

**The Learn Centre Newsletter**  
News Items – at 13 August 2010

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## Introduction

As this is a quiet week for news, it might be interesting to consider the change that we report this week to employment law in Jersey. The PAYE-type systems that are operated by Jersey, Guernsey and the Isle of Man have some similarities to the UK model but also some clear differences. The Isle of Man, for example, has a tax year starting on 6 April and payroll returns with form numbers that reveal their origins in the UK system. Both Jersey and Guernsey have tax years that, sensibly, start on 1 January.

Such variations also exist in their statutory employment rights, particularly those that have payment implications. Jersey and the Isle of Man have established minimum wage structures, but Guernsey is introducing minimum rates for the first time this year. The Isle of Man requires employers to pay redundancy pay, whereas Guernsey has no statutory redundancy provision. Jersey, as explained in this week's news, has just introduced statutory redundancy pay, using a structure that bears a close resemblance to the UK's provisions – but with a higher weekly cap.

## UNITED KINGDOM

### Payroll Calendar for the Next Month

The calendar includes both HMRC and employer activities over the coming month. Employer actions are highlighted in **bold text**.

August 19	<b>For employers required to pay tax and NICs etc to the Accounts Office monthly, this is the deadline for payment to be received by the Accounts Office, unless made electronically.</b>
20	<b>(August 22 is a Sunday) – For employers required to pay tax and NICs to the Accounts Office monthly, this is the deadline for electronic payments to be cleared into the HMRC bank account. Payments through BACS must be initiated by August 18 at the latest.</b>
30	<b>Summer Bank Holiday (except Scotland)</b>
September 5	<b>This is the final day of tax month 5. Tax and NICs etc for payments made in the tax month to September 5 are due for payment to the Accounts Office by September 19, or by September 22 if paid electronically.</b>
17	<b>(September 19 is a Sunday) – For employers required to pay tax and NICs etc to the Accounts Office monthly, this is the deadline for payment to be received by the Accounts Office, unless made electronically.</b>
22	<b>For employers required to pay tax and NICs to the Accounts Office monthly, this is the deadline for electronic payments to be cleared into the HMRC bank account. Payments through BACS must be initiated by September 20 at the latest.</b>

**(Employment Law, Time off (paid and unpaid))**

### Employment Rights

#### *Applications to undertake study and training*

Since 6 April 2010, employers with 250 or more employees have been required to consider applications made by employees to undertake courses of study or training that will improve their effectiveness in the employer's business, or improve the performance of the employer's

business. The requirements will be extended to all employers from April 2011. The legislation has not, as yet, been introduced into Northern Ireland legislation.

As part of the Coalition government's review of regulations, the Department for Business Innovation and Skills has published a consultation document that seeks views on whether the right to apply for study and training should be

- repealed altogether,
- retained only for large organisations (i.e. those with 250 or more employees),
- extended to small and medium-sized organisations from April 2011, as already planned, or
- amended so as to be less burdensome for employers that already provide study and training opportunities and, if so, how it could be done without making the legislation more complex or limiting its force.

The arguments for retaining the policy relate to its intention to promote and support work-based learning and to promote training that delivers benefits for business. On the other hand, the provision has been criticised in respect of the costs involved, the potential for large numbers of employees to apply each year, and the effect on employers that already provide effective access to training.

The consultation period is limited to five weeks, ending on 15 September, so that the views of respondents will be available to the Cabinet's *Reducing Regulation Committee* on 17 September. The Government's response will be published in December 2010.

Further information:

[Consultation launched on right to request time to train](http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=414956&NewsAreaID=2)

<http://nds.coi.gov.uk/content/Detail.aspx?ReleaseID=414956&NewsAreaID=2>

[Consultation document](http://www.bis.gov.uk/assets/biscore/further-education-skills/docs/t/10-1107-time-to-train-consultation.pdf) <http://www.bis.gov.uk/assets/biscore/further-education-skills/docs/t/10-1107-time-to-train-consultation.pdf>

**(Replaces the existing FAQ)**

## **Employer FAQ – Deductions from Pay**

### ***How can we ensure that our rules for making deductions from pay are lawful?***

The key issues to consider are those defined under the 'Protection of Wages' provisions of the *Employment Rights Act 1996* (ERA), as found in section 13 to 16. These provisions apply, not just to employees, but to "workers", including agency staff, apprentices and fixed-term workers. Deductions from wages made by an employer, or payments from wages made by a worker, are only lawful if

- they are required by statute (e.g. tax, NICs, court orders, student loan deductions), or
- the worker has given prior written authority (e.g. loan repayments, trade union check-off deductions), or
- the deduction is authorised under a provision of the worker's contract.

