



This Week in Employment Law

10-02-2020

NMW "naming and shaming" reinstated

After a year long break, the Government has confirmed it will reinstate the "naming and shaming" scheme of employers who fail to pay the national minimum wage (NMW) to their staff. Here, we take a look at the scheme and how it works.

- Employers who are found by HMRC to have failed to pay their workers NMW are subject to a strict enforcement system.
- The worker must receive the money they are due; the employer will be fined 200% of the arrears up to a maximum of £20,000 per worker and, once every three months, a list would be compiled including company names and details of underpayments and published on the internet.
- High profile 'offenders' included Wagamama whose rule that staff had to wear black jeans was seen by HMRC as a uniform; this meant that staff actually earned less than NMW because they had to buy the jeans themselves.
- Approximately a year ago, naming and shaming stopped. However, from April 2020, employers will once again be publicly named for their failure to comply with these laws.
- Unintentional breaches will still be subject to naming and shaming.

Valentine's Day in the workplace

Employers should be cautious of the HR issues that Valentine's Day can bring, particularly with the added focus on harassment in recent times. 'Jokey' cards given by one employee to another, or other types of behaviour, may appear harmless but present the opportunity for the recipient to feel offended.

Did you know?

Harassment can occur where unwanted behaviour creates an offensive or degrading environment for someone. Complaints made by employees as a result of Valentine's Day behaviour should be taken seriously as neglecting to do so can result in claims to employment tribunal.

Leap Year Day and pay implications

The extra day tagged on to the end of February this year means that employers need to consider their normal payment practices to ensure that employees receive the correct pay. Contractual arrangements will need to be reviewed to help decide on any queries received.

Did you know?

Salaried employees who receive the same basic pay every month will not be entitled to receive extra pay to account for the extra day. Employees paid for all hours worked will be entitled to pay to cover the extra day. In all cases, employers must ensure minimum wage obligations are met.

'Angry' resignation resulted in unfair dismissal finding

A Director who resigned during an angry outburst about pay rises was actually unfairly dismissed. Despite the Director's subsequent explanation that he had been stressed at the time and hadn't meant to resign, he was not allowed back to work by his employer.

Did you know?

'Heat of the moment' resignations can be tricky for employers to deal with because, of the face of it, the employee has offered their resignation. However, it is always advisable to give the employee time to calm down and re-consider; failing to do this can, as seen in this case, result in a constructive unfair dismissal finding.

Naming and shaming of NMW failures, whilst not causing a direct financial loss to an employer in the same way as a fine, can still cause reputational damage to a business. Ignorance of the law is not accepted as a reason for non-compliance. To make sure you keep on the right side of the law, call our 24 hour Advisory service, any time of day or night.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this publication.