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# Essential Employer Update 2015

This briefing considers employment law changes affecting parents and the calculation of holiday pay. We also look at RTI penalties and interest, together with National Insurance contributions (NIC) and coding notice changes and the progress being made on simplifying expenses and benefits reporting.

## Employer NIC for under 21s

From April 2015 employer NIC for those under the age of 21 will be reduced from the normal rate of 13.8% to 0%. For the 0% rate to apply the employee will need to be under 21 in the tax week (or month etc) in which the earnings are paid.

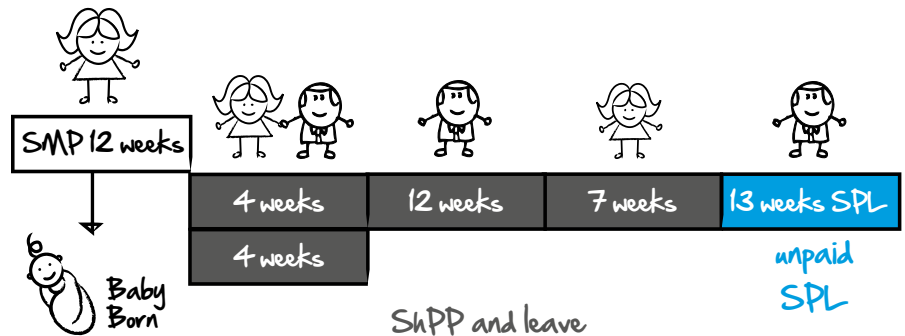
This exemption will not apply to earnings above the weekly limit of £815 (which is equivalent to £42,385 per annum). Employers are liable to 13.8% NIC on pay above this limit.

## Review of employee benefits

Following a review by the Office of Tax Simplification the Government has announced:

- From 6 April 2015, there will be a statutory exemption for trivial benefits in kind costing less than £50.
- From 6 April 2016, the £8,500 threshold below which employees do not pay income tax on certain benefits in kind will be removed.
- From 6 April 2016, there will be an exemption for certain reimbursed expenses replacing the system of dispensations which are currently used to avoid having to report non taxable expenses.
- From 6 April 2016, the introduction of a statutory framework for voluntary payroll benefits in kind.

We will keep you informed of developments.



## Shared parental leave and pay

Shared Parental Leave (SPL) is available to parents whose babies are due on or after 5 April 2015. In the case of adoptions SPL will apply in relation to children matched with a person or placed for adoption on or after 5 April 2015.

Employed mothers will still be entitled to 52 weeks of maternity leave and 39 weeks of Statutory Maternity Pay (SMP). However the mother can opt to exchange part of her maternity leave and SMP into SPL and shared parental pay (ShPP). SPL and ShPP will be available provided the parents satisfy the eligibility requirements. The main elements of the scheme are:

- Mothers must take two weeks (four weeks for a manual worker) of compulsory maternity leave.
- Eligible parents are then able to share the remaining leave and pay between them.
- ShPP is paid at the rate of £139.58 a week or 90% of average weekly earnings, whichever is lower.

- Fathers are additionally still entitled to two weeks Statutory Paternity Pay and leave although the Additional Paternity Pay and leave options are no longer available.
- A mother with a partner (who must also meet the qualifying conditions) will be able to end her maternity leave and SMP and share the untaken balance as SPL and ShPP.
- It will be up to the parents how they share SPL, they could take it in turns or take time off together, provided they take no more than 52 weeks of this leave in total.

## Does the employer have to allow SPL and ShPP?

Leave must be taken in complete weeks and may be taken either in a continuous period, which an employer cannot refuse, or in a discontinuous period, which the employer can refuse. One of the key areas is the discussion between the employer and employee and guidance on this issue can be found by visiting [www.acas.org.uk](http://www.acas.org.uk)

## HMRC to collect more debt through tax codes

HMRC can currently collect certain tax debts of up to £3,000 by adjusting an individual's PAYE tax code which applies to their employment or pension income. This collection method is known as 'coding out'. This method recovers the debt by increasing the amount of tax that is deducted from the income.

The current limit on the amount which can be recovered this way is £3,000. However, for those with PAYE earnings of £30,000 or more the amount which can be recovered via coding out will be increased from 6 April 2015 to £17,000. The limits will apply on a graduated scale based on PAYE earnings. The maximum £17,000 limit applies to earnings over £90,000.

