

Update



Lanyon Bowdler
SOLICITORS

Your quarterly bulletin on legal news and views from Lanyon Bowdler

STATUTORY PARENTAL BEREAVEMENT LEAVE (SPBL) AND PAY (SPBP)

From 6 April 2020, qualifying parents who suffer a stillbirth after at least 24 weeks of pregnancy or otherwise whose children die before the age of 18 will be entitled to statutory bereavement leave and, in certain circumstances, pay.

Eligibility for SPBL

SPBL is to be available to all employees who qualify as a 'bereaved parent'. The necessary relationship to the child is defined widely to cover most types of parental or quasi-parental relationship.

How and when leave can be taken

Leave can be taken at any time in the period of 56 weeks beginning with the date of death as a single week, two separate weeks or two consecutive weeks. A 'week' is any period of seven days.

Notifying the employer

The employee must give the employer notification of the date of death, when leave is to start and its duration. There is no formality as to how this should be done, including that there is no requirement for the notice to be in writing.

The length of notice required depends on how long after the child's death the leave is due to start.

For leave starting within the first 56 days (referred to as 'Period A' in the relevant regulations), the employee must notify the employer before the time they are due to start work on the day the leave is to start, or if this is not practicable, as soon as is reasonably practicable.

Where the employee is already at work but gives notice to start SPBL on the same day, then SPBL officially starts the next day (presumably even if the employer lets the employee go home).

To take leave after the end of Period A ('Period B'), the employee can be required to give at least seven days' notice.

Eligibility for SPBP

Employees taking SPBL may also be entitled to SPBP if they meet the statutory eligibility criteria and provide the relevant



A MESSAGE FROM JOHN MERRY, HEAD OF EMPLOYMENT

Obviously, the impact of the coronavirus is the dominant consideration for employers at the present time.

However, a whole raft of statutory changes will be coming into effect in April, which must not be overlooked. The changes of principal interest to most employers are covered in this newsletter – as is the postponement of the extension of the off-payroll working rules.

To keep up to date with the legal implications of the coronavirus outbreak for employers, please see our regularly updated dedicated web page and additional links [here](#).

I convey my best wishes to all of our clients and contacts at this difficult time.

Our People, Your Team

Contact **Lanyon Bowdler** to find out about the full range of legal services we offer

info@lblaw.co.uk • www.lblaw.co.uk

“ *Very professional and knowledgeable. I felt like he was always on my side and had my best interests in mind.* ”

JA, Hereford

OFF-PAYROLL WORKING RULES – POSTPONED CHANGES

The government has postponed the extension of off-payroll working rules to medium and large companies in the private sector until to 6 April 2021.

The IR35 legislation was introduced in 2000 with the aim of cracking down on a form of perceived tax avoidance whereby individuals would seek to avoid paying employee income tax and national insurance contributions (“NICs”) by supplying their services through an intermediary (usually a personal service company) and typically paying themselves in dividends.

In summary, the IR35 legislation requires the intermediary to determine whether the worker would have been a deemed employee of the end-user client, but for the existence of the intermediary. If so, the intermediary must operate payroll, make deductions for income tax and employee’s NICs and pay employer’s NICs on the fees received for the services.

However, the Treasury’s perception of large-scale tax avoidance nonetheless continued and therefore the government introduced the off-payroll working rules in 2017 for the public sector, whereby the responsibility for operating payroll, making deductions and

paying employer’s NICs shifted from the intermediary to the paying party, where payments for the services were being made by, or on behalf of, public authorities.

These rules were to be extended to medium and large business in the private sector from 6 April 2020. However, in light of the burden on the economy of the coronavirus outbreak, this change has been shelved for a year.

The effect of the new rules is that the burden of making a determination of employment status will fall on “end-user clients”, who then need to notify their contracting party and the worker of that status determination. The final party in the chain before the personal service company must operate payroll, make deductions and pay employer’s NICs on the fees paid for the services.

In anticipation of the changes taking effect this April, many businesses had announced that they had ceased, or would be ceasing, to engage contractors through PSCs. Many other businesses, however, were struggling with this issue, and the delay in implementation provides them with more time to prepare.

AGRICULTURAL MINIMUM WAGE

The Agricultural Wages (Wales) Order 2020 was made on 27 March 2020 and will come into force on 1 April 2019. This Order replaces the Agricultural Wages (Wales) Order 2019.

It makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers in Wales.

The Order increases the minimum pay levels for all categories and grades of agricultural workers in Wales.

For the full Order please [click here](#).

NATIONAL MINIMUM WAGE

National Minimum Wage rates are to increase from 1 April. The National Living Wage (for over 25-year-olds) will increase 6.2% from £8.21 to £8.72.

For other age groups and apprentices the rates will increase as follows:

- 21-24 year olds: 6.5% from £7.70 to £8.20 for
- 18-20 year olds: 4.9% from £6.15 to £6.45
- Under 18s: 4.6% from £4.35 to £4.55
- Apprentices: 6.4% increase from £3.90 to £4.15

STATUTORY BENEFIT PAYMENTS

The following weekly rates are expected to apply from April 2020:

Statutory sick pay £95.85 (up from £94.25).

Statutory maternity allowance and maternity, paternity, shared parental and adoption pay will be the lower of 90% of normal pay and £151.20 (up from £148.68).

The rates will be confirmed once an Order is made. The increase normally occurs on the first Sunday in April, which would be 5 April.

COMPENSATION LIMITS

For dismissals that take place on or after 6 April 2020:

The maximum limit on a week’s pay (including for the purpose of statutory redundancy pay and basic awards for unfair dismissal) will increase to £538.00 (up from £525.00).

The maximum compensatory award for unfair dismissal will increase to the lower of £88,519.00 (up from £86,444) and 52 weeks’ normal pay.

Statutory guarantee pay will increase from £29 to £30 per day from 6 April 2020.

“Efficient, friendly and helpful service. I received prompt and professional emails and letters.

MS, Shrewsbury

WORKERS AND TUPE

An employment tribunal has held for the first time, in the case of *Dewhurst v Revisecatch Ltd*, that workers who are not engaged under contracts of employment qualify for protection under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”).

Such workers contract to provide their services personally but are not carrying on a business on their own account (i.e. they are not self-employed).

TUPE applies to ‘employees’ as that term is defined in those regulations, who are individuals working under ‘a contract of service or apprenticeship or otherwise’, but excluding the genuinely self-employed.

Three cycle couriers worked for CS (UK) Ltd in relation to its contract with HCA Healthcare. Revisecatch Ltd took over the contract with HCA Healthcare and also engaged the couriers to work on that contract. The couriers brought claims, including for failures to inform and consult under TUPE. This decision is not binding on future employment tribunals, and provides only persuasive authority. Clearly, however, the risk is there that future tribunals could take the same approach to the application of TUPE to workers.

Accordingly, it would be prudent for businesses who are involved in a TUPE situation to include workers in information and consultation exercises and the disclosure of statutory employee liability information (“ELI”), and for prospective transferees to include workers within the scope of due diligence exercises and indemnity protections – or otherwise to be prepared for the potential consequences of not doing so.

Breaches of the requirements of TUPE in relation to information and consultation can result in awards of compensation up to the value of 13 weeks’ pay for each affected individual.

Transferees can claim compensation for losses incurred as a result of failures in relation to the provision of ELI, subject to a minimum of £500 per relevant individual.

Further, if a worker is subject to TUPE, transferees will be liable for any pre-transfer acts or omissions of the transferor, such as in relation to unpaid wages or holiday pay or unlawful discrimination. However, as workers do not have unfair dismissal protection, it will be possible for transferees to terminate their contracts, subject to any notice obligations.

Whilst it will be possible for transferees to effectively vary the contractual terms of workers who they retain only in limited circumstances, the absence of unfair dismissal protection means that it will be open to them to terminate workers’ contracts and to offer re-engagement on different terms.

CONTINUED FROM PAGE 1

notifications and evidence. SPBP is paid at the same rate as other statutory payments such as paternity pay (see page 1).

To be eligible to receive SPBP, individuals must:

- have been employed for a continuous period of at least 26 weeks ending with the ‘relevant week’ (which is the week ending on a Saturday before the child died)
- remain in that employment at least until the day the child died, and
- have received normal weekly earnings for the period of eight weeks ending with the relevant week that are not less than the lower earnings limit in force at the end of the relevant week.

