

COMPANY DIRECTORS

Ascot Drummond works with a range of limited companies of various sizes and turnovers. Whether you are an executive director or non-executive director, we can help you to meet your legal responsibilities.

Directors are personally responsible for payments to HMRC. We can make **payments online** on your behalf by agreement. Self-employed people who convert their business to a limited company usually become directors of the company as well as employees. For the purposes of employment law, a director of a limited company has the status of an office holder. However, it is not unusual for a company director to also have a contract of employment with the company and so be both an office holder and employee, and therefore benefit from the employment rights of an employee.

The restrictions which prevent someone being a director are:

- they must not have been disqualified from acting as a company director (unless the court has given them permission to act for a particular company);
- they must not be an undischarged bankrupt (unless they have been given permission by the court to act for a particular company);

Company Directors' Responsibilities

All limited companies must have at least one director. Directors have many business responsibilities for ensuring the success of their company, in areas such as health and safety, employment law and tax. They must also ensure that key information is sent to Companies House and the company produces annual accounts.

Employment status of company directors

Executive directors of limited companies are classed as office holders for the purposes of tax and National Insurance contributions (NICs). The earnings from an office are automatically chargeable to tax as employment income and there is also a liability for Class 1 NICs.

Class 1 employee and employer NICs must still be paid if the director earns over the earnings threshold. Their NICs have to be recalculated every time they are paid based on their total earnings to date. Non-executive directors are regarded as employed by the company or self-employed under a contract for services.

Calculating Directors' NICs

NIC payments can be made on a weekly or monthly basis, as with other employees. The director must agree to this method being used and there must be a regular payment pattern. However, you must re-calculate the directors' NICs after the final payment of

earnings in the tax year is made. You will then need to pay any outstanding NICs for the year. Ascot Drummond can help you do this.

Frequently Asked Questions

1. What responsibilities does a director have towards Companies House?

Every company director has a personal responsibility to return statutory documents to Companies House e.g. accounts; annual returns; and notice of change of directors or secretaries or in their personal details (Forms 288a, 288b or 288c)

2. What happens if I do not submit accounts or annual returns to Companies House?

Companies House can prosecute directors for not submitting documents on time. This is a criminal offence and the court can fine a director up to £5,000 for each offence. There is a separate, civil penalty imposed on the company for the late filing of accounts.

EMPLOYMENT STATUS

Ascot Drummond works with clients who are sole traders or employ a range of staff on various contracts. It is important for employers to be seen to act fairly and meet their statutory obligations to their workers.

A worker is any individual who works for an employer, whether under a contract of employment, or any other contract where an individual undertakes to do or perform personally any work or services. Workers are entitled to core employment rights and protections. Most agency workers, short-term casual workers and some freelancers are likely to be workers but not employees.

You are probably self-employed if you:

- run your own business and take responsibility for its success or failure
- have several customers at the same time
- can decide how, when and where you do your work
- are free to hire other people to do the work for you or help you at your own expense
- provide the main items of equipment to do your work

You are probably employed if you:

- have to do the work yourself
- work for one person at a time, who is in charge of what you do and takes on the risks of the business
- can be told how, when and where you do your work
- have to work a set amount of hours
- are paid a regular amount according to the hours you work, and get paid for working overtime – even if you do casual or part-time work, you can still be employed

Individuals can also be employed and self-employed at the same time, perhaps by working for an employer during the day and running a business in the evenings.

If you are self-employed you are responsible for your own tax and National Insurance contributions. This means telling HM Revenue & Customs (HMRC) about your income by filling in a Self Assessment tax return. Self-employed do not have a contract of employment with an employer. They are more likely to be contracted to provide services over a certain period of time for a fee and be in business in your own right. They will also pay their own tax and National Insurance contributions (NIC). Individuals must register as self-employed with HMRC within three months, or you could face a penalty.

Rights of workers

Providing any other qualifying conditions are met, all workers have rights to:

- the National Minimum Wage
- working time limits, including rest breaks, paid holiday and limits on night work
- protection against unauthorised deductions from pay
- maternity, paternity and adoption pay (but not leave)
- protection against less favourable treatment because of being part time
- Statutory Sick Pay
- protection against less favourable treatment if you make a disclosure in the public interest (often called 'whistle blowing')
- not be discriminated against unlawfully.

You do not have employment rights as such if you are self-employed. You are your own boss and can therefore decide, for example, how much to charge for your work and how much holiday to give yourself. However, you do have some legal protection.

It is important that our clients are clear about the employment status of their workers. This will impact on how employment contracts are written and taxes paid. Employment status can be worked out by asking a few straightforward questions. If you need more information, Ascot Drummond can refer you to experts in employment law and health and safety.

SETTING SALARIES

Ascot Drummond clients are legally responsible for how much they pay their workers and adherence to any legislation.

