

Business considerations at Christmas

...your essential guide to the festive period



INTRODUCTION

Your essential guide to the festive period

At Christmas, many areas of your business can be affected. Whether you are organising parties, entertaining clients, buying gifts or hiring seasonal staff, there are specific VAT, Payroll and Employment rules that need to be taken into consideration. Christmas can also be a tricky time for people in the Credit Control department, with customers avoiding making payments. Many businesses also see an increased number of new customers and more intense promotional activities at this time of year. It is crucial that data protection and the new GDPR remains at the forefront of your mind.

This e-book is a quick guide to dealing with some of these common issues. We have highlighted five main areas of operation for you to consider during this time:

- The application of VAT
- The management of staff under UK Employment Law
- Collecting payments from customers
- Ensuring data is handled correctly
- Awareness of seasonal payroll issues

We hope that you find the content informative and useful. Please feel free to forward a copy to your colleagues if you think it would be helpful.

Let me also take this opportunity to wish you and your colleagues a Merry Christmas and a happy and prosperous 2019.

Stephen Smith

Managing Director

UK Training (Worldwide) Limited



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CHAPTER ONE

VAT

Christmas Parties

Client Entertaining

Gifts and Rewards

VAT

Don't give the taxman an unnecessary Christmas gift

Christmas is a time of giving and many businesses will take the festive season as an opportunity to reward their staff and others for their valued services and support during the year. Unfortunately, this generosity can fall foul of HMRC's rules and some careful planning is often needed to avoid passing some of the benefit on to the tax authorities.

This chapter looks at some of the key issues and sets out to ensure that you make the most of available tax reliefs.

Christmas Parties



Christmas parties are often seen as a good way of rewarding employees for a year of hard work – but be careful to make sure you remember some key points.

Christmas parties qualify as a tax-free benefit for employees provided that the following criteria are met...

1. The party must be open to all employees, or to all at a particular location.
2. The total cost of all staff parties or functions within a year must not exceed £150 per head.

$$\text{Cost per head} = \frac{\text{Cost of event}}{\text{Number attending}}$$

Key points to remember:

- The cost per head includes partners or guests of employees attending so be sure to include in the head count when calculating
- The £150 includes VAT, as well as any costs such as transport or accommodation provided

What if the £150 is exceeded?

If the cost per head of an event exceeds £150, the event becomes taxable and employees are chargeable on the full cost per head – not just the amount which exceeds £150. Note: Input VAT recovery is not restricted by the £150 limit.

Can input tax be reclaimed?

Input tax that is incurred on staff entertaining expenditure such as the Christmas party can be reclaimed. But what if partners or clients attend? Here are three scenarios...

1. Only staff attend (no partners/clients) – all VAT can be reclaimed.
2. Staff and guests/clients are invited – VAT applicable to non-staff is not recoverable and VAT must be apportioned.
3. Non-staff attend but pay a fair and reasonable contribution – all VAT can be reclaimed. But do remember that output tax must be accounted for on the contribution.

Scenario

A company has 3 parties over the course of a year and the cost per head is:

Party 1: £80

Party 2: £100

Party 3: £70

Party 1 and 3 are covered by the exemption – they do not exceed the £150 limit.

Party 2 is not – it takes the cost per head for the year above the £150 limit. The whole event would be taxable.

Since April 2016 there has been a new trivial benefit exemption that can be used as many times throughout the year, provided the cost per benefit is no more than £50. It could be beneficial to use this in conjunction with the Christmas party exemption. In the above scenario, if Party 2 was only £50 per head it would be exempt – provided it was for seasonal or personal reasons. See page 8 for more details.

Client Entertaining



Finally, on the subject of entertaining, remember that client entertaining is never an allowable deduction for tax purposes – VAT cannot be reclaimed.

Remember that if clients are invited to the Christmas party, you cannot reclaim all the VAT incurred and must apportion the costs between the members of staff and clients.

Gifts and Rewards



Another topical subject at this time of year is gifts. Gifts are often sent to customers and clients as a gesture of goodwill. They're also used as another way of rewarding staff for their hard work throughout the year.

Business Gifts

A business gift is one provided to clients or customers and is made to further your business. Business gifts are allowable as a tax deduction if the following criteria are met:

1. The total cost of gifts to any one individual over a 12 month period does not exceed £50.
2. The gift carries a clear advert for the business.
3. The gift is not food, drink, tobacco or exchangeable vouchers

Christmas Bonus for staff

Cash gifts and bonuses are treated as normal pay and are therefore subject to tax and NI through the payroll as if they were additional salary. However, since April 2016 it has been possible to reward employees with gift vouchers of up to £50 for seasonal or personal reasons as part of the new trivial benefits exemption.

