Personnel Advice & Solutions Ltd

COUNCIL NEWS
FEBRUARY 2023

Things Councils should do as Employers, but some don't!

1. **Check Entitlement to Work in the U.K.**
   Does your Council have evidence of every Employees' entitlement to work in the U.K, regardless of their national origins?

   It is a legal obligation for all Employers, including Councils, to check their Employees' Passport, Birth Certificate, Work Visa or Settled Status details. Passports or Birth Certificates must be photocopied in front of the Employee, and handed back to them straight away, the Council cannot retain these documents.

   There are other options other than Passports or Birth Certificates that can be checked. Details are available at "view a job applicants right to work" at GOV.UK.

   This applies to all staff, regardless of their length of service with the Council or ethnicity. Failure to conduct these checks can result in the Council being prosecuted.

2. **Conduct Health and Safety Induction Training.**
   Councils are obliged under the Health and Safety at Work Act 1974 to protect Employees from harm at work. The Health and Safety at Work Regulations 1999 require all Councils to:

   - Identify what could cause injury or illness to anyone.
   - Assess the likelihood of that happening.
   - Take action to reduce or eliminate the possibility of it happing.

   With regards Employees the Council should have risk assessments for all activities. This doesn't just concern high risk jobs such as using chainsaws, spraying or ride on mowers. It includes apparently low risk operations such as manual handling in the office or using step ladders to reach files/boxes etc.

   Employees must be informed of all risks that they are likely to face in doing their work, and how to address them. The provision of this training is evidenced by the Employees' individual training record, listing what training they've had, when and their confirmation that it took place.

3. **Register with HMRC and have a Pension Scheme.**
   80% of Parish Councils employ just one person, the Clerk. It is also likely that the Clerk is part time and earns below the National Insurance Lower Earnings Limit of £123 per

week, or the pension automatic enrolment threshold of £833 per month. Under these circumstances it isn't uncommon to find Councils who have not registered with HMRC, or have a pension in place.

With regards tax, the Council has to register itself as an Employer. Furthermore, if the Employee has other jobs, their cumulative income may take them over the threshold, which could then create tax liabilities for all of their Employers, including the Council.

With regards pensions all Employers are required to be part of a pension scheme, regardless of whether or not their Employees wish to join.

4. **Check the Employment Status of contractors.**
We deal with a number of Councils who have "an arrangement" with a handyman or gardener, who works on a weekly basis for the Council, and submits an invoice at the end of the month. The Council may have considered this person to be a self-employed contractor, but the technical truth can often be that they are an Employee. This normally comes to light either when the Council wants to terminate the arrangement, or the Employee wants holiday pay, or HMRC get involved.

   The tests used to address whether or not someone is an Employee are:
   a) Does the Council control what the Employer/worker does? If you consider the nature of what an Electrician or Plumber would do if you wanted some work doing, they would be left to their own devices. Consider this in terms of how the Council's contractor works. Does the Council give clear instructions as to what work it wants doing and how to do it, and supervises the outcome? If so, they key question of Control appears to show that they would be an Employee.
   b) Financial Investment. The Plumber or Electrician would bring their own tools and equipment. If the Council's contractor uses their own equipment, that would make them a Contractor. However, if they use the Council's tools and equipment, there is no financial investment by the worker and they are in all likelihood an Employee.
   c) Mutuality of Obligation. Again, you don't care who the Plumber or Electrician is, as long as they get the job done. Does the Council expect the same person to turn up on a regular/weekly basis and do the job? If so they are treating them as an Employee.

   If the above tests demonstrate that the person is engaged by the Council as an Employee, they will qualify for the National Minimum Wage rate of pay, and also accrue holiday entitlement during their tenure at the Council. Furthermore, they could claim Unfair Dismissal if the Council tried to terminate the contract, or Constructive Dismissal due to the loss of their basic statutory rights such as holiday pay.

5. **Have a secure, encrypted memory cloud storage base, if the Clerk works from home.**
The Clerk's home office will no doubt store a lot of confidential and/or important information. Should a problem arise, and the Council are unable to have access to this information, it can result in upheaval. However, if this information is routinely stored on a cloud based memory facility, with the Clerk, Chair and representatives of key committees holding the password, the problem would be avoided.

Statutory Payment Rates from April 2023

Shared Parental Pay (ShPP) Statutory rate of £172.48 or 90% of employee's weekly earnings if lower. **Maternity Pay (SMP)** 6 weeks at 90% of average weekly earnings. Then statutory rate of £172.48 or 90% of employee's weekly earnings if lower. **Adoption Pay (SAP)** 6 weeks at 90% of average weekly earnings. Then statutory rate of £172.48 or 90% of employee's weekly earnings if lower. **Paternity Pay (SPP)** Statutory rate of £172.48 or 90% of employee's weekly earnings if lower. **Parental Bereavement Pay (SPBP)** Statutory rate of £172.48 or 90% of employee's weekly earnings if lower.	
Statutory Sick Pay (SSP) £109.40 pw for 28 weeks subject to earnings (average £123 per week)	
Minimum Wage from April 2023	
Workers aged 23 and over (National Living Wage)	£10.42/hour
Workers aged 21–22	£10.18/hour
Workers aged 18–20	£7.49/hour
Workers aged 16-17	£5.28/hour
Apprentices under 19, or over 19 and in first year	£5.28/hour

PROFILE

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