

# Employer Update 2013

## Real Time Information key procedures

Real Time Information (RTI), the biggest shake up to payroll procedures since PAYE was introduced in the 1940's, will become a reality for the majority of employers from April 2013.

Look out for a letter from HMRC inviting your PAYE scheme to join RTI, an invitation you cannot refuse! Let us know as soon as you have received your invitation so we can help you make the necessary transition.

The principle behind RTI is simple, HMRC want to know which employees are being paid, together with details of the deductions being made 'on or before' the payment is made to the employees.

Here we primarily concentrate on the key submissions but do contact us regarding any questions concerning RTI.

Key submissions	What the submission contains and 'top tips'
Employer Alignment Submission (EAS) - preparing for RTI	Although this submission is only compulsory for large employers or those with a complex payroll system, it is advisable for all employers. It provides HMRC with details of all employees employed in the current tax year including: <ul style="list-style-type: none"> <li>• full employee name</li> <li>• date of birth</li> <li>• national insurance number (NINO)</li> <li>• full postal address (this is a mandatory field where the NINO is unknown)</li> <li>• gender.</li> </ul>
Full Payment Submission (FPS) - operating RTI	Used to report details of employees being paid for a particular pay period and provides details of their: <ul style="list-style-type: none"> <li>• pay</li> <li>• statutory payments, such as Sick, Maternity and Paternity Pay</li> <li>• income tax deductions</li> <li>• national insurance contributions (NIC) (both employees and employers)</li> <li>• student loan deductions</li> <li>• starter and leaver information.</li> </ul>
Employer Payment Submission (EPS) - operating RTI	This submission is used: <ul style="list-style-type: none"> <li>• where no employees were paid in the tax month</li> <li>• where the employer has received advance funding to cover statutory payments</li> <li>• where statutory payments are recoverable (such as sick, maternity and paternity pay) together with the NIC compensation payment if applicable</li> <li>• where a NIC holiday is being claimed or</li> <li>• where CIS deductions are suffered which could be offset (companies only).</li> </ul>

## Paying at the lower earnings limit for owner managed businesses

One of the issues that has been identified is that of owner managed businesses taking salaries to establish an earnings record for state pension and benefits purposes. It is important to ensure that employees are paid 'at' the lower earnings limit (LEL) or above.

Under RTI it will not be possible to put wages through the payroll at the year end of the business where these have actually been, or need to be, paid throughout the year, for example to utilise a family member's LEL. Wages should instead be paid regularly and details provided to HMRC through the RTI system on a timely basis.

Where directors are paid annually, due to the special NIC annual earnings period which applies to directors, this salary may be paid in one lump sum at the year end.

## Pensions auto enrolment

As you are no doubt aware, in a move to encourage more people to save in pension schemes, the government has placed greater responsibility on employers to provide access to pension provision.

An employer will have to work out when the auto enrolment rules will have to be applied. This implementation date is known as the 'staging date'. However, a crucial point is that the staging date is set by reference to the number of persons in an employer's PAYE scheme on 1 April 2012. The number of employees on the payroll now is irrelevant.

### Examples of staging dates

Number of employees	Staging date
250 to 349	1 February 2014
62 to 89	1 July 2014
50 to 53	1 April 2015

If you would like any help in determining your staging date please do get in touch.

## Core preparation

One of the key areas of compliance is to decide what types of workers are engaged by the business and businesses may need to spend some time in analysing their workforce.

A 'worker' is:

- an employee or
- a person who has a contract to provide work or services personally and is not undertaking the work as part of their own business.

The second category is defined in the same way as a 'worker' in employment law. Such people, although not employees, are entitled to core employment rights.



There are three categories of workers: eligible jobholders, non-eligible jobholders and entitled workers.

An 'eligible jobholder' is a worker who is:

- aged between 22 years and the State Pension Age
- earning over the minimum annual earnings threshold (£8,105 2012/13 expected to increase in line with the single persons allowance which is set to rise to £9,440)
- working or ordinarily working in the UK.

Most workers will be eligible jobholders unless the employer already has a qualifying pension scheme. These are the workers for which automatic enrolment will be required.

