

Important Information for Employers



We want to make the process of employing staff in the UK as easy ~for you as possible. Our experience suggests a few common pitfalls which we want to draw to your attention.



1. If you have employees in the UK, you must have employers' liability insurance- this is not expensive, but the penalties for not having it are very high.
2. You are also required to hold on file evidence of the employee's right to work in the UK before they start with you- e.g. copy of passport, visa, or online right to work check. If you are found employing someone without a right to work, you can face a £20,000 fine. The onus is on the business to check.
3. If you plan to engage someone as a contractor to avoid them being an employee, don't do this as the UK authorities are quick to challenge independent contractor relationships if there is any possibility of treating the contractor as an employee. The actual terms of any contract will not prevent a contractor being treated for tax and employment law as an employee- it is the actual facts of the relationship which matter. (They can look behind any contract). It's not that bad employing someone in the UK as there is more flexibility for employers under UK law. See point 5 below.
4. You need to provide your employees with a "section 1 statement of terms of employment" as required by section 1 Employment Rights Act 1996. However, in most cases a formal contract is desirable to ensure that the business interests of the employer are fully protected. This must be provided to the employee on or before day 1.
5. In a majority of cases, it is more straightforward to terminate an employee's employment during the first two years of employment. After this time there are more detailed processes which must be followed to avoid a claim of unfair dismissal. Irrespective of the employee's length of service, always get legal advice as soon as you are considering removing a member of staff.
6. It is a legal requirement to have a National Insurance Number if you are working in the UK, if you do not currently hold a number, please ensure you apply as soon as you arrive in the country. <https://www.gov.uk/apply-nationalinsurance-number>
7. Anything you give to staff is potentially reportable, and taxable. To avoid an unexpected tax charge be aware of the following staff benefits:
 - a. If you provide your staff with business tools like mobile phones the contracts must be in the company name or there will likely be a tax charge.

b. The cost of annual staff entertainment is taxable on the recipient of the entertainment if it exceeds £150 per head, the tax charge can be transferred to the company to avoid staff having to pay tax for the cost of the staff party!

c. If you provide food in the office for your staff it is possible to avoid that being classed as "entertainment" as long as certain conditions are met, the most important one being that the food is provided to all staff, not just a select few, again, please ask for specific advice.

d. If you provide share options to employees, you need to be aware that unless the scheme is tax advantaged a large tax liability could arise. There are a number of tax efficient approved option plans which you can use but shares not covered by these could be taxed at over 47% so it is important to get advice on this area- there are also reporting requirements and corporation tax considerations.

e. There is currently no legal requirement to provide benefits to your staff on top of salary.

f. We recommend all employers have a written policy on what travel and subsistence expenses they will pay for. Be aware that HMRC are likely to question subsistence expenses paid for employees who are not travelling overnight on business.

g. If you pay travel expense for employees, you need to be aware that travel between home and work is normally considered a personal expense and is taxable if paid by the company.

h. The company can lend up to £10,000 interest free to an employee to cover the cost of an advance season ticket without incurring any tax liability.

i. Payments for business use of an employee's car should be restricted to HMRC approved rates (45p per mile up to 10,000 miles then 25p per mile). Provision of company cars (other than electric cars) is normally prohibitively expensive in tax terms.

j. Employers have to provide a compliant workplace pension scheme for eligible staff as soon as they start work. You must enrol and make an employer's contribution for all staff who:

- are aged between 22 and the State Pension age

- are classed as a 'worker'
- earn at least £10,000 a year
- normally work in the UK

The amount you and your staff member pay into your pension scheme may vary depending on which pension scheme you choose. However, by law, unless the employee opts out of auto enrolment, you and your staff members have to pay a minimum amount into the pension scheme. This is currently set at 8% of your member of staff's qualifying earnings. You, the employer must pay at least 3 % of this and the employee 5% - but you can choose to pay more.

8. There are also reporting requirements when moving staff from country to country:

a) If you wish to take advantage of tax reliefs for short term business visitors or seconded staff the relevant paperwork should be in place and ensure the terms are actually followed in practice. Anyone coming to the UK to work, even for a short time, is potentially taxable in the UK, even on salary being paid and taxed in the home country, so we need to consider each on a case-by-case basis.

b) If any overseas staff travel to the UK (even for 1 or 2 days) but remain on their home country payroll you must ensure that you apply for a Short-Term Business Visitors (EP appendix 4) scheme in the UK. You must be able to demonstrate that you have the internal procedures that will accurately capture data on days of presence in the UK; that monitoring is undertaken by a central administration point; and, that no employee can ever be present for more than 30 days without reporting to this system.

