

BANKING HALL | LONDON | WEDNESDAY 1 NOVEMBER

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# CIPP Policy team update

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Mathew Akrigg, Policy & Research Officer - CIPP



#PSS23



# CIPP Legislative Update

**Mathew Akrigg ACIPP**  
Policy and research officer



# We will be covering

- New bills passed
  - Extension of auto enrolment
  - Paternity leave
  - NMW regulation 57 amendment
- New case law
  - Car allowance – NIC disregard
  - Holiday pay backdating claims
- HMRC data collection – have your say!



# Paternity leave

- Take leave in two non-consecutive periods of 1 week or a 2-week block
- Must be taken within 52 weeks of the birth / placement
- Provide notice of entitlement 15 weeks prior to birth / placement of adoption
- 4 weeks' notice prior to taking paternity leave

There may be different requirements for notice in adoption cases – please await further guidance

**Applies to England, Scotland and Wales as employment law is devolved in Northern Ireland**



# Paternity leave

## Things to think about

- Two different notice requirements – entitlement and leave
  - Additional admin burden
  - Are you getting information from clients in time?
- How will this work with shared parental leave?



# Pensions (Extension of Automatic Enrolment) Bill

**Achieved Royal Assent on 18 September 2023**

Permits two extensions to automatic enrolment:

- Abolishing the Lower Earnings Limit (LEL) for contributions
- Reducing the age for being automatically enrolled to 18 years old

DWP will release a consultation on implementing the measures

Northern Ireland are also consulting on the same proposals



# Pensions (Extension of Automatic Enrolment) Bill

## Things to think about

- Sectors with high likelihood of increased costs
  - Lots of young workers
  - Lots of part time workers
- UK and NI differences if not brought in at the same time
- Have your say at consultations
  - If you think a rushed implementation will cause significant struggles – tell them!
- National Minimum Wage increase to consider
  - Use as much known information as possible to help clients





# National Minimum Wage Regulation 57

- Currently either paragraph 2 or 3 of the below requirement must be met, from April 2024, paragraph 3 will be removed from Reg 57 of the NMW Regulations 2015

(1) In these Regulations, “work” does not include any work done by a worker in relation to an employer’s family household if the requirements in paragraphs (2) or (3) are met.

- (2) The requirements are all of the following—

- (a) the worker is a member of the employer’s family;
- (b) the worker resides in the family home of the employer;
- (c) the worker shares in the tasks and activities of the family.

- (3) The requirements are all of the following—

- (a) the worker resides in the family home of the worker’s employer;
- (b) the worker is not a member of that family, but is treated as such, in particular as regards to the provision of living accommodation and meals and the sharing of tasks and leisure activities;
- (c) the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, as respects the provision of the living accommodation or meals;
- (d) if the work had been done by a member of the employer’s family, it would not be treated as work or as performed under a worker’s contract because the requirements in paragraph (2) would be met.

# Car allowance NI disregard Willmott/Laing cases

- Seek expert advice to ensure your business is happy with the approach
- Car allowance is categorised as relevant motoring expenditure (RME)
- Unused NIC relief from AMAPs can be offset against car allowance payment
- Car allowance should therefore be split into 2 lines/payments
  1. Taxable and NICable element
  2. Taxable but NIC free element



# Car allowance NI disregard Willmott/Laing cases

- **Example**
- Employee does 100 business miles within a month period
- They are paid 25p per mile by the company
- This leaves 20p per mile that can be offset against RME
  - $20p * 100 = £20$
- A car allowance of £300 per month is paid
- £280 would be taxable and NICable
- £20 would be taxable but NIC free



# Holiday pay backdating of claims

- [Chief Constable of the Police Service of Northern Ireland and another v Agnew and others \(Northern Ireland\)](#)
- Previously, *Fulton v Bear Scotland* established that a three-month gap would break a series
- The Supreme Court has now ruled that where the unlawful deductions can be linked by a common fault then a series can be considered unbroken
- *“A series does not require a contiguous sequence of deductions and a gap of more than three months between deductions does not necessarily bring a series to an end. A correct payment of holiday pay does not break a series if that correct payment was calculated by reference to basic pay.”*



# Holiday pay backdating of claims

- **Example**
  - Holiday pay calculated using basic pay only
    1. Holiday taken in Jan, did not include overtime
    2. Holiday taken in May, no overtime within reference period
    3. Holiday taken in August, did not include overtime
  - The lawful payment does not break the series as the underlying process issue links the two unlawful payments
  - Seek expert advice to ensure your business is happy with the approach.



# HMRC – data collection



# Updated approach on employee hours worked

- **Our proposal is to ask employers to state the number of hours paid per pay period on the RTI submission. We will do this by:**
- **removing bands A to D and replacing with a box for reporting numerical actual hours paid** for most employees. We will no longer require employers to provide hours worked on a weekly basis as this requirement is outdated and was originally intended for tax credits. We propose to ask for hours paid per pay period on the RTI submission.
- **removing the "other" box on the RTI submission** and instead request reasons for any exemptions.

## Scenarios Discussion

### **Hourly paid employees on zero hours contracts**

Mohammed has a zero-hour contract with a retail store and gets paid at the end of the month. Previously his employer used Band E (irregular working hours). His employer will be asked to report his hours paid in the RTI return.

### **Salaried employee with no variable pay**

Paul works 37 hours per week for his employer and is on an annual salary which is monthly paid. Previously his employer would have ticked Band D on RTI (30hrs or more). His employer will now be asked to report how many hours his monthly pay represents. (Contracted weekly hours x 52 / pay frequency)

### **Salaried employee with variable pay/overtime**

Dan is contracted to work 40 hours but also works weekly overtime of up to 8 hours. He is monthly paid. Previously his employer may have used Band E (irregular working patterns) or may have only reported contracted hours by ticking band D (30hrs or more). His employer will now be asked to report his total hours paid per pay period.



Time for some  
audience  
participation!



# Questions

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