

J F HORNBY & CO

Chartered Accountants

The Tower, Daltongate Business Centre, Daltongate, Ulverston, Cumbria LA12 7AJ

T: 01229 588077 F: 01229 588061 E: jfh@jfhornby.com W: www.jfhornby.com

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INCREASE IN NATIONAL MINIMUM WAGE RATES

An employer must pay their workers a minimum amount per hour as defined by law. This amount is called the national Minimum Wage (NMW).

Who is covered by the NMW?

NMW applies to all workers, with certain exceptions such as:

- those under the age of 16
- apprentices under the age of 26 during their first year of apprenticeship
- those who are genuinely self employed
- family members working in the family business
- people working and living as part of a family (e.g. *au pairs*)
- voluntary workers

The new NMW rates from 1st October 2007 are:

	£
Adult Rate	5.52
Young Workers Rates:	
18-21 Development Rate	4.60
* 16-17 Year Old Rate	3.40

* 16 and 17 year old apprentices are exempt from the young workers rate

INCREASE IN STATUTORY HOLIDAY ENTITLEMENT – ADVICE FOR EMPLOYERS AND EMPLOYEES

As many of our clients will be aware, there will be an increase in statutory holiday entitlement for employees from 1 October 2007. However, this will not be the only change as the minimum holiday entitlement will increase again on 1 April 2009.

Before we look at a number of practical points relating to the forthcoming increases, let us familiarise ourselves with dates and holiday entitlement.

Remember that the statutory holiday entitlement sets out the minimum number of days' holiday that an employee is entitled to. This period can always be extended by mutual agreement between the employer and employee. In certain circumstances, the number of days can be reduced by mutual agreement so long as a payment in lieu of holidays is made (see below).

The present legislation that governs holiday entitlement is the Working Time Regulations 1998 which provide for 4 weeks holiday. From 1 October this year this will increase to 4.8 weeks holiday and from 1 April 2009 there will be a further increase to 5.6 weeks. The number of weeks assumes that an employee works a five day week, so expressed in terms of days this will be 24 days from 1 October 2007 and 28 days from 1 April 2009. Remember that the maximum length of holidays is capped at 28 days. So in the case of an employee who works more than a five day week there will be a maximum of 28 days holiday entitlement.

The above figures are pro-rated for those employees working part-time.

Set out below are a number of questions and answers that employers and employees may have to consider:

Q. If my business holiday year does not start on 1 October each year, how do we calculate the holiday entitlement?

A. If, for example, your business's holiday year starts on 1 January each year, then you calculate any increase in holiday entitlement proportionately. So for the holiday year that started on 1 January 2007 each employee will be entitled to 4.2 weeks (21 days). For the holiday year starting 1 January 2008 the entitlement will be 4.8 weeks (24 days). Examples of these and other situations can be found on the Department for Business Enterprise & Regulatory Reform (DBERR) Holiday Entitlement Ready Reckoner (see advice below).

Q. If our business currently pays the minimum holiday entitlement of 4 weeks, can we pay in lieu of the increased entitlement?

A. Yes you can, but only until 1 April 2009. If both the employer and the employee agree, the employee can be paid an additional 4 days in lieu of holiday provided that at least 4 weeks is taken as holidays. After 1 April 2009 a payment in lieu of holiday can only be made on the termination of employment (as is the present rule).

Q. Can holidays be carried over to another holiday year?

A. Four weeks holiday must be taken in each holiday year. However, if both employer and worker agree, any unused additional holiday entitlement can be carried over to the following holiday year (but not further). In addition, the employer can stipulate that any carried-over entitlement is taken within a specified period in the following year.

Q. What if the holiday entitlement calculation results in part days?

A. Holiday entitlement calculations can result in part days. The employer can decide how to treat these part days but they cannot be rounded down to the nearest full day. On the other hand, they do not have to be rounded up to the nearest full day but an employer can do so if he wishes. There are options available to employers, dependant on the type of employment. For example, the part day could be taken off a day's shift, enabling the member of staff to leave early or come in late.

Q. What about new employees?

A. An employee's right to his or her holiday entitlement begins on the first day of employment and there is no qualifying period allowed. However, for the first year of employment an employer may restrict the rate at which staff take their holiday. Under such a system the proportion of holiday that a worker can take (with the employer's agreement) builds up over the year at a rate of one-twelfth of the annual entitlement each month.

Q. Will employers have to issue new contracts of employment?

A. The advice given by DBERR is as follows: "No. As this is a change in terms of employment to the benefit of employees, employers do not need to reissue contracts; but do need to inform staff in writing of the increased holiday entitlement, either through a letter to staff or by a statement on pay slips, for example. We have produced templates for a standard letter, a notice to staff and, should an employer wish to amend contracts of employment, a paragraph for a contract is of employment."

