National minimum wage and salary sacrifice arrangements

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Employers and those advising them need to be aware of the minimum wage increase and review any salary sacrifice arrangements to avoid inadvertent breaches of the national minimum wage legislation.

Provided they are implemented and operated correctly, salary sacrifice arrangements can be used to gain an advantage in a limited number of circumstances, such as pension saving, cycle to work or low CO2 emission cars. You can read more about salary sacrifice on GOV.UK (see tinyurl.com/bdh8xx2d).

The main advantage of salary sacrifice is that both employers and employees can save on National Insurance. Recent decreases in the employee National Insurance contributions rate may mean salary sacrifice is losing its appeal for employees, so some employers may be taking the opportunity to review their arrangements.

Part of any review must include checking compliance with the national minimum wage (NMW) for any lower-paid employees. This is because as the minimum wage encompasses more workers (from 1 April 2024, the main rate not only increased to £11.44 but also includes 21 and 22 year-olds), fewer of them can use salary sacrifice. This is because the rules essentially mean that a salary sacrifice arrangement cannot reduce an employee's cash earnings below the appropriate minimum wage rate.

There are unexpected consequences for employees slightly higher up the income ladder too, because an increase in the minimum wage rate may restrict how much salary they can sacrifice. We give an example on the LITRG website (see tinyurl.com/4nsrw855).

Although the government have confirmed that in some instances penalties will not be charged for NMW breaches related to salary sacrifice, employers will still be required to make good any underpayments (see NMW enforcement guidance on GOV.UK, para 3.7 at tinyurl.com/4jay38kk).

Many employers offer one or more salary sacrifice arrangements, but some may not have revisited these since implementation. The risk of breaching NMW is higher where employers offer a suite of salary sacrifice arrangements to their employees, as it is the aggregate of all salary sacrifices in the pay reference period that must be monitored. If any of this sounds familiar, now is a good time to review your arrangements to ensure compliance with the NMW.

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