

The Apprenticeship Levy - the story so far

With plenty of variables still outstanding with the Government's new Apprenticeship Levy, it seems a good time to look at what we know and how it will affect organisations and apprentices alike.

What is it?

The Government are striving to fund three million new apprenticeships by 2020. To help fund this, the Government are introducing an apprenticeship levy, which comes into effect in April 2017. The levy will be applicable to all the industries across the UK and is set to replace all other Government apprenticeship funding for all organisations.

The levy will be a rate of 0.5% of an employer's salary bill, which will be collected on a monthly basis by HMRC via the PAYE system, along with the employer's tax and National Insurance. The salary bill will be based on the total employee earnings, subject to Class I secondary National Insurance contributions.

In addition, there will be a £15,000 fixed annual allowance for employers to offset against their levy bill, although employers who operate multiple payrolls will only be able to receive this allowance once.

Who has to pay for it?

The Government has set out that only employers in the UK who have a salary bill of over £3 million per annum will be required to pay the levy. This will apply to all employers, regardless of industry and whether they are in the private or public sector.

For those employers whose salary bill is lower than £3 million, they will not have to pay the levy. However, they will still be able to receive funding to assist with apprenticeships, although the extent of the support has not been outlined and the Government are expected to provide further information on this in June.

What does an employer receive for his levy

In England only, employers who pay into the levy can access funding for apprenticeship training via a new 'Digital Apprenticeship Service' (DAS) account, which will in effect be a digital voucher to pay for approved training, assessment and certification for apprentices. Although, employers will not be able to use levy monies to cover all the costs associated with taking on an apprentice, such as costs of supervision and the apprenticeships salary. However the DAS will additionally assist employers in locating training providers and courses and finding a suitable apprenticeship candidate.

If an employer would like to use more funds than they pay into the levy, this is possible, through a top-up system to their digital account.

If an employer does not use their entire levy fund, the Government announced that they would look to reallocate these funds to another employer who will use the funds on an apprenticeship. The period of time before an employer's levy fund will be reallocated has yet to be specified, however this is expected to be announced in June 2016.

In addition there will be a cap on funding. Funding caps will be set which limit the amount of levy funds an employer can spend on training for an individual apprentice. The cap will vary according to the level and form of apprenticeship i.e. the more expensive the training for a particular apprenticeship, the higher the funding cap. This system will only operate in England. Wales, Northern Ireland and Scotland Governments will have to decide how this fund will be spent.



What about the employers who do not pay the levy?

It is still unclear how those employers who do not pay the levy will receive funding for apprenticeship training. The Government has outlined that funding for those employers who do not pay the levy will still come from the levy pot. It is also likely that the funding caps will still be applicable; however it is likely that these employers will need to make an initial payment for the training, which will then trigger funding from the Government, known as a Core Government Contribution (CGC).

It is unclear what the level of funding will be from the CGC, however it may be for every £1 paid by the employer, the CGC will contribute £2.

Institute of Apprenticeships

The Government plan to set up an independent body, led by employers, called the 'Institute for Apprenticeships'. Its purpose will be to regulate the quality of apprenticeships and to advise on setting funding caps, approving apprenticeship standards and assessment plans. It is hoped that this body will be established in 2016 and will be functioning by April 2017.

Religious persuading in the workplace and discrimination

Under the Equality Act 2010 (“the Act”), one of the protected characteristics afforded protection is Religion and Belief. Under the Act, it is unlawful to directly discriminate against a person by treating them less favorably than they would treat others because of their religion or belief.

Similarly, it is unlawful to indirectly discriminate against a person by applying a provision, criteria or practice (“PCP”), which puts that person and others who all hold a certain religion or belief at a disadvantage, which is not a proportionate means of achieving a legitimate aim. In addition, the Act provides that it is unlawful to harass a person because of their religion or belief by engaging in unwanted conduct related to a person’s religion or belief which has the purpose or effect of violating the person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

These three forms of discrimination were examined recently in the case of *Wastenev v East London NHS Foundation Trust*.