GUIDANCE FOLLOWING THE "ARCTIC" DECISION

On 25 July 2007 the House of Lords gave its judgement in the case of *Jones v Garnett* (also known as "Arctic Systems"). Her Majesty's Revenue and Customs (HMRC) had previously lost this case in the Court of Appeal and as a result had appealed to the House of Lords. The case concerned dividend payments made by a company to Mrs Jones through which Mr Jones provided IT consultancy services. HMRC's view was that the settlements legislation deemed the dividends received by his wife to belong to Mr Jones for income tax purposes. As Mr Jones was on a higher rate of tax than his wife, this resulted in additional tax due. The House of Lords, however, has now ruled in favour of Mr Jones.

However, whilst the House of Lords decision was a long fought-for triumph for Mr and Mrs Jones and indeed for a number of other companies in similar circumstances, this will not assist future situations as on 26 July 2007 the Exchequer Secretary to the Treasury, Angela Eagle made a Written Statement to Parliament, advising that legislation will be brought in which will effectively reverse the Lords' decision.

Following the decision given in *Jones v Garnett* and the subsequent Ministerial Statement, HMRC has published guidance on how it will deal with cases which were awaiting the outcome of the appeal.

HMRC had been keeping open some similar cases to that in *Jones v Garnett* whilst they waited for the decision in the House of Lords. These cases will now be reviewed and settled in line with the *Jones v Garnett* decision if appropriate. Of course, each case will be different, and will need to be considered on its individual facts, but unless there are any additional factors which might cause HMRC to take a different view, they expect that most cases where the settled property comprises ordinary shares in a company, or an ordinary (ie unlimited) interest in a partnership, will be within the exemption for outright gifts between spouses.

COMPANIES ACT 2006 – NEW PROVISIONS COMING INTO FORCE

The majority of our corporate clients will be aware that the Companies Act 2006 (the Act) is being introduced over a period of time, with the Government's target of having the whole Act in force by 1 October 2008. A recent statutory instrument has introduced some new provisions of the Act, some of which will be of practical importance to companies and the more important of which are set out below. These provisions come into force on **1 October** this year.

Inspection of the register of members

These provisions deal with the right of members and any other person to inspect a company's register and the index of members' names. New provisions are included concerning information which must be given by a person requesting this information. These provisions have been introduced to protect members of companies from receiving threats or unsolicited correspondence from activist groups, eg animal rights groups.

Company directors

A number of provisions have been implemented concerning company directors. Some of these merely restate existing legislation, but some provisions are new. Note in particular that the new general duties of directors will come into force on 1 October 2007 but that a number of more specific duties will be brought in at a later date. Previous corporate legislation contained no provisions relating to directors' duties but it is now considered important that such duties are set out in the legislation itself. Clients should note that directors will now owe a statutory duty to certain parties other than members of the company, eg creditors.

Derivative claims and proceedings by members

These sections introduce new legislation concerning the rights of members to bring actions against a company's directors for acts or omissions involving negligence, default, breach of duty or breach of trust. We would advise that all client companies should be aware of the concept of a derivative claim but would suggest that such claims will be extremely rare in practice, especially in relation to private companies.

Resolutions and meetings

These provisions, some of which contain new legislation, will be of practical importance to companies, and include the following:

- The extraordinary general meeting will no longer exist and private companies will only have one type of meeting – a general meeting. It should be noted, however, that a private company can, if it wishes, convene an annual general meeting but it does not have to do so. Note that public companies must have an annual general meeting.
- The extraordinary resolution no longer exists and all resolutions are either ordinary resolutions (more than 50% majority) or special resolutions (75% or more).
- The Act now specifically provides that if a company is a one member company, the quorum at a meeting of the company can be one. In practice this has always been the position but it is now set out in the legislation.

Contents of directors' report: business review

This is an important provision which requires all companies (except small companies) to include a business review in the directors' report. The required content of the business review is set out in the Act.

Appointment of auditors of private companies

These provisions set out the requirement for certain private companies to appoint auditors and the term of office for such auditors. In particular, section 487 provides for the automatic reappointment of an auditor without the need for the company to pass an elective resolution to this effect.

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ⁱ *The articles in this newsletter are of necessity summaries of the topics covered. The publisher has taken all due care in the preparation of this publication. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the authors or the publishers. The publisher accepts no responsibility for the content of any material provided by third parties or for the content of any hypertext site referred to in this publication. The Publisher accepts no responsibility for the content of any website of other document referred to in this publication.*