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## October 2016 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

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### Working Time regulations – what rest breaks do we need to give?

The WTR set out the rest breaks an employer needs to give. When an adult worker works for at least 6 hours in a row, they are entitled to a 20-minute break. In addition, workers that carry out monotonous work, where their health and safety is a consideration are entitled to 'adequate rest breaks' to supplement their usual break'.

A break is expected to be uninterrupted time away from their desk or work station. A business needs to make rest breaks available to workers but they can't force them to take them. If something happens that means a business requires a worker to work through their break this is fine as long as compensatory rest is offered in return.

The regulations do not say when, within these six or more hours the worker should take their rest. A business is therefore free in principle to allow workers to take their break when it suits the worker and the business, but it is usually in the middle of the shift or working day. Most workers don't realise they are getting their statutory rest as it coincides with their lunch break or other meal break.

The 20-minute minimum break is the same whether the worker has a 6 or 12- hour working day. Where a shift is as long as 12 hours the statutory minimum is still 20 minutes, of course most employers offer longer breaks.

Contracts of employment may stipulate when within the working days workers are able to take their breaks. In certain industries the scheduling will depend upon maintaining productivity. But the main point is the Working Time Regulations do not dictate when the breaks need to be taken.

### **Do we need to pay for breaks?**

The statutory minimum rest breaks do not need to be paid. Some employers choose to do so but essentially it usually comes down to whether the employee is hourly paid or not. Generally hourly paid workers do not get paid for the rest breaks and annual salaried employees do. It is wise to stipulate this in the employment contract.

**Employers:** we would recommend that your employment contracts set out clearly whether rest breaks are paid and give some guidance on when they should be.

**Contact us:** we can assist with drafting employment contracts or making sure your contracts are up-to-date.

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### **Flexible Working requests – what do employers need to consider?**

In two recent unsuccessful cases, employment tribunals found that there was no absolute obligation on employers to accept a new mothers' requests to work flexibly on their return from maternity leave.

In the case of *Whiteman v CPS Interiors Ltd*, the employment tribunal held that an employer properly handled a new mother's rejected flexible working request to work from home.

The tribunal found that it was a perfectly proper answer to a flexible working request for an employer...to say *'granting this request would not be in the best interests of our business; we believe what has been requested would be detrimental to our business in that, at best, it would cause us minor but more than minimal inconvenience'*...

By rejecting all of her claims, the tribunal held that there is no right to work flexibly, only a right to request to work flexibly.

In a further case of, *Smith v Gleacher Shacklock LLP*, the tribunal held that it was not indirect sex discrimination for an investment banking firm to require a mother to work full time.

Ms Smith asked to work three days per week in the office, followed by homeworking on Thursdays and not working on Fridays. The employer turned down her flexible working request because of the company felt the flexible working arrangements would have had a detrimental effect on the business in terms of the quality of service...

Some of the reasons the Company cited were:

- impact on the firm's ability to look after clients;
- unpredictability of her role;
- tight timescales for various tasks; and
- disproportionate pressure on the small team.

The tribunal concluded that, the employer's stance was justified.

When considering a flexible working request, if your business needs to turn it down, make sure that you cite one of the justifiable reasons for turning down the request. In this case it was acceptable for the company to state that the legitimate aim of ensuring that its partners and clients receive high-quality, efficient secretarial support throughout the week, without problematic handovers was acceptable.

**Employers:** Employers must follow the "ACAS code of practice on handling in a reasonable manner requests to work flexibly". However, as long as their approach is not

discriminatory, they can reject a flexible working request on one of the specified grounds under the legislation

**Contact us:** if you need assistance dealing with a flexible working request.

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## National Minimum Wage

From the 1.10.16. the following National Minimum Wage rates will apply:

The rate for workers aged 21 to 24 years will increase to £6.95 per hour

The development rate for 18 to 20 year olds will increase to £5.55 per hour

The rate for 16 to 17 year olds will increase £4.00 per hour

The apprentice rate will increase to £3.40 per hour

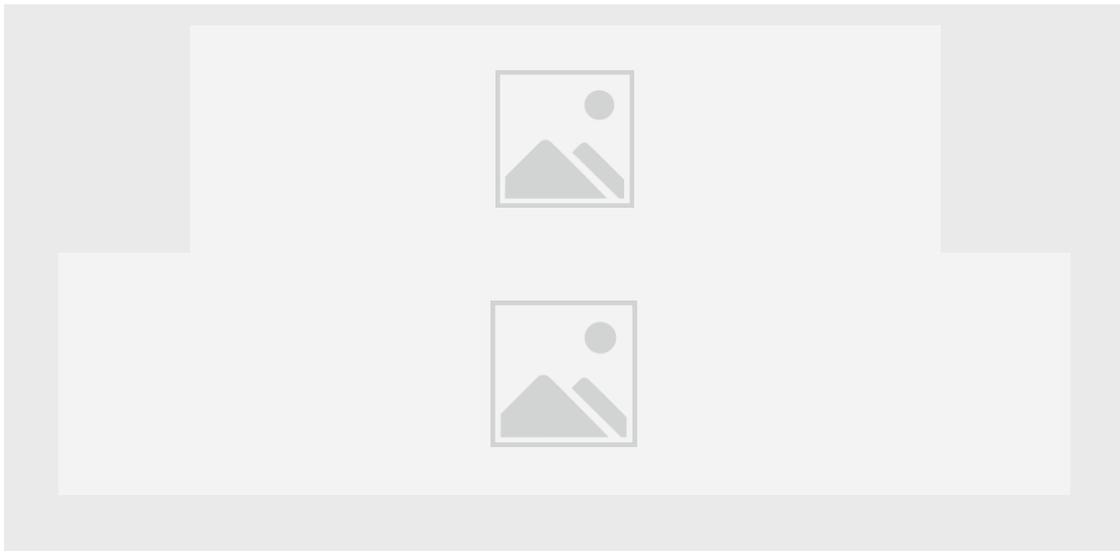
The NLW for workers over 25 will remain at £7.20

**Employers:** be aware that there are new rules with regards to employing apprentices.

**Contact us:** for assistance on inductions for new workers and apprenticeships

**For more information or assistance Email:** [enquiries@employmentlawsupport.co.uk](mailto:enquiries@employmentlawsupport.co.uk)

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