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# HART SHAW

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# Essential update for employers

This briefing provides a practical summary of recent developments affecting employers including where relevant the related tax considerations.

## Pay up on time - or face a penalty

From May 2010 employers who fail to pay their 2010/11 PAYE liabilities on time and in full may face penalties.

HMRC may impose late payment penalties on all employers, regardless of size, who fail to make their monthly or quarterly (an option available to small employers only) PAYE payments on time.

No penalty will be imposed for the first late payment but subsequent breaches may attract penalties from 1% to 4% depending on the number of late payments a year. A further penalty of 5% may be charged if any amounts are still outstanding after 6 months and then again after 12 months.

## Don't owe anything?

It is important to let HMRC know that you have nothing to pay either by:

- completing the online form: [www.hmrc.gov.uk/payinghmrc/pay-nil.htm](http://www.hmrc.gov.uk/payinghmrc/pay-nil.htm)
- sending a signed payslip with the amount completed as "NIL"
- phoning 0845 3667816 with your HMRC accounts office reference and advising them which period no payment is due for.

## Can't pay?

HMRC are advising employers who are experiencing financial difficulty to get in touch before liabilities are due. They should then be able to agree time to pay arrangements. Where such an agreement is entered into, and adhered to, penalties should not be charged.

## Employers...the form-filling starts here

If you are an employer the end of the tax year marks the start of the form-filling season! Here's a reminder of important deadlines for sending information (and money!) to HMRC.

### 19 April 2010 (22 for electronic payments)

- Interest will run on any 2009/10 PAYE, NIC, student loan and CIS deductions not paid over by this date.

**19 May 2010** - Employers' year end returns (P35 and P14s) due for submission.

**31 May 2010** - Employees must be provided with their P60 (certificate of pay and tax deducted).

**6 July 2010** - Submission of P11Ds and P9Ds for 2009/10 which show details of expenses paid and benefits provided to employees and directors. Employees must also be given a copy of their P11D/P9D by this date.

### 19 July 2010 (22 for electronic payments)

- Class 1A NIC for 2009/10 on most benefits provided to employees must be paid. Interest runs from this date on late payments.

### 19 October 2010 (22 for electronic payments)

- PAYE settlement agreement liabilities for 2009/10 are due, together with Class 1B NIC. Interest runs from this date on late payments.

## Electronic filing

All employers (regardless of the number of employees) must file their end of year returns (P35 and P14 (P60)) electronically. This is the first year that electronic filing of online forms is compulsory for smaller employers.

## Dad's at home looking after the baby

The government had pledged to increase paid Statutory Maternity Pay (SMP) to 12 months and introduce Additional Paternity Leave (APL) and Pay by the end of this parliament. The government still intends to introduce the APL and Pay though slightly later than planned but has decided to put the extension of paid SMP on hold for now, due in part to the current economic climate.

For babies due from 3 April 2011, the following will apply:

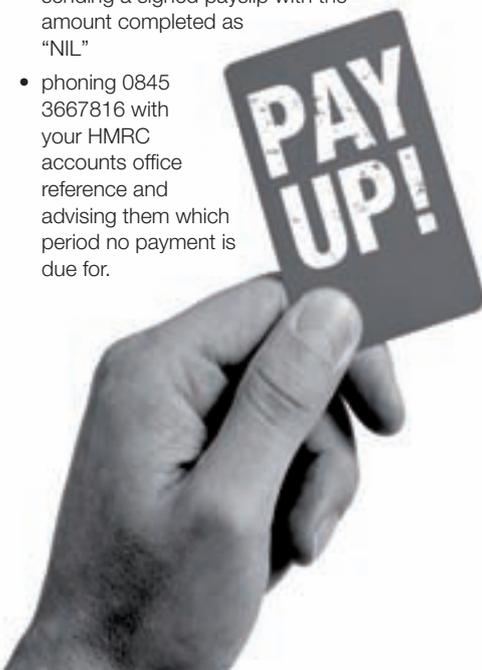
- Parents will be able to transfer up to six months' leave to the father if they choose to. The APL is to be taken once the mother has returned to work.
- This six month period will be the second six months of statutory maternity leave (currently 12 months) and parents will be able to split leave between them if they so wish.
- Some of the APL may be paid if it is taken during the mother's 39 week SMP period. This will generally be paid at the same rate as SMP £124.88 from 4 April 2010.
- Parents will be able to "self certify" by providing details of their eligibility to their employer. The employer and HMRC will be able to carry out further checks of entitlement if necessary.

## Tax breaks on childcare vouchers safe for now

Childcare vouchers have become a very effective tax free perk for many employees.