Gifts to staff

Gifts are in many cases treated as exempt. This is on the grounds that the cash equivalent of the benefit taxable on the employee is so trivial that it would not be worth pursuing.

Under the new trivial benefit exemption, since April 2016, gifts can be provided to employees as often as you would like during the year provided...

- The cost of providing the gift does not exceed £50 per benefit (or average of £50 per employee if provided to a group of employees and it is not possible to calculate the exact cost per person)
- The gift is not in reward for particular service or performance
- The gift is not cash or cash voucher

Example...

An employer has 50 members of staff and provides each one with a bottle of wine at Christmas. The cost comes to £2000 which includes 40 bottles at £20 and 10 bottles at £120.

In this example it is possible to calculate the cost per person.

So the £20 bottles of wine are covered by the exemption but the £120 ones are not.

Gifts from third parties

Finally, gifts that may be overlooked are those given to your employees from third parties. Provided the gift is no more than £250 (inclusive of VAT) per year to the individual, it will be tax-free.

Conclusion

Entertainment and gifts are areas we often get asked about during our VAT training events – we hope this section has gone some way to clarifying the VAT laws. This subject is particularly topical during the festive period – but you should be aware of the rules all year round.

Often, organisations struggle to fully understand the laws and understandably so. On the face of it, the rules imposed by HMRC can seem confusing and this can easily lead to VAT not being accounted for correctly and VAT going unclaimed.

If you clearly understand the rules and plan your festivities carefully, as you can see, you should be able to make the Christmas period tax effective - meaning you can reward your staff for their hard work without having to reward the taxman.

CHAPTER TWO

EMPLOYMENT LAW

Christmas Parties

Hiring Seasonal Staff

Zero Hours Contracts

Online Shopping

Winter Weather

EMPLOYMENT LAW

Avoiding legal issues at Christmas

Christmas time in the workplace can be a very confusing time for employers and employees alike.

For some organisations, work will slow down and people will be looking forward to the Christmas break, while for others it will be the busiest and most stressful period of the entire year.

Christmas has many special challenges for employers and there are likely to be issues that only surface during this period. We have put together some guidance on just a few of the key issues that are likely to crop up.

Christmas Parties



The Christmas party can be an excellent way to boost team morale but be aware that it does come with other considerations.

The legal principle of vicarious liability still applies even when events are held away from the usual workplace. Employers may be responsible for any incidents of harassment, prohibited by the Equality Act 2010, which take place at such events. To reduce the risks of any incidents occurring, employers should remind staff of what is considered to be unacceptable behaviour and most importantly highlight the consequences of such behaviour.

One obvious issue is alcohol and whilst difficult to prevent over-indulgence, there are some small but important things you can do to help the situation...

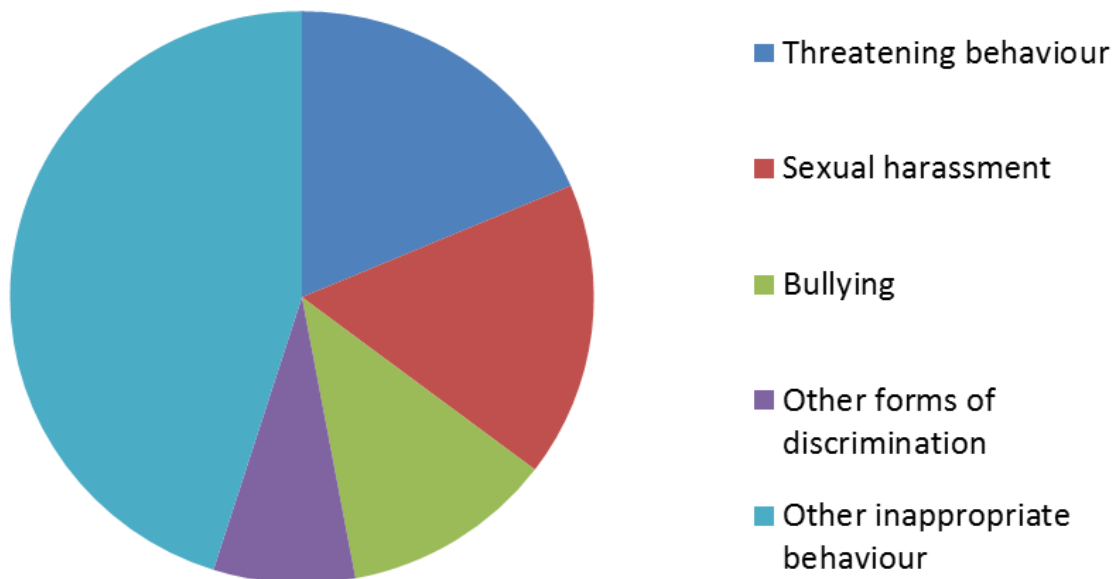
1. Provide plenty of food
2. Limit the amount of alcohol provided
3. Provide non-alcoholic options