It is sensible, therefore, to include as many deduction situations as possible in each worker's contract, e.g. the recovery of overtaken holiday pay, fines for stock losses (taking into consideration the special rules for this in sections 17 to 22 of ERA), fines for non-return of company property (e.g. tools, protective clothing), repayment of training costs or relocation costs for early termination, recovery of an overpayment of wages, deductions for not working notice.

All of such deductions may be lawful if they are clearly defined in the worker's contract. Any deductions that are made routinely but that are not in the contract, or not agreed individually with the worker before the situation arises, are unlawful. A common example of a deduction that is commonly made by many employers but that is unlawful is the recovery of 'overtaken' holiday pay on termination. The *Working Time Regulations 1998* allow employers to pay 'undertaken' holiday pay on termination, but only allow the recovery of 'overtaken' holiday pay if it is provided for contractually.

However, contractual deductions may still be unlawful if any rules or conditions defined in the contract are not properly followed by the employer. For example, if the contract states that overtaken holiday may be deducted from the worker's "final wages", it would be unlawful to make a deduction from any other payments due to the worker on termination. It would be better to state that the deduction will be made from "final payments due on termination", allowing all such payments to be aggregated for recovery purposes. Or, if the contract allows the costs of repairs to be deducted from a worker's wages if damage is due to the worker's negligence, the deduction would be unlawful if the employer has not properly established the worker's negligence.

Problems can also arise if a contractual deduction provision is unreasonable. For example, if a deduction may be made from termination pay where a worker has not worked full notice, the deduction may be unlawful if it is of the nature of a penalty, e.g. "an amount equal to the period of notice not worked", rather than an amount that properly reflects the value of the damage caused to the employer because the employer has not worked notice.

(Region Specific: Guernsey)

## **GUERNSEY**

### **Payroll Calendar for the Next Month**

**August 30** – Summer Bank Holiday (except Alderney)

**September 15** - For employers with 80 staff or more, this is the deadline for payment of tax deducted during August to the Income Tax Office.

(Region Specific: Isle of Man)

## **ISLE OF MAN**

### **Payroll Calendar for the Next Month**

**August 19** –This is the deadline for submission of the T35 Remittance Card and ITIP/National Insurance to the Income Tax Division for tax month 4.

**August 30** – Summer Bank Holiday

**September 5** – This is the final day of tax month 5. The T35 Remittance Card and ITIP/National Insurance in respect of the payments made in the tax month to September 5 must be sent to the Income Tax Division by September 19.

**September 19** –This is the deadline for submission of the T35 Remittance Card and ITIP/National Insurance to the Income Tax Division for tax month 5.

(Region Specific: Jersey)

## **JERSEY**

### **Payroll Calendar for the Next Month**

**August 30** – Summer Holiday

**September 15** – For employers with 80 staff or more, this is the deadline for payment to the Social Security Department of the contributions calculated for August.

**September 15** – This is the deadline for submission of the monthly return and payment of tax deducted in August to the Income Tax Office.

### (Region Specific: Jersey)

## Employment Law

### *Changes to redundancy and notice periods*

The following changes to Jersey employment law took effect from 6 August 2010, under provisions in the *Employment (Amendment No. 5) (Jersey) Law 2010*. They relate in particular to the new right to redundancy pay.

- An employer must make a redundancy payment to an employee who is dismissed by reason of redundancy. The employee must have been continuously employed for a period of two years up to the effective date of termination. There is no upper age limit and no limit to the length of the period of employment. The amount of the payment is one “week’s pay” (as already defined in the Employment Law) for each completed year of employment. The amount of one “week’s pay” is limited to the latest average weekly earnings figure published by the States of Jersey Statistics Unit at least one month prior to the effective date of termination.

The latest average earnings figure is £620 per week (June 2009). The figure for June 2010 is due to be released on 25 August 2010.

- Unless the employer pays the redundancy automatically, the employee, within six months of termination, must make a written claim for payment, or have started Tribunal proceedings to establish entitlement to redundancy pay. A Tribunal may also, at its discretion, award a redundancy payment within one year of termination.
- There is no entitlement to redundancy pay if the employee’s contract is renewed or the employee is re-engaged under a new contract before termination and the renewal or re-engagement takes effect within four weeks of termination.

However, entitlement is not lost if the terms and conditions under the new or renewed contract differ wholly or in part from the old contract and, within four weeks of starting under the new contract, or an agreed longer period, the employer or the employee decides that the new contract is not suitable.