Prime Minister Gordon Brown had announced at the Labour Party Conference that he proposed to withdraw the income tax and national insurance contributions (NIC) exemption on employer provided childcare vouchers.

Currently employees are exempt from tax and NIC on childcare vouchers provided by employers. The exemption is available on the



first £55 a week of vouchers per employee, as long as a range of conditions are met. Any excess over the £55 is liable to tax and to NIC (both employees' and employers' contributions).

After petitions and campaigns by interested parties and, in a change to the original announcement, Gordon Brown has now said:

'I have already made clear that no family currently in receipt of tax relief for their childcare vouchers will see any change in the support they receive. But following our discussions I can now also say that we will retain tax relief for new childcare vouchers issued in the future. However, there still remains a concern that a disproportionate benefit is accruing to higher rate taxpayers. So in order to ensure that this tax relief is given on a fairer basis to all families, we will ensure that all taxpayers get the same income tax relief as basic rate taxpayers do currently. This will take place from April 2011 and will not affect those receiving vouchers issued before that date.'

However, as no formal proposals have yet been issued, the full implications are not clear. It does appear that higher rate tax payers who enter into a childcare voucher scheme from April 2011 will have their tax relief capped at 20%.

## The National Minimum Wage (NMW) update

Since 1 October 2009 the main rate of the NMW has been £5.80.

The development rate for employees between 18 and 21 years old is £4.83 and for 16 and 17 year olds is £3.57.

Since April 2009, automatic penalties are levied on employers where HMRC officers find NMW arrears. The penalties range from £100 to £5,000 with 50% prompt payment discounts for employers who settle within 14 days of notification.

The penalty notice will detail the amounts due to workers and any penalty due on those arrears. The penalty is calculated as half the total underpayment for arrears from 6 April 2009. The underpayments are updated to take into account the length of time the arrears have been outstanding. Settling up on arrears of wages is therefore expensive!

In serious cases of non compliance the employer may be tried in a Crown Court and in those cases the fines are unlimited.

Needless to say the penalty is payable in addition to arrears owed to the workers.

The government has accepted a Low Pay Commission recommendation that the main rate should be extended to 21 year olds. This change will be implemented at the scheduled next change in NMW rates from October 2010.

Please do get in touch if you have any concerns in this area.

## How old is a pensioner?

From 6 April 2010 this is not a straightforward question for women as the state pension age (SPA) is set to rise. The change is to be phased in between April 2010 and April 2020 and will impact on those women born between 6 April 1950 and 5 April 1955. All women born on or after 6 April 1955 will reach SPA at age 65.

This change will not only impact on the women in determining when they are entitled to draw their pension. Employers will also have to be careful that they have correct dates of birth for all employees to ensure they continue to deduct Class 1 employers' and employees' NIC until the woman's individual SPA. Class 1 category C employer only contributions can only be paid for those past their SPA.

### Example

Rosemary was born on 6 April 1952. Her SPA will be 6 May 2014. She works with Heidi who was born on 25 June 1954. Her SPA will be 6 September 2018.

## Heyday Age Discrimination

### So can you tell your employees when to retire?

It has been decided in the High Court, that the Default Retirement Age (DRA) of 65 is currently valid and that it does not at present breach Age Discrimination law. This means that the current position where employers are able to 'retire' employees, at age 65, when they would rather keep working, does not infringe EU law.

However it is expected that the position may change in the future as the judge made it clear that his decision was influenced by the government's announcement in July 2009 that it will bring forward the review of DRA from 2011 to 2010. He stated that, had that announcement not been made, he would have concluded that setting the default retirement age as low as 65 would not have been proportionate, adding "I cannot presently see how 65 could remain as a DRA after the review".

Following this case the existing law remains unchanged for the time being, the judge appears to be advising the government that it should raise the DRA. It is expected that there will be further developments in this area and we will keep you informed. The days of employers being able to retire employees against their wishes at the age of 65 appear to be numbered.

## Saving for retirement - Personal Account Pensions

From April 2012 employers will need to ensure that they are complying with new rules designed to ensure everyone is saving for their retirement. Employer requirements include:

- a duty to automatically enrol all eligible workers between the age of 22 and SPA into a qualifying workplace scheme (unless already in place) and
- compulsory contributions on behalf of those employees who remain in the scheme (Employees will have to actively opt out).

### How much?

Employers will have to start by contributing 1% on a band of earnings rising by 1% a year to 3%.

Employees will need to contribute 4% of salary, which will be topped up by tax relief from the government. The total value of the contribution will then be 5%.

These changes will create more costs for employers. So it will be essential to be prepared.

Further information can be found on [www.dwp.gov.uk/pensionsreform](http://www.dwp.gov.uk/pensionsreform) or please contact us for assistance.

