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Apprenticeship Changes

Currently you can only employ someone on an apprenticeship if they are undergoing training under the Government's apprenticeship scheme, where funding is provided from central government via an approved training provider. The training must be provided through a recognised apprenticeship scheme. Therefore, an employee who is undergoing training on a non-recognised scheme is simply a trainee.

As from May 2017, there are significant changes to the way that apprenticeships are funded. The Government wishes to make all apprenticeships world class giving apprentices prestigious routes to a good career. Employers will be more involved in the design of the training and apprenticeships will be simplified, but with more rigorous testing at the end to ensure that the apprentice is fully competent.

The key change is the introduction of the apprenticeship levy which will come into effect in April 2017.

This will apply to larger public and private sector employers in the UK who have a pay bill of more than £3 million. The levy will be 0.5% of their pay bill. An allowance of £15,000 will be offset against the levy which means that payment will only be made for the portion of the pay bill in excess of £3 million. Employers who pay the levy, and who have registered to do so, will be able to access levy funds and put the money back into the apprenticeship training. Non-paying employers will be expected to make a contribution of around 10% of the cost of the apprenticeship on top of the apprentice's pay, although employers with fewer than 50 employees will not have to pay anything

towards the cost of training an apprentice aged 16-18, a young care leaver or young person with an education, health and care (EHC) plan.

A new Digital Apprenticeship Service will help employers to:

- select an apprenticeship framework or standard
- choose the training provider or providers they want to deliver the training
- choose an assessment organisation
- advertise and recruit to apprenticeship vacancies
- agree a price and pay the co-investment to the training provider directly, the Government will then pay its contribution to the provider directly but the payments will be taken each month from the employer's digital apprenticeship account.

Whilst this comes into effect in April 2017, the changes begin from 1 May 2017 and do not apply to existing apprenticeships.

From April 2016, employers of apprentices do not have to pay employers' class 1 NI contributions if the apprentice is on a recognised apprenticeship scheme, is aged under 25 and is paid below the apprentice upper secondary threshold. However, the Government is also considering whether the current separate National Minimum Wage rate for apprentices remains suitable.

Further guidance is to be issued and you can keep abreast of this on <https://www.gov.uk/government/publications/apprenticeship-levy-how-it-will-work> or by speaking to an approved training organisation.

Around three million EEA citizens work here - around 5% of the UK population. In the short term, the free movement of workers continues, so employers may recruit new EEA workers up until we exit the EU. However, if you have employees from the EEA, you may wish to consider the following:

- Check your "right to work" documentation. Identify which of your employees are EEA nationals, where they work and which roles. Reassure them that their right to work in the UK is unlikely to change in the short to medium term.
- Consider providing help to those who wish to stay, particularly those in business critical roles or those which are hard to fill - provide information on residency/citizenship options, useful websites, or consider providing professional assistance and advice.
- Encourage them to consider applying for residency or citizenship. Those who have been here for less than five years may apply for a Registration Certificate; those with five years may apply for permanent residence, and those with six years or more may be able to apply for British citizenship. Tell them to start collating supporting documents (e.g. bank statements, tenancy agreements, payslips).
- Do they need help with the English language and life in the UK tests?
- Advise them not to leave it too late - a flood of applications is expected!

Employed v Self-Employed

With the recent outcome of the Employment Tribunal's decision on the two drivers who provided services to Uber that found that they were 'workers' under the Employment Rights Act, we thought that we would again provide more guidance on this. We have set out in previous articles that there is differences in defining whether someone is employed or self employed and each case depends on the specific terms and arrangements between the parties.

The Employment Tribunal found that these two drivers were in fact workers and entitled to employment rights because in essence because of the way they directed the way that they worked and because they received direct

payment from the customer using their technology. It seems that this decision will be appealed but in the meantime it poses big issues for employers who do not clearly assess the risks involved by classing people as self-employed.

An employee works under a contract of employment and provides a service but a self employed person has a contract to provide services.

The following quick guide provides the key employment indicators that may be used to denote whether an individual is employed or not.

