

April 2024

# Employment Newsletter



## Changes to Statutory Redundancy Pay and NAECI Contractual Severance Pay rates

ECIA Members should take note that the Government's previous announcement of an increase to the cap on "a week's pay" has now taken effect and will impact on the calculation of statutory redundancy pay moving forwards.

The cap on a "week's pay" **increased from £643 per week to £700 per week** from 6 April 2024. The "week's pay" figure is one of the building blocks, along with number of years of employment, when calculating the value of any redundancy pay entitlement. Under the new cap, an individual with two or more years' service, who earned £700 or more per week, would be entitled to a Statutory Redundancy Payment of one "week's pay" for each year of employment aged 22 or older (but under 41) and one and a half "week's pay" for each full year of employment aged 41 or older.

Statutory Redundancy Pay is capped at 20 years' service, so the maximum payment that an individual could be entitled to is now £21,000. In circumstances where the individual being made redundant does not have sufficient service to qualify for a Statutory Redundancy Payment, the NAECI provides for a Contractual Severance Payment. This payment accrues for each week of service up to a maximum of 103 weeks, after which point it is replaced by a Statutory Redundancy Payment at two years' service. Contractual Severance Payment accrual rates were increased from 6th April to take account of increases to the statutory "week's pay cap".

### For weeks of qualifying employment when the individual is aged 40 or below:

	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	Grade 6
From 6/04/24 Weekly rate of accrual (up to 103 weeks)	£8.28	£9.68	£11.04	£13.12	£13.46	£13.46

### For weeks of qualifying employment when the individual is aged 41 or older:

	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	Grade 6
From 6/04/24 Weekly rate of accrual (up to 103 weeks)	£12.42	£14.52	£16.56	£19.69	£20.19	£20.19

Contractual severance payment is not accrued in any week where the individual has participated in a strike, industrial action or any unauthorised stoppage of work.

## Amendments to Flexible Working Regulations

The Flexible Working (Amendment) Regulations 2023, took effect from 6th April 2024.

ECIA Members need to be aware that the Regulations introduce a day one right for employees to make a request for flexible working, thereby removing the previous qualifying period of 26 weeks.

ACAS has updated its Code of Practice for requests for Flexible Working these changes, and published new non-statutory guidance. The Code of Practice covers other changes that members should be aware of:

- **The removal of the requirement to explain the impact of the request:** there is no longer any requirement for employees to explain what effect, if any, their flexible working request might have on the employer's business, nor to propose suggestions as to how any such adverse effects might be addressed.
- **Increased number of requests:** employees can now make up to two flexible working requests within a 12-month period. Previously it had been only one request per year.
- **Reduced time to respond to a request:** employers are now required to respond to a flexible working request within 2 months. Employers previously had 3 months within which to respond.
- **Employers must consult:** there is now a mandatory requirement for employers to consult with employees about their flexible working requests before rejecting them.

Employment Tribunals must take the ACAS Code into account when deciding claims by employees under the flexible working rules. Members are advised to follow the Code carefully when dealing with requests. It should be noted that there is no right to work flexibly, but employers should consider requests carefully.



The ACAS Code states that "Employers must handle every request in a reasonable manner. This should include carefully assessing the effect of the requested change for both employer and the employee, such as the potential benefits or other impacts of accepting or rejecting it".

The Regulations are written in such a way that the employer must agree the request unless there is a genuine business reason not to. The Employment Rights Act (1996) defined the eight potentially sound business reasons for refusing a request for flexible working. These are:

- the burden of additional costs
- an inability to reorganise work amongst other existing employees
- an inability to recruit additional employees
- a detrimental impact on quality
- a detrimental impact on performance
- a detrimental effect on ability to meet customer demand
- insufficient work available for the periods the employee proposes to work
- planned structural changes to the employer's business.

When handling a request for flexible working, members should be aware of the need to avoid leaving themselves vulnerable to claims of unlawful discrimination from any employee with "protected characteristics" as set out in the Equality Act 2010, namely age, disability, sex, race, religion or belief, sexual orientation, pregnancy or maternity, marriage and civil partnership or gender re-assignment.

Whilst ECIA Members may not instantly face a barrage of requests from site-based employees, they should consider updating their flexible working policies to reflect these changes and may also wish to consider training for line managers or advising them of these changes.

## New rates for National Minimum Wage and Statutory Payments

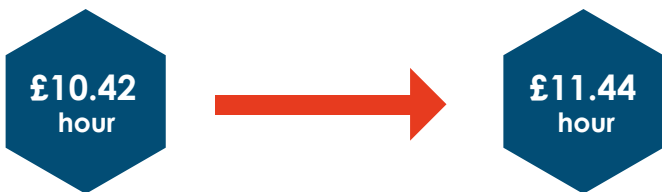
Members need to be aware that new rates for the National Minimum wage (NMW) took effect from 1 April 2024.

The Government had publicly accepted the recommendations of the Low Pay Commission some months ago, but the increases to NMW have only become payable this month.

Prior to 1 April 2024, the highest rate of NMW, known as the National Living Wage was £10.42 and this rate applied to anybody who was 23 and over.

