

Employment

New Approaches to Pay

The way we work is changing. Employees are looking for more flexibility in their work and in particular a job that will fit around their life rather than the other way around. If the way we work is to change, we will also have to think about the way we pay employees. The law allows novel approaches to pay provided that certain requirements are met.

Section 1 Statement

Principally, whatever pay structure you agree with your employees must be set out in writing in what is called a section 1 statement; named after section 1 of the Employment Rights Act 1996. The Section 1 statement must be provided to all employees who work for over 1 month and it must be provided within 2 months of the start of the employment. A section 1 statement is not the same as a contract but it does cover most of the core terms that will feature in a full employment contract.

As to pay, the section 1 statement must include the scale or rate of pay or the method of calculating pay. It must also cover how often the employee will be paid (e.g. weekly or monthly). If the employee is to receive any sort of bonus or commission payment then this must also be referenced in the section 1 statement.

National Minimum Wage

The National Minimum Wage Act 1998 requires all employees to receive a certain minimum amount of hourly pay depending on their age. For the over 25s, this is currently £7.50 per hour but that will rise to £7.83 per hour on 1 April 2018.

Equal Pay

Section 66 of the Equality Act 2010 implies a gender equality clause into every contract, which means that women and men are entitled to receive equal pay for equal work. This means that whatever pay structure you create must not treat men and women differently simply because of their gender.

Part-time work

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 require part-time employees to be treated no less favourably than a comparable full-time worker. The simplest way to achieve parity of pay where an employee wishes to work reduced or non-standard hours is to pro rata the equivalent full time pay. If you can use a current fulltime employee as the basis of the pro-rata calculation then you reduce the risk that a part time employee is not paid on equal terms.

Discrimination

Bear in mind that anti-discrimination law is pervasive and could impact on novel pay structures. If a particular pay structure (e.g. an increased rate of pay for overtime) is less favourable to any particular group of individuals it may be discriminatory; however, the difference in pay could be defended by showing that it was objectively justified. This could be because the operations of the company require the different pay treatment.

Alternatives to standard pay structures

Within these straightforward rules, an employer can agree with an employee any pay structure that works for the business. This may mean setting a standard rate of pay for core hours with the opportunity for employees to additional pay for extra hours or it could be a base pay with performance based commission payment. If your customers are in particular need of your services at certain times of the day, you may offer different rates of pay depending on what time the employee works.

If you are interested in discussing any new ideas about how to pay your employees, please contact our Employment team for advice.



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