



## EMPLOYMENT NEWS HEADLINES

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### COVID-19 THE LATEST DEVELOPMENTS

Following the UK Government budget statement on 3 March 2021, below are the highlights for employers in relation to the Covid-19 pandemic and the latest plans:

- The Coronavirus Job Retention Scheme (CJRS) which was first introduced in March 2020 has since been extended a number of times over the course of the global crisis based on how the virus has spread and evolved. The latest CJRS extension was due to end in April 2021 but the Chancellor, Rishi Sunak, has announced that this will now be extended until 30 September 2021.
- As before, furloughed employees will be able to receive 80% of their monthly salary capped at £2,500 to 30 June 2021, however, as of 1 July 2021 employers will be required to pay 10% of the contribution reducing the Government contribution to 70% and from 1 August 2021 to the planned end of the CJRS on 30 September 2021 employers will be required to pay 20% of the contribution bringing the Government contribution down to 60%.
- Employers will continue to pay national insurance and mandatory pension contributions as they have currently been.

Throughout the crisis, changes have been sudden and often at short notice and there is nothing to suggest these plans will not change further but for now employers should start assessing the financing for these changes and what this may mean for them practically be that consideration of contractual variations for employees or something more drastic such as collective redundancies.

The Government has set out a cautious and measured plan to ease the latest lockdown by:

- reopening schools on 8 March 2021;
- making free coronavirus testing kits available to employers with 50 or more employees where it is not reasonable for them to work from home. Employers are required to register their interest by 31 March 2021 via the government portal, linked here: [Register to order free lateral flow coronavirus tests for your employees - GOV.UK \(www.gov.uk\)](https://www.gov.uk/register-to-order-free-lateral-flow-coronavirus-tests-for-your-employees)
- committing to a longer-term assessment of the use of “vaccine passports” in the fight against the spread of the virus.

A word of caution, employers should carry out a thorough assessment of how this data will be collected, used, processed and stored and there is some guidance on this from the Information

Commissioners Office. In addition to the Data Protection Act considerations, the applicability of health & safety laws and employment laws should also not be overlooked.

**Note:** For employers with 250 or more employees, the deadline for publishing the mandatory Gender Pay Gap Reporting requirements has also been extended for the year 2020-21 until 5 October 2021.

## **SUPREME COURT RULES UBER DRIVERS ARE WORKERS**

Regular readers of Maxlaw Global employment news will recall the key findings of the Court of Appeal in the case of Uber v Aslam & Others (see Issues 6,12 and 18 for the full saga). In a significant and definitive ruling in February 2021 the Supreme Court has unanimously upheld the findings of the Court of Appeal ruling that Uber taxi drivers were indeed workers and not self-employed independent contractors as Uber had argued. This historic ruling will mean that Uber drivers will be entitled to:

- A national minimum wage (see below);
- Statutory Holiday pay – this will include back pay of at least 2 years;
- Working Time Regulations protections;
- Statutory Sick pay under normal qualifying rules;
- Protection under the whistleblowing laws.

The Supreme Court stressed the fact that the rights asserted by the uber drivers were statutory not contractual rights and, therefore, was a matter of statutory interpretation not contractual. This will bring tremendous relief for gig economy workers who were in danger of falling through the gaps of statutory protections afforded to other groups of employees and workers. It will, however, also mean a larger burden for employers who are being forced to quickly adapted with a global shift in working patterns and methods to attract and retain the best talent. That said, not all status determination cases (as previously reported in Maxlaw Global employment news) will result in the same finding as much will depend on the specific facts.

## **‘ALL REASONABLE STEPS’ DEFENCE IN DISCRIMINATION CLAIMS SHOULD NOT BE “STALE” – ALLAY (UK) LIMITED V GEHLEN (EAT)**

The case of Allay (UK) Limited v Gehlen is an important reminder for employers that even where equality policies exist and equality and diversity training is provided, it is simply not enough to pay lip service to them. The policies and training must be kept up-to-date and applied on a daily basis as an integral part of good workplace practices.

Mr Gehlen, who was of Indian origin, was dismissed after 11 months of service on performance grounds. He claimed that he had been harassed on the grounds of his racial background while working at the company. An investigation into the allegation did find that a colleague, Mr Pearson, had made racial comments about Indian stereotypes having corner shops and driving Mercedes cars and was ordered to undertake equality and diversity training. Mr Gehlen brought a claim for direct discrimination and harassment on the grounds of his race.

At first instance, the Employment Tribunal (ET) found that Mr Gehlen was discriminated against as the employer was made aware of the racial harassment but it was dismissed as “just banter” and managers had not taken any steps to deal with the issue as soon as they became aware of it. The employer’s defence that equality and anti-harassment and bullying policies were in place and equality

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and diversity training had been untaken was found by the ET to be “stale”. A refresher training course would have been a reasonable step for the employer to take.

The employer appealed. The EAT upheld the ET’s findings and agreed that the training that had taken place was dated. Furthermore, the EAT noted it was one thing having policies and training but it was an entirely different matter as to its effectiveness. In this case the EAT found the employer had failed to take “all reasonable steps” and could not therefore rely on this defence.

It is critical for employers to keep all policies, training courses and practices under constant review if they are to be relied on as reasonable.

## **NATIONAL LIVING WAGE VERSUS THE REAL LIVING WAGE**

With the closing of the current tax year on 5 April, employers will need to carry out their usual review and increase in the National Living Wage (NLW) part of the National Minimum Wage (NMW) regime, but what is the Real Living Wage (RLW) and how does it differ?

The RLW is:

- a voluntary scheme that employers can sign up to and is a recommended wage level by the *Living Wage Foundation* for those workers 18 years and over which boosts the Government NMW/NLW increases that come into force in April of each year.
- The RLW is based on the real cost of living (based on goods and services) and geography rather than age brackets and is primarily aimed at young workers who face the same real living cost challenges as older workers.
- The increases are recommended each November. For the current year they were set at £10.85 and £9.50 per hour for London and the rest of the UK respectively.

By contrast the NLW is based on average percentage earnings and differs depending on the worker’s age bracket. Many employers are voluntarily signing up to the RLW to not only help their employees during the difficulties caused by the global pandemic but also to attract young talent who would otherwise not be able to subsist in certain parts of the UK on the NLW levels. There is no legal obligation or sanctions for not paying a RLW unlike the NLW where criminal sanctions against employers who breach the National Minimum Wage Act are possible. However, a Living Wage Foundation accreditation can be positive for employer with leading companies such as Aviva, Google and Ikea being active members.

Further information can be found at <https://www.livingwage.org.uk/news/real-living-wage-increases>

The key new Government set NLW rates from April 2021 will be:

- Aged 23 or over: £8.91 (up 2.2% from £8.72).
- Aged 21 to 22: £8.36 (up 2% from £8.20).
- Aged 18 to 20: £6.56 (up 1.7% from £6.45).

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