Setting wages is a matter of judgement and paying the right wages for the market in which you do business. We hope that the information below is a helpful guide.

National Minimum Wage (NMW)

The National Minimum Wage applies to all those with a contract of employment whether written, oral or implied.

The NMW applies to:

- agency workers
- agricultural workers (although these will continue to have pay rates determined by the Agricultural Wages Boards)
- commission workers
- disabled workers
- pieceworkers and homeworkers – the National Minimum Wage Regulations 1999 (Amendment) Regulations 2004 introduced on 1 October 2004 replace existing provisions and a new 'rated output' work system is to replace fair estimate agreements for homeworkers and pieceworkers
- Off-shore workers in UK territorial waters, workers from outside the UK, and workers usually employed in the UK but temporarily working overseas.
- sea-farers.

The NMW does not apply to:

- the 'genuinely' self-employed
- apprentices (the NMW need not be paid at all to those aged 18 and under; and need not be paid for the first twelve months of their apprenticeship to those aged 19 to 26)
- people in higher education whose courses require work experience
- the armed forces
- friends and neighbours doing jobs on an informal basis
- people living and working within the family (e.g. au pairs, nannies and companions)
- prisoners
- a resident member of a religious or other community
- share fishermen

- students on training courses
- trainees on Government-funded training courses or supported by the European Social Fund
- trainee teachers
- voluntary workers (provided they work for a charity, voluntary organisation, charity shop, school, hospital or similar body and receive only reasonable expenses and/or a 'genuine' honorarium).

Hourly rates from 1 October 2008 are:

- Standard rate: £5.73 – payable to people aged 22 and over
- Development rate: £4.77 – payable to people aged 18 to 21 years whether or not they are receiving 'accredited training'. Payable to people aged 22 and over who start a new job with a new employer and receive 'accredited training' for first six months.

Youth rate: £3.53 – payable to 16 and 17 year olds (above the compulsory school leaving age).

What's Included In The National Minimum Wage?

Compliance with the NMW is calculated on the basis of gross pay before deductions such as income tax and National Insurance.

The following items are **included** in pay for compliance purposes:

- basic pay
- incentive pay
- bonuses
- tips (provided they are paid through the payroll)
- deductions for reasons such as misconduct or poor work, advances of wages, or accidental overpayment of wages
- cost of employee-provided accommodation (to a maximum of £26.25 per week).

The following items are **excluded** from pay for compliance purposes:

- an advance of wages
- loans
- redundancy payments
- the premium element only of shift or overtime enhancements
- unconsolidated special allowances (e.g. London Allowances, 'danger' or 'dirty' money, on-call payments)
- expenses
- deductions or payment for tools, uniforms etc.

- benefits in kind
- a reward under a staff suggestion scheme.

While the premium pay element of overtime is not to be included as part of gross pay, overtime hours worked must be included as part of hours worked.

Hours which attract the NMW

Besides setting out the minimum rate and the groups to whom it is payable, it is important to know the hours to which the rate applies, ie the definition of working time. Relevant pay divided by working time provides the employee's hourly rate against which compliance can be assessed. There are four aspects to working time: time work, salaried-hours work, output work, and unmeasured work. Time work is where employees are paid directly in relation to the time they work. Salaried-hours work is where an employee receives an annual salary, paid in equal installments, for an agreed basic number of hours work in a year. Output work generally covers people paid by commission or by piecework. These pay methods can continue but must not deliver a rate of pay for hours worked lower than the NMW. Unmeasured work typically covers situations when there is no specified times for when a task has to be done (e.g. zero hours contracts). In defining the hours to attract the NMW the employer can either pay the minimum rate for all hours worked or reach agreement on a definition of a realistic 'daily average' of hours to be worked.

Records which the employer must keep

All employers will have to keep 'sufficient' records to show they are paying the NMW. There is no definition of 'sufficient' but the closer individual employees' earnings are to the NMW the more important it is to ensure that comprehensive information is kept on all the components of pay made in the reference pay, the total number of hours worked, and absences. Records must be kept for at least three years plus one pay period.

If you require further advice, Ascot Drummond can refer you to employment law and health and safety experts.

SETTING SALARIES – THE LAW

Ascot Drummond clients are legally responsible for what they pay their workers.

The main legislation which impacts on salaries is the Equal pay Act 1970; The Race relations Act 1976, the Part-time Workers and Fixed-term Employees regulations, the Employment (Equality) Age regulations 2006 and the Disability Discrimination Act 1995. We hope that this information is a helpful guide.

The Equal Pay Act 1970

The Act requires that men and women are paid the same when

- they are doing the same or broadly similar work,
- they are doing work which is of equal value, judged by factors such as skill, effort and decision, or
- they are doing work rated as equivalent under an analytical job evaluation scheme.