Ms Wastenev worked for the Trust as Head of Forensic Occupational Therapy and described herself as a born-again Christian and regularly attended an evangelical Church. A member of staff who was junior to Ms Wastenev, ‘EN’, was Muslim and of Pakistani heritage. EN made complaints about Ms Wastenev in relation to her conduct towards her, which she considered ‘grooming’.

Ms Wastenev gave EN a book about a Muslim woman converting to Christianity, invited EN to various Church events, praying with EN and the laying on of hands. EN considered that Ms Wastenev had abused her managerial position and felt Ms Wastenev was trying to impose her religious views onto EN.

The Trust brought disciplinary action against Ms Wastenev who received a final written warning for her conduct. However, Ms Wastenev appealed this decision and the sanction was reduced to a first written warning with the recommendation of further training.

The Claimant brought proceedings at the Employment Tribunal claiming the disciplinary action was direct religion and belief discrimination, indirect discrimination on the basis that the discriminatory provision, criteria or practice was the Trust’s disciplinary policy and procedure and the Trust’s conduct was harassment related to her religion and belief. Ms Wastenev also claimed that the Trust and infringed her Human Right of Article 9 – the right to manifest her belief by sharing her faith with a consenting colleague.

The Employment Tribunal dismissed Ms Wastenev’s claims. In relation to the direct discrimination and harassment claims, the Tribunal held that there was no support that the disciplinary process was due to religious acts, the reason was because Ms Wastenev’s conduct towards a junior member of staff “blurred professional boundaries and placed improper pressure on a junior employee”.

Similarly, the Employment Tribunal dismissed Ms Wastenev’s indirect discrimination claim and found no evidence that the disciplinary policy and procedure put Christians or, more generally, people of faith at a disadvantage. The Tribunal also rejected the Claimant’s argument that the Trust’s conduct breached her Human Rights. Therefore, Ms Wastenev appealed to the Employment Appeal Tribunal (“EAT”).

The EAT rejected Ms Wastenev’s appeal and outlined that her claims of discrimination were based on the manifestations of her religious beliefs in “consensual” interactions with a junior member of staff. Accordingly, the disciplinary action taken against Ms Wastenev was due to these inappropriate actions and not her religious beliefs.

Did you know?

The Government’s draft Equality Act 2010 (Gender Pay Group Information Regulations 2016 are expected to come into force on 1 October 2016.

The draft legislation stipulates that there will be a duty on employers to publish details regarding their gender pay gap and gender bonus gap each year. The pay information must be based on records from a certain pay period each year, commencing in April 2017. The gender bonus information is required to be on the basis of records in the preceding 12-month period, commencing with the 12 months before 30th April 2017.

Organisations are required to publish this information within 12 months; therefore the publication will be required on or before April 2018.



Latest safety news

Review of key fire safety legislation

The London Fire Brigade has recently published a review looking at the effectiveness of the Regulatory Reform (Fire Safety) Order 2005 (RRO), which covers general fire safety and accountability in England and Wales.

Anyone who owns, manages or operates a business needs to comply with the RRO, which came into force on 1 October 2006. The Order applies to virtually all buildings and structures (other than individual private dwellings).

The RRO places the emphasis on risk reduction and fire prevention. Under the Order, the people responsible for commercial buildings, i.e. the employer, owner, or any other person who has control of any part of the premises, is required to carry out a mandatory detailed fire risk assessment identifying the risks and hazards in the premises.

The RRO requires that a risk assessment must be recorded if an organisation has a total of five or more employees.

The review of the RRO was carried out by the fire, security and environmental certification company BRE Global Ltd on behalf of London Fire Brigade. The review concluded that, while the RRO is generally fit for purpose, there are possible improvements that might be made, including to:

- the details of the legislation, possibly with respect to aspects such as competency, the safety of the care sector and how the RRO relates to other key legislation
- improve existing guidance on the RRO
- increase the level of awareness of the RRO and its provisions among “responsible persons” under the RRO since this is not as high as it should be.