From 1 April 2024, the highest rate has increased by 9.8% to £11.44 per hour. The major change that employers need to take note of is that the age at which somebody qualifies for the highest rate has been brought downwards so that it now applies to people aged 21 years and above.

### National Living Wage age 21+



The NMW rate for people aged 18-20 has increased to £8.60 per hour and the rate for young workers aged 16-17 has increased to £6.40 per hour. The Apprentice rate (applicable only for those aged under 19, or aged 19 and above and in the first year of their apprenticeship) has increased to £6.40 per hour.

Members who employ Year 2 Apprentices, who are 21 years of age or older, need to be aware that the promulgated NAECI pay rates for Year 2 Apprentices are, from 1 April 2024, no longer be sufficient to meet the requirements of the National Minimum Wage.

ECIA Members therefore need to be aware that from 1 April 2024, any Year 2 Apprentices that they employ **who are age 21 or older** need to be paid £11.44 per hour. They should be paid at this £11.44 rate until they become 3rd year Apprentices and are entitled to a further wage increase.

Year 2 Apprentices, who are 20 or younger, are not impacted by this and should be paid the published NAECI rates. No other NAECI grades are involved.



### NLW age 18-20



### NLW age 16-17



### NLW Y2 Apprentice age 21+

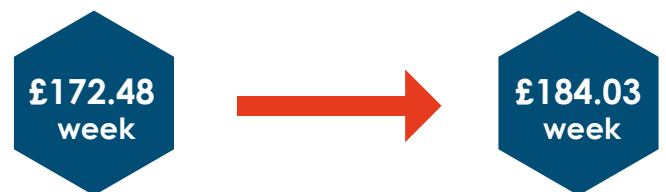


### Statutory payments

A number of other statutory payments have been subject to increase in April 2024.

From 7 April 2024, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Shared Parental Pay, Statutory Adoption Pay, and Statutory Bereavement Pay all increased from £172.48 to £184.03 per week.

### Statutory Pay



Members should take note that the Paternity Leave (Amendment) Regulations 2024, took effect from 8 March 2024. This will impact on the Paternity leave entitlement of fathers and partners of babies born after 7 April 2024. The amending regulations allow the leave to be taken as two one-week non-consecutive blocks, rather than the previous position of only one block. Paternity leave can now be taken at any point in the first year after the birth, rather than the previous position of within 8 weeks of the birth.

From 6 April 2024, Statutory Sick Pay increased from £109.40 to £116.75. The lower earnings limit remains at £123. Members are reminded that, where applicable, SSP is payable in addition to NAECI Sickness and Accident Benefit (currently £162.00 for all grades for weeks 2-14 inclusive).

## Labour's proposals on employment issues

It may not have escaped Members' notice that there is very likely to be a General Election in 2024. It is the Government of the day that shapes the agenda for developing employment law which Members will be required to comply with moving forwards. With current opinion polls showing the Conservatives trailing Labour by around 20 points, it might of interest to know what employment reforms Labour are proposing should they form the next Government. Members should pay keener attention as the general election approaches, particularly as Labour has promised to introduce a new Employment Bill within the first 100 days of office.

### So, what might this Bill contain?

- **Reforming employment law status**

At present, the law differentiates between three types of employment status (employees, workers and self-employed) with each afforded different rights. Labour proposes to introduce a single status of 'worker' to include both employees and workers (as currently defined) who will all be entitled to the same basic rights and protections, e.g. to be able to bring a claim for unfair dismissal. The category of the genuinely self-employed individual is likely to remain unchanged.

- **Unfair dismissal rights from day one**

Currently, employees must have been employed for two years to bring a conventional unfair dismissal claim. Labour proposes to make the right to claim unfair dismissal a right from the first day of employment.

- **Statutory sick pay from day one**

Rather than employees having to wait three days before they receive statutory sick pay, as is the case at the moment, Labour propose to make SSP a day-one right for all workers and the self-employed.

- **Increasing NMW rates**

The Green Paper states that Labour intend to increase the National Minimum Wage rates to at least £10 per hour at the lowest age tier and ensure that all NMW rates are continuously reviewed in line with the cost of living. This will increase the employment costs of younger workers and could discourage employers from taking on apprentices and younger employees, whose hourly rate is currently much lower than the £10 being proposed.



- **The end of "zero-hours" contracts**

Labour propose to ban zero-hours contracts and indeed any contract without a minimum number of guaranteed hours. They are also proposing that anybody who works regular hours for 12 weeks or longer should have the right to a regular contract of employment.

- **The right to "switch off" from work**

It is proposed that workers will have the legal right to disconnect from work and not be contacted by their employer outside of their individual working hours. They will also protect workers from surveillance. Some European countries have already introduced similar rights to "switch off".

- **Extend Employment Tribunal claim time limits**

Presently, employees have 3 months in which to lodge most claims with an Employment Tribunal. Labour think that this is not long enough and is proposing to extend the deadlines for submitting claims.

A Labour Government is looking a distinct possibility and whilst some of these proposals may be diluted in the manifesto the Green Paper gives a good indication of what Labour might include within a 100-day Employment Bill, should they be elected. The proposals could have significant impact on ECIA members, both in terms of the administration involved in complying and the potential increases in employment costs that might follow.