Other workers (non-eligible jobholders) may have the right to 'opt in' which means they can be treated as eligible jobholders. 'Entitled workers' are entitled to join a scheme but there is no requirement on the employer to make employer contributions in respect of these workers.

Please contact us if you are unsure of how to assess the types of workers you have as we can help you with this difficult process.

## Changes to employment rights

### The new employee owner contract

The Government has been consulting on the new employee owner status which involves giving up certain employment rights in exchange for shares in the employer company. Employers can choose to operate this new employment status and any size of company will be able to use this new status.

The proposals on employee owner status will add to the existing employment categories of

'employee' and 'worker'. Businesses will be able to offer individuals contracts under this new category. Employee owners will receive shares in the company valued at between £2,000 and £50,000 which will be exempt from capital gains tax. In return, employment rights for unfair dismissal (apart from where this is automatically unfair or relates to anti-discrimination law), certain rights to request flexible working, training and statutory redundancy pay will be given up. In addition the employee will have to give 16 weeks' notice (instead of 8) of the intention to return early from maternity or adoption leave.

The Government anticipates that employers would choose to apply restrictions on the shares that they issue but to ensure that employees are protected, the Government will require that if shares are surrendered, the employer would have to buy back the employee's shares at a reasonable value.

Shares will be valued according to their unrestricted market value at the time that they are awarded and will be subject to tax and NICs. The Government does not expect that the shares will be eligible for EIS or any tax-advantaged employee share scheme.

### Increased Parental Leave

Under an EU Directive the permitted period of unpaid parental leave following the birth or adoption of a child has increased from three to four months. Although the EU Directive came into force on 8 March 2012 member states are allowed an extra year for implementation, so the increase will be implemented by 8 March 2013.

### Plans for more flexibility in the leave for parents

Deputy Prime Minister Nick Clegg has announced that parents will be able to share up to 12 months leave after the birth of a child from 2015. Only the

first 2 weeks will be protected and need to be taken by the mother. The plans will allow working parents to take up to 52 weeks off in total either together or in separate blocks and will be more flexible than the current system.

## Allocating PAYE payments to avoid a penalty

It has been confirmed in a recent Tribunal that an employer is within their rights to ask HMRC to allocate PAYE payments in the most favourable manner in order to minimise or entirely avoid a penalty. The taxpayer must advise HMRC where to allocate the amount at the time of payment.

Penalties arise when PAYE liabilities are paid late. The first late payment is ignored but subsequent late payments may incur a penalty. The penalties are:

- 1% for up to three late payments
- 2% for four to six defaults
- 3% for seven to nine defaults, and
- 4% for ten or more defaults.

HMRC's online guidance states:

'If you send your payment to HMRC earlier or later than they expect it you will need to tell them the year and month your payment relates to so that they can correctly allocate it to the period you are paying. You still need to use your 13 character reference number but with extra information added.'

#### Example

Empty Pockets Ltd makes payments towards their PAYE liability. If they tell HMRC their preferred allocation at the time of payment then no penalty is due.

Tax Month	Due Date *	Date paid	HMRC allocation	Late?	Preferred Allocation	Late? following Empty Pockets Ltd's preferred allocation
Month 1	19 May	9 June	M1	Y	M2	N
Month 2	19 June	9 July	M2	Y	M3	N
Month 3	19 July	10 August	M3	Y	M4	N
Month 4	19 August	8 September	M4	Y	M5	N
Month 5	19 September	10 October	M5	Y	M6	N
Month 6	19 October	9 November	M6	Y	M7	N
Month 7	19 November	7 December	M7	Y	M8	N
Month 8	19 December	5 January	M8	Y	M9	N
Month 9	19 January	4 February	M9	Y	M10	N
Month 10	19 February	3 March	M10	Y	M11	N
Month 11	19 March	25 March	M11	Y	M1	Y
Month 12	19 April	19 April	M12	N	M12	N
Total late payments				11 = so 4% penalty due		1 = so no penalty due

\*Cleared electronic payments by 22 (or by Faster Payment if 22 is a non banking day).

As you can see if Empty Pockets Ltd allocates the payments on the most favourable basis a penalty is avoided!