9. Tax efficient benefits:

a. Pension - Auto Enrolment pension schemes have 2 types of arrangements:

- Net Pay arrangement (Your employer takes your contribution from your pay before it's taxed. You only pay tax on what's left. This means you get full tax relief, no matter if you pay tax at the basic, higher, or additional rate)
- Relief at source (Your employer takes your pension contribution after taking tax

and National Insurance from your pay. However much you earn, your pension provider then adds tax relief to your pension pot at the basic rate) However salary sacrifice pension schemes are also available, whereby no tax or national insurance is charged on the pension contributions

b. Cycle to work scheme- allows the company to buy a bicycle and rent it to the employee, eventually selling it to them tax free. The employer can get tax relief on the cost of the bike.

c. Childcare Vouchers- the employer can no longer provide vouchers to new applicants. From 5 October 2018, childcare voucher schemes closed to new applicants. You may be able to get Tax-Free Childcare instead.

d. Season ticket loans- an interest free loan to an employee would normally attract tax on the benefit of the interest forgone, however up to £10,000 can be loaned interest free without tax, this allows the employee to buy a season ticket for commuting to the office and enjoy the lower train fares available to season ticket holders.

e. The use of group protection schemes will provide tax benefits for staff in certain cases and offer cost savings. The cost per employee decreases as the number of staff members covered increases. Group Life and Critical illness schemes provide a tax free lump sum payment to the employee upon a successful claim. Income protection arrangements are used to maintain employee salaries during period of absence due to sickness or accident.

10. Salary Sacrifice:

a. Some benefits can be covered by salary sacrifice arrangements where employees trade salary for benefits- potentially saving tax and national insurance for both employee and employer (e.g. cycle to work schemes and pensions.)

b. Note that salary sacrifice arrangements have an impact on mortgage applications and income protection arrangements. Also, you cannot sacrifice statutory payments such as minimum wage or maternity pay.

11. Other popular benefits:

a. Company cars are heavily taxed in the UK and only employees with very high private mileage will benefit from the provision of a company car. Lower tax applies to "electric cars".

b. Private Medical and Dental Insurance is frequently provided by employers. The cost of medical insurance is relatively low as compared to insurance in countries like the US because in the UK private insurance will only be used by an employee after NHS treatment has been sought. It is taxable on the employee and the employer also has to pay national insurance but will get corporation tax relief on the full cost of providing the benefit. Benefits paid out by the scheme to employees are tax free.

c. Key Man Insurance may be appropriate for companies who have invested a significant amount in setting up operation where there is a heavy reliance on one individual.

Expenses and benefits are reported to the tax office annually on forms P11D which are filed in July each year. It is important that clear records are kept of what payments are made to or in respect of individual staff members so that these forms can be produced. It is possible to process benefits and expenses through the payroll (payrolling benefits) which means that you will not have to submit a form P11D.

12. Visas:

All foreign nationals (except Irish and obviously excluding British Nationals) must have a visa to lawfully live and work in the UK. EEA nationals living in the UK before 31 December 2020 should have applied under the EU Settlement Scheme for Settled or Pre-Settled Status, enabling them to live and work in the UK without the need to apply for a visa. If they have not, they are likely to require sponsorship along with all foreign nationals. You need a system in place to ensure those you employ have a right to work and you regularly check their status to ensure extensions have been obtained and their visa remains valid. Please check their paperwork and obtain advice if in doubt. Do not take an employee's word for it you must have documentary evidence.

Let us Introduce Ourselves



Email: contact@ouryclark.com

Oury Clark London:
10 John Street, London WC1N 2EB

Tel: +44 (0) 20 7067 4300

Oury Clark Slough:
Herschel House, 58 Herschel Street
Slough SL1 1PG

Tel: +44 (0) 1753 551111



Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

13. Data Protection

Employers are required to inform their employees, contractors and workers how they collect, use and secure their personal data during and after the working relationship in accordance with the UK General Data Protection Regulation (UK GDPR). At the recruitment stage, a short-form privacy notice should be issued to candidates in relation to the processing of their personal data for the purposes of the recruitment exercise. During employment, training should be provided to staff who handle personal data across the organisation in relation to the requirements under the UK GDPR.