

### **Recovering an overpayment from wages is a deduction and must be itemised on payslip**

The EAT's decision in [Ridge v Her Majesty's Land Registry](#) provides a practical lesson for employers about the correct method which must be adopted when recovering a previous overpayment of wages, so as not to fall foul of [S.8 of the Employment Rights Act 1996](#), which gives employees the right to receive a written itemised pay statement containing, among other items, particulars of any deductions from gross pay and 'the purposes for which they are made'.

HMLR's payslips set out the gross pay on one side and list specified deductions from pay such as income tax and NI contributions etc., on the other side. Because of the way the pay system operated, overpayment situations arose when Ridge exhausted his entitlement to full sick pay, but still had spells of absence. Overpayments in one month would be corrected by making minus entries against gross pay, but with no details. Ridge complained that HMLR was in breach of S.8 ERA 1996 as his payslips contained no explanation for the deductions.

A tribunal rejected Ridge's claim on the basis that the variations to his gross pay were adjustments according to the time he actually worked in each month and therefore were not deductions. Wrong, said the EAT. If an employer reduces an employee's wages to recover an overpayment, it is making a 'deduction' from wages and S.8(2)(b) ERA 1996 requires the employer to identify the amount and purpose of the deduction on the payslip. The aim of S.8 is to ensure clarity in the way wages are calculated and that cannot be achieved by making adjustments to gross pay and not providing any explanation. However, a declaration in Ridge's favour was "plainly a sufficient remedy".

Although this case involved a relatively minor aspect of the statutory landscape, it nevertheless progressed through both the tribunal and the EAT because of the principle involved. If an employee's gross pay needs to be reduced for a valid reason then the amount and the reason need to be clearly set out in the deductions column on the payslip.

### **Four key changes in employment law from 1 October**

The four key changes to employment law coming into force on 1 October 2014 are as follows:

1. Expectant fathers, or the partner of a pregnant woman, will be entitled to take unpaid time off work to attend antenatal appointments with their partner on up to two occasions (see our 23 September Legal Development Alert for further information).
2. An employment tribunal will have the power to order employers to carry out equal pay audits where they have been found to have breached equal pay law, or to have discriminated because of sex in non-contractual pay, unless an exception applies (see our 25 September Legal Development Alert for a summary).
3. The National Minimum Wage hourly rates will increase to: (i) £6.50 for the adult rate; (ii) £5.13 for the youth development rate (for workers aged between 18 and 20); (iii) £3.79 for young workers rate (aged under 18 but above the compulsory school age who are not apprentices); and (iv) £2.73 for apprentices
4. The Defence Reform Act 2014, will amend S.108 of the Employment Rights Act 1996 so that there is no minimum qualifying period of employment to bring a claim of unfair dismissal if the reason is the employee's membership of a reserve force (see our 12 September Employment Law News Update for further details).

### **Commission to investigate discrimination in Metropolitan Police Service**

Under S.20 of the Equality Act 2006, the Equality and Human Rights Commission (EHRC) has powers to investigate compliance with equality legislation when it suspects that an unlawful act may have been committed. Using those powers the [EHRC](#) has informed the Commissioner of the Metropolitan Police Service (the Met) that it will carry out an investigation into unlawful discrimination, harassment and victimisation of employees by the Met. This investigation is a response to longstanding concerns about the Met's treatment of female, BME and gay officers, and follows the recent employment tribunal's findings in the case of Carol Howard v Metropolitan Police Service of race and sex discrimination against Ms Howard, as well as victimisation, resulting in an award of £37,000 in compensation. The focus of the investigation will be the Met's Fairness at Work and misconduct procedures.

## BIS publish technical guide for employers on shared parental leave and pay

Eligible employees will have a new statutory entitlement to shared parental leave and pay from April next year. To help employers prepare for the new law the BIS have published an [Employers' Technical Guide to Shared Parental Leave and Pay](#) to provide technical guidance for employers who think their employee(s) may be eligible. This guidance provides a summary of the legislation and covers the following areas:

- Eligibility criteria
- Ending maternity or adoption leave and pay to create shared parental leave and pay
- Knowing whether your employee qualifies for shared parental leave and pay
- How much shared parental leave and pay can be taken?
- Arrangements for “booking” shared parental leave and pay
- Employees who change their shared parental leave plans
- When shared parental leave and pay can be taken
- Frequently Asked Questions on shared parental leave and pay

On 4 November 2014, SM&B will be holding a Parental Leave Breakfast Seminar. Look out for further details.

## ICO issues guidance on the use of smartphones

Many employers now have a 'bring your own device' (BYOD) policy, allowing employees access to company resources and data on their personal devices. The Information Commissioners Office (ICO) points out that smartphones are revolutionising how millions of us go online each day. We use them to make calls, send texts, check emails and run an ever-growing number of applications. But these devices may also carry some risks. Should the smartphone fall into the wrong hands, it is a potential treasure trove of information. If a rogue application is downloaded, it's even possible for hackers to hijack the phone while still in the owner's possession. Given the security risk the ICO has issued a guide, [Safer smartphones - a guide to keeping your device secure](#), developed with Ofcom, the Office of Fair Trading and PhonepayPlus. The guide sets out nine principles for safer use, which employers are advised to incorporate into BYOD policies, communicate to staff and require compliance during BYOD usage.

### Content

*The aim is to provide summary information and comment on the subject areas covered. In particular, where employment tribunal and appellate court cases are reported, the information does not set out all of the facts, the legal arguments presented by the parties and the judgments made in every aspect of the case. Click on the links provided to access full details. Employment law is subject to constant change either by statute or by interpretation by the courts. While every care has been taken in compiling this information, SM&B cannot be held responsible for any errors or omissions. Specialist legal advice must be taken on any legal issues that may arise before embarking upon any formal course of action.*