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Data Protection - major changes ahead!

2018 may seem a long way off, but the Information Commissioner is recommending that employers should start preparing now for the EU General Data Protection Regulation (GDPR), which will come into effect on 25 May 2018. This will replace the different data protection laws across Europe with a single set of regulations which will apply to all EU member states.

As it seems likely that we will still be in the EU in May 2018, the GDPR will apply to us until we leave. Even if we then change this, it will continue to apply to UK businesses offering goods and services to the EU, or monitoring the behaviour of individuals in the EU from the UK.

The eight core principles in the previous Data Protection Directive and the cross border transfer rules remain largely unchanged. However, the GDPR aims to give individuals more information on how their data is processed; introduces a clarified "right to be forgotten"; and gives individuals the right to be informed when their data has been hacked. In summary:

- **subject consent:** employees must be given more detailed information when consenting to data processing (simple clauses in employment contracts will not suffice)
- **subject access requests:** these must be complied with within one month of receipt (rather than 40 days), with a

possible extension. The employer may charge a reasonable fee or refuse to comply with a request which is "manifestly unfounded or excessive", but otherwise the information must be provided free of charge. Data subjects must be given the details of data retention periods and their right to have inaccurate data corrected. Employers will therefore need a clear procedure for handling requests.

- **sensitive personal data:** lawful reasons for processing criminal records largely disappear, unless additional national laws permit this. This may impact on background checks and investigations.
- **"right to be forgotten":** there are new rules and a right to have inaccurate data rectified.
- **record keeping:** there are more restrictions on the types of data employers can retain and for how long.
- **breaches:** organisations will be required to notify any serious breaches as soon as possible (within 72 hours unless it is unlikely to result in risk to the rights and freedoms of the individual).
- **penalties:** fines of up to €20 million or 4% of annual global turnover (whichever is the greater) will apply to serious breaches with fines of €20 million or 2% (whichever is the greater) for some of the processor, security and administrative related breaches.

Modern Slavery

Further to our emailed articles on Modern Slavery in 2015 and 2016 (available on the HR Solutions' website by using our search tool), as well as our webinars on this subject, we thought we would just update you on the requirements to comply with the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015.

"Modern slavery" is a term which covers slavery, servitude, forced and compulsory labour and human trafficking. It includes exercising ownership over a person; coercing or threatening someone to perform work they would not do voluntarily; and arranging or facilitating another person's travel with a view to them being exploited (even where the person consents to the travel). It therefore covers situations where, for example, migrants take loans to pay for their travel, and then become trapped in 'debt bondage' (this happens when other charges, such as accommodation and transport costs, are added to the loan, resulting in them being unable to repay it). In addition, their passports are often withheld.

The increasing globalisation of the economy means that goods and services bought in the UK may have a long and complex supply chain extending across multiple countries, including those where bonded or forced labour is common. Modern slavery also exists within the UK.

Where a business has a turnover of £36 million or more, including any subsidiary undertakings, it is required to develop and publish a modern slavery statement each year. However, we have noticed that some of our smaller clients increasingly are being asked to produce equal opportunity, diversity, environmental and business ethics policies as part of their tender documentation, and it may be that they will

now be asked to supply information to their customers and also make a written commitment as to the steps they take regarding anti-slavery practices and policies.

Therefore, the Modern Slavery Act will impact on employers of all sizes as clients/customers and consumers may put pressure on businesses of any size to provide ethically sourced products and services, and sponsors and future investors may also wish to reduce their financial risk (and the risk of negative publicity) by only associating with organisations that take active steps to prevent slavery in their supply chains.

The Regulations do not prescribe what has to be included in the statement but it must reflect the nature of the business and its operations, the sector and countries in which it operates and the complexity of its structure and supply chains. A business that simply states that no steps have been taken to ensure its supply chain is free from slavery will still be compliant, however, doing this may run the risk of damage to its reputation and profile.

