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In this edition we cover:

New neonatal care leave and pay effective from 6 April 2025

The new right to Neonatal Care Leave (NCL), brought into force by the Neonatal Care Leave and Miscellaneous Amendments Regulations (the Regulations), will come into effect on 6 April 2025.

NCL will be a "day-one" right, which means it can be taken by all eligible employees from the beginning of their employment. The right will apply in relation to children born on or after 6 April 2025.

What is neonatal care?
Neonatal care is defined as:

- Medical care in a hospital (including maternity homes, clinics, and outpatient departments).
- Medical care in any other place to which the child is moved after discharge from hospital (provided that the care is under the direction of a consultant and includes ongoing monitoring by, or visits from, healthcare professionals arranged by the hospital referred to above).
- Palliative or end of life care.

How much leave can be taken and when?
Parents of babies who are admitted into neonatal care within the first 28 days of life, and who

require at least seven full consecutive days of care, will be able to take one week's leave for every week the child spends in neonatal care, up to 12 weeks.

It is worth highlighting that the seven full consecutive days of care must begin on the day after care begins (i.e., the seven full consecutive days do not include the day that the care started), for a parent to be entitled to one week of NCL.

NCL is in addition to any other family leave entitlement but must be taken within 68 weeks of the child's birth and must be used to care for the child. In practice, this will enable an employee on other forms of statutory family leave (such as maternity or paternity leave) to add their NCL entitlement to the end of their other entitlements.

Notice requirements
NCL is categorised into two tiers, and notice requirements differ between them, as set out below:

'Tier 1' Period
The Tier 1 period covers leave that starts while an employee's child is receiving neonatal care, or up to seven days after neonatal care ends. Leave taken in the Tier 1 period can be taken in non-consecutive blocks of a minimum of one week.

For Tier 1 leave, notice must be given by the employee before the first day of absence or as soon as reasonably practicable.

'Tier 2' Period
The Tier 2 period covers leave that starts more than seven days after an employee's child has stopped receiving neonatal care, and leave taken in the Tier 2 period must be taken in a single continuous block.

For Tier 2 leave, employees must provide 15 days' notice for a single week of leave and 28 days' notice for two or more consecutive weeks of leave. Although the Regulations provide for an employer to operate separate notice provisions, employers can choose to waive the notice requirements if they wish to do so given the complexity of the different notice requirements.

Statutory Neonatal Care Pay
The **Statutory Neonatal Care Pay (General) Regulations 2025** introduce a new entitlement for parents of children who are born after 6 April 2025 who receive neonatal care, allowing them to receive Statutory Neonatal Care Pay (SNCP). SNCP is paid at the statutory prescribed rate (£187.18 from April 2025) or 90% of the employee's average weekly earnings, whichever is lower.

Unlike NCL, SNCP is not a "day-one" right and will only be available to parents who meet continuity of service requirements and a minimum earnings threshold. Specifically, the employee must have 26 weeks' continuous service by the "relevant week" (which, in birth cases, is the 15th week before the expected week of childbirth). The employee must also earn at least the statutory lower earnings limit (£125 per week for 2025/26).

Comment
Carla Codona, Solicitor in our Employment team comments:

"Employers should ensure that they are familiar with neonatal care rights and how they operate and interact alongside other parental leave entitlements.

"It will be important to implement clear and carefully considered policies which align with other family leave policies. With that in mind, decisions should be made regarding arrangements to offer enhanced neonatal care pay (if applicable), or whether it is appropriate to waive the notice requirements provided by the legislation. Whatever is decided, entitlements and requirements should be clearly communicated to employees."

To discuss any of the points raised in this article, including the implementation of neonatal care leave

policies, please do not hesitate to contact a member of the Lindsays Employment team.

Additional dates for your diary – April 2025

From 1 April 2025

- Increase in National Minimum Wage
  - Aged 21 and over ("The National Living Wage) will increase from £11.44 to £12.21
  - Workers aged 18-20 rate will increase from £8.60 to £10.00
  - Workers aged 16-17 rate will increase from £6.40 to £7.55
  - Apprentice rate (apprentices under 19 or ages 19 or over and in the first year of apprenticeship) will increase from £6.40 to £7.55

From 6 April 2025

- Increase in Tribunal Awards
  - The maximum compensatory award for unfair dismissal will increase from £115,115 to £118,223 (or 52 weeks' gross pay, whichever is lower).
  - The limit on a week's pay will increase from £700 to £719. This means that the maximum basic award for unfair dismissal and the maximum statutory redundancy payment will each rise from £21,000 to £21,570.

