

Slide 1

**“New Year - New Rules”?**

**HR Update & Staff Wellbeing**

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Slide 2

**Brexit!**

- Changes to free movement means EU citizens living in the UK before 1.1.2021; can live & work in UK but need to apply under the EU settlement scheme.
- UK is free to depart from EU employment law.. subject to ‘level playing field’ provisions in the deal
- Review of Employment Law WAS due to happen.. But is on hold
- So what?
  - EU law prevented the Government from capping discrimination pay awards..
  - Redundancies - collective consultation periods



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**Employment Contracts**  
**- ie staff on your payroll**

- The law changed in April 2020
- Contracts must be supplied by Day One
- Must contain additional information
- Apply to **new** employees and other workers (e.g. casual workers)

  
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#### Key changes

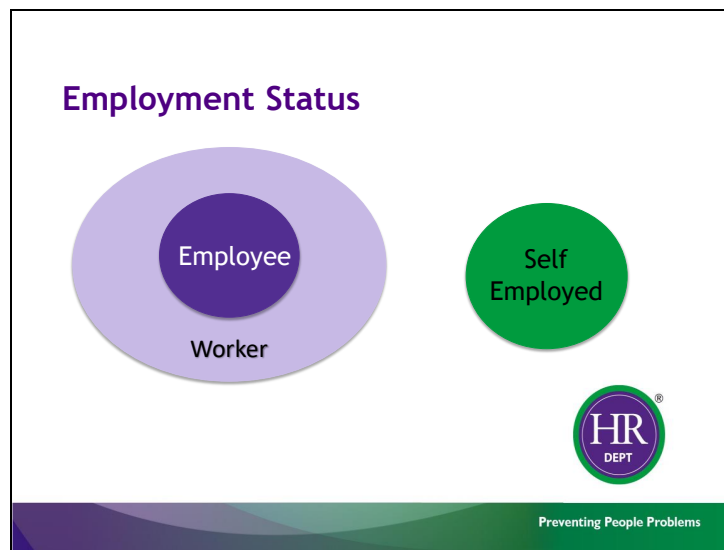
The biggest change concerns the statement of written particulars or written contracts you are required to provide when someone starts working for you.

#### **Do you know what the difference is between a contract and a written statement of particulars?**

From 6 April 2020, written statements need to be given on or before the first day of employment (rather than within eight weeks), to everyone starting to work with you, whether they are permanent employees, fixed term or those categorised as workers.

As our lawyers at Nash & Co say: "This, in all fairness, is a sensible change: who wants to work without knowing their terms and conditions until they have been with their employer for two months? We wouldn't even buy a gym membership without knowing how much notice we had to give when we inevitably want to cancel it after two weeks!"

The employment particulars will be required to have additional information about terms and conditions.



Employment Status:

One of the problems everyone has been grappling with is the nature of the working relationship between an individual and business.

See diagram showing 3 types of relationship:

- Employees (yolk) – have full employment rights – they fall within the category of ‘Worker’
- Other Workers (egg white) e.g. casual workers, some zero hours contractors, temps/agency workers – have fewer employment rights
- AND
- Self Employed – have no employment rights

Versus the taxman’s (HMRC) view: Employees and Self Employed only

So, what are the rights that workers who are not employees have? NMW, paid holiday, working hours/rest breaks, SSP (possibly), Pension membership (possibly), not to be discriminated against, but crucially not employment protection.


The differences between employees and workers and for that matter employees and self-employed do cause confusion and there have been a number of employment law cases about this in recent years.

How can you protect yourself against the risk of claims?

When we talk about casual workers, do you know what the difference is between casual workers and zero hours employees?

**Employment STATUS**

1. Mutuality of obligation
  - *I am obliged to provide work and you are obliged to accept it*
1. Control
  - *You must do the work on the dates/times that I set and under my control*
2. Personal Service (cannot substitute)
  - *If you cannot do the work, you cannot substitute without my agreement*



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Employment Status:

What are the key tests?

