



February 2024 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this month's edition, we report on:

- Leap year - will staff be paid anymore?
 - Carer's leave Regulations 2024
 - Heat of the moment resignations
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Leap year – will staff be paid anymore?

With the extra day coming up at the end of this month - do employers need to think about extra payments? Whether employees are entitled to an extra day's pay this leap year will be determined by how they are paid.

Failing to pay the correct amount could see the employer facing legal risk and fines. It all depends on the employee's pay structure. If employees are paid hourly with a weekly pay reference, their pay won't be affected by the leap day.

Hourly workers who are paid monthly will see an increase in their pay because of the extra day because they will have worked for 21 days in February instead of the usual 20 days.

Generally, companies will gain an extra day's work from employees this leap year, which is welcome after the extra bank holidays in previous years.

There is no specific legislation governing work on 29 February but, for salaried workers, if it falls on a working day, they would be expected to work as usual with no claim to higher pay.

Annual salary is deemed to cover the working days in the year and is usually paid at 1/12 per month, regardless of the length of the month.

Irrespective of any contractual terms, companies need to ensure that employees are paid at least the relevant NMW/NLW rate of pay across all reference periods, encompassing the hours worked on the leap year day. Some employers may offer time off in lieu of time worked on the 29th to reduce this risk.

Employers should also be aware of how the extra day impacts on payroll. If you generally pay on the last day of the month this will result in employees being paid a day later than they might expect.

Employer: communicate to staff in good time to enable them to make financial arrangements if the payment date changes.

Contact us: we can assist with salary reviews and appraisals.

Carer's leave Regulations 2024

The Carer's Leave Regulations 2024 have been laid before Parliament. They set out the statutory scheme under which employees can apply for up to one week of unpaid carer's leave, in any 12-month period.

Key points are:

- the right will be a Day One employment right.
- the right applies to employees who have a dependant with a long-term care need and those who need to be absent from work to provide or arrange care for that dependant.
- requests can be consecutive or non-consecutive for half-days or full days.
- employees must give notice, in writing, of their intention to take carer's leave (giving at least twice the amount of notice than the period of leave requested).
- employers can postpone a request if the operation of the business would be disrupted. The employer must allow the employee to take the leave within one month of the request.
- employees are protected from detriment and dismissal because they take, or seek to take, carer's leave

Employers: the Regulations are due to come into force on 6 April 2024.

Contact us: for updates to Handbooks and policies.

Heat of the Moment Resignations

Was a tribunal correct to conclude that a Claimant's 'heat of the moment' resignation should stand – resulting in him not able to pursue an unfair dismissal claim?

No, held the EAT in *Omar v Epping Forest District Citizens Advice*.

The Claimant resigned during a heated discussion with his manager. He later tried to retract his resignation, saying it was in the 'heat of the moment'. The Respondent (employer) disagreed and his employment ended.

The Claimant claimed unfair dismissal. The tribunal found that the Claimant had resigned.

The Employment Appeals Tribunal disagreed with the tribunal's reasoning. The EAT gave the following guidance on 'heat of the moment' dismissals:

- A notice of resignation, once effectively given, cannot be unilaterally retracted.
- You should look at words of resignation objectively in all the circumstances.
- The circumstances that may be considered, include anything that would have affected the way in which the language used would have been understood by a reasonable employer.
- The subjective understanding of the recipient is relevant but not the determining feature.
- It is not enough if the employee expresses an intention to resign in future – the employer must understand from the words used that the speaker is actually resigning.
- The employer must feel that the resignation was 'seriously meant', 'really intended' or 'conscious and rational' at point when they were said.
- Evidence about what happened afterwards is relevant, but the longer the time that elapses, the less likely it will be taken into account.

Employers: exit interviews provide invaluable feedback and may retain other employees thinking of leaving.

Contact us: for assistance with exit interviews

For more information or assistance Email: caroline@employmentlawsupport.co.uk



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