- Consultation is required between employer and employee representatives if it is proposed to dismiss as redundant two or more employees where there is a recognised trade union, or six or more employees otherwise, within a 90-day period. Consultation must start at least 30 days before the first dismissal is to take effect. There is provision for a Tribunal to make a protective award of up to 13 weeks’ pay if the employer fails to consult and, in this situation, there is no cap to a “week’s pay”.
- During notice of dismissal for redundancy, an employee who will have at least 2 year’s continuous employment at termination is entitled to paid time off to look for work or arrange for training. The hourly rate of pay is a “week’s pay” divided by the normal hours of work, or by the average normal hours over 12 weeks if greater.
- Employees’ representatives are similarly entitled to paid time off to perform their duties.

An additional change, prompted by the introduction of these redundancy pay rights, is a reduction in the notice periods that must be given by employers when terminating employment.

The current periods of notice were intended to compensate employees for the lack of redundancy legislation when they were increased in 1994. They are now reduced to the same levels as apply in the UK, but still higher than they were before 1994. The new notice periods apply to employees who have been continuously employed for one week or more.

<b>Period of continuous employment</b>	<b>Period of notice</b>
Less than 2 years	1 week
More than 2 but less than 3 years	2 weeks
More than 3 but less than 4 years	3 weeks
More than 4 but less than 5 years	4 weeks
More than 5 but less than 6 years	5 weeks
More than 6 but less than 7 years	6 weeks
More than 7 but less than 8 years	7 weeks
More than 8 but less than 9 years	8 weeks
More than 9 but less than 10 years	9 weeks
More than 10 but less than 11 years	10 weeks
More than 11 but less than 12 years	11 weeks
12 years or more	12 weeks

Further information:

[Employment \(Amendment No. 5\) \(Jersey\) Law 2010](http://www.jerseylaw.je/Law/Display.aspx?url=LawsInForce/htm/lawfiles/2010/L-09-2010.htm)

<http://www.jerseylaw.je/Law/Display.aspx?url=LawsInForce/htm/lawfiles/2010/L-09-2010.htm>

[Draft Law and explanatory notes](http://www.statesassembly.gov.je/documents/propositions/44292-17598-2422009.htm)

<http://www.statesassembly.gov.je/documents/propositions/44292-17598-2422009.htm>

[Statistics Unit – Earnings](http://www.gov.je/Government/JerseyWorld/StatisticsUnit/EmploymentEarnings/Pages/Earnings.aspx)

<http://www.gov.je/Government/JerseyWorld/StatisticsUnit/EmploymentEarnings/Pages/Earnings.aspx>

(Ireland, Republic of)

## REPUBLIC OF IRELAND

### Payroll Calendar for the Next Month

**August 23** – For employers who make their payments (and file form P30) through Revenue On-Line Service (ROS), whether required by law to do so or not, this is the deadline for P30 monthly PAYE/PRSI payments.

**August 31** – This is the final day of tax month 8. The P30 monthly PAYE/PRSI payment for August is due for payment to the Collector General by September 14, or by September 23 if paid through Revenue On-Line Service (ROS).

**September 14** – This is the deadline for P30 monthly PAYE/PRSI payments to the Collector General for August by employers who pay monthly, unless they pay (and file form P30) through Revenue On-Line Service (ROS).

**September 23** – For employers who make their payments (and file form P30) through Revenue On-Line Service (ROS), whether required by law to do so or not, this is the deadline for P30 monthly PAYE/PRSI payments.

(Note: These payment dates also apply to equivalent RCT payments and returns made by principal contractors.)

## FORUM HIGHLIGHTS

### Questions posted over the past week

1. What do other employers do when an employee does not complete a P46, the employer ticks box C online, and then the employee completes a P46 with a different box ticked?  
<http://www.paypershop.com/phpBB2/viewtopic.php?f=58&t=586>
2. Do my tax credit payments have anything to do with my tax code? I haven't earned £6,475 yet in the tax year, so why am I paying tax?  
<http://www.paypershop.com/phpBB2/viewtopic.php?f=58&t=1612>
3. I had a personal wedding gift of £500 from my employer last year, but the employer has reported it on my P11D. Surely it is not taxable!  
<http://www.paypershop.com/phpBB2/viewtopic.php?f=58&t=1613>
4. One of our pension payrolls makes payments to minors. Is there any way we can get an NI number for youngsters?  
<http://www.paypershop.com/phpBB2/viewtopic.php?f=58&t=1614>
5. During maternity leave, I will be paid full pay for six weeks, followed by normal SMP plus a payment equivalent to the car allowance I normally receive. I also receive childcare vouchers under a salary sacrifice. My employer intends to reduce the additional payment by the amount of the salary sacrifice. Can he do that?  
<http://www.paypershop.com/phpBB2/viewtopic.php?f=58&t=1615>
6. What do you think about HMRC's "Real-Time Information" and "Centralised Deductions" proposals?  
<http://www.paypershop.com/phpBB2/viewforum.php?f=76>