NEWS FROM THE HR TEAM

Tax changes to payment in lieu of notice payments

On 6 April 2018 changes will be made to the tax element of payments in lieu of notice (PILONs). What do employers need to know?

A payment in lieu of notice (PILON) is money given to an employee when their employment is terminated by the employer without notice, i.e. the employee doesn't work any notice period. PILONs can either be contractual, stated in their employment contract, or non-contractual, not stated in their contract of employment.

Currently, where a PILON is a contractual right, the employee must pay tax on the amount in the usual way as the payment is regarded as normal earnings rather than compensation. Where a PILON is made in the absence of a contractual provision, the first £30,000 can be paid tax free with no NI contributions due. This is because the payment is regarded as damages for breach of contract, rather than normal earnings. Any amount paid above the £30,000.00 threshold is liable to income tax but not NI.

Understandably non-contractual PILONs are attractive to employers and employees alike, but HMRC regularly challenges PILONs and this is partly why changes are being made to the tax treatment of PILONs.

Changes;

From 6th April 2018, the current contractual/ non-contractual distinction will not apply and all PILONs will be treated as earnings. Therefore, all employees will pay income tax and NI on the amount of basic pay that they would have received had they worked their notice period in full. You'll generally have to pay employers' NI too.

The first £30,000 exemption is being retained but the reality is that only genuine redundancy situations will continue to benefit from it.

BBi Group News

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Covert CCTV in breach of human rights laws

Despite covert CCTV footage showing 5 employees stealing stock, the European Court of Human Rights has ordered the employer to award each of those employees €4,000.
What did the employer do wrong?

On 9 January 2018 the European Court of Human Rights delivered its ruling in the case of López Ribalda and others v Spain. The five employees who pursued the case all worked as cashiers at the family-owned MSA supermarket chain in Spain. In early 2009, at one their supermarkets, MSA management began noticing that stock levels and sales figures were not tallying. Between February and June 2009 the losses were in excess of €82,000.

To ascertain what could be happening MSA installed various surveillance cameras at the supermarket. Visible cameras were placed directed towards the entrances and exits hoping to identify potential customer thefts, whilst covert cameras were fitted in the till areas. These were intended to record potential thefts by employees. Staff were told the reasons why the visible cameras were installed, but they were not told about the hidden cameras at the tills.

Caught on camera

Soon after, footage showed that the five employees were working together, and with customers, to steal at the till area. Although it seemed items were put through the till, the transactions were faked or cancelled and the customer would then leave without paying for the item(s). The covert recordings were shown to the five employees, followed by disciplinary proceedings and dismissal for theft. Each employee then claimed unfair dismissal at the Spanish employment tribunal.

Appealing outcome

Both the employment tribunal and Spain's High Court found the employees' dismissals to be fair. They also ruled that covert camera recordings was plausible and the "substantiated suspicions of theft" justified interference with the employees' right to privacy. The employees lodged further proceedings with the European Court of Human Rights (ECHR) where claiming that the use of the covert surveillance footage breached their right to privacy under Article 8 of the European Convention on Human Rights.

Privacy rights breached

The ECHR held that covert video surveillance of an employee at their place of work was a "considerable intrusion into their private life" and, because MSA had completely ignored the Spanish Personal Data Protection Act, Article 8 had been breached. Each employee was awarded €4,000 compensation – even though they had stolen from their employer.

Note;

It is best to remain compliant with the law by following the Information Commissioner's guidance for employers on usage of video surveillance in the workplace. Part 3 of the Employment Practices Code states that the covert monitoring of employees should only ever be undertaken in exceptional circumstances and where you would intend to involve the police. Covert surveillance should not be undertaken to monitor for standard misconduct cases.

Pregnancy and maternity discrimination in recruitment

A large number of employers were found to still have discriminatory attitudes towards employing pregnant employees and new mothers, as found by a survey from the Equality and Human Rights Commission.

What the survey reveals and what you need to be aware of when recruiting;

The Equality and Human Rights Commission (EHRC) online survey, completed by 1,100 employers in the private sector found the following;

- 36% agreed that it was reasonable during the recruitment process to ask women about their plans to have children.
- 59% of employers stated that a woman should have to declare if she is pregnant during the interview process.
- 46% of employers thought it acceptable to ask female applicants if they had young children.
- 44% of employers agreed that women should work at least one years' service with a business before deciding to have children and a similar number thought that women who've had more than one pregnancy while in the same job were a "burden" to their team.
- 32% of employers believed that women who become pregnant and new mothers in work are "generally less interested in career progression" than other employees.
- 41% of employers thought that pregnancy placed an "unnecessary cost burden" on the workplace.

The EHRC has suggested employers are still "living in the dark ages".

Pregnancy and maternity discrimination legislation is clear. Pregnancy/maternity is one of the "protected characteristics" under the Equality Act 2010, making it unlawful to discriminate, whether directly or indirectly, on any related grounds.

For example;

- asking interview questions relating to the female applicants current or future family / child plans could potentially lead to a claim of direct sex discrimination.
- Not offering a job to a woman because she is pregnant amounts to unfavourable treatment because of her pregnancy, which is direct pregnancy discrimination.

Pregnant women are under no obligation to disclose their pregnancy at an interview.

The EHRC's Code of Practice on Employment recommends if an applicant volunteers such information, the interviewer must ensure it does not influence any recruitment decision.

Note;

It is always best not to ask any questions whatsoever of this nature during the recruitment process; be it on an application form or at an interview.

Should you interview and decline a woman that;

- is of child-bearing age
- you know to be pregnant
- has young children

Completely non-discriminatory reasons for declining the applicant must be provided, for example another job applicant scored higher on non-discriminating questions, had more relevant skills or work experience or a higher level of qualifications.

For a job applicant to prove discrimination at the recruitment stage is difficult if there's no evidence at all to support her suspicion that she's been discriminated against.