

NEW PAYSLIP REGULATIONS

Introduction

With effect from 6 April 2019, new payslip regulations will come into force across England, Wales and Scotland. This short note seeks to explain the changes being made, how the extra information can assist in checking that staff are receiving the pay to which they are entitled and the opportunities to press for pay reporting that goes beyond the basic legal requirements.

Current requirements

Currently, employers are required to issue an itemised payslip to an ‘employee’¹, at or before the time at which any payment of wages or salary is made, which carries the following information:

- The gross amount of any wages or salary;
- The amount of any variable, and any fixed, deductions from that gross amount and the purpose for which the deduction is made;
- The net amount of wages or salary payable;
- Where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

Employers do not have to provide details of fixed deductions within each payslip if they have separately provided a “standing statement” of fixed deductions which sets out the aggregate deduction, the amount of each deduction, the intervals at which they take place and their purpose.

Any changes to the standing statement have to be notified in writing and the statement must be reissued annually.

The “amount and method of payment of each part-payment” refers to such practices as making payment partly through a cash payment and partly through transfer to a bank account.

The payslip has to be issued in a written format or an easily accessible electronic format that can be printed off. Issuing of the payslip cannot be made conditional on request.

¹In England, Scotland and Wales, these rights are set out in the Employment Rights Act 1996 and members of the police service, merchant seamen and a master or crew member in share fishing are not eligible. In Northern Ireland, these rights are set out in the Employment Rights (Northern Ireland) Order 1996.

New requirements

However, from 6 April 2019, the legal requirements on employers in England, Wales and Scotland for issuing itemised payslips will change in the following ways:

- The staff entitled to an itemised payslip will expand from those legally defined as an 'employee' to those legally defined as a 'worker';
- Where wages or salary varies by reference to time worked, the itemised payslip must show the total number of hours worked in respect of variable amount of wages or salary either as a single aggregate figure or as separate figures for different types of work or different rates of pay.

Hours related to unpaid leave or statutory sick pay are not classified as hours for variable wages or salary and therefore do not need to be shown.

The government has set out guidance on the new payslip regulations in the document on this link - <https://www.gov.uk/government/publications/payslip-policy-a-guide-to-the-2019-legislation> - and carries the examples, shown verbatim below, of how the regulations apply to different types of worker.

Example 1: A salaried worker with no variable pay

Fred is contracted to work 40 hours a week for his employer at a salary of £24,000 per year. In his role no overtime is required, and he only works his contracted 40 hours per week.

As Fred's pay does not vary by the number of hours worked, there is no requirement to show any of his hours worked on his payslip.

Example 2: A salaried worker with additional variable pay

Amrita is contracted to work 40 hours per week for a salary of £30,000 per year. Amrita's basic hours are Monday to Friday between the hours of 9 to 5 but as her work load fluctuates there are some periods when her work load is much higher, and she needs to stay late or come in on Saturdays as well. When this happens, she is paid an additional hourly overtime rate for any hours worked outside her basic hours.

In her last pay period aside from her basic hours Amrita also worked 6 hours of overtime. Amrita's payslip does not need to show the basic hours for which she is paid a salary, as this does not vary based on the number of hours worked. The only variable amount of Amrita's pay in this pay period is the 6 hours of overtime, and it is this figure of 6 hours that must be included on her payslip.

Example 3: A worker paid by the hour

George is paid National Minimum Wage for his age group for each hour he works. He is paid weekly depending on how many hours he worked that week.

All hours George works each week must be included on his payslip, because they are all paid on the basis of how much time he worked.

Example 4: A worker paid by the hour with additional pay for unsociable hours

Jane is paid well above National Minimum Wage for each hour she works. She is paid weekly depending on how many hours she worked that week. Sometimes Jane is required to work bank holidays. If she does so she is paid 1.5 times her normal hourly rate. Jane worked 25 hours last week. 17 hours were at her normal rate. However the Monday was a bank holiday, on which Jane worked 8 hours.

Jane's employer must record all the hours she worked on her payslip, because they are all paid on the basis of how much time she worked. Her employer can simply show these hours as a single aggregate figure, in this case 25 hours in total. Alternatively, to increase pay transparency the employer may show the hours broken down by the different pay rates, i.e. by showing that 17 hours were worked at her normal rate of pay and 8 hours were at the increased rate for working a bank holiday. Either option is permissible.

Example 5: Term time workers

Peter works at a school. He does not work at all during school holidays, only during term time. Peter is paid monthly in equal instalments regardless of whether it is term time or not.

As Peter is paid monthly in equal instalments his pay does not vary depending on the amount of time he works and therefore the hours he works do not need to be included on his payslip.

Example 6: Day rate workers

Sally is a day rate worker. This means she is paid the same amount for each day she works regardless of how many hours she works in the day.

As her pay varies by how many days she works, i.e. by the amount of time she works, her hours worked need to be included on her payslip even though her pay varies by the day not by the hour.

Example 7: A salaried worker takes unpaid leave

David is a salaried worker earning £40,000 a year paid in equal monthly instalments. He has used up all his paid leave but chooses to take 10 days unpaid leave for a family event in October.

