

## *UK Employment Law Changes in 2010: New Statutory Rates, Limits and Entitlements*

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### **At a Glance**

Various changes to employment - related compensation, benefit and tax rates take effect during Spring 2010. At the same time, legislative changes have effect in several areas of importance to employers with UK employees.

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### **1. New Statutory Compensation Limits and Statutory Benefit Rates**

The maximum compensatory Employment Tribunal award for most unfair dismissal claims with an "effective date of termination" on or after 1 February 2010 will decrease from £66,200 to £65,300 (due to the decrease in the Retail Prices Index over the year to September 2009).

The "effective date of termination" is the date on which the employment contract, viewed objectively, comes to an end.

From 6 April 2009, the prescribed rate of statutory maternity, paternity and adoption pay and maternity allowance will increase from £123.06 to £124.88 per week (or 90% of normal weekly earnings, if lower).

## 2. New Income Tax/National Insurance Contributions Rates

From 6 April 2010:

- the personal income tax allowance for tax payers with gross income in excess of £100,000 will be reduced by £1 for every £2 of gross income in excess of £100,000 until the allowance is reduced to nil;
- the income tax rate for gross income in excess of £150,000 will be increased from 40% to 50%;
- income tax rates and taxable bands for 2010-2011 will be:
  - starting rate for savings only (10%): £0 - £2,440 (NB: if non-savings income is above this limit then the 10 per cent starting rate for savings will not apply);
  - basic rate (20%): £0 - £37,400;
  - higher rate (40%): £37,401 - £150,000; and
  - additional rate (50%): over £150,000; and
- the national insurance contributions lower earnings limit for class 1 contributions will increase from £95 to £97. The upper earnings limit will remain £844 a week.

## 3. New Pension Scheme Allowances

From 6 April 2010:

- the pension scheme individual annual allowance in respect of scheme contributions will increase from £245,000 to £255,000 per annum; and
- the pension scheme individual lifetime allowance will increase from £1.75 million to £1.8 million.

## 4. Time Off For Training

This new right - for employees to request time off work to undertake study or training - applies from 6 April 2010. The right will initially apply to employers with 250 or more employees and is expected to be extended to all employers from 6 April 2011.

To qualify for the right, employees must have more than 26 weeks' service and the proposed training must be for the purpose of improving their effectiveness at work and the performance of their employer's business.

Following receipt of an application for time off work, employers must follow the procedure set out in The Employee Study and Training (Eligibility, Complaints and Remedies) Regulations 2010 and The Employee Study and Training (Procedural Requirements) Regulations 2010 (the "Regulations"). This broadly involves meeting with the employee, considering the request for time off, informing the employee of the decision to allow or refuse the request and allowing the right of appeal.

Employers may refuse a request for one or more of several prescribed reasons listed in the Regulations.

## 5. Additional Paternity Leave and Pay

The Government has published draft regulations setting out the detail of the Additional Paternity Leave and Pay Scheme (the "Scheme"). The Scheme will apply to parents of babies due on or after 3 April 2011, and adoptive parents who are notified of having been matched with a child on or after that date. The Government has stated that it intends the regulations to come into force in 2010 but no firm date has been announced.

Under the Scheme, employees (generally fathers) will be permitted to take up to six months' leave to care for a child, if the child's mother (or primary carer, in the case of adoption) returns to work without having taken their full entitlement to maternity leave (52 weeks). Leave may only be taken:

- in relation to a child under one year old, or in the first year it is placed for adoption;
- once the mother, or primary carer, has returned to work; and
- if the child is over 20 weeks old, or has been with its adoptive parents for at least 20 weeks.

The Scheme provides that fathers, or secondary carers, may be entitled to received additional statutory paternity pay ("ASPP") provided:

- the mother (or primary carer), is entitled to statutory maternity or adoption pay or maternity allowance, and returned to work; and
- the employee must have completed at least 26 weeks' employment ending with the week immediately preceding the 14th week before the expected week of childbirth and remained in employment until the period when ASPP is due.

It remains to be seen whether this legislation will be enacted before the 2010 General Election, which is likely to occur in May.

## 6. 'Fit For Work' Notes

The new Statement of Fitness to work ("Fit Notes") will be introduced on 6 April 2010 for use by General Practitioner doctors ("GPs") in relation to sick, or previously sick, employees.

Currently, GPs may certify patients as either "fit to work" or "not fit to work". However, from 6 April GPs will only be able to certify that an employee "may be fit for work", rather than "fit for work" - to

make it clear that employers still need to carry out a risk assessment on the employee's return. The Fit Note will also list recommended changes an employer could adopt to facilitate an employee's return to work.

The maximum duration that Fit Notes can be issued for in the first six months of an employee's illness will be limited to three months (reduced from six months under the current illness certification scheme).

## 7. Fines for Breach of UK Data Protection Laws

It is expected that from 6 April 2010, the UK Information Commissioner ("ICO") will have the power to impose fines of up to £500,000 for breaches of the Data Protection Act 1998 ("DPA").

The DPA imposes a range of obligations on businesses, employers, professionals and government departments who are responsible for processing personal data ("Data Controllers"). The DPA also provides that personal data must be processed in line with specified data protection principles ("Data Principles"). Data Controllers in breach of the Data Principles may currently be issued with an enforcement notice requiring compliance within a specified period. Failure to comply with the enforcement notice is a criminal offence punishable by a maximum fine of £5,000. A Data Controller may also face civil proceedings if his or her breach has caused damage to an individual about whom data is collected.

The ICO's new power to impose monetary penalties applies where:

- there has been a serious contravention of one of the Data Principles;
- this was likely to cause substantial damage or distress; and
- the contravention was deliberate, or the Data Controller knew or ought to have known that there was a risk contravention would occur and that it would be likely to cause substantial damage or distress and failed to take reasonable steps to prevent it.

A Data Controller has the right to make representations before a final decision on the penalty is made and is also allowed a right of appeal against any penalty.

## 8. What Employers Should Be Doing Now

Relevant references in handbooks and written policies or procedures should be updated as appropriate to take account of the new:

- benefit, tax and social security rates; and
- right to request time off for training.

Similar updates should be made in relation to the additional paternity leave and pay scheme, if enacted.

In-house employment lawyers, HR personnel and line managers should also receive notification and/or training about these new rights. Staff dealing with the administration of applicable policies and/or benefits should be notified of the benefit, tax and social security rate changes.

Compliance and risk staff, and each organisation's data protection officer, must be made aware of the ICO's increased powers and should urgently assess current compliance with data protection policies and practice to ensure avoidance of serious breaches of the DPA.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings London lawyers:*

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