Also, to ensure this opportunity for team bonding is not misplaced, ensure any speakers or entertainers are suitable and will not alienate areas of the workforce.

“One in 10 workers know of someone from their organisation who has been disciplined or sacked for inappropriate behaviour at the Christmas party.”

Survey of 2,000 employees by CIPD

Of these workers, the reason for disciplinary action was as follows...



Hiring Seasonal Staff



Another topical issue is the hiring of seasonal staff. Many businesses will see an increase in demand at this time of year and may need to consider their workforce and their ability to meet these levels of demand.

You may choose to hire new employees on fixed-term or part-time contracts or instead may have casual employees.

You should also think about how you can use your current staff. Keeping motivation high will hopefully have a positive effect on productivity and you may want to think about other incentives such as overtime payments, productivity bonuses and staff discounts.

Be aware that if you employ agency staff for a period exceeding 12 weeks, under the Agency Workers Regulations 2010 they are entitled to the same employment and working conditions as any other permanent members of staff.

Zero Hours Contracts



The number of people employed on zero hours contracts always increases in the run-up to Christmas. It is the busiest time of year on the high street and retailers have to cope with short-term demand that must be met by additional workers in shops, call centres, warehouses and distribution centres throughout the country.

It is not just the retail industry that requires reinforcements at Christmas time. There will also be a surge in business across the leisure and entertainment sectors as people celebrate the festive season with friends, family and work colleagues.

If you are employing people on zero hours contracts to help your business over Christmas then you should make yourself aware of guidance published by The Department for Business, Energy and Industrial Strategy.

What are zero hours contracts?

There is no formal definition in law of a zero hours contract but it is generally regarded as an agreement where the employer offers the individual work on an ad hoc basis or as it arises with no guarantee of a minimum number of hours. The offers can be accepted or declined as appropriate.

Appropriate use of zero hours contracts

Zero hours contracts may be useful where work demands are irregular. Some types of work are affected by external factors beyond the employer's control, which can happen in a range of sectors including hospitality, leisure and catering.

Examples of appropriate use:

- New business start-ups
- Irregular work
- Unexpected injury or sickness
- Special events
- Testing a new service

Inappropriate use of zero hours contracts

It is not appropriate to use zero hours contracts on a permanent basis or when regular fixed hours are worked, such as 10am to 2pm from Monday to Wednesday, where a part-time or fixed-term contract would be more suitable. Nor would their use be appropriate for core business activities, where there is a predictable timetable or output that should be managed with proper business planning.

What are the alternatives?

Employers should consider the nature of the work and whether a zero hours contract is suitable. Alternative options may include:

- offering overtime to permanent staff
- recruiting someone to work part-time or on a fixed-term contract
- using agency staff
- offering 'annualised' contracts that guarantee an agreed number of hours in a 12-month period

What constitutes best practice in the use of zero hours contracts?

Clarity

Be clear and give information about employment status and rights, pay and statutory entitlements, arrangements for offering and accepting work and how the contract will be ended.

Transparency

At the recruitment stage it should be made clear that the work is being offered on a zero hours basis, that is not guaranteed and that hours may vary with demand.

Planning and communication

You should plan ahead and give as much notice of work as is possible. It is unacceptable to cancel at late notice or when someone turns up at the workplace - unless it absolutely cannot be avoided.

How are employment rights affected?

Anyone employed on a zero hours contract is entitled to statutory employment rights including the National Minimum Wage, paid annual leave, rest breaks and protection from discrimination.

Recent legislation has prohibited the use of exclusivity clauses in zero hours contracts, which means that workers can now contract with more than one employer.

Online Shopping



A concerning issue for employers at this time of year is online shopping at work. Be sure that this doesn't result in your business losing out.

