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## April 2022 Update

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

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In this Edition we report on:

- The importance of understanding benefits to employees before TUPE transfers
- Will you continue to offer flexible working?
- Increases to statutory payments or limits

### The importance of understanding benefits to employees before TUPE transfers

When buying a business an in-depth review of all benefit schemes during the due diligence process is necessary, in light of a recent court ruling.

The Employment Appeal Tribunal (EAT) recently found in *Amdocs Systems Group Ltd v Langton* that an employee, who transferred under TUPE to a new employer, was entitled to the 5% escalator payment included as part of the income protection payments.

The new employer's insurance provided less favourable terms and did not include an escalator payment which the claimant employee did not receive during an extended period of sick leave.

The EAT's decisions meant the new employer needed to pay the difference between the amount the insurance policy paid out and the amount to which the employee was entitled under their contract of employment, essentially the missing escalator payment, even though the insurer did not pay the employer.

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#### Advice for employers:

- When describing any insurance-backed benefits, contracts of employment need to be clear and should only refer to benefits that are fully covered by an underlying insurance policy.
- If purchasing a business, future employers should carry out a review of all benefit schemes during the due diligence process.
- Make sure that employees' contracts, summaries of benefits or staff handbook do not promise PHI benefits that exceed the amount covered by their insurance policy.
- These documents should include express limitations along the lines of "*the benefit is subject to the rules of the insurance provider and the insurance policy. The employer reserves the right to amend the cover, benefits and the insurance provider, or to withdraw the benefit in its entirety*".

**Employers:** communicate any changes or qualifications to the terms of benefit schemes to their employees in order to be able to argue that these govern the employees' contractual rights under relevant benefit schemes.

**Contact us:** We can assist with contracts of employment when buying a business.

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### Will you continue to offer flexible working?

With all restrictions now removed, companies are keen to work out the best post-pandemic working models going forwards to ensure productivity and profitability. However, a recent survey showed that two thirds of firms expect to scale back remote working, flexible working and possibly some mental health initiatives with the end of restrictions.

It is a difficult balancing act with many employees expecting flexible working arrangements and other support. Changing policies, or removing things completely, could have detrimental effects on staff retention and recruitment in a highly competitive labour market.

Organisations should be looking to adopt new ways of working that can result in a more inclusive, diverse and engaged workforce. There is also the wellbeing debate when support for employees is scaled back.

It is vital to stay in tune with employee's needs to be able to offer a flexible corporate culture which can adapt to a changing business landscape to continue to attract the best candidates

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and retain valuable employees. This may mean that policies need to be reimagined, business goals altered, new working styles implemented, and general working practices tweaked.

Flexible working doesn't just relate to where the work is carried out. Business owners also need to look at when the work takes place and how long it takes.

This may mean managers being retrained and supported so they have the right work planning and people skills they need. In addition, you will need to be open and receptive to measuring progress, listening to feedback, tracking engagement, learning, sharing and communicating your findings and then acting on them in a positive way to demonstrate leadership.

**Employers:** As many employers scale back flexible working arrangements make sure that you properly understand employees needs before making changes.

**Contact us:** We can assist with flexible working policies.

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### **Increases to statutory payments or limits**

From 3 April 2022, the weekly rate of statutory maternity, adoption, paternity and shared parental pay increased to £156.66 (from £151.97). From 6 April 2022, the rate of Statutory Sick Pay has increased to £99.35 per week (from £96.35).

Employers need to make the necessary adjustments for the relevant employees.

For any termination dated on or after 6 April 2022, the following statutory limits apply to an employment tribunal claim raised:

- The cap on a week's pay has increased to £571. This is relevant to calculating statutory redundancy payments or a basic award in unfair dismissal claims.
- The maximum statutory redundancy payment is now £17,130.
- The maximum compensatory award will be £93,878.

**Employers:** Make sure your payroll payments reflect these new rates

**Contact us:** We can assist with contracts of employment

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Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

**Caroline Robertson, Director**

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