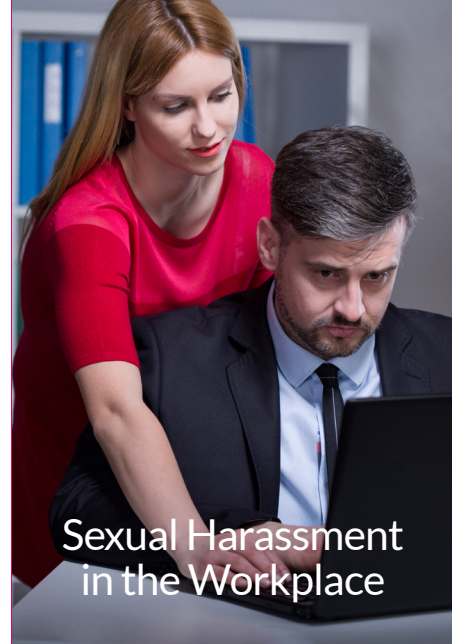
Factor	Self-employed	Employee
Personal service	Will provide own services, but may also sub-contract work to others, or bring in outside assistance.	Only provides personal services.
Mutuality of obligation	Is free to accept or turn down work if they wish. The engager is under no obligation to offer any work, or further work.	The employer is obliged to offer work, and the employee is obliged to do as the employer requests.
Right of control	Likely to be in control of most aspects of the work done.	An employer may control "what", "how", "where" and "when" work is done.
Right of substitution	May sub-contract work, or bring in assistance. Depends on nature of work; an individual may be engaged because of their personal reputation or skill and so no substitute will be acceptable.	It is rare for an employee to have the right to appoint a substitute.
Provision of own equipment	Will normally supply all small tools and bring in or hire plant.	May sometimes supply own small tools or equipment: employer will provide all plant and machinery.
Financial risk/ability to profit	Will quote on a job-by-job basis. Is able to make more profit by more efficient working, or may incur loss if overruns on time, or if required to rectify defects in own time.	Paid whatever work is done, benefits from the National Minimum Wage and statutory holiday entitlement. An employee will bear little risk unless exceptionally work directly relates to a bonus or commission scheme. Or, if poor work affects appraisal for promotion or other benefits.
Opportunity to profit	Can profit if work is performed efficiently, or from re-charging and making a profit on materials.	May only profit under a bonus or incentive scheme. However, may benefit from tips, or payments from third parties.
Length of engagement	Generally a fixed-term or short-term contract.	Contract will generally be open ended after probation period (if any).
Part and parcel of the organisation	May become "a fixture" in that their work brings them to the company regularly, but acquires no additional responsibilities or privileges as a result.	Is capable of being promoted, or manages other staff. Part of works pension, or SAYE scheme.
Employee type benefits	Unlikely to be entitled to any type of benefits. May be invited to functions with other external suppliers.	Part of pension scheme, may enjoy canteen or sports club facilities, car parking, attends staff functions.
Right to terminate contract	If other party is in breach.	Would normally give notice under specified contract term.
Personal factors	May be engaged because of skills, reputation etc.	Personal factors may be the reason for appointment.
Mutual intention	The intention of the parties should be stated in written contract. This may not be persuasive if in reality the parties behave differently.	If the parties intend the relationship to be one of employment it is difficult for the courts to say otherwise. In most cases the parties will have agreed written contracts and the employee will have enforceable rights under employment law.

Other factors to be taken into account are whether the individual is in business in their own right, i.e. has employees, rents work space, has a website, has other clients, does their own invoicing, etc.

If the employee was previously in the direct employment of the end client and performing a similar role and tasks then HMRC and an employment tribunal may well argue that self-employment is a sham.

Getting the employment status wrong can be very expensive if it is found that the person is not self-employed and employers can face significant tax liabilities, penalties, including possible criminal sanctions for failing to comply with auto-enrolment obligations and a wide range of employment tribunal claims, including claims for unpaid holiday pay and minimum wage.