Statements should be succinct, written in simple language, with links to associated documents (such as policies). They should be accurate and refer to actual steps undertaken or begun. The statement should be in English but may also be provided in other languages, if relevant to the organisation's business and supply chains. It should be free from ambiguity and easy to understand.

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Don't forget the increases in the National Minimum Wage!

It's almost 20 years since the National Minimum Wage (NMW) was first introduced – so you would expect that we are all now clear about the rules, but this would not seem to be the case! The Government's policy of "naming and shaming" those who fail to pay the NMW certainly caught the attention of the media and it was surprising to again see some big names on its list (<https://www.gov.uk/government/news/record-number-of-employers-named-and-shamed-for-underpaying>) of 350 employers. Retailer Debenhams – the worst offender – was found to have underpaid almost 12,000 employees. It claims this was due to its payroll software using a calendar year (52 weeks) to check compliance, rather than the year that HMRC uses for payroll purposes (52.17 weeks). Debenhams was required to pay almost £135,000 to its employees and was fined £63,000.

Other household names on the list include clothing retailer Peacocks, Lloyds Pharmacy, half a dozen Subway franchises and Age Concern. Almost a quarter of the 350 employers on the list were in the hospitality sector, and there were also quite a few nurseries, hairdressers and care providers.

Many of the underpayments were due to employers either including tips as payment, or making deductions from pay for purchases of uniforms, deposits for accommodation, and even to cover the Christmas party! These deductions resulted in payments that were less than the NMW. Other areas where inadvertent underpayments have arisen in the past are where staff are required to spend time attending briefings before starting work, or undergoing security searches after clocking off.

Employers should prepare now for the increases in the National Minimum Wage that apply for pay periods on or after 1 April 2017 - the new rates are set out in our Legal Update section. A reminder of which payments may count towards the National Minimum Wage:

Pay includes	Pay excludes
Gross pay	Overtime or shift premia
Commission payments	Allowances such as unsocial hours payments or London weighting
Bonuses or incentive pay	Expense payments or allowances for clothing, travel, subsistence etc
	Tips and gratuities whether paid directly to the employee OR paid through the payroll

No benefits in kind count towards the NMW with the exception of accommodation (up to a specified amount). So the following do NOT count:

- meals
- luncheon vouchers
- fuel
- car
- employer's contribution to the worker's pension fund
- assistance with removals
- medical insurance.

Expenses for travel to a temporary workplace and related subsistence costs which are eligible for tax relief cannot form part of employees' pay for NMW purposes.

A £1.7 million campaign will raise awareness of the NMW. This may be necessary given HMRC's recent list of what it considers to be the 10 worst excuses (<https://www.gov.uk/government/news/hmrc-reveals-10-worst-excuses-for-not-paying-the-minimum-wage>) given in the last 12 months for not paying the minimum wage. Our favourites were:

- "I thought it was ok to pay foreign workers below the National Minimum Wage as they aren't British and therefore don't have the right to be paid it."
- "She doesn't deserve the National Minimum Wage because she only makes the teas and sweeps the floors."



Gender Pay Gap

In our April 2016 newsletter we had an article on Gender Pay reporting and thought that as this seems to be very topical lately, that we would provide an update.

Gender pay gap reporting applies to employers with 250 employees or more who have to annually publish information on pay differences between male and female employees and covers payments made in April each year. The latest date that an employer can start reporting on this is now 4 April 2018 and will be based on pay periods as at 5 April 2017.

Whilst the situation on the pay gap is improving, recent years statistics have shown little improvement. According to the CIPD women would have to work an additional 52 days each year unpaid to close the gap.

Payroll analysis in 2016 of 292 large companies who track gender parity (undertaken by Korn Ferry Hay Group) – found 28.6% of the average pay gap in favour of men. However, all but 0.8% of this could be attributed to variance in seniority, sector and function.

Even if you have equal pay, you may still have a gender pay gap if:

- You have more women employed in the lower level jobs
- You have fewer women in more skilled jobs
- You have fewer women in more senior roles
- Your bonus scheme rewards those in male dominated roles.