HSE aims to maintain regulatory services despite funding cuts

The Health and Safety Executive (HSE) says it will maintain its core regulation activities despite further government cuts of 12.5% by 2019/2020, but admits it will “simplify” some of its regulatory controls.

Following the November spending review, the money the HSE receives from the Department for Work and Pensions will decrease year-on-year throughout the current parliament, falling to just £123.4 million by 2019/2020, and representing a 46% fall in income from the £231 million it received in 2009/2010.

In the current year, 2016/2017, the HSE will receive £141 million from the Government and generate £94 million in income, which includes fees and licensing, such as Fee for Intervention. The business plan says that, “in responding to this financial challenge, the HSE will seek to maintain current levels of its core regulatory activities including permissions, inspection, investigation and enforcement.”

The business plan lists five areas in which the HSE is looking to make simplifications, including regulations governing the use of chemicals, including the Control of Substances Hazardous to Health Regulations, the Control of Lead at Work Regulations and the Dangerous Substances and Explosive Atmospheres Regulations. HSE intends to make further savings through sharing government facilities and moving to cheaper offices.

The HSE plans to place less emphasis on risk assessment paperwork and more on risk control and says it will review the benefits and costs of legislation governing plant and equipment inspection. Work to simplify and streamline legislation and guidance will continue over the coming year, with the HSE making a “significant contribution” to government plans to reduce the cost of regulatory compliance by £10 billion by the end of the parliament.

The business plan does not mention the income that the HSE expects to generate by the end of the parliament to close the budget shortfall, but targets in its earlier business plan said it aims to double its commercial revenue by 2020, particularly through its overseas advisory services. The HSE has already introduced a 4% rise in fees for various regulatory services in April this year, including the Control of Major Hazards (COMAH), plant protection products and biocides regimes.



Legislation Tracker

Area	Legislation	Details	Date
Pensions	Pensions Act 2011 Pensions Act 2007	State retirement age for women become equal to that of men by November 2018. Once retirement age has become equal, the state pension age for both men and women will increase from 65 up to 66 (in 2020), from 66 to 67 and eventually up to 68 years of age by April 2046	Equalisation of the state pension age - November 2018 Increases in the state pension age will occur between 2020-2046
Agency workers	The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016.	The removal of the requirement for employment agencies/businesses to agree terms, and enter into a written contract, with hirers before providing any services	8 May 2016
Whistleblowing	Accountability and Whistleblowing Instrument 2015 (FCA 2015/46)	New rules on whistleblowing for financial sector, which includes an obligation to appoint a whistleblowers' champion and for all UK-based staff and their managers to receive training on blowing the whistle.	7 September 2016
Pay	National Minimum Wage for workers under 25 years old	The hourly rate of the national minimum wage for workers who are aged at least 21 but under 25 increases from £6.70 to £6.95 per hour. The rate for workers who are aged at least 18 but under 21 rises from £5.30 to £5.55 per hour, the rate for workers aged 16 or 17 rises from £3.87 to £4.00 per hour, and the apprentice rate increases from £3.30 to £3.40 per hour.	October 2016
Pay	Equality Act 2010	Employers are required to publish information showing whether or not there are differences in pay between male and female employees. The new requirement will apply to private companies and voluntary sector organisations that employ 250 or more employees	1 October 2016
Apprenticeship	Finance Bill 2016	An apprenticeship levy of 0.5% of their wage bill to be paid by all large employers in all sectors to fund apprenticeships from 6th April 2017.	6 April 2017
Pay	National Minimum Wage	Future changes to the hourly rate of the national minimum wage and the national living wage will take place at the same time in April each year.	April 2017

HSE says no to CDM ACOP

Last year, the HSE decided to seek the views of members of the Construction Industry Advisory Committee (CONIAC) on the need and content of a Construction (Design and Management) (CDM) Approved Code of Practice (ACOP).

This would cover the CDM Regulations 2015 which came into force on 6 April 2015, replacing CDM 2007 and which apply to the whole construction process on all construction projects, from concept to completion.

