

↓ Key Points

- The right to a written statement of terms
- Key Information Document
- The Abolition of Swedish Derogation
- Holiday pay calculations
- Taxation of termination payments
- Parental Bereavement Leave and Pay
- Changes to Information and Consultation of Employees (ICE) Regulations
- Off-payroll in the Private Sector

Guidance on Good Work Plan and Employment Law Changes: April 2020

Background

The Government has announced the next phase of the Good Work Plan coming into effect from April 2020, ensuring new business models can flourish whilst also protecting workers' rights.

The Good Work Plan commits to a wide range of policy and legislative changes to ensure that workers can access fair and decent work. It allows both employers and workers to have the clarity they need to understand their employment relationships and ensure the enforcement system is fair and fit for purpose.

Numerous changes set out in the Good Work Plan published in December 2018 will come into effect on 06 April 2020, along with other employment law changes.

Good Work Plan and Employment Law changes

The right to a written statement of terms

As per Part 1 of the Employment Rights Act 1996, employees who have worked for the same employer for longer than one month are entitled to a written statement of terms covering the details of their employment contract and rights. They must receive this written statement within 2 months of commencing employment.

However as of 06 April 2020, the Employment Rights (Miscellaneous Amendments) Regulations 2019 will extend that requirement to **all workers** rather than just employees, and the statement must be provided **on or before their first day of employment** regardless of whether the individual has worked for the same employer for longer than one month.

Also, in order to ensure the content of a written statement of terms is useful for both the individual and the employer, the following information is now a mandatory requirement:

- How long the job is expected to last, or the end date of a fixed-term contract;
- The specific days and times the worker is required to work;
- The duration and conditions of any probationary period;
- How much notice an employer and worker are required to give in order to terminate the agreement (the section 1 statement can refer to the law or to a collective agreement containing those terms – it will not be permissible to refer to any other accessible document for this information);
- Details on eligibility for sick leave and pay;
- Details of other types of paid leave entitlement in addition to annual leave and holiday pay, e.g. maternity and paternity leave;

- All remuneration (not just pay), e.g. contribution in cash or kind such as vouchers and lunch; and
- Training entitlement provided by the employer, including whether it is mandatory and/or must be paid for by the worker.

Please keep in mind the information required above is **in addition to the current requirements** for a written statement of employment terms which can be found [here](#) and should be provided in one single document.

There are exceptions to this rule for certain terms which can be given no later than two months after the start of employment and may be given in instalments. The following terms can be provided either in a principal statement or in a supplementary statement:

- Pensions/pension schemes;
- Collective agreements;
- Information about disciplinary and grievance procedures; and
- Any other training entitlements not listed above.

Recommended Actions:

- Start to put in place a process which determines who should receive a section 1 statement and whether your organisation is responsible for providing this. For example, agency workers would usually receive their section 1 statement from the employment business contracting with them directly.
- Ascertain what is in your section 1 statement and whether you currently use a statement for your employees, or are all the required particulars already set out in your terms of engagement or employment contract?
- Ensure the additional information required by the new rules is included in your statement.
- Check that all the information required by the new rules is in a single document and that you provide all other information either in a reasonably accessible document (such as on the intranet or on request through HR) and, for the relevant supplementary statements, they are provided within two months of starting work.

Key Information Document

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 (SI 2019 No.725) make provisions for a "Key Information Document" to be provided to all workers (including PAYE, umbrella company workers and Personal Service Company (PSC) workers) by introducing a new Regulation 13A into the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations).

From 06 April 2020, there will be a **requirement to provide a Key Information Document (KID) prior to sending terms to the work-seeker as required under regulations 14-15 before work-finding services commence**. The regulation does not apply to workers who have existing terms with an employment business, however they will be entitled to a new document when signing up with a new employment business. You can only supply the information required by statute in this document. All workers, irrespective of the way in which they are engaged, will be entitled to both a written statement and a KID.

APSCo has written a legal update on the Key Information Document which can be found [here](#).

Abolition of Swedish Derogation

Section 10 of the Agency Workers Regulations 2010 (AWR) known as the Swedish Derogation, **which disappplies regulation 5 (providing the same basic working and employment conditions as a permanent comparator)** regarding pay, has been abolished by The Agency Workers (Amendments) Regulations 2019 (SI 2019 No.724), this will come into force on 06 April 2020.