Therefore, the gender pay gap is not the same as equal pay which is the same pay for the same/equal job. It is the difference between what men earn and what women actually earn. You could have all men at the top of the pay structure and women at the bottom or vice versa and have a big gender pay gap.

The reporting includes employees who work in Great Britain and whose contract is governed by UK legislation. It does not include members of LLPs, partners in a partnership, employees based outside of Great Britain or those in sister companies or associated companies and separate franchises.

Please contact us for further information on what information has to be included and reported.

Automatic Enrolment

What is Automatic Enrolment?

If you employ at least one member of staff, you are an employer and under the Pensions Act 2008, you will now have legal duties. Every employer must put certain members of staff (known as 'eligible jobholders') into a qualifying workplace pension scheme and start making contributions to it.

When will you be affected?

This is known as your staging date and will be determined by the size of your business. Larger employers were the first to reach their staging date in October 2012, followed by medium and then small businesses. All existing companies will have enrolled employees by April 2017 followed by new employers by February 2018.

The Pensions Regulator should write to you to confirm your staging date, but you can check this using your PAYE reference number on The Pension Regulator's website.

Who do you need to enrol?

You must first assess your employees to identify whether they are eligible, entitled or non-eligible. Eligible workers must be automatically enrolled and you must pay minimum contributions. These are UK workers who are either:

- not already in a qualifying pension scheme at work
- aged between 22 and the state pension age
- earn more than £10,000 a year / £833 a month / £192 a week.

Non-eligible workers can ask to be enrolled (opt-in) into your scheme and if they do, you must pay minimum contributions. These are UK workers who either:

- are aged 16 to 22 or between state pension age and 74
- Earn more than £5824 a year / £486 a month / £112 a week

Entitled workers can also ask to join, but you don't have to pay contributions for this group.

- Entitled workers are those aged at least 16 but under 75 who earn less than £5,824.

How much do I have to contribute?

The Government has set minimum contribution levels, which are currently at least 1% of the employees 'qualifying earnings' (currently between £5824 and £43,000 per year), with a total employee and employer minimum contribution of 2%. This will rise to 8% by April 2019.

Opt-outs

Members can opt-out within one month of being enrolled and will be refunded any contributions taken from their pay. The pension scheme will refund any contributions to the employer. After the opt-out period is over, members can't opt out, but they can stop contributing. In this case, contributions already paid will remain invested in the pension scheme.

It is illegal to force employees to opt-out and employers can be fined by the Regulator for doing so.

Compliance

You are legally required to provide information to The Pensions Regulator about how you have met your automatic enrolment duties. The deadline for providing the declaration of compliance is five months after your staging date.

HR Solutions is growing...

We would like to introduce you to the newest members of our team at HR Solutions:



Georgina Jarrett, Business Development Executive

Georgina has joined our Business Development Team in order to help grow our client base. Georgina's main focus will be targeting potential clients and advising of the different service offerings we have available. Georgina brings with her a degree in Marketing, and looks forward to speaking to both current and potential clients soon.



Jessica Hallett, HR Assistant

Jessica has joined our HR Team via an Apprenticeship scheme to provide support to the HR Consultants, in relation to our HR Administration and Fixed Fee Recruitment services and also support in the management of our clients on our HR Database system.



Karen Lovell, HR Advisor

Karen has joined our HR Team to support our HR Consultants and clients using our Advice Line service. Karen brings with her 7 years' HR and Employment Law experience providing generalist and ER support in end to end case management. She supports clients by talking through options, enabling them to achieve the most desirable outcome, wherever possible!

Karen originally comes from a retail HR background. Since then she has specialised in Employment Law and has supported a wide range of industries from public and private sectors, NFPs and multinationals on a consultancy basis.



