

ARE YOU COMPLIANT?

The top 5 HR compliance mistakes
– and how to avoid them



SPEAKERS



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WHAT WE WILL COVER

TOP 5 COMMON COMPLIANCE MISTAKES

- 1 NATIONAL MINIMUM WAGE
- 2 IR35
- 3 HOLIDAY PAY/WORKING TIME
- 4 RIGHT TO WORK CHECKS
- 5 DATA BREACHES

NATIONAL MINIMUM WAGE

ENFORCEMENT

- FY19/20 HMRC identified over £20.8m in arrears for more than 263,000 workers
- Issued just under 1000 penalties totaling £18.5m to non-compliant employers.

JOBS AT/BELOW NMW:

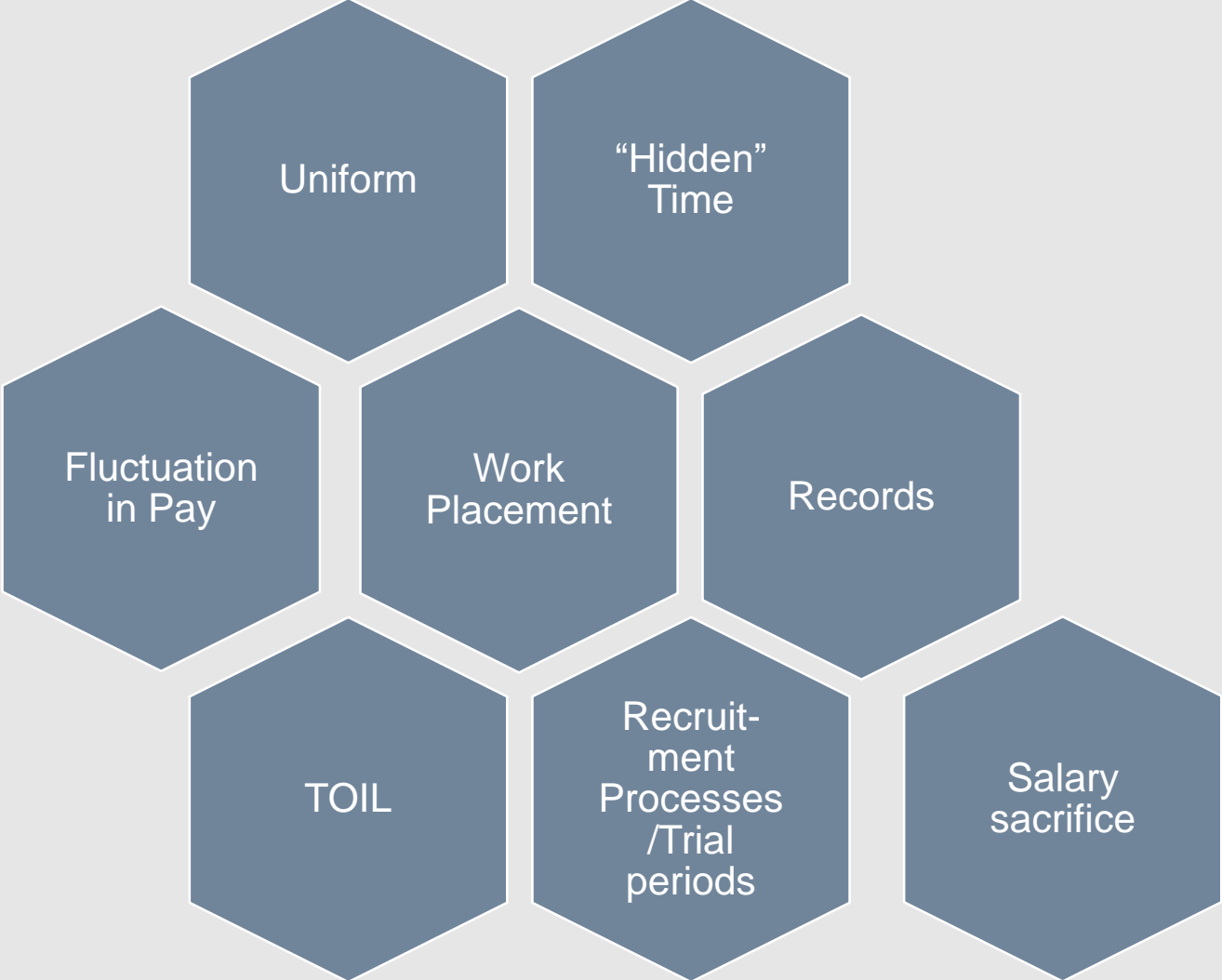
- Estimated 1.83 million people in 2020 in jobs paid at or below NMW excluding those on furlough with loss of pay.
- That's 1 million more people than in 1999.
- Figures don't reflect the latest NLW increases set for April 2022.

