

Legal Bulletin - January 2021

The National Minimum Wage

In his Spending Review on 25 November 2020, the Chancellor announced the National Minimum Wage rate increases for 2021. Additionally, from April 2021, the age threshold for the National Living Wage is lowered from 25 to 23. To reflect this, the 23-24 age category for the National Minimum Wage will be abolished.

The National Minimum Wage rates are set to increase in April 2021 as follows:

- National Living Wage (23+) to increase from £8.72 to £8.91
- National Minimum Wage (21-22) to increase from £8.20 to £8.36
- National Minimum Wage (18-20) to increase from £6.45 to £6.56
- National Minimum Wage (under 18) to increase from £4.55 to £4.62
- Apprenticeship Wage to increase from £4.15 to £4.30

The Government remains committed to a target of the National Living Wage reaching two-thirds of median earnings by 2024.

Off-payroll rules for the private sector (IR35)

The new tax rules (known as the “off-payroll” working rules) were originally due to take effect from 6 April 2020 but have been delayed to 6 April 2021 in view of the economic impact of the coronavirus pandemic.

The changes to the [IR35 rules](#) will affect medium and large businesses within the private sector that use individual contractors. Small businesses will not be affected. The IR35 rules, when implemented in April 2021, will apply to all public sector clients (regardless of size) and medium or large-sized private sector businesses i.e. those who meet 2 or more of the following criteria:

- have over 50 employees
- have a net turnover in excess of £10.2m
- have over £5.1m on their balance sheet

From 6 April 2021, the business using the worker’s services will be responsible for deciding their worker’s employment status. Where the worker is employed for tax purposes after applying the IR35 test, the fee payer (client) will be responsible for deducting employment taxes. The new rules apply if a worker provides services to a client through an intermediary (which is usually the worker’s own company i.e. personal service company), but would be classed as an employee if they were contracted directly. HMRC has published a Check Employment Status for Tax (CEST) tool online: <https://www.gov.uk/guidance/check-employment-status-for-tax>

Whilst small businesses are exempt from the new rules, these changes may affect self-employed contractors, as businesses may decide to limit their engagement to save the business from having to assess their tax status under the April 2021 changes, or contractors cease providing their services if they are caught by IR35.

Employment Bill

A new Employment Bill was announced in the December 2019 Queen's Speech. Whilst the introduction of this legislation has been delayed due to the impact of the coronavirus pandemic, it is expected to be published in 2021.

The Employment Bill is likely to include the following measures, for which there is no confirmed timescale:

- The introduction of a single labour market enforcement body to ensure that vulnerable workers are better informed of their rights, and to support businesses in compliance.
- A new right to request a more predictable and stable contract after 26 weeks' service, aimed at those engaged under contracts with variable and unpredictable hours, such as zero-hours employees.
- Payment of all tips and service charges go to workers, with the distribution of these sums supported by a statutory Code of Practice
- Extending redundancy protection to cover pregnant employees from the date they notify the employer of their pregnancy and for a period of six months after the end of their pregnancy, in addition to the current protection that applies during maternity leave.
- Extended leave for parents of children in neonatal care, to provide a week of leave for every week their baby is in neonatal care, up to a maximum of 12 weeks. Those with a minimum qualifying period of 26 weeks' service and who earn above the minimum pay threshold will be entitled to receive pay for the neonatal leave period at the statutory rate that applies for parental leave.
- A new right to a week's (unpaid) leave for employees with caring responsibilities.

New immigration system from 1 January 2021

A new immigration system will apply to individuals arriving in the UK for the first time from 1 January 2021. EEA citizens (which includes EU citizens) and Swiss citizens moving to the UK for the first time from this date to work will need to obtain a visa in advance:

<https://www.gov.uk/guidance/new-immigration-system-what-you-need-to-know>

<https://www.gov.uk/guidance/recruiting-people-from-outside-the-uk-from-1-january-2021>

Employers who are planning to sponsor workers from outside the UK from 2021 will need to apply for a sponsorship licence in advance: <https://www.gov.uk/government/publications/uk-points-based-immigration-system-employer-information>

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