An employer is able to justify differences in pay between men and women where these can be shown to be for causes which are not attributable to sex. The courts have established transparency as a key concept in demonstrating that a pay system treats men and women equally and have established that the Act applies to those who are in the 'same employment', and regardless of separate bargaining arrangements or staff groups and providing that they can prove that the majority of their group are of the same gender as themselves, and that the majority of the comparator's group are of the opposite sex. The courts have also established that differences in pay between men and women attributed to the market must be clearly identifiable and wholly attributable to the market.

The Race Relations Act 1976

Indirect discrimination is unlawful under the 1976 Race Relations Act. Such discrimination may occur, for example, when an employer applies a rule or requirement equally to all staff, but that rule impacts unequally on members of different racial groups. Complainants of race discrimination before employment tribunals have successfully cited criteria used for discretionary pay awards as constituting indirect discrimination. In the event of such a complaint, the employer would have to prove that the use of its criteria was justifiable irrespective of the race or sex of the person to whom they were being applied.

The Part-time Workers Regulations and the Fixed-term Employees Regulations

The Part-Time Workers Regulations require that no part-time worker should be treated less favourably in respect of any term and condition of employment than a comparable full-time worker, unless less favourable treatment can be justified on objective grounds. Similarly, the

Fixed-Term Employees Regulations provide that employees holding fixed-term contracts must be treated no less favourably than permanent staff, unless the difference in treatment can be objectively justified. Care should be taken to ensure that part-time and fixed-term employees are not inadvertently overlooked when discretion in setting salaries is being exercised.

The Employment (Equality) Age Regulations 2006

The Employment (Equality) Age Regulations ("Age Regulations") outlaw direct or indirect discrimination in employment on the grounds of age unless discrimination can be objectively justified or falls into one of the exemptions provided for by the regulations. Care should be taken to ensure that employees of all age groups are treated fairly during the course of setting starting salaries and when making discretionary payments.

The Disability Discrimination Act 1995

The Disability Discrimination Act (which has subsequently been amended by the Disability Discrimination Act 1995 (Amendment) Regulations 2003 which came into force on 1 October 2004) makes it unlawful to discriminate against disabled persons in employment, including in recruitment, training and other benefits. The Act defines a disabled person as someone who 'has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities'.

Unlawful discrimination covers:

- (i) direct discrimination – where an employer directly discriminates against a disabled person if, on the ground of the disabled person's disability, an employer treats the disabled person less favourably than he treats, or would treat a person not having that particular disability whose relevant circumstances, including his or her abilities, are the same as, or not materially different from, those of the disabled person. Direct discrimination cannot be justified.
- (ii) (ii) indirect discrimination where, for a reason relating to their disability, an employer treats a disabled person less favourably than a non-disabled person is, or would, be treated, and the employer cannot show that the different treatment is justified. Care should be taken to ensure that disabled employees are treated fairly during the course of setting starting salaries and when making discretionary payments.

If you need more information, Ascot Drummond can refer our clients to employment law and health and safety experts.

ANNUAL LEAVE

Our clients are legally responsible for the terms and conditions of their workers. We hope that the information below is a helpful guide.

The Legal Minimum

Under the Working Time Regulations 1998 (as amended), workers (including part-timers and most agency and freelance workers) have the right to:

- 5.6 weeks paid leave each year (capped at 28 days) from 1 April 2009. Many workers already get contractual leave which is more than 28 days. Their holiday entitlement will not change as a result of the amendments to the Working Time Regulations.
- payment for untaken statutory leave entitlement on termination of employment.

The Leave Year

In most cases, employers will calculate entitlement to annual leave on a pro-rata basis. So, if a worker begins work in July and the company's leave year runs from April to March, the entitlement will be three quarters of the full entitlement for that year.

Public holidays

Generally, public holidays include bank holidays, holidays by Royal Proclamation and 'common law holidays'. When public holidays in the Christmas and New Year period fall on Saturdays and Sundays, alternative week days are declared public holidays.

There is no statutory entitlement to paid leave for public holidays. Any right to paid time off for such holidays depends on the terms of the worker's contract. Paid public holidays can be counted as part of the statutory 5.6 weeks' holiday entitlement under the Working Time Regulations 1998 (as amended).

There is a minimum right to paid holiday, but your employer may offer more than this. The main things you should know about holiday rights are workers:

- Are entitled to a minimum of 5.6 weeks times the usual working week (from 1 April 2009)
- Who work part-time are entitled to the same level of holiday pro rata (so currently 5.6 times the usual working week).
- Start building up holiday as soon as they start work.
- Need approval from employers on when to take holidays.
- Get paid the normal pay rate for each holiday.
- get paid for any holiday not taken when they finish a job.

- bank and public holidays can be included in the minimum entitlement.
- continue to be entitled to holiday leave throughout the ordinary and additional maternity leave and paternity and adoption leave.

If you need more information, Ascot Drummond can refer our clients to employment law and health and safety experts.