Mutuality of obligation

Control


Personal Service (cannot substitute)

Are your contractors genuinely self employed?

Can use on-line HMRC Check Employment Status Tool (CEST) to check whether the contractor should be paid via PAYE

### Off-Payroll Tax Rules (IR35!) - April 21

- Long awaited reforms postponed from previously... but what is it?
- Shifts the burden away from the workers 'personal service companies' (PSC) to the company utilising those services
- Will affect medium and large companies in private sector that hire contractors providing services through an intermediary
- Already in the public sector... (so the introduction may well include those 'funded through public money')



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Also known as the 'off-payroll tax'.

Came into effect in April 2000 to eradicate a form of tax avoidance where contractors would seek to avoid paying tax and NIC's by supplying their services via an intermediary eg a Personal Services Company (PSC) and paying themselves dividends.


The contractor is typically a shareholder / director of the PSC.  
It has been described as 'disguised employment'.

Applies where the contractor personally provides services via a PSC and where the contractor would be employed by the end-user if the PSC was not between them.

With IR 35, the rules shift who is responsible for determining the status of a contractor for tax purposes and who is liable for deducting tax and national insurance.

### Off Payroll Tax Rules (IR35!!)

- Does it affect you?
- Small employers exempt!  
(those that have 2 or more of the following:
  - Turnover of £10.2 million or less
  - Balance sheet total of £5.1 million or less
  - 50 employees or fewer)
- If not 'caught' by IR35, the Personal Services Company (PSC) remains liable for determining their status



#### IR35

Since April 2017 the rules have applied to the public sector. In April 2021 the rules on off-payroll working are due to be extended to medium and large private-sector employers.

Unlikely to affect many small charities because it does not apply to small businesses as defined in the Companies Act 2006, ie those that have 2 or more of the following:

Turnover of £10.2 million or less  
Balance sheet of £5.1 million or less  
50 employees or fewer

Businesses must assess their current arrangements with contractors using PSC's to supply their services and issue an IR35 Status Determination Statement (and follow an appeal process if the contractor disagrees with the outcome).

This can be complicated by agencies in the supply chain - often the end/user (engager) hires an agency that supplies the contractor via his/her PSC.

And can be further complicated if the contractor works via an 'umbrella company'!

Ouch!

BUT many companies even if they are not brought within the new IR35 extension are taking the opportunity to review their arrangements with contractors.

Remember – if it looks like a duck and quacks like a duck, it probably IS a duck!

It will look like an employment contract if the person only works for you, especially if the job is full time and it is for an indefinite period.


If it is not full time, it could still look like a part time job.

A contractor therefore may not be genuinely in business on their own account (or self-employed) in which case you are always at risk of HMRC investigating and concluding that tax and NIC's should have been paid through PAYE.

### Employment Status & IR35 - Checklist

- Review your 'off-payroll' workforce
- Consider the nature of the working relationship
- Is the contractor running their own business, has other clients?
- Do they operate differently from your staff?
- Take advice from your accountant





**Technology & Transformation**

- Reliance on technology into 2021
- Automation and AI technology
- Remote Working (Home working)
- Remuneration in a remote world...

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### **Technological and business transformation**

Reliance on technology, and its development, was a trend for 2020 and remains on the 2021 agenda, alongside adjustments to cost bases and restructuring for many organisations. The Covid-19 pandemic has highlighted the fragility of a human workforce, with many organisations being challenged by absences resulting in reduced productivity or closures, and the associated costs. Future-facing businesses are continuing to explore automation and artificial intelligence technologies – not only to increase productivity and efficiency, but to improve many other aspects of their operations.

### **Future ways of working**

Organisations are grappling with the concept of what the future world of work may look like. The government has actively encouraged businesses to allow those who can effectively work from home to do so and this has resulted in a significant adjustment. For many, remote working has become ‘the new normal’ and some businesses have taken the step of disposing of their office space either partially or entirely, while others are planning for adjustments when employees return.

