claim for unfair dismissal brought as a result of a redundancy, its principal concern is whether or not the employer has followed a fair procedure.**

Part of this procedure includes identifying a pool of employees who may be at risk of being made redundant and considering whether the redundant employee was fairly selected from that pool. Who is included in the pool of employees that are 'at risk' is a matter for the employer to decide.The case of *Halpin v Sandpiper Books* has confirmed that this remains the case, even where that pool consists of only one employee.

In this case, the Employment Appeals Tribunal (EAT) confirmed that provided the employer's selection is reasonable in the circumstances, the ET will not interfere. The Claimant was based in China and the only employee of the Respondent in that country, having been moved out there from the UK. It soon became evident to the Respondent that it was not viable to keep an employee in China and he was made redundant following extensive consultation. Despite the offer of alternative solutions including a move back to the UK, the Claimant felt that he had been unfairly selected for redundancy. This was an argument which was rejected by the ET. The Claimant then appealed to the EAT.

The EAT rejected the appeal, upholding the ET's finding that the employer had not erred in having a redundancy pool of one. "Selection only operates, when fairness is concerned, where there is a number of similarly qualified possible targets for redundancy". The fact that there was only one employee who qualified as a possible target meant that the redundancy was not unfair; a decision that was reaffirmed by the EAT in *Wrexham Golf Co Ltd v Ingham*. In this case it was held that the ET had not applied the 'range of reasonable responses' test to the question of whether it was reasonable to focus on the Claimant as the only person at risk of redundancy.

Employers should be aware that the fact that there is only one employee in a given role does not give them an unrestricted right to place an employee into a solitary pool of one. Reasonableness is the key. The circumstances of this case were such that a pool of one was deemed reasonable. Employers should seek advice when they are considering the candidates for redundancy and the process to be followed.

If you require advice or further information please contact Peter Byrne on **01254 54374** or email **peter.byrne@forbessolicitors.co.uk**

# LANCASHIRE HR EMPLOYER'S FORUMS SUPPORTED BY FORBES SOLICITORS

**The next Lancashire HR Employer's Forum is being held on 14th November at Clayton Park Conference Centre.**

Over 90 delegates regularly attend the Forums which are open to HR Practitioners along with Business Owners/Directors/Managers across Lancashire, are free of charge and include a complimentary buffet lunch. One recent attendee described the event,

"I have found the speakers to be of high quality and informative and as a new business owner this is vital. The events are always well attended with an incredible variety of businesses. This provides a great opportunity to get to know people in the local business community and discuss relevant issues."

**For further information please contact Amin Vepari at Community and Business Partners on 01254 505050 or email amin@cbpartners.org**

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For legal advice that is straight to the point:

**Blackburn Office t:** 01254 54374
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# BISINESSES TO BENEFIT FOLLOWING LATEST PROPOSAL

## Employment law bureaucracy is set to be reduced following Vince Cable's latest announcements for reform. Or at least that is the intention.

The proposals from the Department for Business, Innovation and Skills relating to capping unfair dismissal fees, publishing a standard settlement agreement and streamlining Employment Tribunal fees are intended to benefit small businesses in particular, helping to make it much easier to end an employment relationship.

The proposed cap on the compensatory award in unfair dismissal claims will not make it any easier to dismiss staff but it will make it much cheaper, with a proposed reduction from the current limit of £72,300 to the national median average earnings of £26,000. Critics have argued that the cap may encourage employers to act in a way that would entitle an employee to bring an unfair dismissal claim, whereas under existing laws they would make the commercial decision not to do so, due to the potential financial implications.

The government is also intending to introduce "settlement agreements" as a means of compromising employment claims. The consultation on settlement agreements will provide a template on how employers and employees should go about reaching an agreement to end an employment relationship. In light of this, ACAS has agreed to provide a new code of practice for such agreements. There is nothing particularly groundbreaking about this proposal – employment claims can be settled before going to the Tribunal, either via a compromise agreement or an ACAS conciliated COT3 agreement. The difference is that at present, employees are obliged to obtain independent advice before the settlement becomes binding. If the proposals come into force, this will no longer be necessary.

Whilst the proposal for settlement agreements may represent good news for employers by reducing cost and cutting red tape, from an employee's perspective, an important safeguard would be removed. If an employee was no longer required to obtain independent legal advice before a settlement became binding, there would be a clear potential for abuse by employers. For that reason, we expect to see the introduction of safeguards to protect employees' interests (for example, allowing the employee a cooling off period and giving them the opportunity to seek advice before obtaining their signature).

With the introduction of Employment Tribunal fees in 2013, the proposals will come as an added bonus to employers, who can hope to spend less time in front of Tribunal judges if the proposals come to fruition. However, it is important to note that they are still at the consultation stage and therefore, nothing is set in stone at the moment.

For further information or advice, please contact Amy Crabtree on **01254 54374** or email **amy.crabtree@forbessolicitors.co.uk**