Mandatory changes to payslips

Employment Tax | Tax voice



12 March 2019

Steve Wade sets out the key changes

We have seen a raft of changes in the world of payroll in recent years including the introduction of Real Time Information, the payrolling of benefits, dispensation changes, OpRA, termination payment changes, “off payrolling” in the public sector and, of course, the extension of “off payrolling” to the private sector is on the way. One change, which may have been overlooked by tax advisors as it is a change to the Employment Rights Act 1996, is that with effect from 6 April 2019 new legislation will be introduced under which employers will be required to:

1. provide payslips to **all** workers and
2. show hours on payslips where the pay varies by the amount of hours worked.

Under current rules, employers are only obliged to provide payslips to employees, this will now be extended to all workers.

Guidance to new businesses on GOV.UK helpfully explains who is a worker.

Further relevant guidance is available as follows:

- Payslips – Guidance on legislation in force from April 2019 requiring employers to include additional information on payslips
- Get your business ready to employ staff: step by step

The legislation

The Employment Rights Act 1996 (itemised Pay Statement) (Amendment) order 2018 No 147 extends section 8(2) of the Employment Rights Act 1996 so that the requirement will be for a payslip to contain additional particulars of the net amount of wages or salary:

"where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as –

i) a single aggregate figure, or
ii) separate figures for different types of work or different rates of pay."

What hours need to be reported on the payslip?

Where an individual's pay varies by the number of hours they work, the additional information that must be shown on the payslip is the number of hours for which the individual is paid (i.e. the amount of time worked). Any other hours do not need to be reflected, although they can be shown, if it would be helpful to do so. For example, for a worker with a fixed salary who is paid for overtime, only the overtime hours worked would need to be reflected on the payslip. Whilst the amount of the fixed salary must of course be included, the hours worked for which the fixed salary is received could be shown, but is not required. The payslip may be provided either physically or electronically.

The hours can be shown either as a single total of such hours in the pay period or they can be broken down into separate figures pertaining to the different types of work or different rates of pay. The hours should only be shown for the pay periods commencing 6 April 2019.

It is important to note that the hours that must be shown on the payslip are a separate matter from the number of hours worked for National Minimum Wage (NMW) purposes. Although for hourly paid workers, they may be the same.

Variations in pay resulting from unpaid leave or statutory sick pay

Where a worker's pay does not vary by the number of hours they work (e.g. they receive a fixed salary each month), then any variations in pay resulting from statutory sick pay or unpaid leave do not need to be shown on the payslip. Although it could be argued that the change in pay is a variation "by reference to the time worked", in this case the worker's pay changes because they are not working at all.

Some examples

BEIS guidance includes the following example:

"David is a salaried worker earning £40,000 a year paid in equal monthly instalments. He has used up all his paid leave but chooses to take 10 days unpaid leave for a family event in October.

David's employer therefore deducts the 10 days from David's monthly pay because he did not work those ten days.

There is no requirement for David's employer to show hours worked on his payslip. His pay does not vary depending on the amount of time worked, but rather his pay has varied in this month because of a departure from his normal working and pay arrangements."

This should be contrasted with BEIS example of a Day rate worker Sally:

"Sally is a day rate worker. This means she is paid the same amount for each day she works regardless of how many hours she works in the day.

As her pay varies by how many days she works, i.e. by the amount of time she works, her hours worked need to be included on her payslip even though her pay varies by the day not by the hour."

The difference between the two examples is that David's payment does not increase if he works longer. It can only decrease if he doesn't do any work at all, whilst Sally's payment would increase if she worked more days albeit the payment would not increase if she worked more hours per day.

Enforcement

Once the legislation is in force, where a worker believes that the payslip is incomplete (i.e. does not capture all the relevant information) or thinks that they have not received a payslip, the worker may bring a claim before the Employment Tribunal. If successful, the Tribunal may "name and shame" the employer by publishing a declaration on its website. In addition, the Tribunal can order a repayment of unnotified deductions made in the 13 weeks preceding the presentation of the claim, even where the employer was otherwise entitled to make the deductions.

An interesting question will be whether the Employment Tribunal will follow the BEIS guidance as arguably the legislation is wider than the guidance suggests.

Potential challenges for employers

Whilst the requirement under the legislation to show the hours worked on payslips appears to be straightforward, no doubt this will pose challenges for employers. Specifically, employers will need to:

- identify who the internal stakeholders are, so that they may collate this information;
- ensure they have systems and processes in place to capture this information, if not doing so already;
- review contractual arrangements with employees and workers to ensure the contract form (the written terms and conditions) match the regular practice; and
- validate payroll software capability to reflect this information.

All UK payroll software should be updated to be able to reflect the information, however, employers are encouraged to verify this with their payroll providers to avoid non-compliance. Larger employers may need to link the different systems that are used to record hours worked with their payroll software to ensure the payroll deadlines can be met.