

MAY 2009 - ENEWS

In this month's enews we report on the announcement of the forthcoming increases to the National Minimum Wage rates.

Please browse through this month's articles using the links below and contact us if any issues or questions arise.

- **National Minimum Wage increases**
- **Tips and the National Minimum Wage**
- **UK opt out on 48 hour working week**
- **Financial Services Compensation Scheme**
- **P11D deadline looming**
- **Landlords and gas safety**
- **Furnished holiday lettings**
- **HMRC warn of email scam**
- **Vehicle scrappage scheme**

National Minimum Wage increases

The adult rate of the National Minimum Wage (NMW) will rise to £5.80 (£5.73) an hour in October 2009. This is payable to those age 22 and over.

The hourly youth development rate will increase to £4.83 (£4.77) and for 16 and 17 year olds to £3.57 (£3.53) an hour.

Penalties for non compliance

HMRC are able to charge penalties to those employers found to be in breach of the NMW rules.

From 6 April 2009, automatic penalties are levied on employers where HMRC officers find NMW arrears. The penalties range from £100 to £5,000 with 50% prompt payment discounts for employers who settle within 14 days of notification.

The penalty is payable in addition to arrears owed to the workers.

The penalty notice will detail the amounts due to workers (calculated according to the formula shown below) and any penalty due on those arrears. The penalty is calculated as half the total underpayment. The underpayments are uprated to take into account the length of time the arrears have been outstanding.

For each payment period the formula is:

$$\frac{\text{Original underpayment}}{\text{Original NMW rate}} \times \text{Current NMW rate} = \text{Arrears}$$

In serious cases of non compliance the employer may be tried in a Crown Court and in those cases the fines are unlimited.

If you have any queries on the NMW please do get in touch.

Internet links: [HMRC guidance on penalties](#) [NMW news release](#)

Tips and the National Minimum Wage

HMRC have won their case in the Court of Appeal as to the treatment of tips and service charges for bar and restaurant workers.

The court ruled in favour of HMRC in the National Minimum Wage (NMW) legislation case relating to tips, gratuities and discretionary service charges. The case concerned Annabel's restaurant and night club and others.

The ruling confirms that employers must pay their employees at least the NMW without taking into account tips, gratuities, service charges or cover charges, unless they are paid to employees through the employer's payroll.

The case means that Annabel's and others must now pay over £125,000 in arrears to their employees.

Annabel's had operated a 'tronc' scheme which HMRC had argued did not count towards the necessary payment of the NMW. A 'tronc' scheme is sometimes used where restaurant or bar service charges are paid by the customer to the employer, but are then paid into a 'troncmaster's' bank account for distribution in accordance with a 'tronc' scheme agreed between the 'troncmaster' and employees.

The court decided that where a 'tronc' scheme is used the amounts distributed to workers are not paid by the employer and therefore could not be included in pay for NMW purposes.

Rt Hon Stephen Timms, Financial Secretary to the Treasury, said:

"The government's priority is to ensure that all workers are paid at least the national minimum wage. I am extremely pleased that the court has recognised HMRC's commitment to ensuring that tips are correctly and fairly distributed to the people who earn them. This is good news for bar and restaurant workers across the UK."

Internet link: [Press release](#)

UK opt out on 48 hour working week

The ability of UK employers to allow employees to opt out from the European Working Time Directive is set to continue. This means that, where employees wish, they will still be able to work more than 48 hours a week.

The European Parliament had wanted to scrap the opt out.

Employment Relations Minister Pat McFadden said:

"We refused to be pushed into a bad deal for Britain. We have said consistently that we will not give up the opt out and we have delivered on that pledge.

Everyone has the right to basic protections surrounding the hours that they work, but it is also important that they have the right to choose those hours.

In the UK and many other Member States, choice over working hours has operated successfully for many years. The current economic climate makes it more important than ever that people continue to have the right to put more money in their pockets by working longer hours if they choose to do so."

For more information on the operation of the working time regulations please visit the Business Link guidance below.

Internet links: [Press release](#) [Business Link guidance](#)

Financial Services Compensation Scheme

The Financial Services Authority (FSA) have provided a table listing the largest UK deposit takers. The list shows how the Financial Services Compensation Scheme (FSCS) limits would apply for most customers but is not a complete list of deposit takers covered by the FSCS.

If a bank or building society authorised by the FSA is unable to pay back deposits held with it, the FSCS can pay 100% of the first £50,000 of an eligible depositor's claim, per authorised institution. Where a person holds accounts with two or more UK deposit takers covered by a single authorisation, then the FSCS will only pay up to the maximum limit of £50,000 in total, regardless of how many different institutions a person holds accounts with and/or the number of accounts that they hold.