With shopping events like 'Black Friday' and 'Cyber Monday' becoming increasingly popular, it can easily have a direct impact on workplace productivity. With tempting discounts landing in employee's inboxes, ensure you are aware of and dealing with internet usage. Obviously for the majority of businesses, blocking internet use simply isn't an option. You should provide clear guidance and training for monitoring and surveying internet usage to minimise the effects it could have on your business.

“Nearly 9 in 10 working consumers plan to spend some time online shopping during working hours on Cyber Monday”

The Omnibus Company, 2013

Winter Weather



Finally, another issue which often crops up at this time of year is bad weather and travel disruption. When the weather makes it difficult for employees to get into work – there are various points that you need to consider.

First, remember that being unable to get to work because of poor weather conditions does not mean employees are automatically entitled to pay.

One option is to ask staff to take paid holiday, although you must be sure to give the correct notice. The employment contract may stipulate the notice period – but it must be at least double the length of time you want employees to take as annual leave. For example, for 2 days leave, you must give 4 days notice.

If you decide that the workplace has to close then pay cannot usually be withheld.

To minimise disruption to your organisation and ensure team morale is not damaged, you may want consider various measures...

1. Planning

Consider getting policies in place in advance of weather issues to help employees and make them aware of company procedures. Issues of lateness should also be discussed. Getting a policy in place and then ensuring your staff are aware of the policies should result in less confusion.

2. Flexibility

Where possible you should make working hours and staff location more flexible. It may be possible for you to offer the opportunity of working from home or leaving and arriving at a different time to prevent lengthy journeys.

3. Technology

Laptops, smartphones and tablets all enable both communication to be more effective and for work to be less disrupted. Consider supplying these where appropriate to ensure work can be carried out remotely.

Most importantly, be fair and ensure consistency – if not, this will only cause unrest and annoyance among staff – which could be more disruptive than the bad weather!

Conclusion

The number and variety of workplace issues that can be thrown up by the arrival of Christmas are enough to bring out the inner Scrooge in any employer! But it need not be that way.

There are two key points you should take away from this employment law section.

1. Having proper policies and procedures in place will help you to adequately deal with any situation.
2. Plan ahead. Don't leave your planning until the last minute – if you do, you are much more likely to make mistakes.

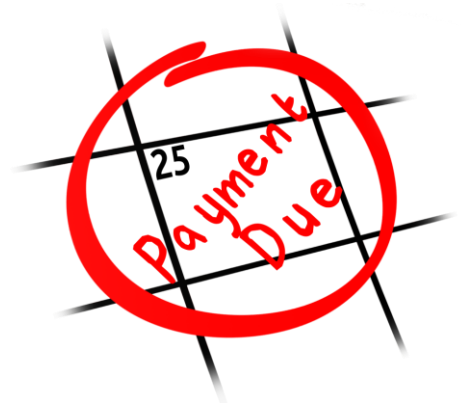
CHAPTER THREE

CREDIT CONTROL

Christmas is traditionally a time when credit controllers have issues with customers – with offices either slowing down or in a frenzied panic before the break. Whichever way, this is a time when you are likely to see invoices being ignored or the excuses for not paying them increasing.

It is important to put measures in place that limit the impact of Christmas on your cash flow...

Top tips...



1. Find out when your customers close for Christmas...

Many businesses will shut over the festive period and even in those that don't, you may find the credit control team are not working as normal.

If payments are due over the festive period, try discussing these well in advance with your customers and make suitable arrangements. If not, you may find that they do not make the payments until January.

2. Find out which customers have a December year end...

If a customer has a December year end, they may try and avoid paying certain invoices to improve the look of their year-end reports. Make sure you are prepared for this possibility and contact the relevant customers to ask when they are planning to pay the outstanding invoices.

Sometimes a call is all that is required... but you may also find some more difficult customers try to give you excuses for why they won't be able to pay.

3. Don't forget about postal payers...

Nowadays, most customers will make electronic payments but you may still have some customers who pay by cheque. If this is the case, you could find that customers avoid sending cheques until the last moment before Christmas, meaning you are unable to bank the cheque until after the break and payment is delayed even further.

If you suspect this could happen with particular customers, try contacting them early and confirm with them when you will need to receive the cheque in order to successfully process it before Christmas.

Conclusion

Christmas can have a real impact on your cash flow, however if you plan ahead and speak regularly with your customers, this impact can be limited.

If you suspect you may have problems with a customer over Christmas, call them. A call means you can confirm they have received the invoice, resolve any queries and ask the customer to confirm payment will be made in good time.