The change only applies to recover Tax Credit, Class 2 NIC and income tax Self Assessment (SA) debts.

The current £3,000 coding out limit will continue to apply to the collection of SA balancing payments and PAYE underpayments.

If an individual does not want the debt coded out they should arrange to pay off the debt or agree a suitable payment plan with HMRC.

A second change is the extension to all tax codes of the rule that only a maximum of 50% of pay can be taken away in tax deductions. Currently the restriction only applies to K codes.

## Overtime and holiday pay

A decision by the Employment Appeals Tribunal (EAT) has ruled that in some cases overtime needs to be included in the calculation of holiday pay. Under the Working Time Regulations most workers are entitled to paid statutory annual leave. This is 5.6 weeks (28 days) if the employee works five days a week. This basic entitlement can include public holidays.

These regulations are derived from the EU Working Time Directive (which requires workers to be given four weeks annual leave).

A worker is entitled to be paid in respect of any period of annual leave for which they are entitled, at a rate of one week's pay for each week's leave.

The EU Working Time Directive is silent as to how to calculate 'one week's pay' but the Employment Rights Act provides rules. These have been generally interpreted as only requiring 'guaranteed' overtime to be included in the pay calculation.

Guaranteed overtime is overtime which the employer guarantees to provide to the employee even if the employer has no work available at the time.

## What the courts say

There have been a number of cases heard before the Court of Justice of the European Union which have stated that workers should be entitled to their 'normal remuneration' when on holiday.

The EAT has recently considered three cases together, where employees were required to work overtime if requested by their employers. The EAT referred to this type of overtime as 'non-guaranteed overtime'. The Tribunal considered two main issues:

- to what extent must non-guaranteed overtime be included in the calculation of holiday pay
- for what period of time can workers seek to recover underpayments of holiday pay from employers.

It was decided that:

- overtime payments must be taken into account in the calculation of holiday pay if there is a settled pattern of work
- if the amount of overtime varies but is regularly paid, overtime payments must also be taken into account on an average basis
- the general backdating rule of three months should apply to underpaid holiday pay and gaps between payments for holiday pay. From 1 July 2015 backdating of claims will be capped at a maximum of two years.

Appeals may be made relating to the decisions however, the Tribunal did note that any appeal against the principle of including non-guaranteed overtime payments in holiday pay is unlikely to succeed.

Please contact us if you require any further information or advice. Alternatively visit the ACAS helpline [www.acas.org.uk/helpline](http://www.acas.org.uk/helpline)

## Automatic Penalties

Real Time Information (RTI) reporting of payroll information is now firmly established and employers are expected to file and pay on time. Do not get caught out by automatic penalties and monthly interest charges.

It has always been the employer's responsibility to pay over PAYE on time, generally by the 19th of the following month (the 22nd for cleared electronic payment) see [www.hmrc.gov.uk/payinghmrc/paye.htm](http://www.hmrc.gov.uk/payinghmrc/paye.htm) for details.

## Interest on late payments of PAYE

In-year interest is charged on any PAYE payments not made by the due date. In order to check if any interest is due check your HMRC 'Dashboard' as these interest charges are not notified by letter. It is important that PAYE is paid over on time.

## Automatic penalties for the late payment of PAYE

Penalties for the late payment of PAYE are structured on a sliding scale. The more late payments in a tax year, the higher the percentage penalty that applies to the aggregate of the late payments.

The first default in any year is disregarded altogether. The remaining defaults trigger a penalty of 1%, 2%, 3% or 4% depending on their number. A 4% penalty is payable if there are ten or more defaults during the tax year.

The saving grace for many employers has been that the identification and issue of these penalties has not been automated, so although many employers have failed to pay on time they have not been penalised. This adhoc system will be automated from April 2015 and penalty notices will be issued on a quarterly basis.

## Late filing penalties

When do they apply to your business?

Number of employees	Automatic Penalties apply from
50 plus	6 October 2014
Less than 50 employees	6 March 2015
Existing employers with 9 or fewer employees	May be able to report PAYE information on or before the last payday in the tax month until <b>April 2016</b> .

## How much are the penalties for failing to make a return?

There will be no penalty for the first month but penalties for subsequent failures are set out in the table:

## Penalty amounts

Number of employees	Amount
1-9	£100
10-49	£200
50-249	£300
250 or more	£400

This includes annual and quarterly schemes.

It is therefore important to ensure that your RTI returns and liabilities are on time, every time.