WHAT DOES THE IMPENDING NATIONAL MINIMUM WAGE INCREASE MEAN FOR THE RETAIL SECTOR?

In this Autumn 2017 Budget, the Chancellor of the Exchequer, Philip Hammond, announced that from April 2018, the national living wage (**NLW**) — the minimum wage rate for the over 25s — would rise from its current rate of £7.50 per hour to £7.83.

The national minimum wage (**NMW**) rate for 21 to 24-year-olds will also rise 4.7 per cent from £7.05 per hour to £7.38 and the rate for 18 to 20-year-olds will rise 5.4 per cent from £5.60 to £5.90. There will be further rises in the rate paid to 16 to 17-years-olds and apprentices.

These increases will exceed the current rate of inflation, boosting the earnings of the country's lowest-paid workers. It will of course also have the knock on effect of higher wages for more senior employees, as companies seek to maintain the pay differential between these individuals. But what does the NMW / NLW increase mean for the retail sector and its workforce, which employs approximately a quarter of the UK's minimum wage population?

How might the retail sector responded to the wage rise?

The higher wage costs following the increase due in April 2018 will come at a time when UK retailers are also contending with the price of sterling falling and increases in business rates. Prior to the NLW / NMW increase in 2017, the retail sector responded to the increased wage bill and other challenges, by looking for efficiencies within the workforce – which may be indicative of the response to expect this year.

First and foremost, there were significant job cuts across the sector – according to the Financial Times, nearly 3,700 retail workers were made redundant in the 12 months up to April 2017 (the time of the last NLW / NMW rise). These losses came from, in part, changes in operational practices to streamline workforces. For instance, following a review of store operations, Sainsbury's removed the role of price controller (a person who ensures that prices displayed on supermarket shelves are correct) whereas Tesco removed the position of deputy manager in its smaller stores.

However, job losses also came about from a reduction in store numbers for a number of retailers, as higher labour costs made marginal stores unprofitable and even pushed some problematic retailers into administration (118 retailers folded in 2017, including some large names such as Jaegar and Brantano).

Where redundancies did not take place, retail employers have reviewed other types of compensation offered to employees or altered other practices, as their wage bills have risen. This has included reduced overtime rates and, like many companies, further closures of defined benefit pension plans, as well changes to working hours and shift patterns.

Other changes we can expect

Whilst last year's response to the increase shows that there are challenges for the retail sector to overcome, there will also be benefits for the industry and the consumer. For example, the direct benefit of a pay bump for the country's lowest paid workers could lead to increased motivation, boosting morale and productivity amongst the retail workforce.

In addition, the increased wage bill is likely to mean that retailers will continue to look at efficiencies through investment in technology to reduce reliance on employees, reduce costs and increase productivity. In-store innovations, such as self-checkout machines and self-scanning technology will continue to become more prevalent, whereas "*display-ready*" boxes will reduce the need for manual shelf-stacking. There are stores in China where a customer scans and pays for everything using their mobile phone, with no staff required. Whilst this could point the way to the future, this level of reliance on technology is extreme. In our view, increased automation is to be expected but there will always be a need for people to staff many retail stores given the personal skills that cannot be replaced by technology, and which are an important part of the "buying experience" in the retail sector.

A further evolution might be increased diversification in the outsourced retail workforce, such as couriers, cleaners and security staff. Companies may look to engage these individuals on a self-employed contractor basis, where no minimum wage applies, rather than as employees. There has already been a significant shift toward this kind of arrangement amongst certain areas of the workforce (couriers most notably), but recent case law around worker status, which has included Uber and CitySprint, demonstrates that such an approach is not without risk.

NMW / NLW Audits

In conjunction with the April 2018 increases, another challenge for retail sector employers is the enhanced focus on NLW / NMW compliance from HMRC. We have anecdotal evidence that the number of HMRC inspectors has increased from circa 10 to 50 over the past year and the number of HMRC employees working on NLW / NMW audits has increased from circa 100 to 450 in the same period.

Through our own clients' experience, we are also aware that a number of organisations are facing investigations from HMRC to assess compliance in respect of (i) charges to employees for uniforms / locker keys and other incidentals which result in a reduction in salary (ii) deductions for lateness where such deductions may take an employee below NLW / NMW (iii) salary sacrifice – what do companies do when an employee who is in a salary sacrifice scheme has their take home pay reduced below NLW / NMW, (iv) how companies define employees' annual hours, and (iv) company processes for increasing wages when an employee reaches a new NLW / NMW age bracket.

All of these issues present potential risks for the retail sector to be alive to.

Conclusion

Whether it is a review of workforce numbers, changes to shift patterns, reductions in supplementary benefits or even the introduction of new technology to increase efficiencies, the steps that retailers have taken and are likely to continue to take as we see future NLW / NMW increases, will have a significant effect on employee populations.

Retail employers must not forget their obligations to employees, whether that is formal redundancy consultations pending site closures or workforce reductions, or informal consultations on changes to terms and conditions or working practices. All give rise to both legal and employee relations considerations. The increased focus on NLW / NMW compliance from HMRC also demonstrates that retailers cannot afford to take risks in this area.

Who to contact

JOHN BRACKEN
Associate
+44 (0)113 209 2559
+44 (0)7710857880

SALLY HULSTON
Partner
+44 (0)113 209 7740
+44 (0)7894 251116

addleshawgoddard.com

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