Therefore, talk to us about any queries on this and we can provide you with the right advice and documentation.



Sexual Harassment in the Workplace

In a recent survey by the TUC it was reported that more than half of women say that they have been sexually harassed at work and most admit to not reporting it.

Harassment claims are usually brought in the employment tribunal as a form of discrimination. Harassment arising from a 'protected characteristic' is unlawful under the Equality Act 2010. Protected characteristics are sex, race, disability, sexual orientation, religion or belief, age, pregnancy, gender reassignment, marital status or civil partnership. Harassment can be ongoing, or can be a one-off serious act. Awards for a successful claim of discrimination are unlimited and take into account injury to feelings.

People respond to situations in different ways and what may seem like an innocent action or remark to one person may be deemed offensive by another. Therefore, sexual harassment constitutes any unwanted behaviour which the person finds offensive or makes them feel intimidated or humiliated and the behaviour is of a sexual nature.

Unwanted behaviour can come in all sorts of forms, i.e. verbal, non-verbal, written or physical.

There are many cases where work colleagues make jokes or indulge in banter that they do not perceive to be offensive but employees don't always understand that their perception is the same as everyone else and are being insensitive to the way in which their words and actions are perceived.

Continued Overleaf >>>

Hot Topic: Redundancy

At this time of year we always find that employers are wishing to downsize and we feel that we need to remind you of the need to ensure the right consultation process is carried out in redundancy situations.

Where any employee is potentially to be made redundant you must consult at the earliest opportunity and for a minimum period in line with the following:

Potential Numbers*	Action required	Timings	Comments
Less than 20	Individual consultation	Consultation to begin in good time	Required to follow a fair dismissal procedure
20 - 99	Election of representatives (see below) Consultation with representatives BEIS informed	Consultation to begin at least 30 days before notice of the first dismissal is served	Union consultation required where there is recognition
100+	Election of representatives (see below) Consultation with representatives BEIS informed	Consultation to begin at least 45 days before notice of the first dismissal is served	Union consultation required where there is recognition

*(being made redundant in one establishment within a period of 90 days or less)

Some of the actions to be taken into account or taken:

- Identifying the business need, reasons, numbers, etc
- Initial announcement
- Electing representatives, where appropriate unless there is union recognition
- Offering voluntary redundancy
- Looking at ways to avoid or minimise the redundancies
- Potential bumping (where an employee claims another employee should be made redundant so that they can be retained but there is no obligation for you to use it but should give it consideration)
- Selection criteria where appropriate
- Redundancy payments
- Proposed termination dates
- Alternative work and current job vacancies and trial periods
- Consultation with individuals, TU reps or elected representatives
- Help with searching for alternative work
- Who is managing the consultations and any appeals

If you fail to consult this may lead to a protective award of up to 90 days' pay for each affected employee and the protective award is calculated on actual gross weekly pay. To ensure that you follow a robust process please do not hesitate to speak with us.

<<< Sexual Harassment in the Workplace Continued

Most policies that cover such discrimination encourage the employee to speak up right away and where possible confront the harasser. As many people don't feel they can do this, an alternative is to write to the perpetrator, explaining how this person's behaviour is making them feel and that they want it to stop, or to speak to a fellow employee, manager, union representative or their HR department. Normally the informal route tends to resolve the issues but if it does not, then the employee must make a formal complaint, either through the bullying and harassment policy or via the grievance procedure.

Employers need to understand that they have a duty to protect their employees and not ignore this sort of behaviour and to ensure that the unwanted behaviour does not continue.

Make sure that you have robust policies in place that explain to employees how you will handle any such behaviour; that you have zero tolerance for sexual harassment; and what the outcomes will be.

If you have any issues in your workplace or would like robust policies in place then please do not hesitate to contact us.

HR Solutions is growing...

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



Juliet Coates, HR Advisor

Juliet has joined our team to support our HR Consultants and clients using our Advice Line service. Juliet brings with her a degree in Business Studies specialising in HR, and has over 10 years HR experience working for a variety of industries providing generalist support ranging from day to day situations through to the more complex cases.



