

#108 HR Newsletter

August 2017

IR35 rules extending to Private Sector companies

New rules that came into effect relating to PSC in April 2017 were for Public Sector only but it looks likely this will spread to Private sector companies also.

PSC (personal service companies) are small companies typically used by consultants running their own business and structuring it as a small Ltd. company where they are the only employee (or perhaps also their spouse). Their income is usually taken as part salary and part dividend to take the advantage of lower taxes on dividend takings.

The IR35 tax rules that have caused huge disruption for HR teams in the Public Sector could be extended into the private sector “as early as spring 2018,” recruiters are warning.

Amendments to the IR35 tax system for the public sector came into effect this April. Since then, public sector contractors have had their tax status determined by the organisations hiring them. Those deemed to fall inside the IR35 regime are treated as employees for tax purposes and have their tax and national insurance contributions deducted at source, resulting in significant pay cuts for many.

Given this has caused huge confusion and turmoil in the Public section – we may be faced with a similar period of uncertainty from April 18 for the balance of the employers.

Public Sector **Employers** were asked to determine the true employment status of their contractors using a Government on line questionnaire – click the link below to see the current Public sector tool as this will be no doubt similar if its extended for Private sector companies

<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

Holiday Pay Calculations

The longstanding question of “**When do I include overtime payments in holiday pay?**” took a large step forward after a recent Court of appeal ruling recently.

The Judge declared that voluntary overtime, on-call allowances and out of hours’ payments could count towards holiday pay.

The key part of this decision is that these payments were **regular**. The judge did not indicate what that meant in practice, however they featured in every monthly payslip.

So the **action** employers need to take is to look at their “unusual” or “infrequent payments” e.g. all types of:

- overtime
- on -call
- standby
- shift payments
- commissions
- attendance allowances etc.

and if they are regular (and we can assume that means paid each and every month) then when a day's holiday is booked by the employee - the pay for that holiday should be calculated on previous 12-week average of all these earnings and NOT simply the basic pay. Note that it is the **regularity** of the additional payments that is key.

Bereavement Leave Bill starts its journey through The Commons

Parents who have suffered the death of a child will receive statutory paid leave to grieve, under a new law introduced to Parliament last week.

The Parental Bereavement (Pay and Leave) Bill seeks to ensure grieving parents in employment receive paid leave to grieve away from the workplace, which the Government says delivers on its pledge to “enhance rights and protections in the workplace”.

There is currently **no legal requirement** for employers to provide paid leave for grieving parents. Kevin Hollinrake MP introduced the Parental Bereavement (Pay and Leave) Bill into Parliament yesterday.

He said: “This is such an important Bill for parents going through the most terrible of times. There is little any of us can do to help, but at least we can make sure that every employer will give them time to grieve. “I have represented a number of constituents who have had to deal with the tragedy of losing a child and I am honoured to be able to do something to help parents in these desperate circumstances.”

Currently under the Employment Rights Act, employees have a day-one right to take a “reasonable” amount of unpaid time off work to deal with an emergency involving a dependant, including making arrangements following the death of a dependant.

What is “reasonable” depends on circumstances but, in practice, the length of time off is agreed between the employer and employee.

This proposal was part of the Government's manifesto pledge.