APSCo has written a legal update on the Abolition of Swedish Derogation which can be found [here](#).

Holiday pay calculations

The reference period in which an average week's pay is determined for the purposes of calculating holiday pay will be **increasing from 12 weeks to 52 weeks** – not including any weeks which a worker has not earned pay. In the instance where a worker has been engaged for less than 52 weeks, the reference period will be the number of complete weeks which the worker has been employed. The introduction of this change will particularly have an impact where a worker's pay varies during the weeks that they work. The reason behind the change is to provide greater flexibility to workers in terms of choosing when to take holiday.

Example from BEIS of how a 52-week holiday pay reference period would operate:

Chitrita works in a large retail store, working on average 35 hours each week. May, June and July are quieter months for the store and so Chitrita typically works 25 hours per week. Under the current 12-week reference period for holiday pay, if Chitrita takes holiday in August, immediately after this quieter time, her holiday pay will reflect her 25-hour working week. This means she will receive less holiday pay compared to busier times of the year.

However, once the reference period is extended to 52 weeks, Chitrita's holiday pay would reflect her average hours for the entire year, which are usually higher than during these quieter months. This is a fairer approach for Chitrita and her employer as her holiday pay will better reflect her working hours across the year.

BEIS have produced guidance for calculating holiday pay for workers without fixed hours or pay which can be found [here](#).

Taxation of termination payments

Any termination payments above the qualifying £30,000 tax-free threshold made on or after 06 April will be subject to class 1A NICs. Termination payments are usually a part of a termination package which is not from employment income, this payment is exempt from income tax up to the value of £30,000, anything above this is subject to income tax. Post April, any payments made above the threshold will be **subject to both income tax and Class 1A NICs** which the employer will be liable to pay for. This means, that termination payments will be more expensive, and this should be factored into settlement agreements with employees. Please note, this payment should be made through payroll and not a P11D.



Parental Bereavement Leave and Pay

The Parental Bereavement (Leave and Pay) Act 2018 has now been passed by Royal Assent and is expected to come into force in April 2020. It allows parents and primary carers that have at least 26 weeks service with their employer to take 2 weeks paid leave (at the statutory rate and subject to the eligibility criteria) following a stillbirth after 24 weeks, or the death of a child up to the age of 18. This leave can be taken all at once in a two-week block or two blocks of one week each for up to 56 weeks after the death. Bereaved parents that have less than 26 weeks service are eligible to take bereavement leave as unpaid leave.

Changes to ICE (Information and Consultation of Employees) Regulations

The Information and Consultation of Employees Regulations 2004 allows employees to negotiate an agreement with their employer, under which the employer agrees to inform and consult those employees about economic and employment-related matters.

As of 06 April 2020, there will be a reduction in the percentage of employees required to make a valid request for an agreement on the sharing of information and consultation within the workplace. At the moment, it is currently a requirement for at least 10% of the workforce to put in a request before an employer is obliged to take steps to comply with this right, **this percentage will be reduced to 2%**. The requirement for the request to be made by at least 15 employees will remain.

Extension of the off-payroll working rules for the private sector

The Chancellor announced at Budget on 29 October 2018 that the government will reform the off-payroll working rules (known as "IR35") in the private sector. Currently in the private sector, the intermediary (the contractor's PSC) is responsible for deciding if the IR35 applies.

From 06 April 2020, the responsibility for operating the off-payroll working rules will move from contractor to the client organisation, recruitment business or other third party engaging the contractor - referred to as the "fee-payer" in the draft legislation.

Please note, this is a taxation law change rather than employment law change, we have guidance available for IR35 in the private sector which can be found [here](#).

Please contact legalhelpdesk@apsco.org should you have further queries in relation to the Good Work Plan and Employment law changes.

Disclaimer

This guidance document is intended for use by APSCo members only. The facts, information, and opinions contained herein are correct to the best of APSCo's knowledge as at time of publication. This document is intended to provide general information only and does not constitute advice. It is not an exhaustive and complete reference document on this subject. APSCo can take no responsibility or liability for the use of or reliance on the information contained within this document or for any decisions or the consequences of any such decisions made by APSCo members.