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# National Minimum Wage

From 1 October 2014, the national minimum rates will increase as follows;

- Adult rate will rise from £6.31 to £6.50 per hour
- For 18 to 20 year olds, the rate will increase from £5.03 to £5.13 per hour
- For 16 to 17 year olds, the rate will increase from £3.72 to £3.79 per hour
- For apprentices, it will rise from £2.68 to £2.73 per hour

Further for employers who pay their employees below the National Minimum Wage will face an increased penalty of up to £20000 with effect from 7 March 2014.

The current penalty is a maximum of £5000.



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## NEWS FROM THE HR TEAM



# Increase in Statutory payments from 6 April 2014

- The maximum compensatory award for unfair dismissal will increase from £74,200 to £76,574.
- The minimum basic award for an automatically unfair dismissal (trade union membership or related activities) is set to increase from £5500 to £5676.
- Statutory sick pay rate will increase from £86.70 to £87.55 from 6 April 2014
- The lower earnings threshold for National Insurance purposes will rise to £111 per week from £109 per week.
- The statutory maternity, paternity and adoption rates will increase from £136.78 to £138.18.
- The statutory redundancy rate will increase from £450 to £464 per week.
- The daily rate for guarantee pay will increase from £24.20 to £25.
- Personal Allowance eligibility for those born after 5 April 1948 will increase from £9,440 to £10,000.



## Penalties for employers for infringing employment rights

**With effect from 6 April 2014, Employment Tribunals will be given additional power to impose financial penalties to employers who are in breach of employee rights through The Enterprise and Regulatory Reform Act 2013.**

Where a breach of employee's rights has occurred and where it has one or more aggravating features, penalties may be imposed on the employer, anywhere from £100 to £5000.

According to section 16 from the explanatory notes to the Act, "an employment tribunal may be more likely to find that the employer's behaviour in breaching the law had aggravating features where the action was deliberate or

committed with malice, the employer was an organisation with a dedicated human resources team, or where the employer had repeatedly breached the employment right concerned.

The employment tribunal may be less likely to find that the employer's behaviour in breaching the law had aggravating features where an employer has been in operation for only a short period of time, is a micro business, has only a limited human resources function, or the breach was a genuine mistake".



## Changes to Flexible Working

**The long awaited changes to employees' right to request Flexible Working are finally set to come in from 30 June 2014.**

Until now, only employees who met certain criteria, could put in a flexible working request. With the new changes all employees, so long as they have 26 weeks continuous employment with the company, can now request to work flexibly.

The statutory procedure for dealing with flexible working requests has also been repealed, which means that employers no longer need to follow the current procedure.

Employees must not have made a previous request in the preceding 12 month period. Employees have the right to request flexible working; they do not have the right to work flexibly.

The draft code of practice on handling requests in a reasonable manner can be found on the ACAS website for further information



## ACAS early conciliation

**From 6 April 2014, all potential claims to the employment tribunal must first be notified to ACAS.**

ACAS' new service will offer free conciliation to settle disputes quickly and without legal action. An extra month shall be allowed for ACAS to try and resolve the dispute before putting in a claim with an employment tribunal.



## Duty to consult and inform for micro businesses under TUPE

**Under the current TUPE regulations, where there is a business transfer, the duty to inform and consult was with the appropriate representatives of employees who will be affected by the transfer.**

This is regardless of the number of affected employees and implied that a small employer would have to elect appropriate representatives

to consult with them rather than informing and consulting with its staff directly.

From July 31, 2014 employers with less than 10 employees will be able to inform and consult with their affected staff directly.

## ACAS consultation on Disciplinary and Grievance Procedures

**In December 2013, ACAS published a consultation document on revising its disciplinary and grievance procedures as a result of the EAT ruling in Toal & Anor v GB Oils.**

EAT reflected that the current procedures did not clarify suitably the statutory right to be accompanied.