Notice and evidence of entitlement to SPBP

The employee must give the notice specifying the week or weeks in respect of which SPBP is being claimed either before the start of the SPBP period, or no more than 28 days after the first day of the period. If it was not reasonably practicable to give it in that time, it can be given as soon as reasonably practicable thereafter.

The employee must also supply (at the same time as the notice) a written statement specifying their name, the date of the child’s death or stillbirth and a declaration that they meet one of the criteria of a ‘bereaved parent’. The notice does not need to be in writing unless the employer requests it – in which case only if the employer agrees can it be given electronically, such as by email to an address specified by the employer.

Interaction with time off for dependants

Employers will need to consider the interaction between the new right to SPBL and the existing statutory right to unpaid time off for dependants. The latter enables an employee to deal with the logistical matters which arise as a result of a death. An employee who wants to take odd days off for things like arranging or attending the funeral may therefore use time off for dependants rather than using a whole week of parental bereavement leave.

Interaction with contractual bereavement leave and pay

Where an employer also grants an equivalent right, the employee cannot exercise the two rights separately, but can exercise whichever is more favourable in any given respect. Contractual remuneration paid to the employee will go towards discharging any SPBP liability.

“Clear explanation of legal position and full discussion of options and outcomes discussed. Very helpful and honest.”

JL, Telford

SPOTLIGHT ON JENNIFER GIBSON



Jenny qualified as a solicitor in May 2008. She joined Lanyon Bowdler in January 2009 and was made an associate in July 2014. Jenny acts for clients from the Shrewsbury, Oswestry and Telford offices.

Jenny specialises in employment law, advising small and large businesses as well as individuals on a wide range of contentious and non-contentious matters, including all types of discrimination issues, unfair dismissal, working time, redundancy and changes to terms and conditions of employment. Jenny provides support to employers in relation to complex HR issues, specialising in grievances and disciplinary matters and the TUPE aspects of business transfers and service provision changes.

Jenny represents clients in the employment tribunals, conducting her own advocacy and has represented individuals at disciplinary and grievance hearings.

FURTHER CHANGES EFFECTIVE APRIL 2020

Written Particulars

The right to receive a statement of written particulars under section 1 of the Employment Rights Act 1996 is being enhanced. Notably, this right will apply to all workers (and not just employees) from their start date, and additional particulars will be required. Please see our Autumn 2019 Newsletter for more details.

Holiday Pay

In relation to any holiday which is part of a worker's statutory minimum entitlement of 5.6 weeks under the Working Time Regulations 1998 which commences on or before 5 April, a worker without normal working hours, or whose pay varies according to the amount of work done or the time of work, has statutory holiday pay calculated by reference to their average remuneration over the previous 12 weeks. This 12-week reference period will be extended to 52 weeks in relation to holiday commencing on or after 6 April.

These reference periods also apply to the calculation of additional holiday pay for workers with normal working hours and whose pay does not vary according to the amount of work done or the time of work, for the purpose of calculating additional holiday pay in respect of their core 4-week holiday entitlement under European law in relation to additional aspects of normal earnings, such as in connection with overtime, commissions and bonuses.

Information and Consultation

The Information and Consultation of Employees Regulations 2004 currently require all organisations with at least 50 employees to commence negotiations on the introduction of an information and consultation arrangement if formally requested to do so by 10% of the workforce (or at least 15 employees, whichever is the greater). As from 6 April, the threshold required for a valid request will be 2% of employees, subject to the existing minimum of 15 employees.

Termination Payments

After two deferrals, employer's national insurance at 13.8% will be payable on non-contractual termination payments and contractual redundancy payments in excess of £30,000 made on or after 6 April 2020.

OFFICES

SHREWSBURY

T: 01743 280280 • F: 01743 282340 • DX: 144320 Shrewsbury

BROMYARD

T: 01885 488442 • F: 01885 488533 • DX: 328901 Bromyard

CONWY

T: 01492 557070 • F: 01492 562653

HEREFORD

T: 01432 352345 • F: 01432 263708 • DX: 17201 Hereford

LUDLOW

T: 01584 872333 • F: 01584 876459 • DX: 26883 Ludlow 1

OSWESTRY

T: 01691 652241 • F: 01691 670074 • DX: 26603 Oswestry

TELFORD

T: 01952 291222 • F: 01952 292585 • DX: 28071 Telford

info@lblaw.co.uk • www.lblaw.co.uk