Emma Wood, HR Administrator

Emma has joined our team to provide support to the HR Consultants, in relation to our HR Administration service, recruitment and also support in the management of our clients on our HR Database system. Emma brings with her over 3 years experience in HR Administration.



Aftab Jussab, HR Consultant

Aftab has joined our team as HR Consultant and will be managing a number of clients and projects across a variety of industries. As well as a degree in Law, Aftab brings with him a wealth of knowledge and experience in employment law having over 15 years experience in the legal sector. Aftab has taken on a number of clients to his profile already, and looks forward to welcoming more soon.

We are still looking for further HR Consultants and Advisors to join our growing team, so if you know of anyone who might be interested, then please encourage them to make contact.

Question and Answer

Q An employee who is pregnant has sent in a fit note that states she can only work for 4 hours a day with no standing, walking or lifting at work and the employee has said that if we don't accommodate this they are entitled to paid maternity suspension, is this right?

A Yes. However, you should make every effort to make reasonable adjustments as advised by the GP and look at alternative work that is sitting down. We suggest that you undertake a risk assessment and evaluate her situation by monitoring it and seeing how she is working and having regular reviews with her.

You could ask her to go back to her GP for more prescriptive advice on what she can and cannot do to ensure all risks to her and her unborn child are taken into account.

If you cannot accommodate alternative work then she will have to be put onto paid maternity suspension. This is paid at her full rate of pay, for up to 26 weeks, therefore providing that you can remove the risks, it may be better to offer her any suitable alternative work that you have.

Note that you have a duty of care under health and safety legislation, and that she has protection both during her pregnancy and when on maternity leave.

Also, if you have made reasonable adjustments for any other employee, such as allowing work on a phased return or alternative duties due to medical reasons, this would strengthen her case for less favourable treatment.

Any alternative work must not be on less favourable terms and conditions.

If, however, she remains off sick, then obtain a professional medical report from an occupational health or medical professional to confirm her condition and what she can and cannot do and when she is likely to be fit to return to work and then have regular reviews with her.

Top Tip

When employing someone new it is important to remember that there are two things you need to do:

- Make the offer and confirm it in writing, this can be in an email, but best practice is to confirm the key terms and conditions in an offer letter with accompanying documentation
- Issue a written statement of terms and conditions of employment containing the main terms and conditions of employment within the first 2 months of their employment. We normally advise that this written statement is sent out with the offer letter or issued on their first day of employment to avoid any misunderstandings.
- The offer letter and written statement together form the contract of employment.

If you do not issue the written statement and the employee brings a claim in the employment tribunal, the tribunal may award additional compensation of up to 4 weeks' pay.



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.



National minimum wage increases from 1 October 2016:

- 21-24 years of age = £6.95 per hour
- 18-20 years of age = £5.55 per hour
- 16-17 years of age = £4.00 per hour
- Apprentice rate if under 19 years of age or in the first year of their apprenticeship = £3.40 per hour

National Living Wage from 1 October 2016

- 25 and over = £7.20 per hour

Gender pay gap reporting from 1 October 2016

Employers with over 250 employees are required to publish information showing gender pay differences

Forthcoming changes

- **Rights of Sunday shop workers** - to be enhanced to allow shop workers to object to working more than their normal hours on a Sunday and a reduction in the notice period for shop workers in large shops to opt out of Sunday working instead of the current three months. A start date for the changes to the rules has yet to be published.
- **Tax-free childcare scheme** comes into force – in families where both parents work and each parent earns less than £100,000 a year, and a minimum weekly income at least equivalent to 16 hours at the rate of the national minimum wage, the Government will pay 20% of their yearly childcare costs (capped at £2,000 per child). The scheme will apply to parents with children aged under 12 and is planned to be introduced in early 2017.
- **30 hours' free childcare** becomes available for 3 and 4 year olds in working families from September 2017.
- **Changes to apprenticeships introduced from 6 April 2017** – see article on the front page.

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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