CHAPTER FOUR

DATA PROTECTION

A festival of Shopping

Profiling and Remarketing

The Internet of Things

Charities

DATA PROTECTION

Keep your data well-wrapped this Christmas and stay on the ICO's good list

This time of year is very important for those organisations that use the opportunity to add to their marketing database or make use of their existing customer data to sell more products during peak sales periods. It is also a crucial period for parts of the manufacturing and technology sectors, especially as many new products that are Internet enabled will feature highly on Christmas wish-lists across Europe.

As the spirit of goodwill spreads throughout the holiday season, it presents perhaps the most important fund-raising opportunities of the year for those organisations that rely on charitable donations.

This will be the first Christmas since the new EU General Data Protection Regulation (GDPR) became fully enforceable on 25th May 2018. The GDPR places many new restrictions on the way personal data can be collected and processed. It has significant consequences for all of the above.

There are many issues that crop up at this time of year, which may raise some tough questions regarding your levels of compliance with this new Regulation. We have included just a few key examples to start you thinking...

A festival of shopping



A quick glance at the planning calendar of any retail marketing professional will highlight several very important dates in a very short space of time. Black Friday in November is quickly followed by Cyber Monday. Both of these are particularly important to online retailers. Then there is the relentless run-up to Christmas throughout December and from Boxing Day to January sees the start of the big sales.

Retailers are spending millions of pounds on promotional campaigns to push their products at these festivals of shopping. A lot of the promotional activity will be targeted towards specific individuals based on existing data or data gathered in the coming weeks.

It is important that the data controllers are able to demonstrate that the data they are using has been collected in an honest and transparent manner and that they have the necessary consent, or other legal basis, for contacting people about their goods or services.

When it comes to collecting data under the new rules, one consideration might be **data retention**. GDPR requires that you keep data 'only for as long as is necessary'. Christmas brings out a lot of once-a-year shoppers. How long is it appropriate to store their data? How many times should they be contacted when they are only interested in making a purchase on an annual basis?

Profiling and remarketing

A very powerful tool for marketers at this time of year is online profiling. This enables retailers to promote certain goods based on the end user's online choices or internet usage. We have all looked online for a Christmas present at some point, only to find ourselves bombarded by adverts for the same or similar products over the following days and weeks.

Another form of profiling is 'remarketing' where you visit a site but fail to make a purchase. The retailer can use Google's Adwords service to continue showing you adverts for the item you almost bought for an extended period of time and on a wider variety of websites.

This form of advertising is much more restricted under GDPR and if you are going to continue to use it then you will need to have explicit consent and have a system for preventing profiling from happening when somebody raises an objection.

Furthermore, if you use profiling on a large scale then you are likely to fall into scope for the mandatory requirement to appoint a Data Protection Officer (DPO), which raises many more complex issues.

The internet of things

Many of the exciting gifts that people will receive for Christmas will be Internet enabled. These could include wearable technology, household items, white goods or even children's toys. The technology can transfer data to and from the device, including health information, behaviour patterns, photographs, audio or video. In some other EU countries, the use of these devices by children is already severely restricted.

If you are a manufacturer of any product that is capable of being connected to the Internet then you will need to be aware of restrictions affecting relevant data controllers.

This kind of information is considered sensitive and as such requires explicit consent from the individual to be processed in this way.

You will also need to pay great attention to the security of that data and take appropriate technical and organisational measures to prevent hacking attacks. If any of this data actually leaves the EU then there are additional safeguards to be taken.

It is also likely that your organisation would also be mandated to appoint a statutory DPO, a role which carries many onerous obligations.

Charities

Christmas is a very important time for charities. It is a time of year when we give extra thought and consideration for those in poverty or need all around the world. Many people wish to show goodwill or share the Christmas spirit with charitable gifts or donations.

However, charities have been hard hit by the Information Commissioner's Office in recent times, with several well-known institutions being subject to substantial fines.

If charities are going to collect the personal data of donors they must be clear that they have explicit consent for processing that data and are open and transparent about how the data will be used. They should not buy, sell or share personal data without explicit permission. Nor should they use unlawful profiling techniques to try and identify donors who may be deemed more generous. They should also limit the amount of time they keep the data and make efforts to keep it up to date and accurate.

If the charity processes sensitive personal data on a large scale then it is likely that it will also be required to appoint a Data Protection Officer. This could be an expensive problem for an organisation relying on charitable income.

Conclusion

Hopefully you have already addressed some of these issues as part of your GDPR preparations.

Remember the sanctions are potentially huge – up to €20 million or 4% of global turnover. You really don't want to find yourself on the Information Commissioner's naughty list...

