

# MASSERS

## EMPLOYMENT LAW UPDATE

March 2016

### **National Living Wage from 1<sup>st</sup> April 2016**

As of 1<sup>st</sup> April 2016, all workers aged 25 and over will be entitled to receive the National Living Wage of £7.20 per hour. The National Living Wage is set by government and is not the same as the rates recommended by the Living Wage Foundation.

The National Minimum Wage rates for workers under 25 will remain at the current rates until October 2016:

Workers aged 21-24:	£6.70 per hour
Development rate 18-20:	£5.30 per hour
Young workers rate 16-17:	£3.87 per hour
Apprentice rate:	£3.30 per hour

The statutory limit on a week's pay for the purposes of calculating redundancy payments will increase by £4 to £479 on 6 April 2016. There will be no increase in the rates of Statutory Sick Pay, Statutory Maternity Pay or Statutory Paternity Pay this April.

### **Care Home may face legal action for non-payment of the National Minimum Wage**

MiHomecare, a large care provider in the UK, has been in the news following a failure to pay workers for travel time between clients. Whilst travel time to and from work isn't generally included for the purposes of the National Minimum Wage, time spent travelling on business or time spent on-call may well be.

### **Damages for injury to feelings are taxable**

It is a common misconception that all payments made to an employee upon termination of their employment can be paid free of tax insofar as they do not exceed £30,000.00. In *Moorthy v The Commissioners for Her Majesty's Revenue and Customs* the Tax and Chancery Chamber of the Upper Tribunal ruled that a payment made on termination for injury to feelings was taxable.

As a result of being made redundant, M brought claims of unfair dismissal and age discrimination. The claim was settled by way of an agreement, under which M received an ex gratia payment of £200,000.00. M's employer treated £30,000.00 as exempt from tax under s.401 ITEPA and taxed the remainder at basic rate.

HMRC subsequently sought to treat an extra £140,023.00 as taxable income and the First Tier Tribunal approved the decision. M appealed and the decision was again upheld by the Upper Tribunal. Under s.406(b) ITEPA a payment on account of injury to an employee is not taxable, however this relates to a medical condition and does not extend to injury to feelings.

It is recommended that parties take advice on the structure and taxation of payments when seeking to settle claims arising on termination of employment in order to avoid further liability for tax at a later date.

## **Sickness absence management**

In *Ajai v Metroline* the EAT has held that exaggerating an illness can give an employer reasonable grounds for dismissal despite the employee being signed off work.

A worked as a bus driver and went off sick following an injury at work. He saw his GP and Occupational Health and was certified as not fit to carry out his driving duties as he was unable to sit for long periods of time.

His employer (M) had doubts as to the authenticity of A's injuries and carried out covert surveillance which revealed that the limitations on his abilities were not as severe as those reported to Occupational Health and described in sickness absence interviews. A was suspended pending an investigation. He was subsequently dismissed without notice and brought a claim of unfair dismissal.

At first instance, an employment tribunal upheld A's claim. They found that although he had exaggerated his injury, there was no evidence that he had exaggerated his ability to carry out his job, i.e. to sit for prolonged periods whilst driving. The tribunal held that M ought to have considered how long it would be before he could carry out these duties when deciding whether to dismiss him.

The EAT overturned this decision and found that the dismissal was reasonable. A was not as sick as claimed and had been dishonest in misrepresenting the extent of his injury. His conduct amounted to a breach of trust and confidence which is central to a working relationship.

Dealing with sick employees can be a minefield. Proactive management of the situation can reduce lengthy periods of absence and help get employees back to work sooner. If there is doubt as to whether an employee is genuinely sick an employer may be justified in investigating their concerns and obtaining medical evidence is often the first step in doing this. A robust approach to dealing with sickness absence teamed with consistent and transparent procedures is of great assistance.

## **Contact Us**

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