NLW INCREASE APRIL 2022:

- £9.50 for those aged 23 and over. This is a 6.6% increase.
- Rise worth over £1,000pa for full time worker.
- Over 2 million workers will benefit.



COMMON ISSUES



IR35 SUMMARY OF THE LAW NOW

- What changed in April 2021
 - Liability risk on party which pays PSC
 - Designed to tackle perceived avoidance of PAYE and NICs
- To whom does it apply
 - Medium and large enterprises (2 of 3):
 - Turnover at least £10.2m;
 - Balance sheet at least £5.1m;
 - More than 50 employees.
 - Intermediary and personal service



PROCESS UNDER THE NEW RULES

End Client

- Makes a status determination “SDS”.
- SDS is passed to the next party in the chain and the worker.

Next Party

- Can appeal the decision (end client must have appeal process in place).
- Otherwise pass the SDS to next party in the chain.

Fee Payer

- Unless appealed, bound by the SDS.
- If SDS shows employment, Fee Payer must apply PAYE and NICs.



IMPLICATIONS FOR EMPLOYERS

THE RISK OF GETTING IT WRONG

- Unexpected tax liabilities
- HMRC Audit e.g. Home Office £29.5m to pay
- Penalties

WHAT EMPLOYERS CAN DO

- Monitor compliance
- Regularly check status
- Gather evidence to support status determinations
- Training for managers



HOLIDAY PAY

▶ TEST

▶ BONUS/OVERTIME/COMMISSION PAYMENTS

▶ 4 WEEKS' LEAVE V 5.6 WEEKS' LEAVE

▶ IS PAYMENT IN LIEU OF ANNUAL LEAVE
ALLOWED?

▶ WHAT IS THE RISK OF GETTING IT WRONG?

▶ SINGLE ENFORCEMENT BODY



Carry over of
right to payment

*Smith v Pimlico Plumbers
Ltd (EAT)*

Working
Time

No need to have
worked shift pattern
in breach of WTR

*Simoes v De Sede UK
Ltd (EAT)*

Stand by periods
and working time

*XR v Dopravni podnik hl.
m. Prahy; and DJ v
Radiotelevizija Slovenija;
RJ v Stadt Offenbach am
Main (ECJ)*



BREXIT: WHERE DOES THAT LEAVE US?

1. EU-UK Trade and Cooperation Agreement (TCA) agreed on **24 December 2020**
2. From **1 January 2021** EU nationals became subject to the **same visitor rules as nationals from outside the EU**
3. What do I need to do as part of a **right to work** check?



EU SETTLEMENT SCHEME

The **deadline** to apply was **30 June 2021** for most people.

Workers can **still apply after this date** if they either:

- have a **later deadline** – for example, if they were joining a family member who was living in the UK by **31 December 2020**, and they join the family member in the UK on or after **1 April 2021**
- have **‘reasonable grounds’** for being unable to apply by **30 June 2021 (or any alternative deadline)** – for example, they had an illness or were the victim of domestic abuse



TEMPORARY COVID-19 CONCESSIONS FOR RTW CHECKS

- The following temporary changes were made on **30 March 2020** and remain in place until **5 April 2022** (inclusive):
 - job applicants and existing workers can send **scans or photos of documents** via email or a mobile app, rather than sending originals
 - checks can currently be carried out over video calls
 - guidance states employers should record the date they made the check and mark it as **“adjusted check undertaken on [insert date] due to COVID-19”**
- **Expired passports**
- Do I need to carry out **retrospective** checks when things return to normal?

DATA PROTECTION – 2018 AND BEYOND

- Data Protection Policies
 - Organisations must have privacy notices
 - Appropriate policy document for special category data
 - Data protection handbook for employees
- Employment contracts
 - Consent no longer appropriate
 - Need to rely on notices
- Training for staff with access to personal data
- Data Protection Impact Assessments
 - For high risk processing
 - To minimise non-compliance risks



DSARS AND THEIR ENFORCEMENT

- Top tips for handling
 - Timing – keep a record
 - Policy and processes in place
 - Seek clarification and manage scope
 - Maintain efficient systems
- DSARs used in employment disputes
 - time consuming
 - expensive
 - pressuring
 - used as leverage
- Enforcement
 - ICO Enforcement Notice for failure to comply with DSAR rare – 1 in 2021
 - Individual claims for court order to comply or compensation
 - Co-operation is key



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Please send any follow up questions to
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The next session today (*International mobility post-Brexit*)
starts at 10:50am – please click separate link