David's employer therefore deducts the 10 days from David's monthly pay because he did not work those ten days. There is no requirement for David's employer to show hours worked on his payslip. His pay does not vary depending on the amount of time worked, but rather his pay has varied in this month because of a departure from his normal working and pay arrangements.

Example 8: An hourly worker on statutory sick pay

Helen is paid according to hours worked. She is paid monthly. She was sick recently and unable to work for two weeks (or ten working days). For these ten days she receives statutory sick pay which is lower than her hourly rate.

As Helen is paid according to hours worked and was working for the rest of the month the hours she worked that month still need to be included on her payslip.

Implications of the new regulations

Whether a member of staff is defined as an employee, a worker or self-employed is determined through legal tests that depend on an individual's unique factual circumstances. As a starting point, the government's definitions of employment status is carried on this link - <https://www.gov.uk/employment-status> - but note the law on this topic is expected to change with high profile 'gig economy' cases that are due to be decided.

Staff who are likely to be workers are those on zero-hours, casual and agency contracts. Therefore, it is these staff who are likely to gain entitlement to an itemised payslip as a result of the new regulations.

It is also this section of the workforce who are most likely to experience volatility in the hours for which they are paid and so potentially benefit most from the requirement to specify those hours.

Ensuring payslips meet regulations

Branches may consider it valuable to check with the employer that plans are in place to issue revised payslips to all qualifying staff from the enforcement date and subsequently to check with members that they are receiving payslips in the required format.

Where employers fail to meet their new obligations from 6 April 2019, either in terms of providing any payslip or failing to include the required detail, an application can be made to an employment tribunal for a "declaration" that forces the employer to issue the required information and a tribunal can impose compensation up to the aggregated value of unnotified deductions in the 13 weeks prior to the tribunal application. A tribunal is unlikely to make any award where no real loss has been suffered or where the non-compliance is purely a technical breach.

The introduction of the regulations may also be an opportune time to press the employer to make sure that payslips are genuinely accessible if issued in an electronic format. In some cases, workers cannot realistically access their payslip without a time-consuming trip to their employer's offices. This is a particularly common scenario in outsourced services where workers are not based in a building owned by their employer. Thought has to be given to workers who may not have email or their own electronic devices, either through issuing written payslips or wider availability of company devices for accessing electronic payslips.

Ensuring correct payment

Once the employer is meeting the requirements, branches can encourage members to utilise the additional information to check that they are receiving correct payment, both in terms of including all the hours they have worked and enforcing the correct rate for those hours.

Engagement with members over discrepancies will help the branch identify whether there are any patterns that can be pursued collectively, such as non-payment for work-related travel time across the whole workforce.

The additional information required by the regulations is not substantial but it can offer some additional assistance in checking payment.

For instance, take example 2 above of Amrita, who is contracted to work 40 hours per week for a salary of £30,000 per year and works a further six hours in overtime during the month that the payslip covers.

Under the old regulations, the payslip would simply have to show total gross pay (alongside deductions and the net amount after deductions). In this example, Amrita would be paid £2,500 gross a month in basic salary and say £102 in overtime payments, but the payslip would just have to show total gross pay of £2,602.

Under the new regulations, the payslip would also have to show that Amrita worked six hours for “variable pay” during the month. That means that a worker can verify that the number of paid hours corresponds to the number of hours they have worked and that the rate at which they have been paid is the correct overtime rate. For example, by taking monthly basic pay from gross pay it is apparent that Amrita has been paid £102 for variable hours. These variable hours totalled six over the month, so by dividing £102 by six, gives an overtime rate of £17 an hour.

Pressing for information beyond the legal minimum

However, the new regulations may continue to allow employers to produce payslips that make it difficult for workers to verify that they have been correctly paid.

After all, the changes set out by these regulations are a response to recommendations by the Low Pay Commission, which has faced considerable pressure from UNISON and other unions over payslip transparency.

And though the changes are an improvement, UNISON continues to make the case to the commission that greater detail is needed to enable staff to check that they have been paid correctly, particularly in addressing scams by social care employers to avoid paying the National Minimum Wage.

The most common ruse that displays this tendency in homecare is the non-payment of workers for their travel time (the calculation for assessing whether an employer is paying the National Minimum Wage is set out in UNISON’s guide available on this link - <https://www.unison.org.uk/bargaining-guides/>).

Therefore, branches should consider whether payslips are adequate or whether the regulations present an opportunity to press for a more detailed summary that nonetheless remains clear.

The template below is offered as an amendable format for setting out gross pay and putting to employers if it can assist in improving the information going to workers, both in terms of providing clarity on the number of hours paid across a variety of categories and the rate at which they are paid.

Payment type	Hours	Hourly pay rate	Gross payment
Basic salary			
Overtime			
Unsocial hours			
Locational allowance			
Occupational allowance			
Sleep-in			
Bonus / performance pay			
Call-out			
Standby allowance			
Benefits in kind			
Statutory payments eg sickness, maternity, adoption, parental pay			
Pension			
<i>Categories for such staff as homecare workers</i>			
Contact time			
Business related travel time			
TOTAL			