CONIAC members were reminded that the original intent of the ACOP in the Health and Safety at Work Act 1974 was to provide practical guidance on the standards needed to achieve compliance with a goal-setting approach, thus bridging the gap between such law and the former more prescriptive requirements. They were also asked to take an account of the HSE review of ACOPs following Professor Löfsted's review of health and safety regulations.

The HSE Board had said, in August 2014, that should a new ACOP be developed, it must be shown to add value, be considerably shorter and be "signposting" in nature.

The majority of views put forward were not in favour of producing a new ACOP, given that the CDM Regulations are generally well established and an ACOP is not seen as necessary or adding any particular value. Having received this feedback, the HSE Board has decided not to produce an ACOP at this stage while further discussions between HSE and industry are held to explore how the existing suite of guidance might be better communicated to achieve the objectives of CDM 2015. This decision will be reviewed after 12 months.



Your questions answered

Q) I have discovered that I accidentally overpaid one of my workers, I want to deduct the overpayment I have made to him in the next pay roll, however do I need the worker's written consent before I do it?

A) No, legally you do not need the worker's written consent to make the deductions, however it may protect you from future disputes with the worker if you do gain his consent.

The Employment Rights Act 1996 expressly excludes the deductions from salary which relate to recovery of overpayment of wages in unauthorised deductions from wages claim at the Employment Tribunal. However, it is still possible for the worker to claim breach of contract if they dispute the deduction in the Civil Courts and if the worker is classed as an employee and the dispute arises or is outstanding on the termination of employment, the employee could also make a claim at the Employment Tribunal. Therefore, getting the worker's consent to the deduction before it is made would assist in protecting yourself from these types of claim.

Q) We have a work-related evening event coming up and I am worried that some of the staff are going to drink too much and not come into work the next day, what can I do about it?

A) Prior to the evening event it will be worthwhile to remind your staff if there are any unauthorised absences after the event, it is likely that this will be treated as a disciplinary offence. However, it is more likely that staff will call in sick if they have a hangover rather than just failing to attend to work. In this event, if staff members call in sick the next day, only when you have evidence rather than misgivings about them not being genuinely ill would you be likely to be able to fairly escalate the matter further. If you are in any doubt it would best practice to seek further guidance before proceeding with any course of disciplinary action.

The latest pay awards and forecasts from Croner Reward

Settlements & Forecast Figures, April 2015, including a pay freeze:

	Settlements		Forecasts		
	May 2015 - April 2016 Average	January 2016 - April 2016 Average	May 2016 - April 2017 Average	January 2017 - April 2017 Average	May 2016 - July 2016 Average
ALL	2.0%	2.1%	2.3%	2.2%	2.5%
Management	2.0%	2.1%	2.3%	2.2%	2.4%
Clerical	2.1%	2.1%	2.4%	2.2%	2.7%
Operative	1.9%	1.9%	2.3%	2.1%	2.4%

Excluding Pay Freeze

	Settlements		Forecasts		
	May 2015 - April 2016 Average	January 2016 - April 2016 Average	May 2016 - April 2017 Average	January 2017 - April 2017 Average	May 2016 - July 2016 Average
ALL	2.1%	2.2%	2.4%	2.2%	2.5%
Management	2.1%	2.1%	2.3%	2.3%	2.4%
Clerical	2.2%	2.2%	2.5%	2.3%	2.7%
Operative	2.1%	2.1%	2.3%	2.2%	2.4%

Percent with Pay Freeze

	Settlements		Forecasts		
	May 2015 - April 2016 Average	January 2016 - April 2016 Average	May 2016 - April 2017 Average	January 2017 - April 2017 Average	May 2016 - July 2016 Average
ALL	16.6%	16.2%	5.7%	6.4%	6.1%
Management	17.1%	16.4%	6.3%	7.1%	6.7%
Clerical	15.5%	15.2%	7.1%	7.7%	7.7%
Operative	20.8%	20.9%	8.3%	9.1%	9.1%



Croner