BBi Group News

BBi Group : Supporting your Business

Group News - June 2016

NEWS FROM THE HR TEAM

National Living Wage

By now, all companies should be paying all of their workers who are aged 25 and over at least the national living wage (NLW) rate.

This is currently set at £7.20 per hour. It's not been popular amongst smaller employers but, one thing is for sure, the NLW isn't going anywhere. However, unlike the four national minimum wage (NMW) rates, it's quite possible to project what the NLW is probably going to cost you over the next few years. Why is this?

When the NLW was first announced the government said it would reach at least £9 per hour by 2020 and ministers remain committed to delivering on this promise by 1 April of that year. So, between now and then, there are three opportunities for the NLW to rise, i.e. 1 April 2017, 1 April 2018 and 1 April 2019. Forecasters predict that the government will attempt to go for an equal split. If that's the case, give or take a few pence, the NLW will rise by around 45p per year - in other words, £7.65 p.h. in 2017, £8.10 p.h. in 2018, £8.55 p.h. in 2019 and finally the £9.00 p.h. target in 2020.

Obviously, we can't say for sure if this will happen - the economy can take different turns - but, as matters currently stand, this approach to NLW increases does seem logical. So apply these figures to your current and intended headcount over the next few years and you shouldn't be far wrong. We should know the 2017 NLW figure in autumn 2016 when the Low Pay Commission provides its recommendations to the government.

A word of warning, on 1 April 2016 the penalties for non-payment were doubled from 100% to 200% of the arrears, the maximum penalty being £20,000 per worker. There's no hiding place as a new HMRC enforcement team has been set up and pleading "an innocent mistake" won't get you off the hook.

Statutory Rates

The rates below apply from 1 April 2016 and are likely to change again on 1 October 2016.

Category of worker	Hourly rate
Aged 25 and above (national living wage rate)	£7.20
Aged 21 to 24 inclusive	£6.70
Aged 18 to 20 inclusive	£5.30
Aged under 18 (but above compulsory school leaving age)	£3.87
Apprentices aged under 19	£3.30
Apprentices aged 19 and over, but in the first year of their apprenticeship	£3.30

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Faking an illness

The Employment Appeal Tribunal has concluded that faking a sickie can amount to a fundamental breach of contract, giving you the right to dismiss.

In March 2016 the Employment Appeal Tribunal (EAT) handed down its ruling in Metroline West v Ajaj 2015. Ajaj (A) had been employed by Metroline (M) as a bus driver. In February 2014 he reported that he'd had an accident at work and suffered an injury. Although he was signed off sick, M arranged for covert surveillance of A when he attended one of its sites for a sickness absence interview.

From the surveillance footage M found that A's level of mobility was inconsistent with his sickness claims. Further covert surveillance was obtained in April 2014. It showed A doing things he insisted were beyond his physical capabilities, e.g. carrying heavy shopping bags. A was subject to disciplinary proceedings and dismissed for misrepresenting his ability to work. He claimed unfair dismissal.

When A won at the tribunal, M appealed to the EAT. It concluded that when an employee claims to be unable to attend work due to sickness, yet they are not actually ill or not as sick as they claim to be, their actions amount to dishonesty. As this strikes at the heart of the employer/ employee relationship, the employer can view this as a fundamental breach of contract and terminate their employment.

An expensive mistake!

Retail giant IKEA has been ordered to pay an employee who was sacked for stealing a milkshake that cost 97p over £23,000 in compensation. What error did IKEA make?

A pricey milkshake

Employee (F) had been employed at IKEA's Ballymun branch in Dublin since 2009 and primarily worked in its restaurant area. In 2014 he was seen drinking a milkshake that would have ordinarily been sold for the equivalent of 97p. F was not seen paying for the milkshake. As a result, F was suspended and later made subject to disciplinary action. He was accused of stealing a 97p milkshake which bosses at IKEA considered to be gross misconduct.

No appeal

F didn't turn up to either the investigatory meeting or the disciplinary hearing but they weren't missed on purpose - he was actually on pre-booked annual leave and away in France meaning that he didn't receive the relevant notifications. IKEA reached a decision in F's absence and he was sacked for gross misconduct. F didn't appeal against this decision internally because, as he explained to the tribunal, he now had "no faith in the company's internal process" Instead he commenced legal action for unfair dismissal.

His side of the story

In giving his evidence F argued that he had taken the milkshake but was adamant that it was no more than a genuine and honest mistake. He also stated that, on a different occasion, he had personally witnessed a group of fellow employees consuming beverages after their shifts finished and had not paid for them. So he wasn't the only one; he had just been singled out for disciplinary action by IKEA.

Tribunal's decision

The tribunal concluded that, in all the circumstances, the employer could not justify the dismissal and awarded F £30,000 (roughly £23,000) in compensation. Clearly, this employer made a number of errors but the biggest was arranging an investigatory meeting and disciplinary hearing at times where the employee was unavailable through no fault of his own.

So, let this be a warning for you, check for pre-booked annual leave dates for all relevant parties when arranging times and dates for investigatory meetings and disciplinary hearings. It could prevent a costly mistake. Should an employee take something without paying for it, don't jump to conclusions. Ask them what their motives were before making any judgement call. Arguably, had F been given the opportunity he would have paid for his milkshake when challenged. Most honest people would and genuine mistakes do happen. Also, don't single employees out for disciplinary action. As there was a culture of taking "free" drinks, IKEA should have dealt with F first and then advised all staff that this was not permitted.

NEWS FROM THE COMMERCIAL INSURANCE TEAM

What is the Insurance Act 2015?

A new legal framework affecting every business insurance policy placed, renewed or amended after 12th August 2016.

- Modernises insurance law and aims to make recovery from insurers simpler and fairer in the event of claim.
- However, these benefits are dependent on the customer making a 'fair presentation of risk'.

What are the key concerns for the customer?

Critical changes for customers centre on the new duty of fair presentation:

- The existing obligations of good faith and ensuring accuracy of material information both remain.
- The Act, however, also specifies what a customer must do for a presentation to count as fair. There are two key elements:

'Reasonable Search' a new obligation which will vary based on business circumstances:

- The customer must make adequate enquiries within their business to identify and verify information relevant to the risk(s) concerned.
- These must include all relevant knowledge of the 'senior management' of the business and those involved in buying the insurance (including the broker).
- Reasonable enquiries must also be made of any relevant third parties involved with the business, including external consultants, contractors and anyone insured by the policy.

'Clear & Accessible' presentation of risk information

- This addresses the clarity of presentation and how able insurers are to assess the risk. 'Data dumping' of large amounts of information without signposting is unacceptable.
- There is also an additional requirement to adequately highlight unusual activities and/or known areas of concern that could affect the risk.