Internal Promotion - Juliet Coates, HR Consultant

HR Solutions are pleased to announce the internal promotion of Juliet Coates from HR Advisor to HR Consultant. Whilst Juliet has only been with us for a short while, in this time she has proved herself to be more than capable of managing a number of clients and projects across a variety of industries, Juliet is now formally managing a number of clients, and is excited to have more clients added to her portfolio, therefore please welcome Juliet to her new position of HR Consultant.

Question and Answer

Q We are about to go into a redundancy process and this covers several departments which will mean giving the employees the option to elect representatives in their areas. Is there anything set down about what percentage of votes counts as accepting a nominated representative?

A There is no hard and fast rule. Normally the best practice is that there should be a majority of people who voted for one nominee. However, if the number is less than 50% you could go back and tell the employees the outcome and ask them if they wish to be represented or if they wish to consult individually or you could just agree to consult with the elected representative.

Also, you may get none or only a few votes in some areas and in that case you would consult with the affected employees individually, so you may end up with consulting both with employees and reps.

The legal stance is that you must offer the right to elect representatives where there is the requirement for collective consultation where you propose to dismiss 20 or more employees as redundant within a period of 90 days or less. The periods for consultation are:

- At least 30 days before the first dismissal takes effect if between 20 and 99 employees are to be made redundant at one establishment over a period of 90 days or less, or
- At least 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

Also remember that if you plan to make 20 or more redundancies you must notify the Department for Business, Energy and Industrial Strategy using form HR1.



March 2017
Legal Update

National Minimum Wage increases from 1 April 2017:

- Young person rate (under 19 but over school leaving age) increasing to £4.05 per hour
- Apprentice rate – increasing to £3.50 per hour*
- 18 – 20 years of age increasing to £5.60 per hour
- 21 – 24 years of age increasing to £7.05 per hour
- Adults aged 25 or over increasing to £7.50 per hour (National Living Wage)

* Apprentices are entitled to this rate if they are either aged under 19 or aged 19 or over and in the first year of their apprenticeship.

Statutory Increases:

- SSP increasing to £89.35 from 6 April 2017
- Statutory maternity, adoption paternity, shared parental leave to £140.98 from 2 April 2017
- Limit on a week's pay for calculating Statutory Redundancy Pay and unfair dismissal basic award increasing to £489
- Maximum basic award for unfair dismissal increasing to £14,760
- Maximum compensatory award for unfair dismissal increasing to £80,541
- Contract claims (breach of contract e.g. for wrongful dismissal) still capped at £25,000

What's new with HR Solutions...?



Client Survey

In April we will be launching our annual client survey, so please keep an eye on your inbox. We value all client feedback, and would encourage you to be honest with your feedback so that it allows us to continue to improve our service. If you have any feedback that you wish to raise outside of the survey, please feel free to contact your HR Consultant or one of the Directors directly.

Employment Law Seminars 2017

On 24th May and 22nd June we are running our Employment Law Seminars in London and Kettering respectively. If you would like to find out more, or wish to attend please email your HR Consultant directly, or contact Hannah Patel on 0333 241 4350.



Webinars

HR Solutions are now holding monthly webinars on a range of HR Topics and important changes that may affect your business. Please email us at enquiries@hrsolutions-uk.com to register your interest in our webinars and we will be sure to send you an invitation.



<< Modern Slavery (continued from page 1)

For the majority of businesses, statements are likely to cover most of the following:

- introduction
- overview
- responsibility
- documentation
- risk assessment
- action plan
- due diligence, monitoring and auditing processes
- training

It is expected that the statements will not be static but will develop and improve over time, reflecting the progress that has been made. Therefore, it is sensible to resist the temptation to try to solve every issue in the first such statement.

HR Solutions has a template Modern Slavery Statement that you can use to develop your own specific statement and can provide a more detailed explanation of what is included in the headings above.

Disclaimer. The information and expressions of opinion in this newsletter are given as a guide only. They are not intended to be comprehensive nor to provide legal advice. They should also not be treated as a substitute for specific advice concerning individual situations. Always seek professional advice or give us a call.

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