- Increase in Statutory Rates
  - Statutory maternity, paternity, adoption, shared parental and parental bereavement pay will increase from £184.03 to £187.18 per week, effective from 6 April 2025.

  - Statutory sick pay will increase from £116.75 to £118.75 per week, effective from 6 April 2025.

Employment Appeal Tribunal gives guidance on test for worker status

In a recent appeal hearing in the case of *Ter-Berg v Malde and another*, the Employment Appeal Tribunal (EAT) has given guidance on the distinction between the tests for worker and employee status, following its consideration of an earlier decision by the Employment Tribunal (ET).

Background
The claimant, Dr Mark Ter-Berg, was a principal dentist for a group of three dental practices. On 1 April 2013, he sold the business to Simply Smile Manor House Ltd. and entered into an Associate Agreement to provide dental services at their specified premises, which contained a clause stating that nothing in it created an employment relationship.

The Agreement also required Dr Ter-Berg to use his best endeavours to find a locum to provide dental services in his place if he failed to utilise the dental facilities "through ill health or other cause" for a continuous period of more than 20 days.

In November 2018, Dr Ter-Berg brought a claim in the ET for detriment and dismissal on the grounds of having made protected disclosures and unpaid holiday pay. He alleged that he had been an employee of Simply Smile, or alternatively a worker, which was denied by the respondents in this case.

Applicable law
Case law has found the following three factors as most relevant in determining whether a contract of employment exists and are commonly referred to as the "irreducible minimum":

- Personal service
- Control
- Mutuality of obligation

Separately, the following three elements must be satisfied to demonstrate worker status:

- There must be a contract between the worker and the putative employer, whether express or implied.
- The contract must require personal service.
- The other party to the contract must not be the customer or client of any business undertaking or profession carried out by the individual.

Case law has found that a right to provide a substitute without restriction is not consistent with personal service. However, a conditional right to provide a substitute only, such as when the contractor is unable to carry out the work, is consistent with personal service, subject to "exceptional facts".

Employment Tribunal decisions
The ET decided that Dr Ter-Berg was not an employee, finding that none of the elements of the "irreducible minimum" of a contract of employment contract were present.

Following Dr Ter-Berg's appeal against that finding, the Tribunal reconsidered the decision in respect of the limited circumstances in which the substitution clause would apply but again found that Dr Ter-Berg was not an employee, as it considered there were "exceptional facts" that meant the substitution clause was inconsistent with a requirement for personal service. Specifically, the Tribunal held that the clear intention of the parties had always been that Dr Ter-Berg should not be an employee.

A separate preliminary ET hearing took place to decide the question of worker status. That Tribunal also found that Dr Ter-Berg was not a worker, concluding that to find otherwise would be inconsistent with its earlier finding in respect of employee status. Dr Ter-Berg appealed to the EAT.

EAT decision
The EAT allowed the appeal and the case has been remitted to a fresh ET. The EAT was of the view that consideration of both employee status and worker status should have been dealt with together, given the overlap between the components of the two legal tests and the likely overlap in relevant evidence. It also found that:

- The Tribunal erred in its decision on the "personal service" element of worker status test on the basis that it was bound by its earlier decision on employee status, which did not actually determine the issue of personal service in respect of the worker test. On the facts, the EAT considered that the tribunal should have held that the personal service element of the test was satisfied.
- The Tribunal erred in concluding that a finding of worker status would be inconsistent with its previous decisions. While the Tribunal's earlier finding that the nature or extent of control was insufficient for the purposes of employee status might potentially be relevant, it did not necessarily determine the issue of worker status, which has a "lower pass mark".
- While the provisions of a written agreement concerning status can be a relevant factor when considering whether a claimant was intended to have, or did have, worker status, in this case, the EAT found that the Tribunal had made an error. It wrongly treated its earlier findings about the significance of the parties' intentions regarding employment status as a reason to conclude that Dr Ter-Berg had worker status.

Comment
Christine Jamieson, Senior Paralegal in our Employment team comments:

"Whilst this case provides some helpful guidance on the key factors to consider when deciding whether a working relationship is that of employee, worker or self-employed, it also highlights the significant complexities of establishing which status applies in any particular working arrangement, regardless of contractual terms agreed.

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"The Labour government has indicated an intention to simplify employment status by creating "a simpler two-part framework" to establish: (a) a single status of worker (including employees and workers) and (b) the genuinely self-employed. However, there is no indication as to when, or if, those plans will come into effect.

"It will be interesting to see how the fresh Employment Tribunal considers these matters and whether any further decision may provide more clarity."

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