Each organisation’s response will vary based on business need and culture as well as individual preference. Businesses will have to be mindful of individual flexibility, talent recruitment and retention, team cohesion and collaboration, performance management and cost implications. Organisations should ensure that their policies and procedures are updated to reflect future ways of working.

### **Remuneration in a remote world**

Changes to the way employers engage staff and where they work will bring about many changes. One key issue will be workers’ remuneration. Pay scales are often structured with a link to a worker’s geographic location (for example - London weighting). But if the workforce becomes more agile, should businesses maintain a remuneration structure based on geographic location? Before any changes are made to pay structures, organisations should consider the legal and employee relations implications. In almost all cases, it will be a breach of an employee’s contract of employment to unilaterally reduce their pay. Unequal pay for the same or comparatively similar job roles creates the risk of equal pay claims. Discretionary pay awards can maintain flexibility for organisations but can create legal risk around the exercise of any discretion.





## Workforce Wellbeing

- 2020 highlighted critical need for this to be a key focus area
- Employers have legal duties (H&S)
  - Physical & mental health wellbeing
  - Assess risks posed in the workplace.
- No Job - No Jab: Pimlico Plumbers
- Can you force your employees to be vaccinated against COVID-19?
  - Would refusal be grounds for dismissal if this is a reasonable request on the grounds of H&S?
  - What about PPE for their own protection?
  - Existing vs incoming employees?
  - What about the MMR vaccine - do we deny children a school place?!
  - What about pregnant employees who can't take the vaccine?
  - Ethical veganism which is now a philosophical belief protected under the equality act



### 'Thriving at Work'

- 2017 independent review into Mental Health in the workplace
- Implemented by Shrewsbury Colleges Group:
- Recommended Six Core standards employers should adopt:
  - *Produce a Mental Health Plan*
  - *Develop Mental Health Awareness*
  - *Encourage open conversations about mental health*
  - *Provide good working conditions*
  - *Promote effective people management*
  - *Monitor employee wellbeing*

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Shrewsbury Colleges Group

### 2021 Aico Mental Health Calendar

January Financial Wellbeing	February Understanding Stress	March Impact of Social Media	April Caring for parents & bereavement	May Mental Health Month	June It's okay to be you
July ?	August Relationships	September ?	October Women's Month	November Men's Month	December ?



‘Mental Health First Aid England is a social enterprise with a vision to improve the mental health of the nation.’ **‘We believe in zero stigma around mental health. We want mental health to be openly discussed and supported.’**



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Aico

## Ethical, Inclusive & Diverse Business

- Cultural shift driving this set to continue into 2021.. Including environmental impact, corporate social responsibility and supply chain
- ‘Speak up, Listen Up’ culture - whistleblowing
- #MeToo; Black Lives Matter
- Gender pay gap.. Will we be required to report ethnicity data?



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### **Ethical business**

The cultural shift driving ethical business is set to continue into 2021. Ethical business practices are by their nature multi-faceted, but some areas of focus include an organisation’s environmental impact, its corporate social responsibility initiatives and its supply chains. Of rising importance is a ‘speak up, listen up’ culture, where individuals feel comfortable raising complaints or ‘blowing the whistle’ without fear of retribution.

### **Inclusion and diversity**

Recent social movements, such as #MeToo and Black Lives Matter, placed an increased focus on inclusion and diversity in the workplace. With racial diversity on the government’s agenda, businesses may soon be required to report ethnicity data. While we await legislation, voluntary actions by many organisations and certain investors have led to some progress in ethnic diversity.

## Anything else?

- Currently in the pipeline:
  - Flexible working as a legal provision
  - Modern slavery victim support
  - The right to shared parental leave and pay being extended to working grandparents...



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## Thank you and any questions!

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