



CLIENT ALERT

Increase in National Minimum Wage and Changes to Statutory Holiday Entitlement

From Monday 1 October 2007 there will be an increase in the National Minimum Wage and Changes to Statutory Holiday Entitlement.

National Minimum Wage

The National Minimum Wage Regulations (Amendment) Regulations 2007 come into force on 1 October 2007. On that date the new minimum wages rates will increase as follows:

- ◆ Adult rate (workers aged 22 and over) will increase to £5.52
- ◆ Development rate for 18-21 year olds will increase to £4.60
- ◆ Development rate for 16-17 year olds will increase to £3.40.

Increase in Statutory Holiday Entitlement

From October 2007 there will be an increase in statutory holiday entitlement. This will be introduced on a phased basis as follows.

- ◆ On 1 October 2007 holiday entitlement will increase from 4 weeks to 4.8 weeks per year (24 days for a full-time employee).
- ◆ Then from 1 April 2009, entitlement will increase to 5.6 weeks per year (28 days for full-time employees).

Who does it apply to?

The new statutory holiday entitlement follows the implementation of the Working Time (Amendment) Regulations 2007. The changes apply to all employees and workers covered by the Working Time Regulations 1998. There is no qualifying period for the statutory entitlement.

Employees on maternity leave retain their entitlement to statutory annual leave and statutory annual leave cannot be taken at the same time as maternity leave.

Workers on statutory paternity leave also retain their holiday entitlement.

How does this relate to time off for bank holidays and public holidays?

The purpose of these changes is to increase holiday entitlement over and above any paid time off for bank holidays and public holidays. Under the Working Time Regulations 1998 it was possible for employers to include statutory bank or public holidays within the employee's 20 day working time entitlement, but the new provisions override this.

How to calculate entitlement

The new annual entitlement will have to be calculated depending on when the employer's leave year runs. Assuming the leave year does not run 1 October to 31 September; adjustments will need to be made to ensure employees receive a proportionate increase in entitlement from 1 October. The DBERR (formally DTI) has provided a useful 'ready reckoner' to allow the calculation of the proportionate increase, and can be found on its website at <http://www.berr.gov.uk/employment/holidays/page40455.html>.

Any employee either joining or leaving the employer would have to have their entitlement adjusted to ensure the statutory minimum is provided.

Rounding down of leave entitlement is not allowed, but employers may wish to round holiday up for ease of administration.

What about employees with 'non-standard' working arrangements?

The statutory entitlement should be applied pro-rata for part-time employees.

Some employees work shifts (either regular or irregular) or have flexible work patterns, e.g. term-time only or annualised hours. The employer needs to calculate how many hours a week is worked on average over the whole year. For casual workers, those working very irregular hours, calculate the holiday entitlement as hours are worked.

For employees working compressed hours, the employer will have to calculate the holiday entitlement in hours. For employees working a 6 day week, 4.8 weeks would equate to 28.8 days leave entitlement, however, the maximum statutory holiday entitlement remains 28 days.

What if I already give my staff more than the minimum holidays?

The maximum statutory holiday entitlement will be capped at 28 days, although an employer can give more. Any holiday that an employer may grant staff above the statutory holiday entitlement is a contractual matter between workers and employer.

Can I pay an employee in lieu of holiday entitlement?

From 1 April 2009 employees cannot receive payment in lieu of holiday entitlement, except on termination of employment as at present. This does not include any contractual entitlement over and above the minimum, for example if employers offer more than the statutory 28 days.

Can I carry holiday entitlement over between leave years?

Four weeks' leave must be taken in each leave year. However, unused holiday entitlement over and above the statutory minimum can be carried over to the following leave year subject to the contract of employment or by agreement between employer and employee.

What else do I have to do – to implement these new provisions?

Employers must notify employees in writing of the changes to holiday entitlement, for example through a letter or circular to all employees or by a statement on pay slips.

What if there is a dispute about entitlement?

Employees who do not feel they are receiving their statutory entitlement, should consider raising their concern with their line manager or HR officer, or contact a trade union representative (if they have one). If the concern cannot be resolved using a formal grievance procedure, the employee can make a claim to an employment tribunal. The Advisory, Conciliation and Arbitration Service (Acas) will offer to help the employer and worker to reach a settlement to avoid the need for a tribunal hearing.

Want to know more?

If you require any advice or information on this or any other employment issue please contact a member of the Thorntons Employment Law Unit:

Email employmentlaw@thorntons-law.co.uk

Tel 01382 229111

www.thorntons-law.co.uk

