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EMPLOYMENT REVIEW

Your quarterly legal bulletin on Employment Law news from Allan Janes Solicitors

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The taxation of termination payments

The rules governing the taxation of termination payments were tightened from 6 April 2018 by means of legislation to amend Chapter 3, Part 6 of the Income Tax (Earnings and Pensions) Act 2003.

Hitherto, where the employee's contract of employment contained an express payment in lieu of notice (PILON) clause, such payments were taxed at the appropriate rate. Where a PILON was not contractual, or the business making it did not routinely make such payments to departing staff, it could be regarded as compensation for breach of contract and paid free of tax up to a threshold of £30,000.

In order to ensure that the £30,000 exemption cannot be abused, the distinction between contractual and non-contractual PILONs has now been removed. The change applies to payments or benefits received on or after 6 April 2018, whether contractual or non-contractual, in circumstances where the employment also ended on or after 6 April 2018.

Employers are now required to calculate the amount of basic pay excluding bonuses, referred to as post-employment notice pay (PENP), the employee would have received had they worked their full notice period. This amount is taxable as earnings and subject to Class 1 National Insurance Contributions (NICs).

The first £30,000 of a termination payment that is not PENP will remain exempt from Income Tax, and any payment made to any employee that relates solely to the termination of their employment will continue to have an unlimited employee NICs exemption. The proposal to subject all termination payments above the £30,000 threshold to employer NICs, which was originally due to take effect at the same time, has been delayed until April 2019.

The legislation ensures that PENP calculations are not to be applied to statutory redundancy payments. These are always taxable as specific employment income and subject to the £30,000 exemption where appropriate.

Initial guidance on the new rules can be found in HM Revenue and Customs Employer Bulletin 70 at https://bit.ly/2FZsC6k. More detailed guidance will be published in the Employment Income Manual in due course.

A further change is that Foreign Service Relief in respect of termination payments is to be removed. This will not apply to seafarers, however.

In addition, the legislation clarifies that the exemption from tax for payments for injury and disability is not intended to apply to payments for injury to feelings, except where the injury amounts to a psychiatric injury or other recognised medical condition.

Employers are advised to include a PENP clause in employees' contracts of employment as the tax advantage of excluding such a clause no longer exists. If you would like assistance in reviewing your contracts of employment to ensure they are fully compliant with current legislation, please contact Charlotte Braham on charlotte.braham@allanjanes.com

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Auto-enrolment – increase in minimum required contribution levels

Under the Pensions Act 2008, every employer in the UK has a duty to enrol certain staff into a pension scheme and contribute towards it.

Employers are reminded that the minimum required contribution levels to auto-enrolment pension schemes or qualifying workplace pension schemes (based on a worker's 'qualifying earnings') increased from 6 April 2018.

From that date, the employer minimum contribution rate is 2% and the staff minimum contribution rate is 3%.

There will be a further increase from 6 April 2019, when the employer minimum contribution rate will rise to 3% and the staff minimum contribution rate will rise to 5%.

The scheme rules or agreements will need to be amended to ensure it continues to meet the qualifying criteria. If a pension scheme does not increase its minimum contribution levels in line with the statutory requirements, it will no longer be a qualifying scheme for existing members and cannot be used for automatic enrolment.

Pension scheme trustees and providers, employers and payroll and software providers should ensure they have done all that is necessary to comply.

Charlotte can assist you in reviewing your pension scheme arrangements to ensure your statutory duties are met. You can contact her on charlotte.braham@allanjanes.com

Government consults on aspects of the Parental Bereavement Bill

The Parental Bereavement (Leave and Pay) Bill began life as a Private Members' Bill in July 2017. The Bill is being supported by the Government and is now wending its way through Parliament.

The aim of the Bill is to give parents who are employed and have suffered the death of a child under 18 the right to two weeks' Bereavement Leave in order to give them time to grieve. Employees with 26 weeks' continuous service will also be entitled to Bereavement Pay.

The Government has published a consultation document seeking views on options for regulations to fulfil certain provisions contained in the Bill, specifically on:

- the definition of 'bereaved parent';
- how and when two weeks of Bereavement Leave and Pay can be taken; and
- the notice and evidence required to take Bereavement Leave and Pay.

The consultation, which can be found at https://bit.ly/2GTdI2D.

Suspected employee disloyalty – serious allegations require serious proof

When key employees leave to join competitors, feelings can run high, and that is one good reason for obtaining level-headed legal advice. One case in which the former managing director of a recruitment agency was accused of engaging in a dishonest conspiracy to harm its interests underlines the principle that serious allegations require serious proof *(Bourne Rail Limited and Another v Ashton and Others)*.

The businessman was one of the founders of the agency, which provided staff for the railway industry. Following his dismissal without notice, however, the agency accused him of having orchestrated the defection to a rival of a number of its employees and consultants with whom it had contractual relationships.

He was alleged to have imparted confidential information to the rival and to have breached restrictive covenants in his employment contract and the fiduciary duties he owed as a director. In support of its claim that he and others had been involved in a conspiracy to intentionally cause economic loss by unlawful means, the agency pointed to what was said to have been a suspicious number of phone calls and emails passing between the businessman and the rival's managing director prior to his dismissal.

In rejecting the agency's claim, however, the High Court noted that a particularly high standard of proof is required to establish dishonesty. There was no evidence that the businessman himself intended to move to the rival or that his contact with the latter prior to his dismissal was improper. The agency's case against the rival and others said to have been involved in the conspiracy was also dismissed and it was ordered to pay the substantial legal costs of the case.

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