Section 10 of the Employment Rights Act 1999 states that an employee may be accompanied by any companion of their choice, so long as the request is reasonable and the companion is a work colleague, a person employed by a trade union or a trade union representative who has been certified in writing by the union as having experience of, or having been trained in.

'Reasonable request' was clarified in the ACAS guidance to include geographical location of the companion and whether or not the companion's presence might prejudice the proceedings.

In light of the EAT ruling, ACAS proposed that an employee may freely choose any companion as defined under ERA 1999 and while retaining its suggestion to choose a companion based on geographical location and non-disruptive to the hearing, ACAS sought consultation on what could be defined as 'reasonable request'.

The consultation closed on 7 January 2014 and according to the consultation document, ACAS will continue to keep the Code under review until a more substantive revision is sought.



## CASE LAW



### **What constitutes Personal Data? Edem v Information Commissioner and another [2014]**

**The Court of Appeal held in this case that a person's name amounts to personal data as defined by the Data Protection Act (DPA) 1998.**

According to the Court of Appeal, a person's name cannot be given unless it is a common name, such that the person cannot be identified despite disclosure.

Mr Edem made a request to the Financial Services Authority asking for a copy of all the information FSA held on him. The FSA withheld

the names of three individuals since they were not decision makers and were junior employees. Further, Mr Edem knew the employees' place of work.

The Court of Appeal held that FSA was right in withholding names and such information amounted to personal data under DPA.

### **Lock v British Gas Trading Limited [2013]**

**This case has been referred to the European Court of Justice to clarify on holiday pay under Working Time Regulations.**

Mr. Lock was employed by British Gas and his remuneration comprised of a basic pay and a commission. As he was on annual leave, he did not generate any commission. He brought in a

claim for his holiday pay as he felt his pay was adversely affected due to not being able to earn commission which made up almost 60% of his salary.

According to the Advocate General of the ECJ, a worker's holiday pay should include an amount that reflects average commission previously earned over a prior period of months. The purpose of the holiday is for relaxation and as such by not being able to earn their full

potential, employees may be deterred from taking holidays. As the commission is directly linked to the work carried out by the employee in this case, it must be considered as a 'constant component' of his pay.

While this opinion is not binding on the ECJ, it is expected that the ECJ may follow this guidance and set a precedent for employers to include commission when calculating holiday pay for their staff.



## And finally on a light note, **Cyborg Bob on duty: enter at your peril**

**Security guards could soon find themselves with new “perfect” patrolling companions — so dedicated to their jobs, they’d snub the offer of a doughnut.**

They are, of course, robots, and security firm G4S is the first company to enrol one. The robot — called Bob — is on a three-month trial as a security officer, marking the first time an autonomous robot has been deployed in an office environment to do a real job.

Developed by the University of Birmingham, the 6ft droid is in charge of patrolling offices, monitoring the environment, checking that doors are closed and desks are clear.

And the best thing about him — he won’t tire. If he’s feeling low on power, he can simply

plug himself into the mains and recharge his batteries. If only mobile phones worked like that.

The robot is loaded with cameras and scanners and if he spots anything that doesn’t seem quite right, he’ll store the incident to his hard drive and report it to a (human) boss.

During his patrols, he’ll also be picking up information about the changing environment — where you really disappear to on your 15-minute tea break, why a big plant is suddenly blocking the doorway and who left the fire doors open.

Bob is part of the £7.2 million STRANDS project where robots learn how to act intelligently in real-world environments to aid industry.

Dr Nick Hawes, project leader, explained that rather than replacing existing human officers, the robots will act as an “additional patrolling resource”.

“This will add huge value for our customers by frequently carrying out routine checks and highlighting abnormal situations which require response from our security teams,” he said.

Bob will be in good company, as a similar robot called Werner will soon be deployed in a care home in Austria, playing games with residents. Put the two of them together and sparks will surely fly...

*Source: Elliot Sinclair, editor and writer for Croner*

Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

**For further information please contact Michelle Brinklow at BBi Risk Solutions:**

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