In the case of customers with joint accounts, FSCS will assume that the money in that account is split equally unless there is evidence to suggest otherwise. This means that each account holder in a joint account would be eligible for compensation up to the maximum limit of £50,000.

Internet link: [fsa list of linked deposit takers](#)

P11D deadline looming

The forms P11D and where appropriate P9D, which report employees and directors benefits and expenses for the year ended 5 April 2009, are due for submission to HMRC by 6 July 2009. The process of gathering the necessary information can take some time so it is important that this process is not left to the last minute.

Employees pay tax on benefits provided as shown on the P11D, either via a PAYE coding notice adjustment or through the self assessment system. In addition, the employer has to pay Class 1A National Insurance Contributions (NIC) at 12.8% on the provision of most benefits. The calculation of this liability is detailed on the P11D(b) form.

HMRC have advised that they will shortly start sending out paper forms P11D(b) - Return of Class 1A NICs. The forms should be issued by 15 June 2009. Those employers who filed electronically last year will receive an electronic reminder as opposed to a paper form. Payslips will be issued to employers regardless of how the form is to be submitted.

This year HMRC have introduced a new quality standard for P11Ds that are submitted on paper, setting out how employers must complete the form and what information must be included. Failure to complete forms in accordance with the standard may result in the forms being rejected by HMRC and may result in a penalty. For more information on these issues please use the links below.

If you would like any help with the completion of forms P11D or the calculation of the Class 1A liability please get in touch.

Internet links: [HMRC P11D guidance](#) [HMRC P11Db guidance](#) [HMRC notice](#)

Landlords and gas safety

Landlords letting property equipped with gas appliances need to ensure that they comply with the law relating to gas safety. As a landlord it is their responsibility to ensure that any pipe work, appliances and flues provided for tenants are maintained in a safe condition.

The landlord must now ensure that a gas safety check is carried out every year by a Gas Safe registered engineer. The new system of registration for engineers was introduced earlier this year. A registered engineer has to check gas appliances and confirm they are safe and issue the relevant certificates. The certificate must be given to the tenant within 28 days.

For more information visit the link below.

Internet link: [Gas Safe Register advice](#)

Furnished holiday lettings

The Budget 2009 contained announcements about significant changes to the rules for furnished holiday lettings (FHL) but those who are affected may have to act fast. The main announcements are set out below:

- Extension of the furnished holiday lettings scheme to properties in the European Economic Area (EEA) (previously it was thought that the property had to be in the United Kingdom). This change is being made due to the possible incompatibility of the rules with European law.
- The removal of the scheme, and its advantageous tax treatments, completely from April 2010. Unlike general property rental businesses, FHL are treated as a trade for certain taxation purposes, which is generally more preferential in terms of loss and capital gains tax reliefs.

It may be worthwhile making claims for FHL treatment for properties in the EEA including those for which tax returns have already been submitted and where the property has actually been disposed of in the last few years.

HMRC have indicated that, in the correct circumstances, late claims and amendments will be accepted in relation to this matter. The first deadline is 31 July 2009, although later deadlines may apply in certain circumstances.

If you believe you may have or have had a property which qualifies for FHL treatment, please do get in touch.

Internet link: [HMRC Budget guidance](#)

HMRC warn of email scam

HMRC are warning that they have become aware that a large number of individuals are receiving emails offering tax rebates. These emails, which are being sent from HMRC Tax Refunds Online and HMRC Tax Refunds On-line, are not genuine.

HMRC are stressing that individuals should not visit the website contained within the email or disclose any personal or payment information.

For more information on this and other scams visit the link below.

Internet link: [HMRC fraud attempts](#)

Vehicle scrappage scheme

The vehicle scrappage or discount scheme is a voluntary scheme for motor dealers. Participating dealers will give buyers a £2,000 discount off the purchase price of a new car or small van in exchange for scrapping their old qualifying vehicle which must, amongst other criteria, be registered on or before 31 August 1999.

The scheme is expected to run from mid May 2009 to March 2010, unless funds are exhausted before then. For general information on the £2,000 scrappage discounts and the qualifying conditions for vehicles visit the Directgov link below.

HMRC have published their view on the tax implications of the car and van scrappage scheme. The guidance covers the business tax and VAT implications of the scheme.

If you have any queries on the tax implications of the scheme please do get in touch.

Internet links: [Directgov website](#) [HMRC Brief](#)