CHAPTER FIVE

PAYROLL

Pay Day

Temporary Staff

Sickness Absence

Gifts and Rewards

PAYROLL

Festive times mean more challenges for the payroll team

Christmas can be an extremely busy time for businesses and this impacts directly on the people involved in payroll. Bank holidays, temporary seasonal staff, sickness, bonuses and gifts all contribute to creating a number of potential headaches.

If you don't know what adjustments and special payroll measures you need to put in place at this time of year, it can be easy for mistakes to occur.

Pay Day



Many employers find that they have to move pay dates around at Christmas because of the plethora of bank holidays and office closures. It's important to remember what the RTI implications of this are.

Where a contractual pay date is brought forward from a Saturday, Sunday or Bank Holiday to the first banking day immediately before, then the payment date in the Full Payment Submission (FPS) should not be shown as the banking day but as the normal contractual pay day.

So a pay date due on 25th December that is paid on Christmas Eve will show a payment date of the 25th December. The FPS can be sent to arrive at any point within the 3-day window, which would be until midnight on 28th December.

If a pay date of 25th December is brought forward to 21st December, then the payment date field should display the 21st and the FPS would be due by midnight on 24th December.

Remember, if you move pay days, workers who are in receipt of Universal Credits may find that their income in December takes them over the eligibility limit and they will not receive benefit payments for the month. An increase in income may see other workers having their benefits reduced. If a worker does lose their benefits because of the move of pay days they should be advised that they will need to reapply to the Department for Work and Pensions in January.

Temporary Staff



Any temporary staff taken on for the Christmas period could well trigger auto enrolment if their age and earnings dictate. To avoid the need to auto-enrol them, employers can use postponement of up to three months from their assessment date. This will postpone the auto-enrolment requirements for these temporary staff, to a date when they are no longer on the payroll.

Of course they could voluntarily opt-in to a pension and you must accept that, but it is perhaps more unlikely than with permanent staff. The exclusions introduced in April 2015 that allow you not to enrol those with a leaving date already on file do not extend to fixed term staff, who must be auto-enrolled even in their last week or month of work, unless postponement is used.

If you have a lot of temporary staff leaving around Christmas, you may find it easier (and cheaper!) to issue their P45s by email rather than in the post. It is only recently that HMRC have agreed that this is acceptable in the same way as P60s and payslips. It may also avoid the inevitable contact when an employee says they didn't receive the P45 in the post and you are unable to issue a duplicate, only a statement of earnings.

Sickness Absence



The hectic nature of pre-Christmas preparations, parties and cold weather all contribute to rising levels of absence at Christmas.

You cannot deny Statutory Sick Pay (SSP) to anyone who self-certifies their absence for the first seven days. If they qualify, then SSP is due from the fourth qualifying day. It is of course perfectly acceptable not to pay anyone for the first three days of absence to deter people from taking isolated days.

If you insist on a fit note from a GP to ensure the absence is genuine, then you will have to reimburse the employee if they are charged for this.

“The winter months do see an increased rate of absence caused by seasonal illnesses, but the effect of the festive party season cannot be ignored either. In any case, with widespread absence comes an increased workload and stress levels for the HR team”

Bupa

Gifts and Rewards



Many employers see Christmas as the ideal time to incentivise employees and thank them for their service through the provision of gifts or bonuses. If you do this, it is important to consider the tax and NI implications.

Trivial Benefits

This Christmas you can provide your employees with a gift up to the value of £50 including VAT. Provided you meet certain conditions, this is considered a trivial benefit and will not count towards taxable income, class 1NIC and does not need to be reported on the P11D.

If you have struggled to find a gift that you can provide to the whole workforce without offending cultural or religious observance, then this Christmas there is a solution...

Since April 2016 you have been able to give gift vouchers up to the value of £50 to employees.

Bonuses

Whilst a Christmas bonus is a lovely surprise, employees often forget that if they have earnings related deductions these will rise as earnings do and can make a dent in any bonus related net pay. This will apply to student loans as well as court orders.

“Over a third of respondents (39.5%) would prefer to receive retail vouchers from their employer at Christmas”

theHRDirector.com

Conclusion

As with all sections of this book, the key to success with festive payroll issues is to take care to follow the rules and regulations carefully, plan in advance and have clear policies in place.

If you have planned for the festive season and understand what impact it will have on the various departments within your business in advance, then the correct procedures should already be in place - meaning there should be only one thing left to do...

Have a Merry Christmas!

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